PERMISSION TO OFFER AMENDMENT NO. 3 OUT OF ORDER AND LIMITING DEBATE ON AMENDMENT NO. 3 DURING CONSIDERATION OF H.R. 5005, HOMELAND SECURITY ACT OF 2002

Mr. ARMEX. Mr. Speaker, I ask unanimous consent that during consideration in the Committee of the Whole of H.R. 5005 pursuant to House Resolution 502, the gentleman from California (Mr. WAXMAN), or his designee, be permitted to offer amendment numbered 3 in House Report 107–615 out of the specified order, to be offered at a time designated by the chairman of the Select Committee on Homeland Security pursuant to section 4 of House Resolution 502 and that debate on such amendment be limited to 20 minutes.

The SPEAKER pro tempore (Mr. ARMEY). That would be fine with the gentleman from California (Mr. WAXMAN). Pursuant to House Resolution 502 and rule XVIII, the Chair designates the gentleman from California (Ms. PELOSI) to offer amendment numbered 3. The Chair recognizes the gentleman from California (Ms. PELOSI).

Ms. PELOSI. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5005, the Homeland Security Act of 2002.

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

There was no objection.

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

There was no objection.

The SPEAKER pro tempore. Is there objection to the request of the gentleman from Texas (Mr. LAHOOD) and the gentleman from California (Ms. PELOSI)?

There was no objection.

ANNOUNCEMENT REGARDING CONFERENCE REPORT ON BANKRUPTCY BILL

Mr. ARMEX. Mr. Speaker, members of the bankruptcy conference should proceed to H–219 to sign the signature sheets before they retire for the evening. And may I reiterate to our Members, there will be no more recorded votes tonight. Those Members who wish to participate in the general debate and in the amendments through amendment No. 23 will want to stay here for that participation and that debate.

GENERAL LEAVE

Mr. ARMEX. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on H.R. 5005, the Homeland Security Act of 2002.

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

There was no objection.

HOMELAND SECURITY ACT OF 2002

The SPEAKER pro tempore. Pursuant to House Resolution 502 and rule XVIII, 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. 5005.

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. 5005) to establish the Department of Homeland Security, and for other purposes, with Mr. LAHOOD 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 Texas (Mr. ARMEY) and the gentleman from California (Ms. PELOSI) each will control 45 minutes.

The Chair recognizes the gentleman from Texas (Mr. ARMEY).

Mr. ARMEY. Mr. Chairman, I yield myself 5 minutes.

Mr. Chairman, as Ronald Reagan once said, “History teaches that wars begin when governments believe the price of aggression is cheap.”

President George W. Bush has heeded this call. He has asked us to undertake the most significant transformation of our government in half a century. If we are to do this, it is essential that we understand why it is necessary to do so. We must start with a precise understanding of why an enormous transformation of our government is required.

Mr. Chairman, the world has changed. It is a much different world than it was in 1947 when the last transformation of our government took place. It is a far different place than it was mere 10 months ago. Our place in the world stage will never be as we have known it.

Mr. Chairman, what will it take to defend freedom under such circumstances? As the greatest, most free Nation the world has ever known, how do we protect our citizens and our culture from the forces who hate us? Do we lock up our doors and bar the windows? Are we perhaps in danger of sacrificing our liberty in the name of security?

The answer is that we are here today to act to defend individual liberty as much as we are here to defend personal safety. The enemies we now face take advantage of our free society to destroy us. They do so precisely because they hate the idea that we have the ability to choose for ourselves. We cannot grant them the victory they seek...
by relinquishing our freedoms or clos-
ing our society.

This is an enemy not constrained by
traditional borders. It is not con-
strained by any moral compass that
distinguishes between the lives of civi-
lains, women and children. To fight
such an enemy, new solutions are re-
quired.

Here at home, the need for new solu-
tions is great. Our ability to deal with
foreign terrorists remains limited. Many
government resources are scattered,
technology is outdated on too many occasions, and the mis-
sions of our agencies on the front lines
of terrorism are unfocused. This, Mr.
Chairman, makes us vulnerable. As
long as we are vulnerable, our enemies
will believe the price of aggression is
one they can afford.

We cannot allow ourselves to forget
just how real the threat has become.
Although we may find ourselves safe
while terrorist cells are confused and
on the run, we must recognize that short-term success
should not inspire complacency. In this
battle, time is of the essence. We must
not take any more time than is abso-
lutely necessary to do this job and to
do it right.

The threats and freedoms present a
great challenge to our society. Our re-
sponse must be even greater. They
must not win.

Let me close by recalling the words of
our Founders. They remind us that the
protection of our liberty is an imper-
vious responsibility. As Mr. Chairman, if I may quote from what I
consider the single greatest sentence ever written about America, the first
sentence in the preamble to the Con-
stitution, we are told by our Founding
Fathers that our purpose is “to provide
for the common defense, promote the
general welfare and, “Mr. Chairman,
“to secure the blessings of liberty to
ourselves and our posterity.”

We are here tonight to heed these
words, and we must take the new and
awesome responsibilities that they
impose seriously. Together, let us work
together to make freedom secure as we
cast our vote today.

Ms. PELOSI. Mr. Chairman, I yield
myself such time as I may consume,
not to exceed 6 minutes.

Mr. Chairman, the preamble to the
Constitution that the distinguished
majority leader just quoted tells us
that providing for the common defense
is a primary role of our government, and
civil service protections. By doing so,
it invites problems of corruption, fa-
voritism, and low morale that were the
reasons that the civil service was es-
stablished in the first place. Civil serv-
ice is a backbone of a democratic gov-
ernment. We must preserve it.

The bill before us also ignores the bi-
partisan agreement on liability and in-
stead inserts a provision so unprece-
dented in its sweep that it prompted the
Radio Officers Association of the
United States to write yesterday to the
gentleman from Texas (Mr. Arne)
“This is not the time to immunize
those who risk the lives of innocent
American troops through willful mis-
conduct.”

As for the Department itself, it is a
1960s version of the bureaucracy. I had
hoped that we could set up a Depart-
ment that would be lean and agile and
of the future, that would maximize the
use of technology, that would cap-
italize on the spirit of innovation and
new technologies. But, sadly, it does not.

Instead, we have, as I say, this bloat-
ed 1960s bureaucratic Department
which the General Accounting Office
says will take between 5 and 10 years
for the Department to be up and run-
ning, and, in its current form, will cost
$1.5 billion, says the Congressional
Budget Office, to set up.

Certainly we will pay any price to
protect the American people, but there
appears to be an opportunity to cost
$1.5 billion just on management and re-
arranging Departments, money better
spent on truly protecting the American
people.

Mr. Chairman, tonight we will have
bipartisan amendments to correct the
problems in this bill. Unfortunately,
though, the rule did not allow us to
bring the DeLauro amendment to the
floor. That amendment would have pre-
vented those irresponsible businesses
that choose profit over patriotism by
fleeing into the Bermuda Triangle,
going offshore to avoid taxes needed to
pay for the war on terrorism. Instead,
they are trying to cash in on that war.

As for the Department itself, it is a
1960s version of the bureaucracy. I had
hoped that we could set up a Depart-
ment that would be lean and agile and
of the future, that would maximize the
use of technology, that would cap-
italize on the spirit of innovation and
new technologies. But, sadly, it does not.

As the senior Democrat on the Per-
manent Select Committee on Intelle-
ger, and as the distinguished chair-
man presiding, where he also serves, we
know full well the dangers our country
faces from the terrorists. We have be-
fore us today a historic opportunity to
shape a Department of Homeland Secu-
rity that will make the American peo-
ple safer, while also honoring the prin-
ciples and freedoms of our great Na-
tion.

Unfortunately, we do not have a bill
before us today that measures up to
the challenge of protecting the Amer-
ican people in the best possible way.
There are serious problems with the
bill in its current form.

For example, out of the blue, the Re-
publicans attempted to remove alto-
gether the deadline for installation of
devices to screen baggage for explo-
losives. When that failed, they needlessly
extended the deadline.

Then, ignoring the bipartisan rec-
ommendations of the Committee on
Government Reform, the Republican
bill weakens good government laws and
civil service protections. By doing so,
its sweeping scope, without bipartisan
agreement on liability and inst-
rance, a common mission. Let us work
together to make freedom secure as we
voting the House today.

Mr. THORNBERRY. Mr. Chairman, as
we debate the bill tonight, we are on hallowed ground,
ground broken on September 11. We
must do our very best in memory of
those who died and as a comfort to
their loved ones. In that spirit, I thank
the chairman.

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

Mr. ARMEY. Mr. Chairman, I yield 3
minutes to the distinguished gen-
leman from Texas (Mr. Thornberry),
one of the true entrepreneurs and
innovators in homeland defense in this
body.

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

Mr. THORNBERRY. Mr. Chairman, I
thank the majority leader for yielding
me time.

Mr. Chairman, since the end of the
Cold War, there have been some dis-
concerting trends. One is that chemical,
biological, nuclear and radiological
weapons are spreading to more and
more nations and more and more
groups. In addition to that, more and
more nations and more and more
groups are hostile to the United States
and will seem to stop at nothing to at-
tack us. Study after study recognized
our vulnerability and urged us to act,
and yet it has taken September 11 to
give that impetus, to force us to act,
and tonight we are acting in important
ways.

It is true that organizational reform
does not solve all of our problems. We
still have to have the best people, we
still have to have resources, we have to give the right authorities. But as the Deutsch Commission found, a cardinal truth of government is that policy without proper organization is effectively no policy at all. That is why this organization is important. It does not guarantee success but without it, we can guarantee failure.

What we found when we tried to protect our people is dozens of different agencies scattered across Departments all across the government. So the first question is: can we bring some of those key Departments and agencies together under one umbrella, with one chain of command, they will work better together and we will be safer.

Under this legislation, one piece relates to information, so all the cyberterrorism offices scattered around the government will be brought together and will work together. There is a science and technology initiative where a number of the offices around the government will be brought together to identify, develop, and then field technologies that will keep us safer.

The third element is transportation and border. Ninety percent of the people in the new Department will be devoted to border and transportation security. If somebody thinks that this new Department is bloated, they are going to have to get rid of some of the people on our borders; and I do not think many of us will want to do that.

This brings together Border Patrol, Customs, Coast Guard and Agriculture inspectors, and actually they have the same chain of command. They can actually use the same equipment under the same regulations and working together have better border security.

A fourth element is emergency preparedness and response. Build upon the strengths of FEMA with its regional offices all around the country, this will be the key conduit of communication and training and planning and grants for local responders, and they all support each other.

Mr. Chairman, the world has changed a lot in the last 10 years, and our government institutions must evolve and change in order to meet this new challenge. But this new Department also has to have the tools to meet that challenge, and that is why some of the amendments that we are going to consider, giving them the tools, the management flexibility, for example, to hire computer experts away from Silicon Valley, are so important.

This bill is not perfect, but it makes us safer and it should be supported.

Mr. Chairman, the past several days, I have distributed to our colleagues a series of questions and answers about creating a Department of Homeland Security. I am including copies of them in the Record at this point because they reflect a number of the issues which have been raised about this proposal and some of the reasons we should support it.

Establishing a Department of Homeland Security

Question 1: Where did this idea come from?

It has been said that the idea of consolidating a number of government agencies into a new Department of Homeland Security was hatched in secret in the middle of the night—and now we’re being asked to vote on it less than 2 months after it was first proposed.

Not true. Here are the facts.

As far as I know, the idea to create a new Department of Homeland Security from several of the President’s offices and agencies scattered around the Government springs from the U.S. Commission on National Security 21st Century, popularly known as the Hart-Rudman Commission. This bipartisan Commission was established by Congress in 1997 and was charged with undertaking a broad, in-depth study of America’s national security challenges over the next 25 years.

The quality and experience of those serving on the Commission was extraordinary. The Commission also had a top rate staff.

The Commission issued three reports—one on the threats we face, one on an overall strategy, and finally one with specific recommendations. Overall, they spent 3 years carefully looking at the world and our role in it and concluded that “security of the American homeland from the threats we mentioned should be the primary national security mission of the U.S. Government.” (Just to show you the breadth of the study, their second recommendation dealt with the adequacy of our math and science education.)

The Commission unanimously recommended the creation of a new Department of Homeland Security, along with border security agencies, cyber terrorism offices, and emergency response organizations, such as FEMA. Their final report was issued publicly on February 15, 2001.

In fairness, a number of other commissions in recent years, such as the Marsh Commission (1997), the Deutsch Commission (1999), the Bremer Commission (2000), and the Gilmore Commission (2001), reached similar conclusions about the importance of reorganizing the Government to address homeland security.

Many of the principles and suggestions from them were also in the Hart-Rudman report or have been incorporated into the various proposals.

On March 21, 2001, I introduced H.R. 1158, to implement the Hart-Rudman recommendations and create the new Department. The Government Reform Committee, as well as other committees, held hearings on this issue.

After September 11, a number of other proposals came forth. The Administration, and of course, President Bush appointed Governor Ridge to head a Homeland Security Office in the White House.

Earlier this year, a bipartisan group of House and Senate Members introduced a revised proposal, H.R. 4660, to create a Department of Homeland Security. This bill was introduced by Ms. Harman, Ms. Tauscher, Mr. Gibbons, and me, and was cosponsored by 40 Members. In the Senate, it was S. 2452 by Senators Lieberman, Specter, and Graham.

In June, in response to the Commission’s recommendations, the Administration announced its own plan that was similar to the previous proposals. The Senate bill was reported out of the Government Reform Committee on May 22, 2002. The President announced a revised proposal last month, and of course, President Bush appointed Governor Ridge to head a Homeland Security Office in the White House.

In sum, several years of study and work—inside the Congress and out—have gone into this idea. I recommend that you or your staff take a look at the Hart-Rudman report, which set forth the problems and some solutions well before September 11. A complete copy of the report can be found at http://www.nssg.gov.

Question 2: Now does creating a new Department make us safer? [Part 1]

Now that you know where the idea came from (Question 1), let’s get to the heart of the matter: How does this proposal help make us safer? After all, that is what really matters.

One way a Department of Homeland Security can make us safer is by bringing together one umbrella and one chain of command many of the government agencies that deal with border security, cyber terrorism, emergency response, and counter-mass destruction.

The new Department of Homeland Security would bring together those various entities that deal with border security, cyber terrorism, emergency response, and counter-mass destruction. Under this legislation, one piece relates to information, so all the cybersecurity offices scattered around the government will be brought together to identify, develop, and then field technologies that will keep us safer.

Another important consideration is that this new Department is bloated, one chain of command, with direct control over the policies and funding of the agencies involved, it will be very difficult to control and coordinate their efforts. One chain of command, with direct control over budgets, is required to make sure that all of the communications equipment is compatible; to make sure that the dozen or so databases these agencies have can be shared; to have clear; consistent regulations and procedures for border inspections; and to have clear; consistent communications with other government agencies.

Control over our borders is essential to protecting our homeland. We must have the organizations and tools responsible for border security be as effective as possible. That means they must operate as one integrated, seamless unit. They must have the technology and equipment to do that, and they must have the procedures and regulations to operate as one unit.

This plan would give them one phone number, over 90 percent of the personnel who will be in the new Department of Homeland Security will be from existing agencies charged with border and transportation security.

As Leon Panetta has said, without “direct line authority over the policies and funding of the agencies involved, it will be very difficult to control and coordinate their efforts.” One chain of command, with direct control over budgets, is required to make sure that all of the communications equipment is compatible; to make sure that the dozen or so databases these agencies have can be shared; to have clear; consistent regulations and procedures for border inspections; and to have clear; consistent communications with other government agencies.

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Now, of course, organizational reform is no silver bullet. We still need more top quality people to manage our borders. We still need the best technology we can field quickly. We still need to improve our immigration and other laws. But all of those resources and efforts will not be as effective as they could be without the right organizational structure to get the most out of them.

The Deutsch Commission report said that “a cardinal truth of government is that policy without proper organization is effectively meaningless.” President Eisenhower believed that “the right system does not guarantee success, but the wrong system guarantees failure.” A defective system will suck the leadership into its cracks and fissures, wasting their time as they seek to manage dysfunction rather than making critical decisions.

Homeland Security is too important to have anyone “manage dysfunction.” We need the best odds we can get in order to protect our people.

**QUESTION 3: HOW DOES CREATING A NEW DEPARTMENT MAKE US SAFER (PART 2)?**

Consolidating existing agencies into a new Department of Homeland Security can help make us safer by integrating the work of those agencies into one seamless unit. It can help make us safer in other ways, too.

One way is by making homeland security a higher priority in the day-to-day operations of the federal government. Today, no federal department has homeland security as its primary mission. Rather than dozens of different agencies with some homeland security duties, we should have:

One department whose primary mission is to protect the homeland;

One department to secure borders, ports, and other vulnerabilities on the front of our homeland security efforts, September 11 taught us that lesson in ways we will never forget. Local police, firefighters, and emergency medical personnel will be on the scene, and they will always be the first to respond to any terrorist attack.

Local law enforcement are also essential to preventing terrorist attacks. When intelligence information is received about a threat to shopping malls, for instance, it is the local police that will be on higher alert and ready to respond. However, we reorganize federal agencies, empowering first responders is tremendously important to making the country safer. Organizations like the International Association of Chiefs of Police and the International Association of Fire Chiefs, support creation of a new Department of Homeland Security for very good reasons.

It will provide a “one-stop shop” for state and local officials. I suspect I will be hearing from local officials who need help in finding the proper federal agencies that will be on higher alert and ready to respond. Because the Coast Guard already has a number of varied missions that have little to do with the primary focus of the Department of Homeland Security, it will not continue to perform its many jobs, but its critical role in protecting the United States and its citizens will be enhanced.

The Hart-Rudman Commission called the Coast Guard a “moderate security agency given its unique blend of law enforcement, regulatory, and military authorities that allow it to operate within, across, and beyond the United States’ borders.” How about it, the Coast Guard already has a number of varied missions that have little to do with the primary focus of the Department of Homeland Security. The new Department of Homeland Security will be in a much better position to perform its many jobs. The Coast Guard already has a number of varied missions that have little to do with the primary focus of the Department of Homeland Security.

Another way the new Department can make us safer is by helping set priorities with the homeland security mission. We could spend the whole federal budget on homeland security and still not be 100 percent safe. We have to look at our vulnerabilities from the perspective of the most important threats. We need to work with our partners to get more resources and attention in one area and less in another. That becomes very hard to do when the agencies charged with setting priorities are themselves scattered around the government.

For border security, what is more important: more people or more technology? What if the Justice and Interior Departments want to emphasize one category, but Customs decides to emphasize the other? Naturally, Congress plays a key role in sorting out what is more important and what is less important, but the agencies must have one coherent, integrated decision process in order to be effective.

In sum, creating a Department of Homeland Security will help make homeland security a higher national priority and by making our homeland security efforts more effective. It is not a magic answer, but given all that is at stake, every added measure of security counts.

**QUESTION 4: HOW DOES THIS REORGANIZATION AFFECT EMERGENCY RESPONDERS?**

If anyone needed a reminder that local emergency responders are the forefront of our homeland security efforts, September 11 taught us that lesson in ways we will never forget. Local police, firefighters, and emergency medical personnel will be on the scene, and they will always be the first to respond to any terrorist attack.

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will develop as a part of its homeland security mission, will also enable FEMA to deal even more effectively with natural disasters.

Another reason I feel confident that the various agencies involved in homeland security will perform their other important missions is—yes, the Congress. We provide their funds, and through oversight and direction we can ensure that the important needs of the country are met.

**QUESTION 6: HOW MUCH WILL THIS NEW DEPARTMENT COST?**

With any significant proposal before Congress, there is the issue of cost. In this case, the Congressional Budget Office has estimated that the President’s plan for a Department of Homeland Security will cost about $3 billion over five years. Some have misinterpreted this amount as the cost of the reorganization. It is not.

In fact, the CBO report states that two-thirds of their $3 billion estimate is for new programs suggested by the President, such as the National Bio-Weapons Defense Analysis Center, the new intelligence analysis function, and other newly authorized activities. We may agree with the President’s recommendation to create these new programs, but they are for new capabilities, not reorganization.

According to the CBO estimate, the cost of consolidating agencies and providing centralized leadership, coordination, and support services in the new department is approximately $1 billion over five years. That figure is an estimate based on the cost of administering other, existing departments, such as the Department of Justice. It does not consider any cost savings from things like consolidating overhead and support services.

The President proposed a dramatic increase in homeland security spending in his budget for fiscal year 2003. He believes that what we are calling the new Department of Homeland Security should be accommodated within these new, higher levels of spending.

We also have to look at the bigger picture, however. Homeland security should not be used as an excuse to justify new, unneeded spending. There is no doubt we will be spending significantly more money on real homeland security. The world is a different place. We also should do everything we can to make sure that the money is spent wisely and efficiently. That is a primary purpose of the new Department of Homeland Security. The Secretary should please even the most rigid budget hawk.

**QUESTION 7: HOW BIG SHOULD THE NEW DEPARTMENT BE?**

When the President first submitted his proposal for a Department of Homeland Security, some complained that it was not big enough because some essential agencies were not included. Others have argued that it has too many people and too many agencies, that it needs to be “leaner and meaner.”

What is the right size? The short answer is that the new Department should be whatever size it takes to do the job. Obviously, we cannot put every function necessary to border and transportation security in one cabinet department. We have to choose what job we need the Department to do and then give the Department the agencies and tools it needs to do that job.

If we want the Department to be responsible for border security, as most everyone does, then it must have all of the border security functions. If it also wants to do transportation security will, in fact, be the largest component of the new Department. About 90 percent of the employees of the Department of Homeland Security will be in that category.

To significantly reduce the size of the Department, you have to either leave one of the border agencies out or you have to reduce the number of people on the border. Neither of those options makes us safer.

Most agree that the new Department should do everything in our national security. If so, it needs to have the entities in the federal government which deal with that issue.

We all know that state and local emergency management is on the front line of homeland security and that we need to assist them in doing their jobs. The new Department not only can provide grants and training; it can reorganize existing communications among different levels of government and even among various emergency responders. But, it needs to build upon the existing FEMA structure and its relationships to “hit the ground running.”

It is important to remember that this reorganization does not make government bigger. It is an improvement. The old Department not only can provide grants and training; it can reorganize existing communications among different levels of government and even among various emergency responders. But, it needs to build upon the existing FEMA structure and its relationships to “hit the ground running.”

**QUESTION 8: WHY HAS THE PRESIDENT ASKED FOR MANAGEMENT FLEXIBILITY IN THE NEW DEPARTMENT?**

The President’s request for “management flexibility” has been interpreted to mean a number of things and raised many fears, some unnecessarily. Here is where we find ourselves:

Terrorists are always probing for weak- ness. They are seeking out our vulnerabilities. They are watching what we do and adjusting their plans accordingly. We have to be flexible and adaptable in order to be successful. Unfortunately, thosecharac- teristics are usually not found in govern- ment organizations.

If we receive information that leads us to believe that we should acquire a particular capability, we need the flexibility that the new Department can provide. It needs to do that, within limits, without waiting on a bill from Congress or on approval of a reprogramming request. Some would say that the funding flexibility is especially important during the transition phase of the new Department.

We face even bigger challenges with peo ple. It takes far too long to hire qualified personnel. It is very difficult today to reward a federal employee who does an outstanding job and wants to continue in the same posi- tion. We have in the past talked today to dismiss a federal employee who does not do a satisfactory job. Most managers simply try to shove them out of the way.

To hire people with the background and ex- perience we need to fight cyber attacks, the federal government must compete with in- dustry. The traditional civil service system hinders our ability to do so. New incentives, flexibility in hiring and firing, and greater flexibility in hours and benefits will all help us get and keep the top quality people we need.

The new Department needs other kinds of flexibility as well. Creating a new Depart- ment in a time of war, merging various cultu- ral and political points of view, and increasing the number of people and resources involved will be a tremendous management challenge.

The new Secretary should have some ability to reorganize inside the new Department as developments warrant. He or she should also have greater procurement and contracting flexibility to help identify and use the latest and most up-to-date technology as rapidly as possible.

The President has been clear that he is not trying to overturn federal protec- tions in this bill. He is simply trying to give the new Department every chance to work—and so should we.

**QUESTION 9: IF NOT THIS, WHAT?**

Creating a new cabinet department, re- aligning existing agencies, creating new ca- pabilities to fight terrorism—it seems like a lot in one bill. Understandably, some Mem- bers have concerns that it is too much too fast.

Well, what are our alternatives? Of course, the easiest option is to leave things as they are. We could reject the Presi- dent’s proposal and assume that the best we can do to keep our Nation secure is keep the current system with dozens of different agen- cies—each having some homeland security responsibility.

Another option is to leave the various agencies in their current departments but look to a White House office to coordinate their activities, using the Drug Czar as a counterpart for a White House coordinator to help set government-wide policies, in part because a number of these agencies involved in homeland security will not be in the new Department. But, as Tom Ridge has learned, a White House coordi- nator is not a substitute for a direct chain of command, with day-to-day control over—and responsibility for—key func- tions. A coordinator and 100 people in the White House cannot ensure that communica- tions equipment is compatible, that data bases are interoperable, or that every guard at each border crossing follows the proper procedures.

A third option is to move incrementally— combine just two or three agencies, see how that works, and leave the door open to add- ing a few more down the road. Unfortu- nately, we do not have the luxury of time before we act. We need safer borders today, and the governmental entity charged with re- sponding with day-to-day control over and responsibility for foreign intelligence opera- tions makes us safer. We need greater cyber security today.

We cannot wait.

We must avoid setting up the new Depart- ment with too many responsibilities. If we assign it the job of border security but do not give it direct control over all of the people and resources at the border, it simply cannot be effective. Going half-way is not fair to the employees in the new agency or to the American people.

Just as when we looked at our welfare sys- tem a few years ago, we can credibly argue that the present system is as good as we can do. We must also resist the tempta- tion to tamper around the edges in ways that do not make a difference. We need to strengthen federal support for emergency response today, and we need better cyber security today. We cannot wait.

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visited Ground Zero at the World Trade Center with the President and my colleagues from the tri-State area.

Winston Churchill once said, “You can always rely on America to do the right thing, once it has exhausted the alternatives.”

Let me suggest that the gravity of the challenges we face in the wake of September 11 impels us to prove Churchill wrong on his latter sentiment. As we seek to protect the American people, to establish the new Department of Homeland Security, we must get this right the first time.

Let us get this right for Kelly Colisanti of Hoboken, New Jersey, whose husband was killed in the attack on the World Trade Center. Let us not forget Kelly and the more than 100 constituents from my congressional district in northern New Jersey who were killed, and all of the other victims of the horrific attacks of September 11.

How we use American power abroad determines our success as a global power. It defines us in the eyes of others. America now faces the awesome responsibility to protect her people from terrorism.

History shows that if the American power domestically is an entirely different matter. The establishment of this new Department will have profound implications. Let us keep that in mind as we proceed to establish a very powerful domestic security agency. Let us also refrain from questioning or impugning the motives of those who have a different view as to how we protect the American people and, yes, American workers.

Let me underscore a few items.

A Nation that can put a man on the moon and lead the information age can surely figure out a way to get the bomb detection technology we need in just 400 airports. Secretary Mineta testified before the Transportation and Infrastructure 2 days ago that the TSA would meet the deadlines. He said the same before the Select Committee on Homeland Security. The Department’s Inspector General testified that it was premature to say the TSA would not be able to meet the deadlines. As a Congress, we need to speak with one voice that excuses and delays will not be tolerated, and that is why I will offer an amendment to protect the American people, to establish a very powerful domestic security agency. Let us also refrain from questioning or impugning the motives of those who have a different view as to how we protect the American people and, yes, American workers.

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of biomedical research activities at the Department of Health and Human Services and NIH and the CDC has never been greater than today. This bill literally builds upon those great research agencies, and rather than destroying their work and taking it over and, in fact, makes it clear that NIH and CDC will remain with primary responsibility over human health-related research, and that the new Department itself will not engage in R&D efforts, but rather will collaborate and coordinate with these two agencies.

More importantly, the bill retains all of the legal and budgetary authority for these research programs within HHS. The Committee on Energy and Commerce recommended this approach because of the terrorism-related research currently being performed at NIH and at the CDC, which is really dual-purpose in nature. It serves the priority and needs of both counterterrorism and, also, traditionally, the needs of public health. So I want to thank the gentleman from Texas (Mr. ARMEE) and the administration for working with us on this important change.

We also want to make clear that the bill adopts recommendations that our committee made with respect to not only bioterrorism and public health operations at NIH and HHS, but also the public health emergency grant programs agencies have asked us to do is that the committee adopted our committee’s recommendations in this area as well.

The bill also will improve the efforts by our country’s top scientists at national laboratories to develop new methods of detecting and preventing terrorist attacks, such as improved sensors to detect radiological devices and new scanners to screen luggage and cargo, a critical need as we move forward. Also, the ability to screen for radiological and nuclear materials entering our ports is woefully inadequate. We are going to do something about it with this bill.

To address those needs, our committee recommended the bill adopt a provision that will establish at the new Department a central technology clearinghouse that will assist Federal agencies, State and local governments and, even more importantly, the private sector in evaluating, implementing, and adopting the information about key homeland security technologies such as radiation and bio-defense detectors.

I particularly want to thank the gentleman from North Carolina (Mr. BUIR) of our committee, the gentlewoman from New York (Ms. WELLS), and the gentlewoman from California (Ms. HARMS) for their help in this regard during the committee’s deliberations.

I also want to point out that, indeed, we also recommended, and the committee adopted in this print, with the Department a Federal cybersecurity program that will begin to provide computer security expertise to other Federal and civilian agencies to help improve protection of their critical information systems.

Our committee did work in this area, and what we learned about the vulnerability of Federal agencies to cyberattack was astounding. Today, many of the internal software lines tell us the private sector is in similar shape. This bill will turn it around. The cybersecurity section is a critical component.

Mr. Chairman, I want to commend this bill to all of my colleagues and recommend its passage.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from California (Mr. WAXMAN), the ranking member of the Committee on Government Reform.

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

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

Mr. Chairman, while I agree that we need homeland security legislation, it is clear that the Federal departments are not working together as they should to protect our Nation. The recent revelations of missed signals and failure to communicate at the FBI and the CIA illustrate how serious this problem is. Unfortunately, the bill we are considering today has serious flaws. In fact, I think it may well cause more problems than it solves.

I want to show a chart to the right. Here is how our homeland security agencies are organized today, and I have a second chart. This is how they will be organized after the new Department is created. We are getting more bureaucracy and we are doing so at a tremendous cost to the taxpayers.

According to the Congressional Budget Office, just creating and managing a new department will cost $4.5 billion, and this does not include additional spending that may be necessary to prevent terrorist attacks, reduce the Nation’s vulnerability to attacks, and recover from any attacks.

Now, if this money were used at the front lines of fighting terrorism instead of paying for a new bureaucracy, think how much better off we might be. There is an old adage that those who do not remember the past are condemned to repeat it, but we may do exactly this in our headlong rush to create this new department.

The history of past reorganizations is not reassuring. Here is what Petronius the arbiter, an advisor to the Roman Emperor Nero, said nearly 2000 years ago, and I quote: “We trained hard, but it seemed that every time we were beginning to form up into teams, we would be reorganized. I was to learn later in life that we tend to meet any difficulty by reorganizing, and a wonderful invention it may be, but it is neither easy nor convenient to draw a line in the sand and declare the illusion of progress, while producing confusion, inefficiency, and demoralization.”

The committees were able to work in a bipartisan way to achieve some substantial improvements to the President’s bill. Unfortunately, the Select Committee on Homeland Security chose to simply reverse many of these gains. Even worse, the Select Committees on Homeland Security added entirely new provisions that weaken our national security. One provision delays deadlines for improving airline safety. Another exempts defense contractors and other large campaign contributors from liability if they commit intentional wrongdoing. This is the ultimate anti-corporate responsibility provision imaginable.

One major defect in this bill is that it would transfer a vast array of responsibilities that have nothing to do with homeland security such as administering the national flood insurance program and cleaning up oil spills at sea.

This bloats the size of the bureaucracy and dilutes the new department’s counterterrorism mission.

Another major defect is the bill lacks a strong mechanism to coordinate the activities of the many Federal agencies with major homeland security functions. This coordination has to occur at the White House level to be effective, but this bill does not give the White House Office of Homeland Security the budgetary power it needs to do its job. I will be offering an amendment later to address this deficiency.

Another problem is the President’s proposal include broad exemptions from our Nation’s most basic good government laws, such as civil services laws and the Freedom of Information Act.

We fixed many of these loopholes in our committee, but the Select Committee ignored our work. As a result, I will be offering an amendment to restore to the employees of the new department basic civil service rights.

There are many problems in this bill that need to be fixed. I hope we will be able to put aside partisan differences and, for the sake of our national security, finally address them as we move forward with this legislation.

I agree we need homeland security legislation. It is clear that federal departments are not working together as they should to protect our nation. Revelations of missed signals and failures to communicate at the Federal Bureau of Investigation and the Central Intelligence Agency illustrate how serious the problem is. Unfortunately, the bill we are considering today has serious flaws that may well cause more problems than it solves.

Fundamentally, reorganization is a bureaucratic exercise. The bill before us addresses organizational flow charts, the creation of five new undersecretaries, and the appointment of 12 new assistant secretaries. But as a professor of management at Carnegie-Mellon University recently remarked, “To think that a structural solution can bring about a major improvement in performance is a major mistake.”
According to the Administration, “responsibilities for homeland security are dispersed among more than 100 different government organizations.” Indeed, this organizational chart from the White House lists 153 different agencies, departments, and offices with a role in homeland security.

The President’s proposal will not simplify this patchwork and may even make it worse. Even after all of the proposed changes, the federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to this chart, prepared by the minority staff of the Appropriations Committee, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President’s proposal, from 153 to 160.

We are getting more bureaucracy, not less. And we are doing so at a tremendous cost to the taxpayer.

The Administration has asserted that this new Department “would not ‘grow’ government,” and that any costs would be paid for by “eliminating redundancies.” According to the Congressional Budget Office (CBO), however, just creating and managing the new Department will cost $4.5 billion. And this does not include “additional spending that may be necessary to prevent terrorist attacks, reduce the risk of terrorist attacks, and recover from any attacks,” CBO says.

If this money were used at the front lines of fighting terrorism—instead of paying for a new bureaucracy—think how much better off we might be.

The committees of jurisdiction were able to work in a bipartisan way to achieve some substantial improvements to the President’s bill. Unfortunately, the Select Committee chose to simply reverse many of these gains. Even worse, the Select Committee added entirely new provisions that weaken our national security.

One provision added by the Select Committee delays deadlines for improving airline safety. Under current law, the Transportation Security Administration is required to take all necessary action to ensure that all United States airports have sufficient explosive detection systems to screen all checked baggage no later than December 31, 2002. But under the Select Committee bill, air passengers must wait another full year before all bags are checked for bombs.

Another new Select Committee provision exempts defense contractors and other large campaign contributors from liability—even for intentional wrongdoing. The Select Committee added a provision to exempt contractors from liability for the products the Secretary deems “qualified anti-terrorism technologies.” For these products, which could include pharmaceutical products such as the anthrax vaccine, the Select Committee limited corporate liability, exempted companies from punitive damages even when the companies are fraudulent or negligent, and gave them complete immunity in state courts. This is the ultimate anti-corporate responsibility provision imaginable.

Yesterday, we received a letter from the Reserve Officers’ Association in the United States opposing this provision. In their letter, the reserve officers stated that this section “is inconsistent with pursuing the highest quality product for use by our armed forces as they fight terrorism.” Yet today, we will hear additional proposals to expand this broad corporate exemption even further. Mr. ARMIEY will introduce an amendment to extend these liability exemptions to an even wider range of potentially defective products and services.

On July 11, I wrote with Representative DAVID OBEY, the Ranking Member of the Appropriations Committee, in sending a letter to Governor Ridge outlining a number of serious problems with the bill (attached). This letter raised concerns with ten different areas related to the establishment of the new Department. I asked the majority staff of the Appropriations Committee that this letter be inserted in the RECORD.

As the letter explains, one major defect in this bill is that it would transfer to the new Department a vast array of responsibilities that have nothing to do with homeland security, such as administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boil weevil. Giving the new Department dozens of unrelated responsibilities will bloat the size of the bureaucracy and dilute the new Department’s counterterrorism focus.

Another major defect is that the bill lacks a strong mechanism to coordinate the activities of the many federal agencies with major homeland security functions. This coordination has to occur at the White House level to be effective. In the letter, we gave the White House Office of Homeland Security the budgetary powers it needs to do its job. I will offer an amendment later today that addresses this deficiency.

A third problem is that the President’s proposal included broad exemptions from our nation’s most basic “good government” laws. The bill allowed the new Secretary to waive civil service laws that prohibit patronage, protect whistleblowers, provide for collective bargaining rights, and ensure health and retirement benefits. Under the President’s proposal, the Secretary could also ignore cornerstone procurement principles, such as open and competitive bidding, and basic government in sunshine laws, such as the Freedom of Information Act (FOIA) and the Federal Advisory Committee Act.

We fixed many of these loopholes in the Committee on Government Reform, but the Select Committee ignored our work. As a result, I will be offering an amendment with Mr. FROST later today to restore to the employees of the new Department basic civil service rights. I will also be strongly supporting the amendment by Representative MORELLA to protect collective bargaining rights, and I will be supporting an amendment to fully restore FOIA and FACA protections.

Let me be clear: I am opposed to reorganization. I am convinced there are steps we can take that will make sense and improve the functioning of our government. But it has to be done in a way that minimizes disruption and bureaucracy and maximizes our ability to confront the terrorism threats that we face. Simply rushing to reorganize is not the solution.

A better approach would be to create a leaner, more focused Department of Homeland Security and to strengthen the authority of the existing White House Office of Homeland Security. The new Department should be limited to the Immigration and Naturalization Service, the Customs Service, and the Transportation Security Administration. Such a new Department would have less than half of the employees of the proposal before us. Even more important, it would have a narrow, focused mission of protecting our borders and transportation systems.

At the same time, we need to develop a detailed homeland security strategy and to ensure that all federal agencies coordinate in implementing the strategy. This needs to be done at the White House level. Currently, there is an office in the White House that is supposed to be providing this coordinating function, but it does not have enough power to be effective. As part of a streamlined, less bureaucratic approach to homeland security, Congress should be codifying the White House Office of Homeland Security in statute and giving the director of the office budgetary authority sufficient to make agencies pay attention to the office.

There is an old adage that those who do not remember the past are condemned to repeat it. But we may do exactly this in our headlong rush to create the new Department. The history of past reorganizations is not encouraging. The Defense Department was riven with strife. In 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they couldn’t figure out how to cooperate. It was not until the Goldwater-Nichols Act of 1986 that the problems created in the 1947 reorganization were finally addressed.

Let us avoid the mistake of the past. We have to do a careful job. But the process we are following is not encouraging. The reorganization plan was released before the Administration completed its work on the national strategy for homeland security. Moreover, the White House proposal we are considering today was put together by a handful of political appointees working in secret. The agencies with expertise were excluded from the process. In fact, there was so little communication between the White House and the agencies that one important agency had to call my staff to find out how it fared under the plan.

These days there seems to be a lot of self-congratulation going on, which makes us all feel good. But the time for congratulations and ceremonial posturing is over. We have captured Osama bin Laden and the other al Qaeda leaders, when we have arrested the criminal who launched the anthrax attacks, and when Americans from California to New York go to bed at night knowing that our intelligence and law enforcement agencies are in the best position possible to thwart terrorism.

Our job today is not to congratulate ourselves for creating another bureaucracy, but to...
address the many problems in this bill that need to be fixed. I hope we will be able to put aside partisan differences and—for the sake of our national security—produce legislation that actually makes sense.

HOMESTEAD SECURITY

General: Congress is considering the President’s proposal to create a new Department of Homeland Security on an accelerated schedule. But now that Congress has rejected the rhetoric that would implement the President’s plan, many issues have arisen about the details of the proposal. We are writing in the hope that you will also provide expedient responses to these concerns.

The issues fall into ten main areas. First, the new Department will inherit a vast array of responsibilities that have nothing to do with homeland security. These include administering the National Flood Insurance Program, cleaning up oil spills at sea, and eradicating pests like the boll weevil. Giving the new Department dozens of responsibilities unrelated to homeland security risks bloating the size of the bureaucracy and diluting the new Department’s counterterrorism mission.

Second, the legislation lacks an effective mechanism to implement the many federal agencies that have major homeland security functions. The President’s submission to Congress listed 153 different agencies, departments, and offices involved with homeland security. After the creation of the proposed new Department, this number actually will increase to 160 agencies and departments with little purpose to end duplication and redundancy. But the draft bill does not include a mechanism for developing and implementing a unified homeland security strategy across the entire government.

Third, there are inefficiencies and coordination problems that will arise when parts of agencies are removed from their existing departments and moved to the new Department. The goal of the legislation is to make government more efficient, but some of the proposed changes could have exactly the opposite result. For example, GAO has testified that programs transferred from the Department of Health and Human Services include “essential public health functions that, while not homeland security, are critical to basic public health core capacities.

Fourth, despite prior assurances that the Administration supported reforms of the Immigration and Naturalization Service (INS) that were passed by the House, the President’s proposal would import the INS into the new Department of Homeland Security wholly intact and without these needed reforms.

Fifth, the legislation includes broad exemptions from our nation’s most basic “good government” laws. The legislative language would allow the new Secretary, in conjunction with the Attorney General or Personnel Management, to waive all provisions of the civil service laws. These laws have evolved over many decades to ensure that our government has a professional service that is the basis of merit rather than political favoritism. Yet the proposed legislation would allow the new Department to waive all of these rules, including those that habituate, protect whistle-blowers, provide for collective bargaining rights, and ensure health and retirement benefits.

A sixth concern has been taken with procurement and the management of real property. Under the proposal, the Secretary does not have to comply with cornerstone procurement principles, such as open and competitive bidding. Moreover, basic government in sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act, have been limited in their application to the new Department.

Sixth, the President’s proposal would give the new Department new necessary powers to avoid meaningful congressional oversight. Not only would the new Department be able to exempt itself from civil service, procurement, and agency role, and procedures, but also it would be able to rearrange functions, eliminate offices, and transfer large amounts of appropriated funds without having to seek prior congressional approval.

Seventh, the proposal does not address the potential for disruption in the nation’s war against terrorism. According to David Walker, the Comptroller General of GAO: “[R]eorganizations of government agencies frequently encounter start up problems and unanticipated consequences that result from the consolidations, are unlikely to fully overcome obstacles and challenges, and may require additional modifications in the future to effectively achieve our collective goals for defending against terrorism.” Although Administration officials have compared this restructuring to the formation of the Department of Defense in the 1940s, the reorganization was not attempted until after the war was over, and even then it caused confusion and inefficiencies for decades.

Eighth, there is no comprehensive national strategy for combating terrorism to guide the new Department. Logically, a major bureaucratic reorganization like this should be proposed as part of a comprehensive national strategy for providing homeland security. But in this case, the reorganization is occurring in a vacuum. A strategic plan that identifies the major threats the nation faces and explains how the new Department will meet them. Nor is there a comprehensive threat and risk assessment that identifies and prioritizes threats in a coherent manner.

Ninth, the costs of this proposal have not been identified. Although the Administration has stated that the creation of this new Department “would not ‘grow’ government,” this is not credible. According to the non-partisan GAO, even the less ambitious reorganization proposed by Senator Lieberman will cost taxpayers over $1 billion over the next five years. Costs for the Administration’s plan inevitably will be higher.

Finally, the Administration’s proposal was developed in secret by a small group of White House advisors, without substantive input from the agencies that handle homeland security. It is being rushed through Congress on an accelerated schedule. This is not how a strategic plan produces good policy. The potential for making grave mistakes as a result of this truncated process should be a serious concern for all Americans.

We need to work together to address the concerns raised in this letter and to make improvements in the legislation. Your response to the concerns raised in the body of this letter will be an important step in this process. For this reason—and given the short time frame Congress has for consideration of this legislation—we urge you to respond by July 15, 2002.

I. TRANSFER OF FUNCTIONS NOT RELATED TO HOMELAND SECURITY

According to the White House briefing document, the Department of Homeland Security “must be an agile, fast-paced, and responsive organization..." Transferring functions that do not involve homeland security to the new Department, however, interferes with this goal. Giving the new Department unnecessary responsibilities will increase the size of its bureaucracy and dilute its counterterrorism mission.

At the same time, giving vital but unrelated government responsibilities to the Department creates the risk that these responsibilities will be neglected and performed poorly. As GAO has concluded, many of the unrelated functions being given to the new Department “represent extremely important functions executed by the federal government, and sufficient attention, could have serious implications for their effective delivery and consequences for sectors of our economy, health and safety, research programs, and other significant government functions.”

Despite these risks, many important government functions that are not related to homeland security are being transferred to the new Department. In fact, the new Department will have to carry out over three dozen completely unrelated missions under the President’s proposal.

Section 402(3) of the President’s proposal would transfer the Animal Plant Health Inspection Service (APHIS) to the new Department. APHIS has nearly 8,000 full-time employees (FTEs), and is responsible for inspecting plants and animal products at the border. The other APHIS employees perform functions that are critical to various sectors of the economy, but are not related to homeland security. For example, APHIS is responsible for:

- Eradicating pests, such as the boll weevil, the citrus canker, the gypsy moth, and various noxious weeds through detection and control strategies throughout the United States;
- Approving animal drugs that are made from biological materials, such as animal vaccines;
- Approving field trials of genetically modified crops; and

Section 502(1) of the President’s proposal would transfer the Federal Emergency Management Agency (FEMA) into the new Department. FEMA has a limited role in counterterrorism. According to former FEMA director James Lee Witt, “[o]ver the last decade FEMA has responded to more than 10 major hurricane and major disaster events. Two of those were related to terrorism (Oklahoma City and New York City).” In Mr. Witt’s view, “[G]iving FEMA into a homeland or national security agency would seriously compromise the nation’s previously effective response to natural hazards.”

FEMA responsibilities that are unrelated to homeland security include:

- Providing flood insurance and mitigation services (excluding participation in the Hazard Mitigation Grant Program, and flood mapping);
- Conducting various programs to mitigate the effects of natural disasters, such as programs to assist states in preparing for hurricanes and the National Earthquake Hazards Reduction Program;
- Providing temporary housing and food for homeless people; and
- Operating the National Fire Data Center and the National Fire Incident Reporting System to reduce the loss of life from fire-related incidents.

Section 402(4) of the President’s proposal would transfer the United States Coast Guard out of the Department of Transportation and into the new Department. The
Coast Guard describes itself as a “multi-mission, military, maritime” agency. Although it performs some security-related functions, it also conducts many others unrelated to homeland security. For example, Coast Guard responsibilities include:

- Providing navigational tools to ensure that vessels can navigate the nation’s waterways.
- Promulgating and enforcing boating regulations to ensure that oceangoing vessels are safe.
- Protecting the nation’s fishery resources, as well as its endangered species, by enforcing prohibitions against illegal and excess fishing.
- Protecting the maritime environment by preventing oil spills in the nation’s waters and ensuring that spills are cleaned up expeditiously if they happen; and
- Maintaining a fleet of ships that is capable of breaking ice in order to maintain maritime mobility and monitors the movement of glaciers.

These Coast Guard functions are essential, but they could be jeopardized by the transfer to a new Department focused on homeland security. Indeed, the effects of the shift in the Administration’s priorities are already being felt. According to the Administration’s homeland security budget justification for fiscal year 2003, by September 30, 2002, the Coast Guard’s port security mission grew from approximately 1-2 percent of daily operations to between 50-60 percent today. Without commitment to its core marine and fishery functions, the Coast Guard’s ability to protect boaters and the marine environment will be jeopardized.

There are many other examples of unrelated functions being transferred to the new Department. The transfer of the Environmental Measurements Laboratory from the Department of Energy (DOE), for example, will make the new Department responsible for maintaining the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, as well as the program that assesses the quality of 199 private laboratories that measure radiation levels. Radiation measurement quality control undoubtedly will seem like a small item to the new Department of Homeland Security, but assuring that the laboratories make accurate measurements is important because these measurements could potentially affect public health and cause large unnecessary public expenditures at DOE facilities.

Appendix A contains a list of 40 unrelated functions that would be transferred to the new Department by the President’s proposal. While it may be impossible to create a new Department without transferring some unrelated functions, there would seem to be serious dangers inherent in the wholesale transfer of unrelated functions as contemplated in the Administration’s proposal.

II. LACK OF EFFECTIVE COORDINATING MECHANISMS

At the same time that the Administration’s proposal transfers numerous unrelated functions to the new Department, the proposal also fails to include provisions that would ensure the coordination of the more than 100 federal entities that will continue to have significant homeland security functions.

According to the Administration, “responsibilities for homeland security are dispersed among a multitude of federal, state, and local governments.” Indeed, an organizational chart provided by the White House listed 153 different agencies, departments, and offices with a role in homeland security. The White House argues that the President’s proposal would solve this problem by “transforming and realigning the current confusing patchwork of government activities into a single department.”

In fact, however, the President’s proposal will not simplify this patchwork and may even make it worse. Even after all of the changes proposed in the President’s legislative language, the federal government would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to an analysis by the Congressional Budget Office, the total number of departments, agencies, and offices with a role in homeland security actually will grow under the President’s proposal.

One example of the continued need for coordination across agencies involves providing emergency response. According to the Administration’s proposal, all but one of the 11 federal agencies (FEMA) would continue to exist, and this one agency would be placed within a new Department, the new Department’s proposal. But under the Administration’s proposal, all but one of these 11 federal agencies (FEMA) would continue to exist, and this one agency would be placed within a new Department. The potential for confusion—and the need for effective coordination—remains as great after the creation of the new Department as before.

In fact, in some cases, the reorganization will actually create confusion. Currently, three separate federal agencies are in charge of protecting the food supply: the Food and Drug Administration (FDA), which prevents adulteration of fruits, vegetables, processed foods, and seafood; the Environmental Protection Agency (EPA), which regulates environmental contaminants, such as pesticides; and the Department of Agriculture, which regulates the safety of meat and poultry for human consumption, as well as the spread of plant and animal pests through food products. Leading experts, such as the National Academy of Sciences, have called for consolidating these diffuse authorities into a single agency.

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public health and safety. The President’s proposal seeks to “clarify” these responsibilities by “eliminating the artificial distinction between ‘crisis management’ and ‘consequence management.’” But it does not describe how the new Department and the FBI will handle the scene of a bioterrorist attack if they both arrive at the same time with fundamentally conflicting interests and goals.

There are many other instances of coordination problems that the President’s proposal does not address. It is unclear in the President’s proposal, for instance, how the Department of Homeland Security would organize and coordinate the various different police forces that exist among federal agencies. The Administration’s proposal would transfer some of those forces (the Federal Protective Service, which protects buildings belonging to the various agencies that make up the Department of Homeland Security) to the new Department. These forces protecting Department of Energy, Veterans, and judicial buildings). Moreover, functions from the White House to the new Department from GSA creates its own problems because, as GAO has observed, “security needs to be integrated into the decisions about location, design, or usage of federal facilities.”

What is urgently needed is an effective entity at the White House level that can unify the different functions and security functions behind a comprehensive national strategy. This is supposed to be the mission of the White House Office of Homeland Security, which President Bush created in October. It is not clear, however, that the proposal does nothing to give the head of the office the kinds of authority needed to succeed.

III. PROBLEMS WITH EXTRACTING CERTAIN AGENCIES

The sections above have raised concerns with transferring functions unrelated to homeland security and the lack of coordinating mechanisms regardless of whether agencies are inside or outside the structure of the new Department. Also of concern are the potential effects of removing certain functions from their home agencies.

This is a particular problem for the functions being transferred from the Department of Health and Human Services. The President’s proposal would move the Office of the Assistant Secretary for Public Health Emergency Preparedness and the Office of the Secretary for Health and Human Services related thereto to the new Department of Homeland Security. This provision makes little sense. In the President’s and Biomolecular Research Preparedness and Response Act of 2002, Congress created the Office of the Assistant Secretary for Public Health Emergency Preparedness in recognition of the need to have a central office in HHS to coordinate how the various agencies within the Department respond to public health emergencies. Moving these other departments will not eliminate the need for a coordinating office within HHS. It will simply recreate the same problems within HHS that Congress was attempting to fix.

Richard Falkenrath, director of policy at the White House Office of Homeland Security, was asked about this problem during a briefing for staff on July 1, 2002. He answered that the challenge of coordinating emergency preparedness and response activities within HHS could be handled by “a couple of people” in the White House Office’s staff. Obviously, this cavalier attitude is seriously misinformed.

Section 506 is also problematic. It transfers control of the National Biodefense Coordination Office to the new Department. These funds, which total over $1 billion, allow states and localities to enhance their surveillance, communication, and laboratory abilities all of which are essential for responding to numerous functions that are inherent in an emergency and not related to terrorism. As GAO has stated, these programs “Include essential public health functions that, while Important, are not critical to basic public health care capacities.” As a result, GAO made the following conclusions: “We are concerned that this approach may lead to the creation of health and homeland security units that are dual-purpose programs. We are also concerned that the separation of control over the programs from their operations could lead to inefficiencies and uncoordinated efforts.”

In the Administration’s proposal, the HHS programs are important for homeland security, they are just as important to the day-to-day needs of public health agencies and hospitals, such as reporting on disease outbreaks and providing alerts to the medical community. The current proposal does not clearly provide a structure that ensures that ongoing homeland security and public health will be met.

Section 403 also creates uncertainties by transferring to the new Department vague authorities over visa processing. Currently, the Secretary of Homeland Security is responsible for an important public health activity of the State Department, which processes about 400,000 immigrant visas and over six million non-immigrant visas annually. The new Department employs thousands of foreign service officers skilled in hundreds of languages. Section 403(1) transfers to the Secretary of Homeland Security “exclusive authority” over this function, but this authority would be exercised “through the Secretary of State. As a result, it is unclear whether the current Department would continue in policy decisions, or whether this is merely an administrative authority. Additional statements by the Administration have not clarified this provision. The Administration has stated that consular officers will remain employed by the State Department, but that the new Secretary of Homeland Security will delegate some visa functions unrelated to security.

Similar problems affect the provisions transferring portions of the Department of Energy. The provisions in the bill are ambiguous and notional. For example, section 302(2)(G) of the President’s proposal would transfer “the advanced scientific computing research program and activities within the Lawrence Livermore Laboratory’s Computing Directorate, which supports other programs at the laboratory by providing computing capacity and capability, as well as research, advanced development, and operations and support related to computing, computer science, and information technologies. Such a transfer could harm the laboratory’s ability to support the nation’s defense by safeguarding this stockpile of nuclear weapons—as well as other core laboratory activities.”

Section 302(2)(E) gives, the President authority to transfer from DOE to the new Department any biological and environmental research program that is related to microbial pathogens. The result would be that ongoing DNA sequencing of harmful microbes could be transferred to the new Department, while virtually identical work on microbes with beneficial uses (such as microbes that break down oil spills) would remain at DOE. Splitting the highly specialized work risks weakening the effectiveness of both.

IV. LACK OF RECOGNITION OF DISPARATE IMMUNIZATION FUNCTIONS

In April, the House passed legislation (H.R. 3231) recognizing the two distinct functions of the INS: an immigration function and an enforcement function. As part of this effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration and Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice.

When the House immigration bill was being considered, the Administration expressed its support. In addition, when the White House issued its briefing document regarding the new Department of Homeland Security, that support was reiterated. The briefing document stated the following: “The new Department of Homeland Security would include the INS and would, consistent with the President’s long-standing position, separate immigration enforcement from immigration law enforcement.”

Despite these assurances, however, the legislative language proposed by the President does not support the new Department of Homeland Security intact and unchanged. There is no detail whatsoever regarding the enforcement and immigration functions that it is proposed to transfer to the new Department. As a result, the Administration’s proposal fails to address internal structural and coordination problems that would threaten to derail the whole reform effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration and Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice.

V. EXEMPTIONS FROM “GOOD GOVERNMENT” LAWS

The Administration’s proposal would create a number of exemptions from the “good government” laws. It would make the civil service, procurement, and property acquisition and disposal laws essentially optional for the new Department. In addition, the President’s proposal would weaken valuable sunshine laws, such as the Freedom of Information Act and the Federal Advisory Committee Act. The bill would also create a weak management and oversight structure by not fully applying the Chief Financial Officer’s Act, the Inspector General Act, and the Inspector General Act.

A. Exemption From Civil Service Protections

The nation’s civil service laws have evolved over many decades to ensure that the government has a workforce that is accountable to the people. The new Department would include the INS and would, consistent with the President’s long-standing position, separate immigration enforcement from immigration law enforcement.”

Under the President’s proposal, employees of the new Department would be exempted from essential provisions of title 5 of the United States Code. No rationale has been offered to explain why affording these basic protections for federal employees and their families would undermine the mission of the new Department. The civil service provisions that become optional include the following: a prohibition on hiring or promoting a federal employee on the basis of political affiliation and on coercing political activity (anti-patronage protection); the prohibition on hiring or promoting a relative (anti-nepotism protection); the prohibition on reprisal against employees for the lawful disclosure of information about illegal and wasteful government activity (whistleblower protection);
The authority was given to the Defense Department to eliminate the open and competitive bidding process in order to attract nontraditional contractors. In fact, however, it has been used mainly by traditional contractors to negotiate contracts that waive the federal government’s rights to review financial management and cost information, as well as its rights to use inventions discovered through research funded by the federal taxpayer. In reviewing the use of this authority by the Defense Department, the Inspector General Report noted, “Do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud.”

Section 732(a) of the President’s proposal would exempt the new Department from the Freedom of Information Act (FOIA). FOIA was designed to preserve openness in the federal government, and which consists of members who are not federal employees, must follow certain rules in order to protect government values such as openness, accountability, and a balance of viewpoints. Generally, FOIA requires that any government agency that is subject to FOIA must make its records available for public examination. The President’s proposal contains no explanation why the new Department could not also comply with FOIA. In fact, the only two agencies that are exempt from FOIA are the Central Intelligence Agency and the Federal Reserve.

The preferences for veterans in hiring and in reductions-in-force; the protection from arbitrary dismissal or demotion through due process appeal rights to their own Protection Board; the right to organize, join unions, and bargain collectively with management over working conditions; sick and annual leave for federal employees and family and medical leave; retirement benefits, such as the Civil Service Retirement and Health Benefits Program; and health insurance through the Federal Employees’ Health Benefits Program. Moreover, important programs for ensuring a diverse federal workforce, such as the requirement to recruit minorities, would also become optional under the proposed legislation.

Another potential threat to the civil service laws is section 732(b), which allows the Secretary to hire an unlimited number of employees through “personal service contracts” rather than through the civil service system. Although the rationale for this provision seems to be to allow the new Department to maintain the competitive edge that it would lose if it had to compete for employees with other federal agencies, it would undermine the federal government’s own system of recruitment. Congress addressed this issue by carefully balancing the goals of ensuring a diverse federal workforce and the public potential risks of chemical accidents with the goal of keeping sensitive information away from terrorists. In the Chemical Safety Information Site Security Act of 1999, Congress concluded that information about potential “worst case” scenarios should remain available to the public, but with certain restrictions to prevent a searchable database from being posted on the Internet. Congress ensured public access to basic information about the risks of chemical accidents, preserving the right of Americans to know about chemical accidents that could impact their families and communities. Under the President’s proposal, chemical companies could now prevent the disclosure of all Risk Management Plans under FOIA simply by sending them to the new Department.

Section 731 of the President’s proposal would exempt advisory committees established by the Secretary of the new Department from the Federal Advisory Committee Act (FACA). FACA requires that any committee formed to provide advice to the federal government, and which consists of members who are not federal employees, must follow certain rules in order to protect government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that any committee announces its meetings, hold their meetings in public, make transcripts of the meetings, and provide the opportunity for divergent viewpoints to be represented.

To protect sensitive information, FACA includes exemptions for information that relates to national security issues or information that is classified. As a result, many agencies with homeland security missions, such as the Department of Justice, the Federal Bureau of Investigation, and the Department of Homeland Security, currently operate under FOIA without difficulty. The President’s proposal contains no explanation why the new Department could not also comply with FOIA. In fact, the only two agencies that are exempt from FOIA are the Central Intelligence Agency and the Federal Reserve.

At least 27 advisory committees that currently exist would be transferred to the new Department. These existing advisory committees, which are currently subject to FACA, include the Nautical and Mine Survey Advisory Committee to the Secretary of the Navy, the National Advisory Council on the Safety of Nuclear Installations, and the Advisory Council to the National Urban Search and Rescue System at FEMA, the Advisory Committee on International Child Labor Enforcement at the Department of Labor, the Advisory Committee on Foreign Animal and Poultry Diseases at APHIS. When rechartered under the Homeland Security Department, none of these advisory committees will be subject to the new Department and thereby prevent public disclosure.

One particular target of the new FOIA exemption is the new Department’s Risk Management Plans that chemical plants are required to file under the Clean Air Act. These plans inform communities about the dangers that could face in the event of a chemical accident in a nearby plant. Chemical industry officials argued that Congress should restrict public access to this information because it could be used by terrorists to target facilities.

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In addition, the President’s proposal waives important conflict of interest laws that apply to individuals serving on advisory committees. Under section 731, if an individual serves on an advisory committee, the individual will be exempt from the provisions of sections 203, 205, or 207 of Title 18, United States Code. These sections contain important provisions that protect against conflicts of interest. This section would authorize the President to appoint the Inspector General (IG) of the new Department as an advisory committee member. The IG could serve on a committee that is advising an agency on a specific matter that cannot lobby the agency about that matter. This section would provide that the IG would have an obvious conflict of interest in full reporting.

VI. EXEMPTION FROM CONGRESSIONAL OVERSIGHT

In addition to the other exemptions to many of the nation’s good government laws, the President’s proposal would substantially undercut Congress’ ability to conduct oversight of the new Department. Through several broad and sweeping provisions in the President’s proposal, the Secretary of the new Department would have new powers to rewrite enacted legislation and override budgetary decisions made by Congress.

The President’s proposal would give the Secretary of the new Department the equivalent of more than $30 billion. In transferring the various existing agencies to the new Department, several provisions of the President’s proposal would allow the Secretary to rewrite law and override the provision of permanent law that requires funds transferred to be used only for the purposes for which they were originally appropriated. Taken together, these provisions would allow the new Secretary to rewrite appropriations relating to both homeland security and all other functions conducted by the new Department.

The model most often cited by the Administration is the creation of the Department of Defense in 1947. But that reorganization was not undertaken until after World War II was over. Moreover, the newly created Department was riven with strife for decades after its creation. As recently as 1983, when President Reagan ordered the invasion of Grenada, the Army and the Marines had to split the island in half because they could not figure out how to cooperate. The original 1947 reorganization required a couple of decades being swallowed by the Goldwater-Nichols Act of 1986 before the problems created by the 1947 reorganization were finally addressed.

By contrast, GAO has closely tracked the history of government reorganizations. According to David Walker, the Comptroller General of GAO, “Often it has taken years for the consolidation functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management systems for decades after its creation. As recently as 2001, the U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that no overarching strategic national policy of comprehensive national strategy for fighting terrorism. GAO has made this finding repeatedly.” The U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that “no overarching strategic framework guides U.S. national security policy formulation or resource allocation.” Like- wise, the independent panel headed by Governor James Gilmore concluded that the United States has no coherent, functional national strategy for combating terrorism.

Some of the necessary steps for developing an approach to homeland security: First, evaluate the threats posed to the country; second, develop a plan for dealing with those threats; and third, implement that plan through whatever reorganization and realignment of resources is necessary. It appears, however, that the Administration has taken exactly the opposite approach: White House officials proposed the reorganization first; they will come out with a strategy second; and they may eventually do a comprehensive assessment of the threats facing the country.

Experts have consistently criticized the United States for lacking a comprehensive national strategy for fighting terrorism. GAO has made this finding repeatedly.” The U.S. Commission on National Security, the bipartisan group headed by former Senators Warren Rudman and Gary Hart, found that “no overarching strategic framework guides U.S. national security policy formulation or resource allocation.” Likewise, the independent panel headed by Governor James Gilmore concluded that “the United States has no coherent, functional national strategy for combating terrorism.”

Nine months ago, in October 2001, the White House agreed with this assessment. In
the executive order creating the White House Office of Homeland Security, President Bush recognized that developing a national strategy was essential in the fight against terrorist threats. The President therefore ordered the new Office to: ‘‘The mission of the Office shall be to develop and implement the coordination of a comprehensive national strategy to protect the United States from terrorist threats or attacks.’’

When you assumed your position, you also recognized that developing this strategy was your ‘‘very first mission’’ and your ‘‘main mission’’ and your ‘‘very first mission.’’ In a speech in April, you said, ‘‘I take every word of that executive order seriously,’’ and you promised that the new Department would be ‘‘guided by an overarching philosophy: risk management—focusing our resources where they will do the most good, and achieve the maximum protection of lives and property.’’

Since that time, the National Strategy has been promised repeatedly. In the budget justification for fiscal year 2003, the Administration announced that the new Department ‘‘will not have a list of priorities set forth in a clear and cannot gauge whether your reorganization proposal best serves the nation’s interests. Moreover, the new Department will have no clear strategy to implement after it is created. As John R. Brinkerhoff, civil defense director at FEMA under President Reagan, has stated: ‘‘We are now in the process of putting the cart before the horse: We have identified the national strategy for homeland security, it came as a surprise not only to Congress and the American people, but also to the agencies, departments, and offices affected by the proposal. The plan was put together with so much secrecy that [no] Cabinet secretary was directly consulted about planning the new department and no estimate of the level of savings to be achieved by combining agencies. The only thing we knew was that these unknown costs would exactly equal these unknown savings. Obviously, Congress needs more concrete information about budget costs before it can determine whether it was affected by the reorganization.’’

IX. COST

The Administration has stated that the creation of this new Department ‘‘would not grow government.’’ According to the Administration, ‘‘The cost of the new Department will be contained and the possible savings achieved by eliminating redundancies inherent in the current structure.’’

This is a credible statement. CBO has examined the costs of the reorganization proposal put forth by Senator Lieberman (S. 2425). According to CBO, the Lieberman bill would cost about $1.1 billion over the 2003-2007 period. CBO writes: ‘‘[A] new cabinet-level department would require additional resources to perform certain administrative functions, including new positions to staff the offices of the Inspector General, general counsel, budget, and Congressional affairs for the new Department. The Administration has estimated that the new Department will have up to 22 Deputy, Under, and Assistant Secretaries at the Department of Health and Human Services, which administers a budget about ten times the previous budget of the new Department of Homeland Security. Like CBO, GAO has also concluded that the new Department will impose costs on the taxpayer. According to GAO, ‘‘[n]umerous complicated issues will need to be resolved in the near future, including a harmonization of information technology systems, human capital systems, the physical location of people and other assets, and many other factors.’’ As a result, GAO concludes that the President’s reorganization proposal ‘‘will take additional resources to make it fully effective.’’

When the President made his nationally televised address on June 6, 2002, announcing his proposal for a new Department of Homeland Security, it came as a surprise not only to Congress and the American people, but also to the agencies, departments, and offices affected by the proposal. The plan was put together with so much secrecy that [no] Cabinet secretary was directly consulted about planning the new department and no estimate of the level of savings to be achieved by combining agencies. The only thing we knew was that these unknown costs would exactly equal these unknown savings. Obviously, Congress needs more concrete information about budget costs before it can legislate intelligently.

X. PROCESS

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COAST GUARD

International Ice Patrol: The Coast Guard has a fleet of ships designed to break ice in cold regions to ensure that boats are able to navigate the waterways.

Marine Safety: The Coast Guard enforces regulations to ensure that boats and other marine equipment meet safety standards.

Maritime Drug Interdiction: The Coast Guard intercepts illicitly brought into this country on the waterways.

Maritime Law Enforcement: The Coast Guard enforces the laws of the waterways.

National Oil Spill Cleanup: The Coast Guard helps to prevent oil spills in the nation’s waters and assists in their cleanup when they occur.

National Flood Insurance Program: FEMA provides flood insurance to cities and towns, helping to protect our domestic fishery resources and marine environment.

Search and Rescue: The Coast Guard, as one of its primary missions, rescues troubled vessels and people on the nation’s waterways.

CUSTOMS

Border Drug Interdiction: The Customs Service fights against drug smuggling at the United States border.

Copyright Protection: The Customs Service helps to enforce the Copyright Acts.

Enforcement of Health and Safety Laws: The Customs Service checks imports to ensure that they comply with health and safety laws.

Fostering of Trade: The Customs Service works closely with the trade community and identifies and confronts trade issues facing the country.

Child Pornography Prevention: The Customs Service enforces laws protecting against child pornography.

Fair Trade Protection: The Customs Service enforces a variety of fair trade laws such as the Lanham Act, the Trade-Mark Act and the Trade Act of 1974.

Protection of Species at Risk: The Customs Service enforces laws protecting threatened species such as the Bald Eagle Protection Act and the African Elephant Conservation Act as well as the Endangered Species Act of 1973.

Revenue Collection: The Customs Service provides the nation with its second largest source of revenue.

Stolen Antiquities and Art: The Art Recovery Team works to recover stolen pieces of art and antiquities.

Tariff Enforcement: The Customs Service ensures that U.S. tariff laws are enforced.

DEPARTMENT OF ENERGY

Energy Emergency Support: The DOE Office of Energy Assurance assesses the potential effects of natural disasters such as earthquakes, hurricanes, tornadoes, and floods on energy infrastructure and provides energy emergency support in the case of such disasters.

Human Subjects Research Database: The DOE Environmental Measurements Laboratory (EML) maintains the Human Subjects Research Database, which contains descriptions of all projects involving human subjects that are funded by the DOE, performed by DOE staff, or conducted at DOE facilities.

EML also provides direct assistance to the manager of the DOE Protecting Human Subjects database and assists with production of educational and guidance materials.

Quality Assessment Program for Contractor Laboratories: EML also runs a quality program for DOE contractor laboratories that measure radiation. The program tests the quality of 149 private laboratories’ environmental radiological measurements.

FEDERAL EMERGENCY MANAGEMENT AGENCY

Emergency Food and Shelter: FEMA gives grants to providers of emergency food and shelter for hungry and homeless people.

Hazard Mitigation Program: FEMA provides grants to states and local governments to implement hazard mitigation measures to reduce the harm and death resulting from major natural disasters, such as hurricanes.

National Earthquake Hazards Reduction Program: FEMA is the lead agency on programs to improve the understanding, characterization and predictions of earthquake hazards; to identify and monitor lands and land use practices; to reduce risk through post-earthquake investigations and education; to develop and improve design and construction techniques; to improve mitigation capacity; and to accelerate the application of research results.

National Flood Insurance Program: FEMA administers the National Flood Insurance Program, which provides insurance coverage for events that are not covered by traditional homeowners’ policies.

Reduce Loss through Mitigation: FEMA runs a number of programs to reduce the loss of life from fire-related incidents, including the National Fire Data Center and the National Fire Incident Reporting Systems.

SECURITY SERVICE

Prevention of Counterfeiting: The Counterfeit Division of the Secret Service has exclusive jurisdiction to counterfeiting of United States securities and obligations including items such as food stamps and postage stamps.

Safe School Initiative: The Secret Service has partnered with the Department of Education to help prevent violence in schools.

Telecommunications Fraud: The Secret Service has become a recognized expert in helping to prevent telecommunications fraud such as the cloning of cellular telephones.

Mr. ARMEEY. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Oklahoma (Mr. WATTS), the conference chairman and member of the Select Committee on Homeland Security.

Mr. WATTS of Oklahoma. Mr. Chairman, I too want to commed the chairman, the gentleman from Texas (Chairman ARMEY) for I think using exceptional grace and exceptional composure and I think real balance in giving all the Members of the Select Committee a say, and I think as well giving all of the committees of jurisdiction a real voice in this process. Again, I think the gentleman did an exceptional job and he is to be commended for his work on this legislation.

Mr. Chairman, I believe the best way to secure our homeland is to involve all sectors of society. By creating a working relationship between the public and private sectors, the best available technologies, and the amount of knowledge can be brought to the table to achieve a common goal of protecting our Nation from those who seek to inflict terror within our borders. We have discussed at length in this process the role of the government in homeland defense and national security. At the same time, we need to integrate the private sector into an overall agenda of homeland defense.

During the Select Committee hearings last week, my colleagues accepted an amendment I offered to create a position of special assistance for the private sector to be a liaison within the Office of the Secretary of Homeland Security. The special assistant would be the primary contact for private sector activities and coordination with the Department of Homeland Security. The private sector will help combat terrorism by ensuring that America’s protection assets have the most advanced technology to secure and defend our homeland, from the superaccurate sensors that can detect biologic warfare agents, to integrated computer systems that allow government agencies to effectively communicate with State and local officials and each other.

In addition, the special assistant will ensure that federally-funded research and development projects that have homeland security application are not just sitting in the lab, somewhere but are in the lands of our Nation’s defenders.

The special assistant for the private sector will play a crucial role in coordinating the security of our nation’s critical infrastructure, an important job considering, Mr. Chairman, that 85 percent of our critical infrastructure is owned by the private sector.

By fostering relationships between Federally funded programs and the private sector, new and innovative technologies will help the government and local communities with deterrence, prevention, recovery and response.

The ultimate goal of these efforts is to ensure that our police, firefighters, baggage screeners, cargo inspectors and other front-line defenders have the best anti-terrorism technology America has to offer. The private sector can play a critical role to protect and defend our homeland.

Mr. Chairman, we must do everything possible to promote its work, so together with the government we can better secure our great Nation. I am delighted that we have done this that we are moving forward in this legislation. I encourage all of my colleagues to support it.

Mr. Chairman, I rise today in strong support of H.R. 5005, the Homeland Security Act of 2002. This bill represents a monumental step toward addressing the serious homeland security concerns we currently face in America by creating a new Department of Homeland Security. I also rise to ask the new Secretary of Homeland Security to study the steps currently being taken by the Oklahoma Municipal League to put into place a statewide emergency response network which uses the most up-to-date wireless broadband technology to link federal, state and local officials in the event of a natural disaster or criminal or terrorist activity.

The Oklahoma Municipal League has begun a successful effort to create a statewide broadband network for municipal schools, businesses and residences through a public-private partnership. Utilizing grants and low cost loans from industry, state and federal
sources, the League and member municipalities are creating the base network for public services that will be self-sustaining through commercial subscription services to businesses and residences. Telecommunications fiber links are leased from carriers for backbone services and wireless last-mile technology is used to provide Internet access. The network links local governments to each other and to state and federal offices. This network can be utilized to efficiently coordinate the activities of first responders in the event of an emergency.

The goals in Oklahoma have begun discussions with the Federal Emergency Management Agency for implementing this program on a national scale and I urge the Secretary to work with FEMA and other relevant federal agencies to expedite this process and provide any resources available to assist the Oklahoma Municipal League in further developing this network. Recognizing that Homeland Security begins at the local level, I also urge the Secretary to make other states aware of the Oklahoma program and encourage them to use it as a model for implementing similar networks in their own states.

I would also ask the Secretary to study the impacts of terrorism on rural America and develop guidelines for minimizing the effects of these incidents. This study should focus on the difficulties of communication among state and local officials in rural areas, particularly with respect to the ability of municipal government officials and first responders to have real-time transmission of voice, data and video in order to effectively respond to emergency situations. The findings of this study should provide communities that are preparing disaster response plans and educating the public on the steps to take in the event of an emergency.

Mr. Chairman, these two studies should be conducted immediately upon creation of the new Department of Homeland Security. The Secretary should report back to Congress the findings of these studies within 120 days of the creation of the new Department.

Ms. PELOSI. Mr. Chairman, I yield 4 minutes to the gentleman from Minnesota (Mr. OBERSTAR), the ranking member Committee on Transportation and Infrastructure.

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

Mr. Chairman, here we are crafting the first new department of government in many years and I am a little surprised. It is Alice in Wonderland. It is indeed first, evidence later.

A provision in this legislation would extend a deadline for screening of checked luggage aboard aircraft by explosive detection systems out into the future after last year, just eight months ago in this very Chamber, we voted to set a deadline of December 31, 2002 to do that very job. Where is the evidence that we need to do that? Where is the evidence that should precede the verdict that this great Nation cannot accomplish that task that we have set forth by an overwhelming majority of this body?

I frankly am offended that we would hardly, as the ink dries on the Transportation Security Administration law, hardly is the President’s pronounce-ment of a need for a Department of Homeland Security than this body will become and begin to understand that very security.

I am not a newcomer at this business of aviation security. I have spent about 20 years at it in the Committee on Public Works, and then the Committee on Transportation and Infrastructure. I am proud to say that I held the very first hearings on aviation security as Chair of the Subcommittee on Oversight and Investigations. And in the aftermath of Pan Am 103, as Chair of the Aviation Authorizing Committee with my then-ranking member, the gentlewoman from Georgia (Mr. Gingrich), fashioning the legislation requested by President Bush to create a Presidential Commission on Aviation Security and Terrorism and served on that commission with our distinguished colleague from Arkansas, Mr. Hammerschmidt.

We wrote a report that made 64 recommendations to improve aviation security, drafted those recommendations into legislative language, to them enacted throughout the other body and to the president and signed them into law. And I said then, oh, there is such a willingness in the body political and in the Nation as a whole to strengthen security that never will we have to worry that these provisions will be implemented, and yet we saw the airlines lobby against 10-year criminal background checks for screeners. It took 10 years to get that provision of law implemented by rule. And positive passenger handling deployment of explosive detection systems.

That then came September 11 and the new Transportation Security Act, and I said then, this time we will not make a mistake. We will write provisions in law and implement them applicable by ac-

tion of law, not by bureaucratic rule making so that the will of the people and of the Congress cannot be frustrated. And here we are 9 months later, frustrating that will of the Congress and the country to raise the bar of security. We raised it in law and in this bill it is being lowered again. And lowered to create a one year, at least, window of vulnerability for aviation security. We ought to remove that provision and I will propose the amendment tomorrow to do so.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from New Jersey (Mr. LOBONDO). Mr. LOBONDO. Mr. Chairman, I rise in support of H.R. 5005 and I thank the majority leader for yielding me this time.

Since becoming chairman of the Subcommittee on Coast Guard Maritime Transportation 18 months ago, I fo-cused my efforts on making sure that Congress provides the Coast Guard substantial increased monies, additional manpower and more modern assets necessary to carry out their multi-mission charge.

I have worked with many Members of this House from my first days as chair-

man to pursue these goals, and during my tenure, I have developed a set of guiding principles designed to make sure that the Congress is serving the Coast Guard in the same fine way that the Coast Guard is serving America.

As we have considered this bill and examined this task of improving the security, I have, again, had these principles frame my views. First, we must ensure that anything we do in Washington will not negatively affect the Coast Guard’s ability to effectively carry out all of its missions including conducting search and rescue, stopping drug smuggling, interdicting illegal immigration, and all the other maritime safety commissions, as well as the critical homeland security mission.

Congress must also ensure that the Coast Guard stays intact and remains a ready force to meet and handle a wide range of duties, including homeland se-

curity.

Fortunately, the Select Committee and the White House have agreed that an intact Coast Guard doing all of its mission tasks is the way to go. I worked hard on this issue and am very pleased it is part of this bill.

Secondly, we must ensure that the Coast Guard continues to receive the resources it needs to keep doing the great job they have done both before and after September 11. The Coast Guard needs substantially more money and more modern assets to meet the challenges of the future and to operate safely, efficiently and effectively to protect America.

The passage earlier this week of over half a billion dollars in a supplemental appropriations bill for the Coast Guard is indeed good news to allow the Coast Guard to continue to meet the increased cost of defending America.

Lastly, the Coast Guard needs to continue to report directly to the Secretary of Homeland Security, keeping its access at the highest levels of administration. This point was a top priority for me from the very first days the President’s proposal was made. I was adamant that the Coast Guard would not be lost in a bureaucratic jun-

gle, and I want to thank the majority leader, the gentleman from Texas (Mr. ARMEEY), the gentleman from Alaska (Mr. YOUNG), the gentleman from New Jersey (Mr. MENENDEZ), and the gentle-

man from Ohio (Mr. PORTMAN) for their efforts in joining me to ensure that the Coast Guard continues to enjoy its open access door to the Secretary.

It is absolutely critical that the Coast Guard can report directly to the top decision makers, and this is exactly what this bill specifies that they do.

Mr. Chairman, I believe this legisla-

tive proposal is good for the Coast Guard and the right direction for America at this time in our Nation’s history, and I urge a strong support of this legislation.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentleman from
Mr. ARMEY. Mr. Chairman, I ask unanimous consent that the gentleman from Michigan, (Ms. KILPATRICK), an important member of the Committee on Appropriations, was given permission to revise and extend her remarks.)

Ms. KILPATRICK. Mr. Chairman, I rise and I support the concept of a Department of Homeland Security, but I do not support this concept and let me tell you why.

This concept allows 170,000 Federal employees to be transferred to an agency they have no rights, a brand new personnel system where they do not have rights. They are not able to bargain collectively. They are not able to have certain rights and are subjugated to the whim of the Secretary.

I rise in opposition because this bill defies the appropriations process set up in our Constitution of checks and balances. I oppose this bill because it eliminates the process, the Congress, the constitutional Congress, that allows us to exist and have checks and balances and appropriations process and employee rights that this legislation will take away in the name of terrorism. Yes, we need to do something but this is not the vehicle and I hope it will not pass.

The Secretary can waive various pay-check schedules for these employees. He can move the employees at their whim, 170,000 employees who have dedicated much of their lives to this government.

We need more time; there is no rest for this. Yes, the terrorism is bad. Yes, I believe the terrorists have won. Because what they have done is frighten Americans. We are a better Nation than that. We have an Army. We have people who are committed to this country. I believe it is our responsibility to reject the legislation and then come back and pass the practical amendments, the practical balance that we need to make sure that citizens are safe and make sure that our employees have the rights that they deserve.

Mr. Chairman, I rise in opposition to H.R. 5005 because it eliminates the protections and rights of many Federal employees, violates fundamental rights under the Constitution, and defines a well-established appropriations process. These reasons make this a bad bill for the citizens of this nation. It takes away the fundamental rights that we hold dear.

Black American has not enjoyed the fullness of America’s Constitutional freedoms, as have most Americans. Black Americans have been explicitly and implicitly limited to many of our basic civil liberties and this bill will potentially further restrict. The limitations that we experience are even greater than most recent immigrants. Perhaps, that is why we tend to be more liberal in defense of them.

Most American generations have enjoyed the freedoms inherent in the Constitution for nearly three hundred years. In the history of nations, that is a very long time. Since 9/11, Terrorists have frightened our nation, and now, we are afraid. For all of our braggadocio and speeches, we are afraid. Our fear is making us overwhelmingly passive to government propaganda and carelessly willing to sacrifice our liberties to those among us who are more than glad to take them. If we pass the Homeland Defense Act, as presently proposed, the terrorists will have won.

Why then were we worrier because we would have destroyed our Constitutional democracy of checks and balances. This Constitutional innovation has stood us in good stead through our own Civil War, through two world wars, numerous undeclared wars, racial hostilities and a number of other internal and external conflicts.

This massive war-like structure we are calling The Department of Homeland Defense will make the country vulnerable by weakening the very regulatory agencies that the last two hundred and fifty years has taught us that we need.

By making the massive shifts of personnel and responsibilities of existing agencies to one Homeland Defense Department, focused exclusively on terrorism, we won’t be able to tell whether 19 million pounds of tainted meat is the act of terrorism or the result of corporate misfeasance.

In 1930, France had the largest army in Europe. Watching the rise of fascism in neighboring Germany, they decided to construct an impenetrable defensive wall the entire 300 miles along the Franco-German border. Orignally priced at 300 million francs, with only 82 miles completed, the cost had ballooned to 23 times the original budget. Ultimately, the cost of the Maginot Line consumed all of France’s defensive budget leaving them with a military unprepared for the German blitzkrieg that ultimately defeated them six years later.

This so-called, Homeland Defense Act, creates for us a bureaucratic Maginot Line, which can be circumvented by anyone who disregards the neutrality and vulnerability of Switzerland and Belgium, went around the Maginot Line invaded and defeated France in six weeks.

What makes the Department of Homeland Defense as vulnerable as the French of 1940 is the obviousness of it. The ideal target of unconscionable fanatics is anything that resembles static vulnerability. The best offense against terrorism is the stealth of intelligence.

What we need to defend ourselves against terrorism is not another massive, inflexible department but exactly what this country does best. America has the ability to invent, innovate and diffuse its technological creations; to build networks that multiply human intelligence.

We can leave the departments exactly where they are and do what they know how to do best. What we ought to do is build inside of all government departments, a responsive and flexible network of networks, which can respond to any sort of threat—whether it is an act of terrorism, an accident, negligence or misfeasance. We need this flexibility so that the country does not exist in a permanent ‘yellow’ state. We do need to multiply our intelligence capability one hundred—fold to coordinate and diffuse our information.

I suspect that most Members of Congress are students of history or at least buffs. As I am. One of my greatest sources of current history is my eighty-three year old father—a Navy veteran of the Second World War. He often takes the time to give me an historical spin on what looks like something new.

If the history of the Maginot Line is too distant and the analogy too abstract to be immediately comprehensible, consider another recent event—The Gulf of Tonkin Resolution. That Resolution appealed to patriotism by responding to an ‘unprovoked’ attack on American Naval forces off the coast of North Vietnam. The resolution gave the President the authority to escalate the war in Vietnam without further action from constitutional Congress. Fifty thousand American lives were lost in an undeclared war driven by an irrational rush to judgment motivated by anger and fear.

In The Imperial President, Pulitzer Prize-winning historian, Arthur Schlesinger, traced the history of constant shift of power to the President. Most often, these shifts occurred as the result of a belief that the country was in danger by either internal or external threats. Once the shift was made, Congress never retrieved its relinquished powers.

Values and constitutional liberties of this nation are not only threatened by terrorists, but also, threatened by the possibilities of a federal government without proper checks and balances. For Black Americans, the latter threat is much more conceivable than the former. I want to see the nation combat these despicable terrorists acts, but not by completely centralizing the power of federal government, or trampling on our civil liberties, or protecting federal employees rights.

My conscious will not permit me to agree with this bill; Congress should not agree. The Department of Homeland Defense. I will not agree with legislation to strip civil liberties. I will not agree with a contract that will deny workers of their rights and proper recourse for wrong done towards them. I will not be silent to the ills of this bill, even in the midst of a daunting and scary future, which has bred fear through all of us.

This bill would give a two-year authority to unilaterally transfer up to two percent of appropriations between department functions. That alone, with only 15 days of prior notice to Congress. There is an effective process to transfer funds with Congressional approval that works well. I will not support this bill, and hope that my colleagues too will understand what is at stake with the passage of this bill. I believe we can construct a bill that will protect our employees rights and will not violate proper appropriation procedure or our fundamental rights under the Constitution.

For these reasons, Mr. Speaker, I am opposed to H.R. 5005.

Mr. ARMEY. Mr. Chairman, I ask unanimous consent that the gentleman from Ohio (Mr. PORTMAN) be permitted to control the remainder of my time for consideration of this debate.
The CHAIRMAN. Is there objection to the gentleman from Texas?

There was no objection.

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

I thank the majority leader, and I want to commend him for the work he has done to put together the bill we have before us today. His leadership on the Select Committee was fair, open, honest. We had some good debates, and it was done in a not just bipartisan but a nonpartisan way and I know that will continue tonight as we get through some of these statements and then later tonight and tomorrow into the amendment process.

Briefly responding to the gentlewoman from Michigan (Ms. Kilpatrick), she will be happy to know that workers’ rights are indeed preserved in the underlying legislation. All of title V is included in the legislation. I hope she will read it.

I would also like to say that collective bargaining is explicitly not just permitted but guaranteed. So we are hearing a lot of statements tonight that may be based on some information that is being passed around that is not accurate. I think we need to read the legislation so that we can keep to the facts.

Shaping this legislation, Mr. Chairman, has been and will continue to be a big job. All of America is looking at us to help protect the homeland and produce a Department of Homeland Security that is worthy of the name. It is a challenge, and we had better get it right. This Department will be the keystone of our national strategy to confront a menacing threat and to shut it down.

Its mission as proposed by the President is critical. First, to prevent terrorist attacks; second, to reduce our vulnerabilities to attack, hardening our infrastructure; third, to minimize damage should we be attacked; and, finally, and this is very important in this new agency, to be sure that those functions that are being transferred to this new Department that are not related to homeland security are also not neglected. And we will hear something about that tonight and into the amendments.

This is all a big job, and it results in a very big agency, 170,000 employees. We know a big agency. The question is, and the gentlewoman from California raised it earlier, will it also be a lean and agile agency to be able to respond to the threat that we find ourselves confronting in this new century? Will this thing work? I think we are going to determine that in our votes tonight and tomorrow. We are going to determine whether this new agency is going to have the ability to rationalize and bring together 22 different agencies of Government. It is a difficult task, admittedly. It is necessary to do it. As we have heard so many people speak so well about tonight the necessity of consolidating and streamlining, being sure that we have real accountability in a system that does not exist now; and I do not think anybody would say it does when there are so many different agencies and Departments of government responsible, nobody is responsible.

We have got to be sure that we take these 22 different agencies and we bring them together as a single team focused on a single mission. This will require managerial, budget, and, yes, personnel flexibility. It will require consolidation and streamlining just will not happen; it will not work.

Second, beyond this huge organizational challenge, the new Department has to meet an active, deadly and unpredictable threat, the threat of terrorism. It must be able to do so with cleverness, with speed and with flexibility of its own.

I believe the Select Committee bill we have before us meets these tests. It does provide us with a 21st century agile Department, and it must not be weakened through the amendment process if we are to properly protect our homeland. The most fundamental responsibility of Congress, of course, is to protect our country and to protect our citizens. I strongly believe the bill that we have before us puts the pieces in place to see that with good congressional oversight we can indeed meet that responsibility.

As we work through these amendments, I hope my colleagues on both sides of the aisle will continue to focus on the necessity of rising to this daunting challenge without partisanship, without rancor, but with one goal in mind, and that is how best to protect our families.

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

Ms. PELOSI. Mr. Chairman, I yield 3 minutes to the gentleman from Wisconsin (Mr. Obey), the very distinguished ranking member of the Committee on Appropriations.

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

Mr. Chairman, I want to express my appreciation for the fact that the committee did correct what I thought to be the most fundamental problem associated with the original draft just sent down by the White House. That draft gave unprecedented authority to bureaucrats to spend money without congressional supervision, and I think it would have been antithetical to the Constitution itself, and I appreciate the fact that that disastrous proposal has now been removed.

That leaves us with the question of what we think of the organizational structure. Much is left, and we can have honest differences about that. I happen to think and I happen to fear that the remainder of this product will in fact make it more difficult rather than less difficult for us to respond to terrorist attacks and to prevent them, for two reasons.

First of all, this agency that is created is going to be composed of 170,000 people. That is not going to be a lean, mean, agile agency. It is going to be a slow, cumbersome agency which I think will slow down our ability to react. Second, even though some 22 offices and agencies are being pulled into that Department, there are 111 agencies that have to do with homeland security that will not be tied into that Department, and my question is who is going to coordinate them? In my view what we need is to have a substantially upgraded and strengthened Office of Homeland Security within the White House, and that is the reason I personally favor Senate confirmation. Not because it in any way weakens the occupant of that office, but because it would put them on an equal footing in terms of prestige and clout with the Office of Management and Budget, with the President’s science advisor and the like; and I think that is what is needed if we are going to coordinate those 111 agencies outside the tent office.

I also believe the FBI needs to be substantially reshaped because right now they simply do not have the analytical capacity that is needed to engage in this kind of analysis as opposed to just looking at what is happening with 25,000 separate crimes around the country. It is a very different mindset that is required, and I think the FBI director recognizes that fact.

And, lastly, we have to look at resources. We have to substantially more resources to enhancing our translation capacity because right now the hard fact is there are thousands of pages of raw data, raw intercepts lying on floors and sitting on shelves all over the security agencies in this town. No one has ever looked at them because we have not had the personnel and they have not had the focus. That needs to be fixed if we are going to truly improve the security posture of the country.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. Chambliss), a member of the Permanent Select Committee on Intelligence, one of the House’s experts on homeland security.

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

Mr. Chairman, I rise tonight to support this very important bill to establish a Department of Homeland Security. I applaud the work of the gentleman from Texas (Mr. Armey), the majority leader, and the gentlewoman from California (Ms. Pelosi), the minority whip, who I work with on the Permanent Select Committee on Intelligence, and the members of the Select Committee on Homeland Security who have worked tirelessly over the past few weeks to ensure the successful implementation of the President’s plan to improve the security of our Nation. As our President said last night, he has done so and what great vision he has for where this country ought to be from a homeland security standpoint,
and he is providing strong leadership in moving us in the direction of that vision. The world has changed dramatically since September 11 of last year. Winning the war on terror means changing the mindset of our entire government top to bottom and drastically changing the way we do business. The new Department of Homeland Security will centralize and coordinate our efforts to better protect our citizens. Let me point out that one of the most important aspects of this plan is the effort to improve the sharing of information among our Federal agencies, as well as between Federal, State and local officials. Last week, the gentlewoman from California (Ms. Harman) and I released a summary of our classified report on why our intelligence agencies failed to prevent the terrorist attacks of September 11. Not only did we find that the information technology and agencies that could not communicate with itself because they have a completely outdated information infrastructure, but the right people were not getting the right information at the right time. We must streamline and better coordinate the sharing of information so that our local officials like Wayne Bennett, the sheriff of Glynn County, Georgia, or Bud Watson of the Atlanta Police Department, the people who are on the front lines protecting our communities every day, have the most accurate information so that they can do the best job they can to disrupt terrorist activity and better protect our citizens.

Mr. Chairman, I urge my colleagues to support this landmark legislation.

Ms. Pelosi. Mr. Chairman, I am pleased to yield 2½ minutes to the very distinguished gentleman from Arkansas (Mr. Snyder).

Mr. Snyder. Mr. Chairman, I have been watching this debate with some interest for the last couple of hours, and I am one of those that is standing forward tonight to say I am a vote in play on this, and I came over here because I find my questions are not being answered by this debate. I am hearing a lot of superlatives about streamlining and coordination and consolidation, how we are not going to let September 11 occur again. We have got to talk about some details about what good specifically is going to occur by October 10. We have got to make it happen. We have rejected that, and now we are going with the whole hog kind of thing that I am not sure we need to go that far.

The second point I want to make is a funding issue. We had the intelligence budget increase this year, and several speakers talked about how we are finally going to give additional funding to intelligence, implying that perhaps the problem all along, a lot of it, is we have underfunded intelligence.

Part of the problem in this bill is about visas and how they have been given out; and yet the New York Times had an article, front page story on Monday, how we have terrible personnel problems in the Department of State. No wonder we are having problems, and yet we have not addressed the personnel issues nor have we addressed the great infrastructure needs, security infrastructure needs of the State Department. Another point, as has been said, we have got to be careful about this bigger-is-better argument. When we look at the challenges back home in Arkansas, I do not find anyone saying let us take all the fire departments and consolidate them into one big fire department, let us take all the sheriff and police agencies and consolidate them into one that that will help our coordination. We need to be, perhaps, more focused.

My final concern is I fear that this could be a distraction. I am just asking these as questions tonight, that in the course of doing this huge consolidation we will forget to focus on the gaps in intelligence and the gaps in specific funding and the gaps in specific coordination personnel needs that may be lost in the massive consolidation that is occurring.

Mr. Fortman. Mr. Chairman, I yield 3 minutes to the gentleman from Virginia (Mr. Tom Davis), a member of the Committee on Government Reform and leader on civil service and technology issues.

Mr. Tom Davis of Virginia asked and was given permission to revise and extend his remarks.

Mr. Tom Davis of Virginia. Mr. Chairman, I rise in support of the glasses on Virginia’s cybersecurity information security language included in the Chairman’s en bloc amendment. The events of September 11 and ensuing war on terrorism have raised an unprecedented awareness of the vulnerabilities we face. This has naturally focused more attention on security issues, particularly with respect to information security. From my work on the Committee on Government Reform, it is clear that the state of Federal information security suffers from a lack of coordinated, uniform management. Federal information systems continue to be woefully unprotected from both malicious and benign interception.

Title XI in the manager’s amendment incorporates the major provisions of the Federal Information Security Management Act of 2002, FISMA, which will strengthen the information security management infrastructure within the Federal Government.

FISMA will achieve several objectives vital to Federal information security. Specifically, it will remove GISSA’s sunset clause and permanently require a Federal agency-wide risk-based approach to information security management with annual independent evaluations on agency information security practices. Second, it will require that all agencies implement a risk-based management approach to developing and implementing information security measures for all information and information systems.

Third, it will streamline and make technical corrections to GISSA to clarify and simplify its requirements. Fourth, it strengthens the role of the National Institute of Standards and Technology in the standard-setting process; and, finally, it requires OMB to implement risk-based mandatory standards for Federal information and information systems, and to consult with the Department of Homeland Security regarding the promulgation of these standards.

The critical infrastructure information provisions included in H.R. 5005 will promote voluntary information-sharing among our Nation’s critical infrastructure and assets. The provisions are supported by every critical infrastructure sector.

Critical infrastructures are those systems that are essential to the minimum operations of the economy and government. Traditionally these sectors operated in the private sector, largely independently of one another, and coordinated with government to protect themselves against threats posed by traditional warfare. Today the public and private sectors must learn how to protect themselves against unconventional threats, such as terrorist attacks and cyberintrusions.

In Presidential Decision Directive 63, issued by the previous administration, there is a commitment to Freedom of Information Act, antitrust, and liability were identified as primary barriers to facilitating information-sharing with the private sector. The provisions in the amendment address these concerns by providing a limited FOIA exemption for sharing information, and a new process for resolving potential antitrust concerns for information shared among
private sector companies for the purpose of correcting, avoiding, communicating, or disclosing information about a critical infrastructure threat or vulnerability.

These provisions will enable the private sector to share information with sharing organizations, to move forward without fear from government restraints, and allow us to have a timely and accurate assessment of the vulnerabilities of each sector to physical or cyber threats and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded mandates on the private sector, and I urge its adoption.

We all know that the Federal, State and local governments will spend billions and billions of dollars to fight the war against terror. Contentious floor debates aside, we all support these efforts. But to me, the question isn’t simply how much we spend, but how well we spend it.

Since the tragic events of 9/11 the Government, in general, and the Office of Homeland Security, in particular has been overwhelmed by a flood of industry proposals offering various solutions to our homeland security challenges. Because of a lack of staffing expertise, many of these proposals have been sitting unreviewed, perhaps denying the Government breakthrough technology.

In February, I held a hearing in my Subcommittees on Technology and Procurement Policy on homeland security challenges facing the Government. One theme that was expressed unanimously by industry was the need for an organized, cohesive, comprehensive process by the Government to evaluate private-sector solutions to homeland security problems. Now we have part of the solution, with the creation of the new Department of Homeland Security in the bill on the floor today, Chairman ARMFIELD at my request included language in a new section 309 which his based on H.R. 4629, legislation I introduced in May. This language will close the loop and provide a vehicle to get these solutions into government and to the front lines in the war against terror.

Chairman ARMFIELD’s Managers’ amendment included a new section 309 in the Homeland Security Act to the establish within the Department a program to meet the current challenge faced by the Federal Government, as well as by State and local entities, in leveraging private sector innovation in the fight against terror. The amendment would establish a focused effort by:

Creating a centralized Federal clearinghouse in the new Department for information relating to technologies for disseminating to Federal, State, local and private sector entities and to issue announcements to industry seeking unique and innovative anti-terror solutions;

Establishing a technical assistance team to assist in evaluating and using anti-terror technologies to assess their feasibility, scientific and technical merit and cost; and

Providing for the new Department to offer guidance, recommendation and technical assistance to Federal, State, local and private efforts to evaluate and use anti-terror technologies and provide information relating to Federal funding, regulation, or acquisition regarding these technologies.

Since September 11, we have all been struggling to understand what changes will occur in our daily lives, in our economy, and within the Government. We now will establish a new Department of Homeland Security to focus and coordinate the war against terror. The new section 309 in this landmark legislation will establish the framework it needs to examine and act on the best innovations the private sector has to offer.

I would also like to offer my thanks to the staff of the Science and Energy and Commerce Committees who collaborated with my staff in crafting this consensus amendment.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 2½ minutes to the distinguished gentleman from Indiana (Mr. ROEMER), a member of the Permanent Select Committee on Intelligence.

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

Mr. ROEMER. Mr. Chairman, I think that this country is in dire need of a homeland security department, and I hope and pray that the President’s proposal will work. But I think that it will not.

While I do not know what I am going to do yet on final passage, I have very grave concerns about this being too bureaucratic, too big, too cumbersome, and not quick enough and agile enough to deal with the threat of al Qaeda that can move from Yemen to Hamburg to the United States in a matter of 12 hours.

Now, when President Clinton proposed his massive health care proposal in 1993, I thought it was too bureaucratic. I opposed it, I thought it was too slow. When we look at this proposal, to get a decision made from the CIA to homeland security, assess the threat, get it back up to the Secretary, determine the reliability, go back down and then have a real threat, then say should we call Indianopolis, warn them, prevent it, harden the target, we are going from the President to the Secretary to the infrastructure protection to the threat analysis and back. I do not know that this is going to work. I hope it does.

The current system, Mr. Chairman, is the President and then here is Tom Ridge. Here is the President and here is Tom Ridge in the Office of Homeland Security. Right there and back right back. Very quick. I think we need quick.

I hope that we will take our time on this. Twenty-two departments, $38 billion, 180,000 people versus, I think, going more toward what we have, making Tom Ridge a Cabinet secretary, making it lean, agile, technologically connected with e-mail and databases, and able to knock al Qaeda out quickly before they can attack the United States again. Not with a big bureaucracy. I urge my colleagues to go forward with caution.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from New York (Mr. BOEHLERT), the distinguished chairman of the Committee on Science.

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

Mr. BOEHLERT. Mr. Chairman, I rise in strong support of H.R. 5005, and I want to draw particular attention to the bill’s appropriate focus on science and technology.

Advancement in science and technology will be critical to the success of every mission of the Department of Homeland Security: Improving intelligence analysis, cybersecurity, border security, and emergency response all will require the identification and development of new technologies, ranging from new software to make computer networks more secure, to new standards to make emergency response communications equipment interoperable.

Like the Cold War, the war on terrorism will be won as much in the laboratory as on the battlefield. With that in mind, the Select Committee has followed the recommendation of the Committee on Science and Technology, and has created an Under Secretary for Science and Technology. With this under secretary, the bill ensures that one senior official in the new Department will be responsible and accountable for the science and technology activities of the entire Department. This approach will ensure that the science and technology activities of the Department have the critical mass and the skilled leadership they need to succeed.

The language of title III gives the Under Secretary for Science and Technology the tools needed to build the scattering of relatively small programs being transferred into the agency into a dynamic science and technology capability.

I want to thank the members and staff of the Select Committee for working with us so cooperatively to ensure that the new departments will have a strong, vigorous, and innovative science and technology capability, as called for by the National Research Council and other expert groups. I also want to point out the Committee on Science provisions were approved in our committee on a bipartisan, unanimous vote.

Mr. Chairman, I also want to draw attention briefly to the cybersecurity provisions of the bill which have been strengthened as H.R. 5005 moved through the congressional process. The bill now explicitly focuses on cybersecurity, one of our Nation’s most serious vulnerabilities. The manager’s amendment will strengthen those provisions even further by providing more tools and direction to ensure the security of Federal, State, local and private sector computer systems, and to help speed recovery if security is ever breached, nonetheless.

I want to thank my colleagues, and I urge full support of H.R. 5005.
amendments here tonight, and which passed unanimously and, of course, in bipartisan fashion from that committee.

Mr. HALL of Texas. Mr. Chairman, I rise, of course, in support of this bill. This is that bill that I argued for every part of it, but, in balance, I think passage of this legislation will help us better protect our country.

I thank the gentlewoman from California (Ms. Pelosi), our illustrous minority whip, for working me in at this stage of the proceeding, and I thank the chairman of the Committee on Science, the gentleman from New York (Mr. Boehlert), who ushered this bill to the present status.

Mr. Chairman, I am pleased to be present and just to be a Member of this body in a day and time at the creation of a Department of Homeland Security. The President of our country deserves a lot of credit for stepping up and accepting the idea that a new department is called for at this time.

The Congress is a deliberative body, and normally we spend years considering an idea before coming to any type of a conclusion. In this instance, though, the threat is great and imminent, and action very necessary. I always heard “haste makes waste,” but quick action means we will not get everything we want in this bill, exactly like we want it. I know that, and the chairman of the Select Committee from Texas (Mr. Army), knows that. Nevertheless, this good start can be fixed as we go along.

I want to spend a few minutes talking about the ways in which the Committee on Science strengthened the bill. Under Secretary for Science and Technology, a provision that was supported by Under Secretary for Science and Technology, two of the foundations, unique American strengths that cut across all mission areas, across all levels of government, and across all sectors of society. Science and technology are too important to be left to chance in this new department. They need to be planned, coordinated, and directed under a strong Under Secretariat.

One, the gentleman from Texas (Mr. Barton) recommended language to ensure that the Department has access to universities through centers of excellence. This is a useful component of the research and development enterprise for the Department. However, the current structure of this provision, with numerous criteria that the applicants must meet and its exclusion of private research institutions, can still be perfected in conference, and I hope that it is.

Mr. Chairman, the gentleman from California (Ms. Pelosi) and the gentleman from Michigan (Mr. Ehlers) led the charge in blocking the transfer of NIST’s Computer Security Division to the new Department. Ms. Pelosi and Mr. Ehlers led the charge in blocking the transfer of NIST’s Computer Security Division to the new Department.

An amendment in the bill authored by the gentleman from Washington (Mr. Baird) explicitly directs the Secretary for Emergency Preparedness and Response to treat the psychological consequences of major disasters and to provide appropriate training for mental health workers who must deal with the aftermath of these events.

There were also a number of good ideas accepted by the Science Committee that are not in the base bill but which will be offered later as Floor amendments. I urge the Members to accept our Committee’s unanimous judgment on these amendments, which include:

The amendment of the gentleman from California (Ms. WOOLSEY) creates a Homeland Security Institute. The Institute would be a non-profit organization assisting the Secretary in the same way that the RAND Corporation and the MITRE Corporation assist the Secretary of Defense in analyzing proposals, establishing test-beds, assessing defense vulnerabilities and strengths, and so forth. The creation of this Institute was the major recommendation of last month’s National Research Council report on terrorism R&D.

The amendment of the gentleman from New York (Mr. Israel) creates an advisory committee for the Under Secretary for Science and Technology. The committee would review and make recommendations on general policy issues for the Under Secretary. Most importantly, the Committee will include representatives of the users of the Department’s research activities—emergency responders—and of citizen experts.

It includes proposed language by the gentleman from Michigan (Ms. Rivers) that strengthens the channels through which creative American inventors can propose their ideas and technologies to the appropriate government officials. Macedo and I have heard from constituents who fit that description and who have asked for our help. This amendment provides those inventors with a place to take their ideas.

Two other amendments were adopted by the Science Committee but failed to make the list of amendments under consideration on the House Floor. I would hope that these items may be accommodated in the conference.

First the amendment of the gentleman from Texas, (Ms. Eddie Bernice Johnson) to clarify how the Department should classify information. The amendment adds language requiring the Under Secretary, before issuing R&D awards, to state definitively and in a timely manner whether the research results will be controlled by standard classification procedures. This policy was part of President Ronald Reagan’s National Security Decision Directive 189, promulgated in 1985.

And there is the amendment of the gentleman from Utah (Mr. Matheson) regarding standard setting by the Department. This amendment tasked the National Institute of Standards and Technology to work with the new Department in standard setting for chemical, biological, nuclear and radiological detection, and transportation standards.

Mr. Chairman, I urge the adoption of these. We need to move this bill through the conference as quickly as possible. Homeland security is too important a task to let politics, turf, jurisdictional concerns, or struggles over credit get in our way.

Mr. PORTMAN. Mr. Chairman, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. Weldon), the founder and chair of the Congressional Fire Caucus.

Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.

Ray Downing took me through the World Trade Center in 1991 to give me lessons that I should learn to take back to this body regarding our ability to respond to terrorist incidents. Ray Downing was the Chief Rescue Officer for New York City on September 11. All of those 343 firefighters that were killed worked for Ray Downing. As people were rushing out of the building, Ray was going in with his friends. In fact, two of his sons are firefighters today with the New York City Fire Department.

Ray Downing became a good friend of mine after 1991. And, in fact, he encouraged me to introduce legislation in our defense bill, which I did in 1999, creating the Gilmore Commission. The Gilmore Commission published three documents long before 9–11 occurred. And so when my colleagues today talk about the rush to do something, I do not know where they have been. The Gilmore Commission, the Hart-Rudman Commission, the Deutsch Commission, the Bremer Commission, all of this work was done over the past 8 years. Where have my colleagues been? When were they engaged with us?

Ray Downing was engaged. Ray Downing made recommendations for one single Federal agency, and he made it over and over again in the Gilmore Commission documents. Ray Downing who led us to understand that FEMA had to play a lead role and be a part of that agency, not some outside entity. It was Ray Downing who told us...
that communication was terrible in 1991, and we did not listen. We did not do anything up until now. It was Ray Downing who told us in these reports that our intelligence system was inadequate and it was Ray Downing who told us that cybersecurity and asymmetric sets required a new impetus, a new direction. Not once, not twice, but three times in three separate volumes that each of us in this body should have read.

Mr. Chairman, I am here today because of Ray Downing. Ray Downing is an American hero. I wore his bracelet until we found his remains 40 days ago, through DNA evidence, because we could not find his body. When I went to the Ground Zero on September 13, his two sons were on their knees looking for their dad.

Ray Downing told us what we should have done and we did not pay attention. This is no rush. I say it is about time to do something in the name of the heroes of this country, the domestic defenders who are in our 32,000 departments who have been telling us for 10 years what recommendations we should enact.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentleman from Maryland (Mr. Wynn).

Mr. WYNN. Mr. Chairman, I thank the gentlewoman for yielding me this time, and extend my compliments to my colleagues on both sides of the aisle that have brought this bill forward. I think it is a good piece of work, although I have some questions.

Our most important resource in homeland security is human capital. I represent 72,000 Federal employees, and I rise to take exception to the so-called flexibility provisions. I fear they will result in lower morale and, thus, less effectiveness. This bill undermines the rights and protections currently afforded to Federal employees and in certain cases, even increases unfairness. The bill allows the new Department after 1 year to reduce the pay of employees transferred from other agencies. The bill would allow the Department to establish a new human resource management system, one that is different from other Federal employees, and leaves to the discretion of the Secretary whether the new system would apply to all or just some organizational units.

In addition, the bill undercuts the ability of employees to represent employees. The bill would allow the Secretary to exempt some employees from organizing unions. Currently only the President has that authority. Second, those allowed to organize would not necessarily be already formed labor organizations. The bill undermines due process and civil liberties. It would allow the new Department to establish an appeal system rather than taking appeals to the Merit System Protection Board or Equal Employment Opportunity Commission.

I understand that some flexibility is necessary. However, in this respect the bill uses a meat-ax approach more akin to wholesale bursting. Many of the proposed personnel changes are not rationally linked to security functions. The tragedy of September 11 was linked to a lack of coordination, information-sharing, and intelligence failures, not unionization and not the existing grievance procedure. The bill asking my colleagues to represent our Federal employees for more to help us with homeland security while we undermine their employment security. This is a wrong-headed approach which I hope we will correct as we move forward in this process.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. GRANGER), a member of the Subcommittee on Transportation of the Committee on Appropriations.

Ms. GRANGER. Mr. Chairman, I want to express my admiration and appreciation for the gentleman from Texas (Mr. ARMED) for his leadership in fashioning this legislation which provides the foundation to defend this bill forward to protect America by establishing the Department of Homeland Security.

I have been working especially hard on transportation issues in homeland security, and tomorrow I will be speaking on those issues, but I want to respond tonight to the suggestion that there is no case for providing flexibility in this arbitrary deadline for checking baggage for explosives.

Airport security is important to our homeland security, and we all know that and we all want it, but we want real, not pretend, security at our airports. To make the deadlines as we have it today, the TSA would have to install screening machines at our airports at a rate of one every 35 minutes for the next 5 months. To make the deadline as we have it, screeners would have to be recruited, hired, and trained at the rate of 4.5 seconds for the next 5 months. I can go on and on.

The American people know that cannot happen and we know it cannot happen. That is the case for changing this deadline. Let us make this right. Let us have real, pretend, security at our airports. The American people deserve and demand real security, not political posturing. Let us do it right, and let us pass real legislation, the legislation that is before us here today.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE), who has been a very active participant in making suggestions for this legislation.

(Ms. JACKSON-LEE asked and was given permission to revise and extend her remarks.)

Ms. JACKSON-LEE of Texas. Mr. Chairman, I am reminded of the debate we had just a few days ago giving honorary citizenship to Marquis de Lafayette. His words rendered during his lifetime ring very loud today. He fought for America’s freedom in the Revolution when patriots stood side by side. His words were, “Humanity has won its battle. Liberty now has a country.”

I am so pleased to be here today with the dedicated men and women of the new Department, and even as the winds of action whirl around us, I hope that words of caution are relevant as we move this legislation forward to be instructive to do what is best for the American people.

I rise to take exception to the so-called due process from Texas (Ms. WYNN), a member of the Army National Guard.

Mr. WYNN. Mr. Chairman, I yield 2 minutes to the gentlewoman from South Carolina (Mr. WILSON), the only Member of Congress who is in the National Guard.

Mr. WILSON of South Carolina. Mr. Chairman, it is a great honor to rise in support of H.R. 5005, the Homeland Security Act of 2002. I commend the majority leader, the gentleman from Texas (Mr. ARMED), for his excellent service and the members of the Select Committee for the bipartisan nature in which this bill was put together. I also commend the President for his leadership in working for the establishment of the new Department.

My perspective, indeed, is as the only member of the Army National Guard serving in Congress at this time, and I have had the privilege as a member of the South Carolina National Guard to work with the community agencies and with the different first responders for...
other natural disasters that have occurred in our country. In particular, I have worked with the situation of recovery from Hurricane Hugo which struck our State. It was an extraordinary experience, but working together to recover our State and ensure domestic tranquility.

H.R. 5005 will ensure that our communities and first responders are prepared to address all threats. I believe that it is an orderly streamlining of agencies on homeland security. In particular, I want to commend that the Secret Service will be moved to the Department. One of the main missions of the Secret Service is protecting individuals and securing key events such as the Olympics and Super Bowl. The Department will depend on this agency’s protective functions and expertise. H.R. 5005 essentially accepts the Committee on Government Reform’s recommendation.

Another point that I see in this bill is recognition that active private sector participation in homeland security is essential. The Select Committee authorized the Secretary of Homeland Security to enter into special liaisons with the private sector to promote public-private partnerships and promote technology integration for homeland security. A national council for first responders is also established.

Mr. Chairman, I yield 2 minutes to the gentleman from Georgia (Mr. BARR), a member of both the Committee on the Judiciary and the Committee on Government Reform.

Mr. BARR of Georgia asked and was given permission to revise and extend his remarks.)

Mr. BARR of Georgia. Mr. Chairman, when American leaders convened on Monday, December 8, 1941, they knew three things: They knew America was at war; they knew that the mechanism that had been designed to alert America to impending danger had failed; and they knew that the mechanisms that we had in place at the time to respond to emergencies had failed.

They indeed faced a crisis, much as the crisis that we faced the day after the terrorist attacks on this Nation on September 11. We knew that the existing mechanism designed to alert America to danger and to inspecting attacks had failed, we knew we were at war, and we knew that the mechanisms designed to respond quickly to emergencies in this Nation were not adequate to the challenge.

We owe it to this President the same as our forefathers owed and gave to Franklin Delano Roosevelt in December of 1941 the power and the flexibility to respond to a threat that our Nation had never faced before. Is the mechanism that this President is proposing and that we have before us in the Department of Homeland Security perfect? No, it is not. But it does grant the President the flexibility that he needs to respond to an ever-changing threat, and to make those responsible for meeting that threat within our shores accountable.

Without flexibility and the mechanisms that we provide this President, there can be no accountability, and without accountability, whatever mechanisms we put in place, no matter how much money we put behind them, they will fail. Therefore, I urge Members to adopt this proposal to give the President the flexibility that he needs, and also to maintain the balance included in this important proposal to ensure that the privacy rights of American citizens are not infringed by the exercise of this expanded power. Mr. Chairman, I am pleased to rise in support of this historic piece of legislation.

On June 6, 2002, President Bush proposed creating a permanent Cabinet-level Department of Homeland Security, to unite essential agencies to work closely together and provide seamless coordination and execution of homeland security functions.

The Select Committee, under the leadership of Chairman Armey, took President Bush’s proposal and made it better. The measures included by the Select Committee, along with the functions and responsibilities of the Department, help create a world-class workforce within the civil service framework, enhance research and development opportunities, and protect civil liberties.

This bill goes beyond moving boxes on an organization chart. It represents a thoughtful approach to securing our borders and protecting our nation. It follows a rational strategy to bring together the current disjointed hodgepodge of government activities into a single department whose primary mission is to protect our homeland.

I also like to commend the work of Chairman Dan Burton. The Committee on Government Reform, on which I serve as Vice Chair, worked long and hard to perfect this bill. We crafted a document which served as the base text for the Select Committee bill. We worked into the early morning hours, marking up this legislation. We voted on nearly 40 amendments. At the end of that process, thanks to the leadership of Chairman Burton, we approved the Select Committee bill.

Government Reform paid particular attention to important management issues. Not only is the right organization for Homeland Security important, so is having the management tools and flexibility to create an agile 21st century workforce capable of responding to emerging new threats, and protect and defend the American people. This is, for example, the reason Committee on Government Reform recommended to the Select Committee, granting the Secretary of Homeland Security needed flexibility in the area of personnel management.

I recently chaired Government Reform hearing in Atlanta to examine post 9/11 security at federal buildings outside the nation’s capital. Undercover GAO investigators attempted to infiltrate federal facilities Atlanta, the largest federal government presence outside of Washington, D.C. We learned a very important lesson as a result of this investigation: Organizing the proper structure and implementing proper procedures is futile if there is no accountability, and there can be no accountability if the Secretary cannot move quickly to rectify personnel problems in the interests of security, we will have no accountability, and we will have failed in our most critical task—to create an effective organization capable of responding quickly and decisively to security threats. The Secretary must have the authority and the flexibility to remove employees from sensitive positions if those employees pose a threat to national security.

We do not aim to take away any employee right. We are merely providing the Secretary the needed management flexibility to strike a sensible balance between national security, employee rights, and the overall needs of the government to protect its citizens.

While we have heard the hue and cry about protecting the rights of the bureaucrats, we need to remember why we are creating this Department in the first place: to protect our communities from the terrorist threats that are unlike any other in the history of our nation. I submit the safety of our communities outweighs the importance of sometimes onerous administrative procedures. When we are talking about so-called “dirty bombs” being detonated here in the nation’s capital, and aircraft being employed as missiles to take out our treasured institutions, I believe the proper perspective comes back into focus.

The existing personnel system locks federal organizations into making obsolete decisions—decisions that do not reflect the mission of the Department or needs of American public. This bill brings accountability and common sense to a cumbersome process, while retaining fundamental rights for all transferred employees.

I would also like to take a few moments and discuss the issue of privacy; specifically the privacy protections we’ve incorporated into the final bill.

The Department of Homeland Security will be assembling millions of pieces of personal information about American citizens. The thought of the federal government collecting such private details still gives me pause. However, after spending eight years of my life at the CIA, I understand how important collecting and analyzing foreign intelligence information is to stopping terrorism. However, in order to protect this information and ensure it is not improperly retained, used, or disseminated, I fought for the inclusion of the Privacy Officer provision, which I proposed in the Select Committee’s Commercial and Administrative Law Subcommittee.

This provision mandates the Privacy Officer track public complaints regarding privacy violations, then explain to Congress how the Department has addressed them, and what internal controls have been established to improve privacy protection. It is vital we protect America from those who would cause us harm, but that must not mean that Americans sacrifice their privacy unnecessarily or absolutely necessary, and always with regard to the Bill of Rights. The inclusion of a Privacy Officer will help to
prevent that from happening. The privacy officer is specifically charged with examining legislative proposals that would minimize privacy intrusions, and also be required to assess the privacy implications of rules proposed by other agencies. This privacy officer will ensure that private information obtained by the new Department be kept private, absent a sound, compelling and constitutional reason otherwise. These provisions will safeguard American right to privacy and preserve the freedoms and liberties central to the American identity.

Mr. Chairman, President Bush—and Governor Ridge—are to be commended for the job they have done over the past nine months. Since the September 11th attacks, their swift and decisive efforts to strengthen homeland defense have restored confidence in the American people. I also commend all the Committees for their hard work on this bill, and urge Members to support this important piece of legislation.

Ms. PELOSI. Mr. Chairman, I yield 2 minutes to the gentlewoman from Florida (Ms. BROWN) who is a member of the Committee on Transportation and Infrastructure, and the Committee on Veterans’ Affairs.

Ms. BROWN of Florida. Mr. Chairman, the first agency to respond to the terrorist act on September 11 was the United States Coast Guard. Within minutes, they were guarding our ports, bridges and waterways. It was so reassuring to know that they were out there protecting us while other agencies were still in shock, and I want to point out to the gentleman under the supervision of the Department of Transportation.

I strongly oppose the transferring of the Coast Guard to the Department of Homeland Security. Moving the Coast Guard to the new Department is not in the best interest of the Coast Guard, the Department of Homeland Security, or the American people. Each year the Coast Guard conducts over 4,000 search and rescue cases. They inspect U.S. and foreign flag ships, and protect many of U.S. citizens who travel on cruise ships and ferries. Most important to my home State of Florida, they stop drugs from entering our country. Over 80 percent of the Coast Guard’s operating budget is spent on missions that have nothing to do with border protection or homeland security.

Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentleman from Indiana (Mr. SOUDER) chairman of the Government Reform Criminal Justice and Drug Policy Subcommittee.

Mr. SOUDER. Mr. Chairman, I rise in support of this legislation. I particularly would like to discuss a provision of the bill that arises from an amendment that I successfully offered in the committee with bipartisan support from the gentleman from Maryland (Mr. CUMMINGS) and the gentleman from Arizona (Mr. DAVIS) to provide for a senior-level official within the new Department to coordinate counter narcotics matters.

I raised this issue as chairman of the Criminal Justice and Drug Policy Subcommittee and as one of the cochairs of the Speaker’s Task Force on a Drug Free America. I believe it is extremely important, and I would also like to thank the leadership, including Chairman ARMEN, Speaker HASTERT and the Ranking Members (Mr. BRADSHERD, Mr. CRUZAN, Mr. WINTER) for working with us on this provision.

The scope of the legislation we are considering today is much larger than just catastrophic terrorism. One of the issues the proposed reorganization will have an impact upon is drug interdiction.

Let me remind the House of two critical facts. First, approximately 19,000 Americans will die this year of drug-induced causes. These tragedies happen every day in every single district across the country. Thousands more Americans have to seek emergency treatment and thousands more families are disrupted by the effects of illegal drugs. The second is that three of the most prominent agencies involved in this legislation, the Customs Service, the Coast Guard and the Border Patrol, are among the preeminent agencies in the Federal Government with respect to drug interdiction. This bill will move these agencies into a new Cabinet Department whose stated mission and focus relate primarily to catastrophic terrorism.

While I strongly support the overall intention of the bill, I also believe with equal strength that our efforts to respond to potential future acts of terrorism cannot come at the price of relaxing our efforts against drugs. Section 768 of the bill, which is derived from my amendment, will require the appointment of a counter narcotics official who will be in charge of the Department to assure this coordination.

The new counter narcotics official must be a senior officer capable of ensuring proper attention and resources to this critical mission. He or she must also be dedicated solely and exclusively to this task. In my view, it will not be acceptable for the new Secretary of Homeland Security simply to add this job on top of others tasked to another senior official.

The purpose of the provision is to ensure that there will be a responsible official whose energies and attention are devoted to managing the significant responsibilities of the new Department in this area. This mission is unique among all of the antiterrorism functions and it is important that we have this senior level coordinator.

Mr. Chairman, Hulse’s findings have long suggested the need for such a single operational coordinator even prior to the current reorganization.

This new Department will become the preeminent drug interdiction agency for the federal government, and we cannot allow that mission to continue to be run with such a lack of integration and coordination. We must have an official in charge of this vital task, and I again very much appreciate its inclusion in the bill. Drug control is an integral part of Homeland Security, and I look forward to working closely with the new Department in pursuit of this goal.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 1½ minutes to the gentleman from Ohio (Mr. KUCINICH), the ranking member on the Committee on Government Reform Subcommittee on National Security and a member of the Committee on Education and the Workforce.

Mr. KUCINICH. Mr. Chairman, after an attack on our Nation, Franklin D. Roosevelt told our Nation, “We have nothing to fear but fear itself.” Over 61 years later, we are told we have everything to fear. We now measure our fears by the size of the bureaucracy we could create to deal with those fears. But if I submit that we will not have responded to the underlying conditions which have created those fears in the first place.

This bill will not accomplish a more effective defense of our Nation because there has been no risk assessment. There is no sense of the actual causes of insecurity and there is no strategy which would provide justification for sweeping changes in 153 federal agencies. This legislation demonstrates how this bill will accomplish security superior to what these 153 different agencies can now accomplish with strong leadership. $4.5 billion more will be spent, but how do we know it will work in a new department when there has not been any agency-by-agency analysis that justifies the creation of a new Department?

Mr. Chairman, this House just passed a national independent commission to investigate 9/11. We new Department with 170,000 employees to respond to 9/11, yet the commission which will analyze 9/11 has not even begun its work. That is quite a feat, especially with our President saying tonight, “I didn’t run for office promising to make government bigger.” 170,000 employees in this new Department, no idea how they will be integrated, 10 years for the Department to be up and running. Meanwhile this reorganization itself will represent a threat to the security of our Nation because it will induce paralysis and administrative breakdown.

Ms. BROWN of Florida. Mr. Chairman, the first agency to respond to the terrorist act on September 11 was the United States Coast Guard. Within minutes, they were guarding our ports, bridges and waterways. It was so reassuring to know that they were out there protecting us while other agencies were still in shock, and I want to point out to the gentleman under the supervision of the Department of Transportation.

I strongly oppose the transferring of the Coast Guard to the Department of Homeland Security. Moving the Coast Guard to the new Department is not in the best interest of the Coast Guard, the Department of Homeland Security, or the American people. Each year the Coast Guard conducts over 4,000 search and rescue cases. They inspect U.S. and foreign flag ships, and protect many of U.S. citizens who travel on cruise ships and ferries. Most important to my home State of Florida, they stop drugs from entering our country. Over 80 percent of the Coast Guard’s operating budget is spent on missions that have nothing to do with border protection or homeland security.

The Republican Party is supposed to be the party of smaller government, but today they are creating a huge monster. I do support the creation of a Department of Homeland Security, but this is not the time to rush through this legislation. It is not unpatriotic to ask serious questions about this agency, and we should not base the process on a symbolic date. Our constituents deserve better than that. We do not need to create another monster. We need to create a homeland security agency that really will protect this Nation and its citizens from harm.
Mr. PORTMAN. Mr. Chairman, I yield 2 minutes to the gentlewoman from West Virginia (Mrs. CAPITO), a member of the Committee on Transportation and Infrastructure and also someone who has taken a special interest in homeland security issues.

Mrs. CAPITO. Mr. Chairman, I rise in support of H.R. 5005, the Homeland Security Act and I commend the committee for their fine work.

Mr. Chairman, the way our country prepares and responds to emergencies since the events of September 11 must be a key component of our homeland security strategy. To that end, I think the President should be commended for putting nearly all of the Federal emergency management and response responsibilities under the Department of Homeland Security. By making emergency management and response a priority under the new Department, we will change the mindset of merely reacting to disasters to include an overall plan of helping communities better prepare for emergency situations. A broader perspective on emergency preparedness will help our cities and towns across the country be ready to respond to terrorist attacks and other emergency situations that could paralyze a community that is ill-prepared for a surprise scenario. Initiatives such as State-to-State pacts for emergency response situations must be promoted in order to better use our resources that can be shared across the country.

I think it is important to highlight a few national “firsts” included in this bill. Building a national incident management system to respond to attacks, consolidating existing Federal emergency response plans into a single national plan, and developing comprehensive programs for interoperative communications technology.

The emergency preparedness and response functions of the Department of Homeland Security will continue current Federal support for local government efforts to promote structures that have a lesser chance of being impacted by disasters. It will bring together private industry and citizens to create model communities in high-risk areas.

Like the Boy Scouts and Girl Scouts, every community in America, no matter how large or how small, needs to always be prepared. A firm structure demonstrated by the Federal Government will provide the help and guidance that towns, cities and counties need as they continue to ensure the safety of citizens across the country.

I support this bill wholeheartedly.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 1½ minutes to the very distinguished gentleman from Texas (Mr. TURNER), a respected member of the Committee on Armed Services and the Committee on Government Reform.

Mr. TURNER. Mr. Chairman, the gentlewoman from California (Ms. PELOSI) has 3 minutes.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield the balance of my time to the gentlewoman from Connecticut (Ms. DELAUNOY), a very important member of our Select Committee on Homeland Security, the assistant to the minority leader, and a respected member of the Congress on Appropriations.

Mr. DELAUNOY. Mr. Chairman, I have been proud to work with Chairman ARMEN, Ranking Member PELOSI and all the members of the Select Committee to craft this legislation. Every Member of the House came to this effort with one goal, to create a department that will help us win the war on terrorism and protect our citizens from future attacks. We have no greater obligation under this Constitution. We share the goal, but we differ on the details.

And while we have made great strides toward the goal, we cannot afford to ignore the details. We face an enemy who leaves us no room for error and we owe the American people nothing less than getting this right the first time.

There are several areas where I believe we have made real progress, due in large part to the hard work of our committees. I am very pleased that the chairman heeded the bipartisan recommendation of the Committee on Energy and Commerce and declined the administration’s request to transfer sell-off health functions from the National Institutes of Health and the Centers for Disease Control to the new Department.

On a bipartisan recommendation of the Committee on Appropriations, we removed provisions that would have given the administration unprecedented power to transfer funds without congressional oversight. And the gentleman from Illinois (Mr. HYDE) and the gentleman from California (Mr. LANTOS) worked together to find a bipartisan compromise on the visa issue that was accepted by the White House and three committees. No easy task.

But I would like to point out that the amendment I offer makes it very clear that the director of OMB and the director of Homeland Security can limit the indemnity in any amount they see fit.

I would urge Members to join us in restoring this language tomorrow.

Mr. PORTMAN. Mr. Chairman, could the Chair tell us what the division of time is? We have the right to close, I believe.

The CHAIRMAN. The gentleman from Ohio (Mr. PORTMAN) has 4½ minutes and the gentlewoman from California (Ms. PELOSI) has 3 minutes.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield the balance of my time to the gentlewoman from Connecticut (Ms. DELAUNOY), a very important member of our Select Committee on Homeland Security, the assistant to the minority leader, and a respected member of the Committee on Appropriations.

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Mr. ARMEY. Mr. Chairman, let me say on a personal note, it is a privilege for me to follow the gentlewoman from Connecticut. What a privilege it was to serve together on this select committee. The gentlewoman made it select indeed, and I want to thank her for that.

Mr. Chairman, on September 11 of last year, early in the morning, the unthinkable happened in America. We should not fault ourselves because we had not thought about it. Americans would not think of such an attack and anticipate it. It was the unthinkable; so horrible, so awful, so sneaky, so vicious.

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The horrific events of September 11, 2001 showed that terrorists were able to hijack our national transportation system and use it against us as a weapon. The terrorists used America’s accessibility and our freedom of mobility to perpetrate these unspeakable evil acts. We are to restore confidence and adequately protect our transportation infrastructure—the foundation of our economy—then we must conduct a complete assessment of our public transportation system’s vulnerabilities. The events at LAX over the July 4 weekend this year, once again showed how vul -
July 25, 2002

CONGRESSIONAL RECORD — HOUSE

H5659

Representatives LYNN RIVERs and MIKE HONDA in our fight against terrorism.

They also offered many sound ideas for our national security. The CDC is an integral part of our country, they are the frontline supporting and defending our nation. The requirement for a strong Customs was so important that it was the Fifth Act of Congress and was the first federal agency of the new Republic. The many functions of Customs are as important today as they were at the start of our nation.

Passage of the Homeland Security Act of 2002 is the right decision for the country. This country is only as safe and secure as the economy that supports it. Last year over $1 trillion in merchandise was imported into the country. Customs collected over $20 billion of revenue. The bill before us today helps to protect the trade functions of the Customs Service that are so vital to the strength of this land. It helps to protect the investment that America has made in the new computer system that will be the cornerstone of the new Department. The bill keeps Customs core revenue functions whole, which ensures that the many trade and enforcement functions will be carried out.

Our bipartisan agreement in this bill: Transfers the Customs Service in its entirety to the Department of Homeland Security Divi- sion for Border and Transportation Security. Identifies revenue-related offices and functions within Customs—about 25 percent of the agency— and prohibits reorganization or decrease in their funding or staff or reductions to Title V pay and benefits levels.

Revenue requirements for transfers of customs revenue services be maintained, and requires notice to Congress of actions that would reduce such service.

Maintains the Commissioner of Customs as Senate-confirmed.

Transfers all authority exercised by Customs to Homeland security with the exception of revenue collecting authority, which would remain at the Treasury Department. Treasury may delegate this authority to Homeland Security.

Specifies that a portion of the Customs Merchandise Processing Fee must go to build the new Customs computer, which Governor Ridge has told us will likely be the cornerstone of the new Department’s architecture.

For these reasons I urge a “yes” vote on House Resolution 5005.

Mr. GOSS. Mr. Chairman, I rise this evening to briefly summarize the bipartisan recommenda- tions of the Intelligence Committee on title 2 of H.R. 5005.

Before I offer the committee’s recommenda- tion, let me give you an overview of the com- mittee took action. I find the entire structure of the new department, you will no- tice that the vast majority of the organization has to do with planning, implementation, pro-

where the proposal came from, should be im-

I believe the Rivers/Wu amendment will keep an open door for talents outside of the government to contribute to our efforts to fight terrorism. I urge my colleagues to adopt the amendment.

Mr. THOMAS. Mr. chairman, I rise in sup-


The protection of the United States from threat and terror is, and should be, the first priority of this government. The protection that we seek to achieve with the creation of the new Department is for our people, our property, and our economy. For more than 200 years, the U.S. Customs Service has been on the frontline supporting and defending our nation. The requirement for a strong Customs was so important that it was the Fifth Act of Congress and was the first federal agency of the new Republic. The many functions of Customs are as important today as they were at the start of our nation.

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tection and response to terrorist threats and actions. What we also know is that combating terrorism relies very much on timely, well-co-ordinated access to intelligence and other sen- sitive information. I would submit that if the an-

alytical portion of the Department doesn’t work, the rest of the Department’s operations and functions are somewhat meaningless.

The committee’s strategic vision was that the new department needs an analytical focal point where foreign intelligence, Federal law enforcement, and state and local information will all be analyzed collectively in order to best understand threats, specifically to our homeland, and to properly evaluate the weaknesses in our defenses. Without an all-source analytic capability to validate and make sense of threat information, the Secretary for Homeland Secu-

rity will have to rely only on Intelligence Commu- nity analysis that may be fractional, con-

tradictory, parochial, and incomplete, and will have to make critical analytical judgments in a vacuum.

The HPSCI recommendations to the Select Committee, which have been largely adopted in the Manager’s amendment, provide for the establishment of an all-source, collaborative Intelligence Analysis Center that integrates intel-

ligence and other information from the Intel-
lence Community, as well as Federal, State and local law enforcement agencies and the private sector, with respect to terrorist threats and actions against the United States. Our proposal integrates the traditional mission of intelligence analysis with new sources of infor-
mation and sophisticated information tools.

An equally important duty of the Intelligence Analysis Center will be to integrate intelligence and other information to produce and dissemi-
nate strategic and tactical vulnerability assess-
ments with respect to terrorist threats. The In-

telligence Analysis Center would be charged with developing a comprehensive national plan to provide for the security of key national re-

sources and critical infrastructures. The Intel-

cence Analysis Center would also review and recommend improvements to daily and re-

procedure for sharing intelligence and other in-

formation within the Federal Government and between the Federal, State, and local govern-

ments.

The committee believes that the proposed Intelligence Analysis Center should be made an element of the Intelligence Community and be a funded program within the National For-

eign Intelligence Program in accordance with the National Security Act of 1947. Making the Intelligence Analysis Center an NFIP element will ensure that the Secretary has full and timely access to all relevant intelligence per-

aining to terrorist threats against the United States, as well as to ensure proper coordina-

tion between the Department and Federal intel-

ligence and law enforcement agencies.

The Intelligence Committee’s recommenda-
tion envisions an Intelligence Analysis Center that is agile in terms of personnel and infra-

structure, appropriately flexible in terms of its auth- orities and its capacity to address rapidly changing threats to the United States, and unique to our government in that it incor-

porates the best analytical practices and capa-

bilities used in both the intelligence and the private sector to defend our country and our people.

THE CHAIRMAN. All time for general debate has expired.
Pursuant to the rule, the committee amendment in the nature of a substitute printed in the bill is considered as an original bill for the purpose of amendment and is considered read.

The text of the committee amendment in the nature of a substitute is as follows:

H. R. 9006

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

SECTION 1. SHORT TITLE; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the “Homeland Security Act of 2002”.

(b) TABLE OF CONTENTS.—The table of contents for this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Definitions.
Sec. 3. Construction; severability.
Sec. 4. Effective date.

TITLE I—DEPARTMENT OF HOMELAND SECURITY

Sec. 101. Executive department; mission.
Sec. 102. Secretary; functions.
Sec. 103. Other officers.
Sec. 104. National Council of First Responders.

TITLE II—INFORMATION ANALYSIS AND INFRASTRUCTURE PROTECTION

Subtitle A—Under Secretary for Information Analysis and Infrastructure Protection

Sec. 201. Under Secretary for Information Analysis and Infrastructure Protection.
Sec. 202. Functions transferred.
Sec. 203. Access to information.
Sec. 204. Procedures for sharing information.
Sec. 205. Privacy officer.
Sec. 206. Federal cybersecurity program.

Subtitle B—Intelligence Analysis Center

Sec. 211. Intelligence Analysis Center.
Sec. 212. Mission of the Intelligence Analysis Center.

TITLE III—SCIENCE AND TECHNOLOGY

Sec. 301. Under Secretary for Science and Technology.
Sec. 302. Functions transferred.
Sec. 303. Conduct of certain public health-related activities.
Sec. 304. Federally funded research and development center.
Sec. 305. Miscellaneous provisions.
Sec. 307. Conduct of research, development, demonstration, testing and evaluation.
Sec. 308. Transfer of Plum Island Animal Disease Center, Department of Agriculture.

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

Sec. 401. Under Secretary for Border and Transportation Security.
Sec. 402. Functions transferred.
Sec. 403. Visa issuance.
Sec. 404. Transfer of certain agricultural inspection functions of the Department of Agriculture.
Sec. 405. Functions of Administrator of General Services.
Sec. 406. Functions of Transportation Security Administration.
Sec. 407. Preservation of Transportation Security Administration as a distinct entity.
Sec. 408. Annual assessment of terrorist-related threats to public transportation.
Sec. 409. Explosive detection systems.
Sec. 410. Transportation security.

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

Subtitle A—Emergency Preparedness and Response

Sec. 501. Under Secretary for Emergency Preparedness and Response.
Sec. 502. Functions transferred.
Sec. 503. Nuclear incident response.
Sec. 504. Definition.
Sec. 505. Conduct of certain public-health related activities.

TITLE VI—MANAGEMENT

Sec. 601. Under Secretary for Management.
Sec. 602. Chief Financial Officer.
Sec. 603. Chief Information Officer.
Sec. 604. Establishment of Office for Civil Rights and Civil Liberties.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

Sec. 701. Authority of the Secretary.
Title I—Department of Homeland Security

Sec. 101. Executive Department; Mission.

(a) Establishment.—There is established a Department of Homeland Security, as an executive department of the United States within the meaning of title 5, United States Code.

(b) Mission.—

(1) The primary mission of the Department is to—

(A) prevent terrorist attacks within the United States;

(B) reduce the vulnerability of the United States to terrorism;

(C) minimize the damage, and assist in the recovery, from terrorist attacks that do occur within the United States;

(D) carry out the functions of entities transferred to the Department, including by acting as a focal point regarding natural and manmade crises and emergency planning;

(E) ensure that the functions of the agencies and subdivisions within the Department that are not related directly to securing the homeland are not diminished or neglected except by a specific explicit Act of Congress; and

(F) ensure that the overall economic security of the United States is not diminished by efforts, activities, and programs aimed at securing the homeland.

(2) Responsibility for Investigating and Prosecuting Terrorism.—Except as specifically provided, any entity transferred to the Department under this Act, to the extent the functions of such entity are related to securing the homeland, shall be assigned to the Department, subject to such conditions as the President, by and with the advice and consent of the Senate, deems appropriate.

(3) Interfacing with Other Relevant Federal, State, and Local Government Agencies.—The Secretary shall ensure that the policies, regulations, processes, programs, projects, activities, and authorities of the Department are compatible with each other and that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments.

(c) Coordination with Non-Federal Entities.—The Secretary shall coordinate (including the provision of training and equipment) with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities.

(d) Interfacing with the Federal Government.—The Secretary shall coordinate (including the provision of training and equipment) with the Federal Government and the Department of Defense to ensure adequate planning, equipment, training, and exercise activities.

(e) Interfacing with the Public—The Secretary shall coordinate (including the provision of training and equipment) with the public to ensure adequate planning, equipment, training, and exercise activities.

(f) Interfacing with the Private Sector—The Secretary shall coordinate (including the provision of training and equipment) with the private sector to ensure adequate planning, equipment, training, and exercise activities.

(g) Standards Policy.—All standards activities of the Department shall be conducted in accordance with section 12(d) of the National Technology Transfer Advancement Act of 1995 (15 U.S.C. 6722 note) and Office of Management and Budget Circular A-119.

Sec. 102. Secretary; Functions.

(a) Secretary.—(1) There is a Secretary of Homeland Security, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) The Secretary is the head of the Department and shall have direction, authority, and control over it.

(b) Functions.—The Secretary—

(1) except as otherwise provided by this Act, may delegate any of the Secretary's functions to any officer, employee, or organizational unit of the Department;

(2) shall have the authority to make contracts, grants, and other agreements, and to enter into agreements with other executive agencies, as may be necessary and proper to carry out the Secretary's responsibilities under this Act or other Acts;

(3) shall take reasonable steps to ensure that information systems and databases of the Department are compatible with each other and with appropriate databases of other Departments;
(1) A Deputy Secretary of Homeland Security, who shall be the Secretary’s first assistant for purposes of subchapter III of chapter 33 of title 5, United States Code.
(2) An Under Secretary for Information Analysis and Infrastructure Protection.
(3) An Under Secretary for Science and Technology.
(4) An Under Secretary for Border and Transportation Security.
(6) An Under Secretary for Management.
(7) Not more than four Assistant Secretaries.
(8) A Chief Financial Officer.
(9) A Functions Inspector General.
(10) A Deputy for Border and Transportation Security.
(12) A Deputy for Management.
(13) A Deputy for Science and Technology.
(14) A Deputy for Border and Transportation Security.
(15) A Deputy for Emergency Preparedness and Response.
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methods under the National Security Act and related procedures or, as appropriate, similar authorities of the Attorney General concerning sensitive law enforcement information.

SEC. 204. PRIVILEGES FOR SHARING INFORMATION.

The Secretary shall establish procedures on the use of information shared under this title that—

(1) limit the redissemination of such information to ensure that it is not used for an unauthorized purpose;

(2) ensure the security and confidentiality of such information;

(3) protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(4) provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

SEC. 205. PRIVY OFFICER.

The Secretary shall appoint a senior official in the Department to assume primary responsibility for privacy policy, including—

(1) developing information technology policies that sustain, and do not erode, privacy protections relating to the use, collection, and disclosure of personal information;

(2) ensuring that the personal information contained in Privacy Act systems of records is handled in full compliance with fair information practices as set out in the Privacy Act of 1974; and

(3) evaluating legislative proposals involving collection, use, and disclosure of personal information by the Federal Government.

SEC. 206. FEDERAL CYBERSECURITY PROGRAM.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall establish and manage a program to improve the security of Federal critical information systems, including conducting out responsibilities under paragraphs (1) and (2) of section 201 that relate to such systems.

(b) DUTIES.—The duties of the Secretary under subsection (a) are—

(1) to evaluate increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of encryption technologies;

(2) to provide assistance to civilian executive agencies in protecting the security of Federal critical information systems, including identification of significant risks to such systems; and

(3) to coordinate research and development for critical information systems relating to supervisory control and data acquisition systems, including, as appropriate, the establishment of a test bed.

(c) FEDERAL INFORMATION SYSTEM SECURITY TEAM.

(1) IN GENERAL.—In carrying out subsection (b)(2), the Secretary shall establish, manage, and support a Federal information system security team whose purpose is to provide technical expertise to civilian executive agencies to assist such agencies in securing Federal critical information systems by conducting information security audits of such systems, including conducting tests of the effectiveness of information security control techniques and performing logical access control tests of interconnected computer systems and networks, and related vulnerabilities and threats.

(2) TEAM MEMBERS.—The Secretary shall ensure that the team under paragraph (1) includes technical experts and auditors, computer scientists, and computer forensics analysts whose technical competence enables the team to conduct audits under such paragraph.

(3) AGENCY REPORTS ON FEDERAL CYBERSECURITY AUDITS.—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph.

(4) REPORTS.—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team shall make a written assessment of the audit and making recommendations for corrective action. Such report shall be submitted to the Secretary, the head of such agency, and the Inspector General of the agency (if any), and upon request of any congressional committee with jurisdiction over such agency, to such committee.

(d) DEFINITION.—For purposes of this section, the term ‘Federal critical information system’ means an ‘information system’ as defined in section 492 of title 44, United States Code, that—

(1) is, or is a component of, a key resource or critical infrastructure;

(2) is used or operated by a civilian executive agency or by a contractor of such an agency; and

(3) does not include any national security system as defined in section 5142 of the Clinger-Cohen Act of 1996.

Subtitle B—Intelligence Analysis Center

SEC. 211. INTELLIGENCE ANALYSIS CENTER.

(a) ESTABLISHMENT; NIPP AGENCY.—(1) There is established within the Department the Intelligence Analysis Center, The Under Secretary for Information Analysis and Infrastructure Protection shall be the head of the Intelligence Analysis Center.

(b) FUNCTIONS.—The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 316 of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(c) DUTIES OF THE INTELLIGENCE ANALYSIS CENTER.

(1) IN GENERAL.—The Secretary and the Director of the Intelligence Analysis Center shall carry out the duties specified in paragraphs (1) to (7) of section 201(b).

(2) ADDITIONAL DUTIES.—The Intelligence Analysis Center shall be the head of the Intelligence Analysis Center of the Department collected from all sources available.

(3) PRODUCING ALL-SOURCE COLLABORATIVE INTELLIGENCE ANA—LYS, WARNINGS, TACTICAL ASSESSMENTS, AND STRATEGIC ASSESSMENTS OF THE TERRORIST THREAT AND INFRASTRUCTURE VULNERABILITIES OF THE UNITED STATES.

(4) PROVIDING APPROPRIATE DISSEMINATION OF SUCH ASSESSMENTS.

(5) IMPROVING THE LINES OF COMMUNICATION WITH RESPECT TO HOMELAND SECURITY BETWEEN THE FEDERAL GOVERNMENT AND STATE AND LOCAL PUBLIC SAFETY AGENCIES AND THE PRIVATE SECTOR THROUGH THE TIMELY DISSEMINATION OF INFORMATION PERMITTING TO THREATS OF ACTS OF TERRORISM AGAINST THE UNITED STATES.

(2) COORDINATION OF INTELLIGENCE.—Coordinating with elements of the intelligence community and with Federal, State, and local law enforcement agencies, and the private sector as appropriate.

(3) ADDITIONAL DUTIES.—Performing such other functions as the Secretary may direct.

(2) CRITICALLY AND TACTICAL ASSESSMENTS OF THE INTELLIGENCE ANALYSIS CENTER.—The Under Secretary shall conduct strategic and tactical assessments and warnings through the Intelligence Analysis Center, including research, analysis, and the production of assessments on the following as they relate to the mission of the Department:

(A) DOMESTIC TERRORISM.

(B) INTERNATIONAL TERRORISM.

(C) COUNTERINTELLIGENCE.

(D) TRANSCONTINENTAL CRIME.

(E) PROLIFERATION OF WEAPONS OF MASS DESTRUCTION.

(F) ILICIT FINANCING OF TERRORIST ACTIVITIES.

(G) CYBERSECURITY AND CYBERCRIME.

(H) KEY RESOURCES AND CRITICAL INFRASTRUCTURES.

(I) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.

(J) TRANSFERS OF FUNCTIONS TRANSFERRED.—In accordance with title VII, for purposes of carrying out this title, there is transferred to the Under Secretary the functions, personnel, assets, and liabilities of the following entities:

(A) THE NATIONAL INFRASTRUCTURE PROTECTION CENTER OF THE DEPARTMENT OF COMMERCE.

(B) THE CRITICAL INFRASTRUCTURE ASSURANCE OFFICE OF THE DEPARTMENT OF COMMERCE.

(C) THE FEDERAL COMPUTER INCIDENT RESPONSE CENTER OF THE DEPARTMENT OF COMMERCE.

(D) THE NATIONAL INFRASTRUCTURE SIMULATION AND ANALYSIS CENTER OF THE DEPARTMENT OF ENERGY.

(E) THE NATIONAL COMMUNICATIONS SYSTEM OF THE DEPARTMENT OF DEFENSE.

(F) THE INTELLIGENCE ELEMENT OF THE COAST GUARD.

(G) THE INTELLIGENCE ELEMENT OF THE UNITED STATES CUSTOMS SERVICE.

(H) THE INTELLIGENCE ELEMENT OF THE IMMIGRATION AND NATURALIZATION SERVICE.

(I) THE INTELLIGENCE ELEMENT OF THE TRANSPORTATION SECURITY ADMINISTRATION.

(J) THE INTELLIGENCE ELEMENT OF THE FEDERAL PROTECTOR SERVICE.

(2) STRUCTURE.—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic, and strategic assessment and warning functions provided to the Under Secretary under paragraph (1) and the Under Secretary under paragraph (1) shall be detailed on a reimbursable basis for a period of less than two years for the performance of temporary functions.

(2) INCLUSIONS OF OFFICE OF INTELLIGENCE AS AN ELEMENT OF THE INTELLIGENCE COMMUNITY.—Section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)) is amended—

(1) by striking ‘and’ at the end of subparagraph (I);
TITLE III—SCIENCE AND TECHNOLOGY

SEC. 301. UNDER SECRETARY FOR SCIENCE AND TECHNOLOGY.

The Secretary, acting through the Under Secretary for Science and Technology, shall have responsibilities for—

(1) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, and initiatives for, coordinating the Federal Government's civilian efforts to identify and develop countermeasures to chemical, biological, radiological, nuclear, and other emerging terrorist threats, including the development of comprehensive, research-based defensible plans for such efforts and development of annual measurable objectives and specific targets to accomplish and evaluate the goals for such efforts;

(2) establishing and administering the primary research and development activities of the Department, including the long-term research and development needs and capabilities for all elements of the Department;

(3) conducting basic and applied research, development, demonstration, testing, and evaluation activities that are relevant to any or all elements of the Department, through both intramural and extramural programs, provided that such responsibility does not extend to human health-related research and development activities;

(4) coordinating and integrating all research, development, demonstration, testing, and evaluation activities of the Department;

(5) coordinating with other appropriate executive agencies in developing and carrying out the science and technology agenda of the Department to reduce duplication and identify unmet needs;

(6) establishing Federal priorities for research, development, demonstration, testing, and, as appropriate, procurement and transitional operation of technology and systems;

(7) ensuring that the research, development, demonstration, testing, and evaluation activities of the Department are aligned with the Department's long-term research and development activities described in subparagraphs (A), (B), and (C) of paragraph (6); and

(8) coordinating the deployment of technology that will serve to enhance homeland security, including the establishment of a centralized Federal repository for information relating to potential deployment in subparagraphs (A), (B), and (C) of paragraph (6) for dissemination to Federal, State, and local government and private sector entities, and for information for persons seeking guidance on how to pursue proposals to develop or deploy technologies that would contribute to homeland security;

(b) FUNCTIONS.—With respect to civilian human health-related research and development activities relating to countermeasures for chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary shall have the authority to establish or contract with one or more federally funded research and development centers to provide independent analysis of homeland security-related threats or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 307.

(c) MISCELLANEOUS PROVISIONS.—

(1) CLASSIFICATION.—To the greatest extent practicable, research conducted or supported by the Department shall be unclassified.

(2) CONSTRUCTION.—Nothing in this title shall be construed to preclude any Under Secretary of the Department from carrying out research, development, demonstration, or evaluation activities, as long as such activities are coordinated through the Under Secretary for Science and Technology.

(3) REGULATIONS.—The Secretary, acting through the Under Secretary for Science and Technology, may issue necessary regulations with respect to research, development, demonstration, testing, and evaluation activities of the Department, including the conducting, funding, and reviewing of such activities.

(4) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCE DESIGNATION PROGRAM.—Within 90 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 302(e)(2) of this Act, the President shall notify the Congress of the transferred program and shall include the reasons for the transfer and a description of the effect of the transfer on the activities of the Department of Energy.

SEC. 305. FEDERALLY FUNDED RESEARCH AND DEVELOPMENT CENTER.

The Secretary, acting through the Under Secretary for Science and Technology, shall have the authority to establish or contract with one or more federally funded research and development centers to provide independent analysis of homeland security-related threats or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 307.

SEC. 306. MISCELLANEOUS PROVISIONS.

(a) ESTABLISHMENT AND COMPOSITION.—There is established within the Department a Homeland Security Science and Technology Coordination Council (in this section referred to as the “Coordination Council”). The Coordination Council shall be comprised of all the Under Secretaries of the Department and any other Department officials designated by the Secretary, and shall be chaired by the Under Secretary for Science and Technology. The Coordination Council shall meet at the call of the chair.

(b) RESPONSIBILITIES.—The Coordination Council shall—

(1) establish priorities for research, development, demonstration, testing, and evaluation activities conducted or supported by the Department;

(2) ensure that the priorities established under paragraph (1) reflect the acquisition needs of the Department; and

(3) assist the Under Secretary for Science and Technology in carrying out his responsibilities under section 301(b).

SEC. 307. CONDUCT OF RESEARCH, DEVELOPMENT, DEMONSTRATION, TESTING AND EVALUATION.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Science and Technology, shall carry out intramural research, development, demonstration, testing, and evaluation programs so as to—

(A) ensure that colleges, universities, private research institutes, and companies (and consortia thereof) from as many areas of the United States as practicable participate in such programs;

(B) distribute funds through grants, cooperative agreements, and contracts through competitions that are as open as possible;

(C) The Secretary, acting through the Under Secretary for Science and Technology, shall establish within 1 year of the date of enactment of this Act a university-based center or centers for homeland security. The purpose of this center or centers shall be to establish a coordinated, university-based system to enhance the Nation’s homeland security.

In selecting colleges or universities as centers for homeland security, the Secretary shall consider the following criteria:

(i) Demonstrated expertise in the training of first responders.

(ii) Demonstrated expertise in responding to incidents involving weapons of mass destruction and biological warfare.

(iii) Demonstrated expertise in emergency medical services.

(iv) Demonstrated expertise in chemical, biological, radiological, and nuclear countermeasures.

(v) Strong affiliations with animal and plant diagnostic laboratories.

(vi) Demonstrated expertise in food safety.

(vii) Affiliation with Department of Agriculture laboratories or training centers.

(viii) Demonstrated expertise in water and wastewater operations.

(ix) Demonstrated expertise in port and waterway security.
(x) Demonstrated expertise in multi-modal transportation.

(xi) Nationally recognized programs in information security.

(xii) Nationally recognized programs in engineering.

(xiii) Demonstrated expertise in educational outreach and technical assistance.

(xiv) Demonstrated expertise in border transportation and security.

(xv) Demonstrated expertise in interdisciplinary public policy research and communication outreach regarding science, technology, and public policy.

(C) The Secretary shall have the discretion to establish such centers and to consider additional criteria as necessary to meet the evolving needs of homeland security and shall report to Congress concerning the implementation of this paragraph as necessary.

(D) There are authorized to be appropriated such sums as may be necessary to carry out this paragraph.

(c) INTRAMURAL PROGRAMS.—(1) In carrying out the duties under section 301, the Secretary, acting through the Under Secretary for Science and Technology, may draw upon the expertise of any laboratory of the Federal Government, whether operated by a contractor or the Government.

(2) The Secretary, acting through the Under Secretary for Science and Technology, may establish a headquarters laboratory for the Department at any national laboratory and may establish additional laboratory units at other national laboratories.

(3) If the Secretary chooses to establish a headquarters laboratory pursuant to paragraph (2), then the Secretary shall do the following:

(A) Establish criteria for the selection of the headquarters laboratory in consultation with the National Academy of Sciences, appropriate Federal agencies, and other experts.

(B) Publish the criteria in the Federal Register.

(C) Evaluate all appropriate national laboratories against the criteria.

(D) Select a national laboratory on the basis of the criteria.

(E) Report to the appropriate congressional committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory shall perform.

(4) No laboratory shall begin operating as the headquarters laboratory before 180 days after the transmittal of the reauthorization and reprogramming information to the headquarters laboratory of the Department until the criteria, and what duties the headquarters laboratory was selected, the committees on which laboratory was selected, how the selected laboratory meets the published criteria, and what duties the headquarters laboratory pursuant to paragraph 411 takes effect.

(4) Establishing and administering rules, in accordance with section 403, governing the granting of visas or other forms of permission, including parole, to enter the United States to individuals who are not a citizen or an alien lawfully admitted for permanent residence in the United States.

(5) Except as provided in subsection (b), administering the customs laws of the United States.

(6) Conducting inspection and related administrative functions of the Department of Agriculture transferred to the Secretary of Homeland Security under section 404.

(7) In carrying out the foregoing responsibilities, ensuring the speedy, orderly, and efficient flow of lawful traffic and commerce.

SEC. 402. FUNCTIONS TRANSFERRED.

In accordance with the transition period defined in section 801(2), there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The United States Customs Service, except as provided in subsection (a).

(2) The Coast Guard of the Department of Transportation, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of Transportation relating thereto.

(3) The Transportation Security Administration of the Department of Transportation, including the functions of the Secretary of Transportation, and of the Under Secretary of Transportation for Security, relating thereto.

(4) The Federal Protective Service of the General Services Administration, including functions of the Administrator of General Services relating thereto.


(6) The Office for Domestic Preparedness of the Office of Justice Programs of the Department of Justice, including the functions of the Attorney General relating thereto.


(8) The Domestic Emergency Support Teams of the Department of Justice, including the functions of the Attorney General relating thereto.

SEC. 403. VISA ISSUANCE.

(a) IN GENERAL.—Notwithstanding section 104(a) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary of Homeland Security shall have the authority to refuse a visa to an alien if the Secretary of Homeland Security determines that the granting or refusal of visas, and shall have the authority to refuse visas in accordance with law and to develop programs of homeland security training for consular officers (in addition to consular training programs of the Department of State), which authorities shall be exercised through the Secretary of State, except that the Secretary shall not have authority to alter or reverse the decision of a consular officer to refuse a visa to an alien.

(b) CONSTRUCTION.—Sections 212(a)(10)(C) and 212(a)(10)(D) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C) and 1182(a)(10)(D)) shall be construed to affect any delegation of authority to any agency of the United States, with the consent of the head of the executive agency under whose jurisdiction such officer or employee is serving, any of the functions specified in paragraph (1).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES.—In accordance with section 301(a) of the Immigration and Nationality Act (8 U.S.C. 1103(a)), the Secretary of Homeland Security shall be assigned to any diplomatic and consular posts abroad to perform the following functions:

(I) Provide expert advice and training to consular officers regarding specific security threats relating to individual visa applications or classes of applications.

(II) Review any or all such applications prior to the granting or refusal of visas.

(III) Conduct investigations with respect to matters under the jurisdiction of the Secretary,
shall submit to the Congress a report on how the implementation of the Office of Science and Technology Policy functions required by subsection (a) may be assigned permanently to overseas diplomatic or consular posts with country-specific or regional responsibility. If the Secretary so directs, any such employee, when present at an overseas post, shall participate in the terrorist lookout committee established under section 304 of the Enhanced Border Security and Visa Entry Reform Act of 2002 (8 U.S.C. 1350a).

SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT OF HOME SECURITY TO THE SECRETARY OF AGRICULTURE.

(a) TRANSFER OF AGRICULTURAL IMPORT AND ENTRY INSPECTION FUNCTIONS.—There shall be transferred to the Secretary of Homeland Security the functions of the Department of Agriculture relating to agricultural import and entry inspection activities under the laws specified in subsection (b).

(b) COVERED ANIMAL AND PLANT PROTECTION LAWS.—The laws referred to in subsection (a) are the following:

4. The Plant Protection Act (7 U.S.C. 7701 et seq.).

(c) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period, the Secretary of Homeland Security shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security, all employees of the Department of Homeland Security who perform functions related to the transfer of the functions referred to in paragraph (1). The Secretary of Homeland Security and the Secretary of Agriculture shall cooperate in establishing a transition plan to carry out the transfer of the functions referred to in paragraph (1).

(d) EFFECT OF TRANSFER.—Sections 403(c), 403(h), and 404 of the Homeland Security Act of 2002 (Public Law 107–296) shall be amended to read as follows:

1. Section 403(c) shall be amended by striking subsection (c) and inserting the following:

2. Section 403(h) shall be amended by striking the paragraph beginning with ‘‘(1) the Secretary of Homeland Security, and’’ and inserting the following:

3. Section 404 shall be amended by striking the paragraph beginning with ‘‘(1) the Secretary of Homeland Security, and’’ and inserting the following:

(e) SECRETARY CONCERNED DEFINED.—In this title, the term ‘‘Secretary concerned’’ means—

1. For purposes of subsection (d), the term ‘‘Secretary concerned’’ shall mean the Secretary of Homeland Security.
2. The term ‘‘Secretary concerned’’ shall mean the Secretary of Agriculture.
3. The term ‘‘Secretary concerned’’ shall mean the Secretary of Homeland Security.

(f) TRANSFER OF FUNDS.—Out of funds collected by the Customs and Border Protection of the Department of Homeland Security and reallocated to the Department of Agriculture under the Homeland Security Act of 2002 (Public Law 107–296), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), the amount specified in paragraph (1) to the Secretary of Agriculture.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period described in subsection (c), the Secretary of Homeland Security shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security, all employees of the Department of Homeland Security who perform functions related to the transfer of the functions referred to in paragraph (1).

(h) IN GENERAL.—The Secretary of Homeland Security and the Secretary of Agriculture shall cooperate in establishing a transition plan to carry out the transfer of the functions referred to in paragraph (1).
(b) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 220(f) of the Federal Property and Administrative Services Act of 1999 (40 U.S.C. 4490(d)) or the Airport and Airway Trust Fund in order to screen all checked baggage by explosive detection systems without imposing burdens on transportation security that is not vested in the Secretary of Homeland Security.

SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL AERIAL AVIATION ADMINISTRATION.—The Secretary and other officials in the Department shall consult with the Administrator of the Federal Aviation Administration before taking any action that might affect aviation safety, air carrier operations, aircraft airworthiness, or the use of airspace.

(b) REPORT TO CONGRESS.—Not later than 60 days after the date of enactment of this Act, the Secretary of Transportation shall transmit to Congress a plan for complying with the requirements of section 44901(d) of title 49, United States Code.

(c) LIMITATIONS ON STATUTORY CONSTRUCTION.—

(1) GRANT OF AUTHORITY.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the date of enactment of this Act.

(2) OBLIGATION OF AIP FUNDS.—Nothing in this Act may be construed to authorize the Secretary or any other official in the Department to obligate amounts made available under section 48103 of title 49, United States Code.

SEC. 407. PRESERVATION OF TRANSPORTATION SECURITY ADMINISTRATION AS A DISTINCT ENTITY.

(a) IN GENERAL.—Nothing in this Act may be construed to vest in the Secretary or any other official in the Department any authority over transportation security that is not vested in the Under Secretary of Transportation for Security, or in the Secretary of Transportation under chapter 449 of title 49, United States Code, on the date of enactment of this Act.

(b) CONSENT.—Subsection (a) shall cease to apply two years after the date of enactment of this Act.

SEC. 408. ANNUAL ASSESSMENT OF TERRORIST-RELATED THREATS TO PUBLIC TRANSPORTATION.

On an annual basis, the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, shall conduct an assessment of terrorist-related threats to all forms of public transportation, including public gathering areas related to public transportation.

SEC. 409. EXPLOSIVE DETECTION SYSTEMS.

(a) INSTALLATION OF SYSTEMS.—Section 44901(d) of title 49, United States Code, is amended by adding at the end the following:

“(2) MODIFICATION OF AIRPORT TERMINAL BUILDINGS TO ACCOMMODATE EXPLOSIVE DETECTION SYSTEMS.—

“(A) NOTIFICATION OF AIRPORTS.—Not later than October 1, 2002, the Under Secretary shall notify the owner or operator of each United States airport described in section 44901(c) of the number and type of explosive detection systems that will be deployed at the airport in order to screen all checked baggage by explosive detection systems without imposing unreasonable delays on the passengers using the airport.

“(B) ASSESSMENTS OF AIRPORT TERMINAL BUILDINGS.—If the owner or operator of a United States airport described in section 44901(c) determines that the airport will not be able to make the modifications to the airport’s terminal buildings that are necessary to accommodate explosive detection systems required under subparagraph (A) in a cost-effective manner on or before December 31, 2002, the owner or operator shall provide notice of that determination to the Under Secretary not later than November 1, 2002.

“(C) PLANS FOR MAKING MODIFICATIONS TO AIRPORT TERMINAL BUILDINGS.—

“(i) IN GENERAL.—If the owner or operator of an airport provides notice to the Under Secretary under subparagraph (B), the Under Secretary, in consultation with the owner or operator, shall develop a plan, to be published by December 1, 2002, for making necessary modifications to the airport’s terminal buildings so as to deploy and fully utilize explosive detection systems to screen all checked baggage.

“(ii) DEADLINE.—A plan developed under this subparagraph shall include a date for executing the plan. All such plans shall be executed as expeditiously as practicable but not later than December 31, 2003.

“(iii) TRANSMISSION OF PLANS TO CONGRESS.—On the date of completion of a plan under this subparagraph, the Under Secretary shall transmit a copy of the plan to Congress. For security purposes, information contained in the plan shall not be disclosed to the public.

“(D) REQUIREMENTS FOR PLANS.—A plan developed and published pursuant to subparagraph (C), shall provide for, to the maximum extent practicable—

“(i) the deployment of explosive detection systems in the baggage sorting area or other non-public area relative to the lobby of an airport terminal building; and

“(ii) the deployment of state of the art explosive detection systems that have high throughput, low false alarm rates, and high reliability without reducing detection rates.

“(E) USE OF SCREENING METHODS OTHER THAN EDS.—Notwithstanding the deadline in paragraph (1)(A), after December 31, 2002, if explosive detection systems are not screening all checked baggage at a United States airport described in section 44901(c), such baggage shall be screened by the methods described in subsection (e) until such time as all checked baggage is screened by explosive detection systems at the airport.

“(2) PURCHASE OF EXPLOSIVE DETECTION SYSTEMS.—Any explosive detection system required to be purchased under paragraph (2)(A) shall be purchased by the Under Secretary.

“(3) EXPLOSIVE DETECTION SYSTEM DEFINED.—In this subsection, the term ‘explosive detection system’ means a device, or combination of devices, that can detect different types of explosives.

“(4) CORRECTION OF REFERENCE.—Section 44901(e) of title 49, United States Code, is amended by striking ‘‘(b)(1)(A)’’ and inserting ‘‘(d)(1)(A)’’.

SEC. 410. TRANSPORTATION SECURITY.

(a) TRANSPORTATION SECURITY OVERSIGHT BOARD.—

(1) ESTABLISHMENT.—Section 115(a) of title 49, United States Code, is amended by striking ‘‘Department of Transportation’’ and inserting ‘‘Department of Homeland Security’’.

(2) MEMBERSHIP.—Section 115(1) of title 49, United States Code, is amended—

(A) by striking subparagraph (G);

(B) by redesignating subparagraphs (A) through (F) as subparagraphs (B) through (G), respectively; and

(C) by inserting before subparagraph (B) (as so redesignated) the following:

“(A) ‘‘The Secretary of Homeland Security, or the Secretary’s designee.’’;

“(B) CHAIRPERSON.—Section 115(b)(2) of title 49, United States Code, is amended by striking ‘‘Secretary of Transportation’’ and inserting ‘‘Secretary of Homeland Security’’.

(b) APPROVAL OF AIP GRANT APPLICATIONS FOR SECURITY ACTIVITIES.—Section 47106 of title 49, United States Code, is amended by adding at the end the following:

“(g) CONSULTATION WITH SECRETARY OF HOMELAND SECURITY.—The Secretary shall consult with the Secretary of Homeland Security before approving an application under this subsection for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(c) (relating to installation of bulk explosive detection systems).

Subtitle B—Immigration and Nationality Functions

CHAPTER I—IMMIGRATION ENFORCEMENT

SEC. 411. TRANSFER OF FUNCTIONS TO UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

In accordance with title VIII, there shall be transferred from the Commissioner of Immigration and Naturalization to the Under Secretary for Border and Transportation Security all functions performed under the following programs, and all personnel, assets, and liabilities pertaining to such programs, immediately before such transfer occurs:

(1) The Border Patrol program.

(2) The detention and removal program.

(3) The intelligence program.

(4) The investigations program.

(5) The inspections program.

SEC. 412. ESTABLISHMENT OF BUREAU OF BORDER SECURITY.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Homeland Security a bureau to be known as the ‘‘Bureau of Border Security’’.

(2) ASSISTANT SECRETARY.—The head of the Bureau of Border Security shall be the Assistant Secretary of the Bureau of Border Security, who—

(A) shall report directly to the Under Secretary for Border and Transportation Security; and

(B) shall have a minimum of 10 years professional experience in law enforcement, at least 5 of which shall have been years of service in a managerial capacity.

(3) FUNCTIONS.—The Assistant Secretary of the Bureau of Border Security—

(A) shall establish the policies for performing such functions as are—

(i) transferred to the Under Secretary for Border and Transportation Security by section 411 and delegated to the Assistant Secretary by the Under Secretary for Border and Transportation Security; or

(ii) otherwise vested in the Assistant Secretary by law;

(B) shall oversee the administration of such policies; and

(C) shall advise the Under Secretary for Border and Transportation Security with respect to any policy or operation of the Bureau of Border Security that may affect the Bureau of Citizenship and Immigration Services of the Department of Homeland Security established under chapter 2, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO IMMIGRATION STATUS.—The Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to immigration status, and shall report to the Secretary of the Office of Immigration Statistics established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(b) AUTHORIZATION OF APPROPRIATIONS.—

(1) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions
shall submit a report to the Congress on the implementation of such program.

(b) CHIEF OF POLICY AND STRATEGY.—
(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Border Security.

(2) FUNCTIONS.—In consultation with Bureau of Border Security personnel in local offices, the Chief of Policy and Strategy shall be responsible for—
(A) establishing national immigration enforcement policies and priorities;
(B) performing immigration research and analysis on immigration enforcement issues; and
(C) coordinating immigration policy issues with the Chief Financial Officer and Strategy for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2), and the Assistant Attorney General for Citizenship and Immigration Services, as appropriate.

(c) CITIZENSHIP AND IMMIGRATION SERVICES LIASON.—
(1) IN GENERAL.—There shall be a position of Citizenship and Immigration Services Liaison for the Bureau of Border Security.

(2) FUNCTIONS.—The Citizenship and Immigration Services Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Citizenship and Immigration Services of the Department of Justice (established under chapter 2) and the Bureau of Border Security, including—
(A) information resources management, including computer databases and information technology;
(B) records and file management; and
(C) forms management.

SEC. 413. POLICY DEVELOPMENT, RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—
(1) violations of whistleblower and dissent provisions involving supervisory or managerial responsibility and classified, in accordance with chapter 51 of title 5, United States Code, as a GS-14 or above, shall, as a condition on further promotion—
(i) gain some experience in all the major functions performed by such bureau; and
(ii) work in at least one local office of such bureau.

(B) REPORT.—Not later than 2 years after the date on which the transfer of functions specified under section 411 takes effect, the Secretary shall submit to the Congress a report with a plan detailing how the Bureau of Border Security, after the transfer of functions specified under section 411 takes effect, will enforce comprehensively, effectively, and fairly all the enforcement provisions of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) relating to such functions.

(b) CONSULTATION.—In carrying out subsection (a), the Secretary of Homeland Security shall consult with the Attorney General, the Secretary of the Treasury, the Secretary of Labor, the Commissioner of Social Security, the Director of the Executive Office for Immigration Review, and the Directors of the Federal Bureau of Investigation, the Office of the Inspector General of the Department of Homeland Security, and the local law enforcement agencies to determine how to most effectively conduct enforcement operations.

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

Subchapter A—Transfers of Functions

SEC. 421. ESTABLISHMENT OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF BUREAU.—

(1) IN GENERAL.—There is established in the Department of Homeland Security a bureau to be known as the "Bureau of Citizenship and Immigration Services".

(2) Assistant Attorney General.—The head of the Bureau of Citizenship and Immigration Services shall be the Assistant Attorney General for Citizenship and Immigration Services, who—
(A) shall report directly to the Deputy Attorney General; and
(B) shall have a minimum of 10 years professional experience in the rendering of adjudication, decision, and policy protection services, at least 5 of which shall have been years of service in a managerial capacity or in a position affording comparable management experience.

(3) FUNCTIONS.—The Assistant Attorney General for Citizenship and Immigration Services—
(A) shall establish the policies for performing such functions as are transferred to the Assistant Attorney General by this section or this Act or otherwise vested in the Assistant Attorney General by law; and
(B) shall oversee the administration of such policies;

(c) CHIEF OF POLICY AND STRATEGY.—

(1) IN GENERAL.—There shall be a position of Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services. The Chief of Policy and Strategy shall—
(A) establish national immigration services policies and priorities;
(B) performing policy research and analysis on immigration services issues; and
(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—In consultation with Bureau of Citizenship and Immigration Services personnel in field offices, the Chief of Policy and Strategy shall be responsible for—
(A) establishing national immigration services policies and priorities; and
(B) performing policy research and analysis on immigration services issues; and
(C) coordinating immigration policy issues with the Chief of Policy and Strategy for the Bureau of Citizenship and Immigration Services.

(d) GENERAL COUNSEL.—

(1) IN GENERAL.—There shall be a position of General Counsel for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The General Counsel shall serve as the principal legal advisor to the Assistant Attorney General for Citizenship and Immigration Services. The General Counsel shall be responsible for—
(A) providing specialized legal advice, opinions, determinations, regulations, and any other written or oral communication to the Assistant Attorney General for Citizenship and Immigration Services with respect to legal matters affecting the Bureau of Citizenship and Immigration Services; and
(B) representing the Bureau of Citizenship and Immigration Services in all legal proceedings involving immigration services issues.

(e) CHIEF BUDGET OFFICER.—

(1) IN GENERAL.—There shall be a position of Chief Budget Officer for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief Budget Officer shall—
(A) formulate and execute the budget of the Bureau of Citizenship and Immigration Services;
(B) financial management of the Bureau of Citizenship and Immigration Services; and
(C) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF CHIEF APPROPRIATIONS OFFICER.—The Chief Budget Officer for the Bureau of Citizenship and Immigration Services shall have the authorities and
functions described in section 902 of title 31, United States Code, in relation to financial activities of such bureau.

SEC. 305. (a) There is established within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the 'Ombudsman').

(b) The Director of the Office shall be responsible for the performance of the Ombudsman.

(c) The Ombudsman shall have the responsibilities and authority—

(A) to appoint local ombudsmen and make available at least 1 such ombudsman for each State; and

(B) to evaluate and take personnel actions (including dismissal) with respect to any employee of any office of the Ombudsman.

(d) The Ombudsman may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services in carrying out the Ombudsman's responsibilities under this subsection.

SEC. 424. EMPLOYEE DISCIPLINE.

(a) In general.—The Assistant Attorney General for Citizenship and Immigration Services may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to the provisions applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Citizenship and Immigration Services who willfully deceives the Congress or agency leadership on any matter.

SEC. 425. OFFICE OF IMMIGRATION STATISTICS WITHIN BUREAU OF JUSTICE STATISTICS.

(a) In general.—Part C of title I of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3712 et seq.) is amended by adding at the end the following:

"Office of Immigration Statistics

"Sec. 305. (a) There is established within the Bureau of Justice Statistics of the Department of Justice an Office of Immigration Statistics (in this section referred to as the 'Office'), which shall be headed by a Director who shall be appointed by the Attorney General and who shall report to the Director of Justice.

(b) The Director of the Office shall be responsible for the following:

(1) Maintenance of all immigration statistical information of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

(2) The Office shall include in this information the statistics of the type contained in the publication entitled 'Statistical Yearbook of the Immigration
and Naturalization Service’ prepared by the Immigration and Naturalization Service (as in effect on the day prior to the effective date specified in section 427 of the Homeland Security Act of 2002), the Assistant Attorney General for the Department of Justice, on the aggregate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such offices and bureaus, and the reasons for such denials, disaggregated by category of denial and application or petition type.

Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.

The Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review shall provide statistical information to the Office of Immigration Statistics from the operational data systems controlled by the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review, respectively, for the purpose of meeting the responsibilities of the Director.

(b) Transfer of Functions.—There are transferred to the Office of Immigration Statistics the functions of the Omnibus Crime Control and Safe Streets Act of 1968, as added by subsection (a), the functions performed immediately before such transfer occurs by the Bureau of Immigration, and Planning of the Immigration and Naturalization Service with respect to the following:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of refugee applications.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service.

(c) Conforming Amendment.—Subsection 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3722(c)) is amended—

(1) by striking “and” at the end of paragraph (22);

(2) by striking the period at the end of paragraph (23) and inserting “;” and “;”;

(3) by adding at the end the following:

‘‘(24) an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filed an application or petition with the Immigration and Naturalization Service or, and inserting “;” and “;”.

(4) Authorization of Appropriations.—The Attorney General (or a delegate of the Attorney General), at such time or times as the Attorney General (or the delegate) shall provide, may make such determinations as may be necessary for the purposes of this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, allocations, and other funds employed, held, used, arising from, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this subchapter, subject to section 202 of the Budget and Accounting Procedures Act of 1990, shall be transferred to the Assistant Attorney General for Citizenship and Immigration Services for allocation to the appropriate component of the Department of Justice. Unexpended funds transferred pursuant to this paragraph shall be used to fund processes for which the funds were originally authorized and appropriated. The Attorney General shall have the right to adjust or realign transfers of funds and personnel effected pursuant to this subchapter for a period of 2 years after the effective date specified in section 427.

(5) Change of Authority.—The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter in a manner consistent with the provisions of this Act; and

(b) References.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 of the Homeland Security Act of 2002, the Assistant Attorney General for Citizenship and Immigration Services, any reference in any other Federal law, Executive order, rule, regulation, or delegation of authority, or for personal or institutional use, and in any official or unofficial publication, report, or document issued by the United States or programs established by a Con-
to immigrant services. The study shall also in-
clude an estimate of the timeframe and cost and shall consider other factors in implementing such a filing system, including the feasibility of fee payment online.

(2) REPORT.—A report on the study under this subsection shall be submitted to the Committees on the Judiciary of the United States House of Representatives and the Senate not later than 1 year after the effective date of this Act.

(c) TECHNOLOGY ADVISORY COMMITTEE.—

(1) ESTABLISHMENT.—The Attorney General shall establish, not later than 60 days after the effective date of this Act, an advisory committee (in this section referred to as the “Technology Advisory Committee”) to assist the Attorney General in—

(A) establishing the tracking system under subsection (a); and

(B) conducting the study under subsection (b). The Technology Advisory Committee shall be established after consultation with the Committees on the Judiciary of the United States House of Representatives and the Senate.

(2) COMPOSITION.—The Technology Advisory Committee shall be composed of representatives from high technology companies capable of establishing and implementing the system in an expeditious manner, and representatives of persons who may use the tracking system described in subsection (a) and the online filing system described in subsection (d).

SEC. 436. CHILDREN’S AFFAIRS.

(a) TRANSFER OF FUNCTIONS.—There are transferred to the Director of the Office of Refugee Resettlement of the Department of Health and Human Services functions under the immigration laws of the United States with respect to the care of unaccompanied alien children that were performed by the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the effective date specified in subsection (d).

(b) FUNCTIONS.—

(1) IN GENERAL.—Pursuant to the transfer made by subsection (a), the Director of the Office of Refugee Resettlement shall be responsible for—

(A) coordinating and implementing the care and placement of unaccompanied alien children who are in Federal custody by reason of their immigration status, including developing a plan to be approved by the Attorney General to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the laws governing the provision of legal services; (B) ensuring that the interests of the child are considered in decisions and actions relating to the care and custody of an unaccompanied alien child;

(C) making placement determinations for all unaccompanied alien children who are in Federal custody by reason of their immigration status;

(D) implementing the placement determinations described in subsection (c).

(E) implementing policies with respect to the care and placement of unaccompanied alien children;

(F) identifying a sufficient number of qualified individuals, entities, and facilities to house unaccompanied alien children;

(G) OVERSEEING THE INFRASTRUCTURE AND PERSONNEL WITH WHICH UNACCOMPANIED ALIEN CHILDREN RESIDE;

(H) REUNITING UNACCOMPANIED ALIEN CHILDREN WITH A PARENT ABRROAD IN APPROPRIATE CASES;

(I) UPDATING, AND PUBLISHING AT LEAST ANNUALLY A STATE-BY-STATE LIST OF PROFESSIONALS OR OTHER ENTITIES QUALIFIED TO PROVIDE GUARDIAN AND ATTORNEY REPRESENTATION SERVICES FOR UNACCOMPANIED ALIEN CHILDREN;

(J) MAINTAINING STATISTICAL INFORMATION AND OTHER DATA ON UNACCOMPANIED ALIEN CHILDREN FOR WHOSE CARE AND PLACEMENT THE DIRECTOR IS RESPONSIBLE, WHICH SHALL INCLUDE—

(i) biographical information, such as a child’s name, gender, date of birth, country of birth, and country of habitual residence;

(ii) the date on which the child came into Federal custody by reason of his or her immigration status;

(iii) information relating to the child’s placement, removal, or release from each facility in which the child has resided;

(iv) in any case in which the child is placed in detention or released, an explanation relating to the detention or release; and

(v) the disposition of any actions in which the child is involved.

(K) COLLECTING AND COMPILING STATISTICAL INFORMATION FROM THE DEPARTMENT OF JUSTICE, THE DEPARTMENT OF HOMELAND SECURITY, AND THE DEPARTMENT OF STATE ON EACH DEPARTMENT’S ACTIONS RELATING TO UNACCOMPANIED ALIEN CHILDREN; AND

(L) CONDUCTING INVESTIGATIONS AND INSPECTIONS OF FACILITIES AND OTHER ENTITIES IN WHICH UNACCOMPANIED ALIEN CHILDREN RESIDE.

(2) COORDINATION WITH OTHER ENTITIES; NO RELEASE ON OWN RECOGNIZANCE.—In making determinations described in paragraph (1)(C), the Director of the Office of Refugee Resettlement (or any other designated official) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Homeland Security and the Attorney General of the United States, and with the Executive Director of the Office of Refugee Resettlement of the Department of Homeland Security to ensure that such determinations ensure that unaccompanied alien children described in such subparagraph—

(i) are likely to appear for all hearings or proceedings in which they are involved;

(ii) are protected from smugglers, traffickers, or others who might seek to victimize or otherwise engage them in criminal, harmful, or exploitative activity;

(iii) are placed in a setting in which they not likely to pose a danger to themselves or others; and

(B) shall not release such children upon their own recognizance.

(3) DUTIES WITH RESPECT TO FOSTER CARE.—In carrying out the duties described in paragraph (1)(G), the Director of the Office of Refugee Resettlement is encouraged to use the refugee children foster care system established pursuant to section 412(d) of the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) to accommodate the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating determinations under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.) from the authority of any official of the Department of Justice, the Department of Homeland Security, or the Department of State.

(d) EFFECTIVE DATE.—Notwithstanding section 4, this section shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

(e) REFERENCES.—With respect to any function transferred in accordance with any other Federal law, Executive order, rule, regulation, or delegation of authority, or any document of or pertaining to a component of government from which such function is transferred—

(1) to the head of such component is deemed to refer to the Director of the Office of Refugee Resettlement;

(2) to such component is deemed to refer to the Director of the Office of Refugee Resettlement;

(3) the term “Immigration and Naturalization Service,” or the term “Department of Labor,” or the term “part of the Department of Labor” or the term “Office of the Attorney General” means the term “Department of Homeland Security,” or the term “part of the Department of Homeland Security,” or the term “office of the Attorney General” (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuing service in the same and unbroken line of agency, position, or grade;

(B) is serving under an appointment without retirement for a term of at least 1 year, or is a career employee for an agency, position, or grade, who has satisfied the requirements of section 2105 of title 5, United States Code;

(C) has been appointed to an office, position, or grade in the career civil service at the level described in paragraph (A) or (B), and has been on the appointment roll for a period of at least 3 years, or has received the equivalent of such period of service by virtue of having performed the duties of another office, position, or grade in the career civil service;

(D) is an employee in the career excepted service at a grade level comparable to that of the level described in paragraph (A) or (B) or the equivalent thereof as described in paragraph (C);

(E) is an employee in the career excepted service at a grade level comparable to that of the level described in paragraph (A) or (B) or the equivalent thereof as described in paragraph (C);

(F) has performed the duties of an employee at a grade level comparable to that of the level described in paragraph (A) or (B) or the equivalent thereof as described in paragraph (C) for at least 1 year, or has performed the duties of an employee at a grade level comparable to that of the level described in paragraph (A) or (B) or the equivalent thereof as described in paragraph (C) for at least 1 year, and has been on the appointment roll for a period of at least 3 years, or has received the equivalent of such period of service by virtue of having performed the duties of another office, position, or grade in the career civil service;

(G) is an employee in the career excepted service at a grade level comparable to that of the level described in paragraph (A) or (B) or the equivalent thereof as described in paragraph (C) who, if designated to a position in the career, would be eligible for appointment to the position described in paragraph (A) or (B) or the equivalent thereof as described in paragraph (C) on the basis of the requirements of this title; and

(H) maintains statistical information and other data on unaccompanied alien children.

(2) SAVINGS PROVISIONS.—Subsections (b), (c), and (d) of section 812 shall apply to a transfer of functions under this section in the same manner as such provisions apply to a transfer of functions under this Act to the Department of Homeland Security.

(3) TRANSFER AND ALLOCATION OF APPROPRIATIONS AND PERSONNEL.—The personnel of the Department of Justice employed in connection with the functions transferred by this section, and the assets, liabilities, contracts, property, and unexpenses, authorizations, allocations, and other funds employed, held, used, arising, available to, or to be made available to, the Immigration and Naturalization Service in connection with the functions transferred by this section, subject to section 202 of the Budget and Accounting Procedures Act of 1950, shall be transferred to the Director of the Office of Refugee Resettlement for allocation to the appropriate component of the Department of Health and Human Services. Unexpended funds transferred to this paragraph shall be used only for the purposes for which the funds were originally authorized and appropriated.

(g) DEFINITIONS.—As used in this section—

(1) the term “unaccompanied alien child” means a child who—

(A) has no lawful immigration status in the United States;

(B) has not attained 18 years of age; and

(C) with respect to whom—

(i) there is no parent or legal guardian in the United States;

(ii) no parent or legal guardian in the United States is available to provide care and physical custody.

CHAPTER 3.—GENERAL PROVISIONS

SEC. 441. ABOLISHMENT OF INS.

The Immigration and Naturalization Service of the Department of Justice is abolished.

SEC. 442. VOLUNTARY SEPARATION INCENTIVE PAYMENTS.

(a) DEFINITIONS.—For purposes of this section—

(1) the term “employee” means an employee (as defined by section 2105 of title 5, United States Code) who—

(A) has completed at least 3 years of current continuing service in 1 or more covered entities; and

(B) is serving under an appointment without time limitation;

but does not include any person under subparagraphs (A)–(G) of section 663(a)(2) of Public Law 104–208 (5 U.S.C. 5597 note);

(2) the term “covered entity” means—

(A) the Immigration and Naturalization Service;

(B) the Bureau of Border Security of the Department of Homeland Security; and

(C) the Bureau of Citizenship and Immigration Services of the Department of Justice; and

(D) the term “transfer date” means the date on which the transfer of functions specified under section 411 takes effect.

(b) STRATEGIC RESTRUCTURING PLAN.—Before the Attorney General or the Secretary obligates funds pursuant to this section, the head of the appropriate entity shall submit to the Committees on the Judiciary of the United States Senate and the House of Representatives a strategic restructuring plan, which shall include—

(1) an organizational chart depicting the covered entities after their restructuring pursuant to this Act;

(2) a summary description of how the authority under this section will be used to help carry out that restructuring; and

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(3) the information specified in section 663(b)(2) of Public Law 104-208 (5 U.S.C. 5597 note).

As used in the preceding sentence, the ‘appropriate committees of Congress’ are the committees of Appropriations, Government Reform, and the Judiciary of the House of Representatives, and the Committees on Appropriations, Governmental Affairs, and the Judiciary of the Senate.

(c) AUTHORITY.—The Attorney General and the Secretary may, to the extent necessary to help carry out their respective strategic restructuring plan described in subsection (b), make voluntary separation incentive payments to employees. Any such payment:

(1) generally shall be paid to the employee, in a lump sum, after the employee has separated from service;

(2) shall be paid from appropriations or funds available for the payment of basic pay of the employee;

(3) shall be equal to the lesser of—

(A) the amount the employee would be entitled to under paragraph (2) of section 5596(c) of title 5, United States Code; or

(B) an amount not to exceed $25,000, as determined by the Attorney General or the Secretary; or

(4) may not be more than the amount a non-covered employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act, whichever occurs first;

(5) shall not be a basis for payment, and shall not be included in the computation of any other type of Government benefit; and

(6) shall not be taken into account in determining the amount of any severance pay to which the employee was entitled under section 5595 of title 5, United States Code, based on any other separation.

(d) ADDITIONAL AGENCY CONTRIBUTIONS TO THE RETIREMENT FUND.—

(1) IN GENERAL.—In addition to any payments which it is otherwise required to make, the Department of Justice and the Department of Homeland Security shall, for each fiscal year with respect to which it makes any voluntary separation incentive payments under this section, contribute to the Civil Service Retirement and Disability Fund the amount required under paragraph (b).

(2) AMOUNT REQUIRED.—The amount required under this paragraph shall, for any fiscal year, be the amount under subparagraph (A) or (B), whichever is greater.

(A) FIRST METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to the minimum amount necessary to offset the costs of separation to the retirement system under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employee, and which, except in the case of any payment that is made to a non-covered employee who voluntarily separates (whether by retirement or resignation) before the end of—

(A) the 3-month period beginning on the date on which such payment is offered or made available to such employee; or

(B) the 3-year period beginning on the date of the enactment of this Act, whichever occurs first;

(B) SECOND METHOD.—The amount under this subparagraph shall, for any fiscal year, be equal to 45 percent of the sum total of the final basic pay of the employees described in paragraphs (3) and (4) of this section, with respect to an employee, 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.

(e) EFFECT OF SUBSEQUENT EMPLOYMENT WITH THE GOVERNMENT.—An individual who receives a voluntary separation incentive payment under this section and who, within 5 years after the date of the separation on which the payment is based, accepts any compensated employment with the Government through a personal services contract, shall be required to pay, prior to the individual’s first day of employment, the entire amount of the incentive payment. Such payment shall be made to the covered entity from which the individual separated or, if made on or after the transfer date, to the Deputy Attorney General (for transfer to the appropriate component of the Department of Justice, if necessary) or the Under Secretary for Border and Transportation Security (for transfer to the appropriate component of the Department of Homeland Security, if necessary).

(f) EFFECT ON EMPLOYMENT LEVELS.—

(1) INTENDED EFFECT.—Voluntary separations under the provisions of this section are intended to necessary reduce the total number of full-time equivalent positions in any covered entity.

(2) USK OF VOLUNTARY SEPARATIONS.—A covered entity may set 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. 443. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION PLANS.

(a) IN GENERAL.—The Attorney General and the Secretary may each, during a period ending not later than 5 years after the date of the enactment of this Act, conduct a demonstration project for the purpose of determining whether one or more changes in the policies or procedures relating to methods for disciplining employees would result in improved personnel management.

(b) SCOPE.—A demonstration project under this section—

(1) may not cover any employees apart from those employed in or under a covered entity; and

(2) shall not be limited by any provision of chapter 43, 75, or 77 of title 5, United States Code.

(c) PROCEDURES.—Under the demonstration project—

(1) the use of alternative means of dispute resolution (as defined in section 771 of title 5, United States Code) shall be encouraged, whenever appropriate; and

(2) each covered entity under the jurisdiction of the official conducting the project shall be required to provide for the expeditious, fair, and independent review of any action to which section 4303 or subchapter II of chapter 75 of title 5 would apply (except an action described in section 7512(5) thereof).

(d) ACTIONS INVOLVING DISCRIMINATION.—Notwithstanding any other provision of this section, if, in the case of any matter described in section 7702(a)(1)(B) of title 5, United States Code, there is no judicially reviewable action under the demonstration project within 120 days after the filing of an appeal or other formal request for review (referred to in subsection (c)(2)), an employee shall be entitled to file a civil action to the same extent and in the same manner and to the same extent and in the same manner as an employee described in section 7511(a) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included in any project under this section if such employees are—

(1) neither managers nor supervisors; and

(2) within a unit with respect to which a labor organization is accorded exclusive recognition under chapter 71 of title 5, United States Code. Notwithstanding the preceding sentence, an aggrieved employee within a unit (referred to in paragraph (2)) may file a complaint procedure developed under the demonstration project in lieu of any negotiated grievance procedure and any statutory procedure (as such term is used in section 712 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and transmit to the Committees on Government Reform and the Judiciary of the House of Representatives and the Committees on Governmental Affairs and the Judiciary of the Senate periodic reports for each demonstration project conducted under this section, such reports to be submitted after the second and fourth years of its operation. Upon request, the Attorney General or the Secretary shall furnish such information as the General Accounting Office may require to carry out this subsection.

(g) DEFINITION.—In this section, the term ‘covered entity’ has the meaning given such term in section 442(a)(2).

SEC. 444. SENSE OF CONGRESS.

It is the sense of the Congress that—

(1) the Attorney General and the Secretary of Homeland Security, the Secretary of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equal in rank and, accordingly, they each should be adequately funded; and

(2) the functions transferred under this subtitle should not, after such transfers take effect, operate at levels below those in effect prior to the enactment of this Act.

SEC. 445. REPORTS AND IMPLEMENTATION PLANS.

(a) DIVISION OF FUNDS.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of funds and transfer of funds, including unexpended funds, appropriations, and fees, between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(b) DIVISION OF PERSONNEL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate a report on the proposed division of personnel between the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(c) IMPLEMENTATION PLAN.—

(1) IN GENERAL.—The Attorney General and the Secretary, not later than 120 days after the effective date of this Act, and every 6 months thereafter until the termination of fiscal year 2005, shall each submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate an implementation plan to carry out this Act.

(d) CONTENTS.—The implementation plan should include details concerning the separation of the Bureau of Citizenship and Immigration Services and the Bureau of Border Security, including the following:

(A) Organizational structure, including the field structure.

(B) Chain of command.

(C) Procedures for interaction among such bureaus.

(D) Fraud detection and investigation.

(E) The processing and handling of removal proceedings, including expedited removal and applications for relief from removal.

(F) Any other amendments to the Immigration and Nationality Act (8 U.S.C. 1101 et seq.).
(G) Establishment of a transition team.
(H) Methods to phase in the costs of sepa-
rating the administrative support systems of the
Immigration and Naturalization Service in or-
directly to the Border and Transportation Secu-
rity.

(2) COMPROMISER GENERAL STUDIES AND RE-
PORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later
than 18 months after the date on which the trans-
fers made by chapters 1 and 2 have been
completed, the Comptroller General of the United
States shall submit to the Committees on Appro-
priations and on the Judiciary of the United
States House of Representatives and the Senate a report containing the fol-
lowing:
(A) A determination of whether the transfers of functions made by chapters 1 and 2 have been
completed, and if a transfer of functions has not been
completed, identifying the reasons why the trans-
fer has not taken place.
(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identi-
fication of any issues that have arisen due to the trans-
fers.
(C) An identification of any issues that may
arise due to any future transfer of functions.

(2) REPORT ON MANAGEMENT.—Not later than 4 years after the enactment of this Act, the
Comptroller General of the United States shall submit to the Committees on Approp-
riations and on the Judiciary of the United
States House of Representatives and the Senate a report, following a study, contain-
ing the follow-
ing:
(A) Determinations of whether the transfer of functions from the Immigration and Naturaliza-
tion Service to the Bureau of Citizenship and Immi-
gration Services and the Bureau of Border Secu-
rity, with respect to each function transferred, the follow-
ing:
(i) Operations.
(ii) Management, including accountability and communication.
(iii) Financial administration.
(iv) Recordkeeping, including information management and technology.
(B) A statement of the reasons for the determin-
ations under subparagraph (A).

(3) REPORT ON FEES.—Not later than 1 year after the enactment of this Act, the
Comptroller General of the United States shall submit to the Committees on the Judiciary of the
House of Representatives and of the Senate a re-
port examining whether the Bureau of Citizen-
ship and Immigration Services is likely to derive
sufficient funds from fees to carry out its func-
tions in the absence of appropriated funds.

SEC. 446. IMMIGRATION FUNCTIONS.

(2) SEC. 451. UNITED STATES CUSTOMS SERVICE.

(a) ESTABLISHMENT; COMMISSIONER OF
CUSTOMS.—

(1) ESTABLISHMENT.—There is established in the Department the United States Customs Serv-
vice, under the authority of the Under Secretary
for Border and Transportation Security, which
shall be vested in the Secretary of Homeland
Security.

(2) AUTHORITY AND RESPONSIBILITIES.-The Com-
missioner of Customs, Department of the
Treasury, shall:
(A) Conduct the affairs of the United States Customs Service, and make the rules and regu-
lations necessary to carry out the duties imposed by
law.
(B) Preside at all meetings of the Board of Assessors.
(C) Administer the laws relating to customs, and the regulations made by the Secretary of
the Treasury.
(D) Appoint, with the advice and consent of the Senate, the heads of the following depart-
ments, boards, and agencies:
(i) Domestic Revenue Service.
(ii) Customs Inspector.
(iii) Commissioner of Customs.
(iv) Commissioner of Internal Revenue.

(3) COMPENSATION.—The compensation of the
Commissioner of Customs shall be fixed by law.

(4) OFFICE.—The office of the Commissioner of
Customs shall be at such place as the Secretary of the Treasury may designate.

(5) APPROPRIATIONS.—The amounts appropri-
ated for the expenses of the United States Customs
Service shall be payable out of the Treasury of the United States, and shall be subject to
the direction and control of the Secretary of
the Treasury.

(6) AUDIT.—The Comptroller General of the
United States shall audit the accounts of the United States Customs Service.

(7) AUDIT OF APPOINTMENTS.—The Comptroller
General of the United States shall make an audit of the appointments of employees of the
United States Customs Service.

SEC. 452. REVENUE FUNCTIONS OF CUSTOMS.

(1) RETENTION OF CUSTOMS REVENUE
FUNCTIONS BY SECRETARY OF THE
TREASURY.

(a) RETENTION BY SECRETARY OF THE TREA-
SURY.—

(1) RETENTION OF AUTHORITY.—Notwith-
standing sections 401(5), 402(1), and 408(e)(2),
authority that was vested in the Secretary of the
Treasury by law before the effective date of this Act under those provisions of law set forth in
paragraph (2) shall not be transferred to the Secretary by reason of this Act, and on and after
the effective date of this Act, the Secretary of the Treasury may delegate any such author-
ity to the Secretary at the discretion of the Secre-
tary of the Treasury.

(b) RETENTION.—The Secretary of the Treasury shall retain the functions described in this
paragraph, and the Secretary shall consult with the Secretary regarding the exercise of any such
authority not delegated to the Secretary.

(c) STATUTES.—The provisions of law referred
to in subsection (a) of this section, including the Tariff Act of 1930; section 249 of the Revised
Statutes of the United States (19 U.S.C. 3); section 2 of
the Act of March 4, 1923 (19 U.S.C. 6); section
13031 of the Consolidated Omnibus Budget Rec-
conciliation Act of 1985 (19 U.S.C. 58c); section
251 of the Revised Statutes of the United States
as revised (19 U.S.C. 1901); section 266 of the Act of June 26, 1920 (19 U.S.C. 68); the Foreign
Trade Zones Act (19 U.S.C. 81a et seq.); section 1 of the Act of March 2, 1919 (19 U.S.C. 190); the Trade Act of 1974 (19 U.S.C. 1801 et seq.); the North American Free Trade Area Implementa-
tion Act; the Uruguay Round Agreements Act;
the Caribbean Basin Economic Recovery Act;
the North American Free Trade Agreement; the
African Growth and Opportunity Act; and any other provision of law vesting customs revenue func-
tions in the Secretary of the Treasury.

SEC. 453. ESTABLISHMENT AND IMPLEMENTA-
TION OF COST ACCOUNTING SYS-
TEM; REPORTS.

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than January 1, 2003, the
Commissioner of Customs shall, in ac-
cordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial state-
ments (as contained in the report of the Office of the Comptroller General, “Cost Accounting in
the United States Customs Service” issued on February 23, 2001), establish and implement a cost accounting system for ex-
penditures incurred in the operation of the Customs
Service.

(2) ADDITIONAL REQUIREMENT.—The cost ac-
counting system described in paragraph (1) shall
provide for an identification of expenses based on
the type of operation, the port at which the opera-
tion took place, the amount of time spent on the expenditure by personnel of the Customs
Service, and an identification of expenses based on
the resource attributable to such func-
tions.

(b) REPORTS.—Beginning on the date of the
enactment of this Act and ending on the date on
which the cost accounting system described in para-
graph (1) shall provide an identification of all
amounts expended pursuant to section 13031(f)(2) of the Consolidated Omnibus Budget Rec-
conciliation Act of 1985,
SEC. 454. PRESERVATION OF CUSTOMS FUNDS.
Notwithstanding any other provision of this Act, no funds available to the United States Customs Service or collected under paragraphs (1) through (8) of section 13031(a) of the Consolidated Omnibus Budget Reconciliation Act of 1985 may be transferred for use by any other agency or office in the Department.

SEC. 455. SEPARATE BUDGET REQUEST FOR CUSTOMS.
The President shall include in each budget transmitted to the Congress under section 1105 of title 31, United States Code, a separate budget request for the United States Customs Service.

SEC. 456. PAYMENT OF DUTIES AND FEES.
Section 350(a) of the Tariff Act of 1930 (19 U.S.C. 1505(a)) is amended—
(1) in the first sentence—
(A) by striking "Unless merchandise" and inserting "Unless the entry of merchandise is covered by an import activity summary statement, or the merchandise"; and
(B) by inserting after "by regulation" the following: ("but not to exceed 10 working days after entry or release, whichever occurs first"); and
(2) by striking the second and third sentences and inserting the following: 
"(1) an import activity summary statement is filed, the Secretary of record shall deposit estimated duties and fees for entries of merchandise covered by the import activity summary statement no later than the 15th day of the month following the month in which the merchandise is entered or released, which ever occurs first.

SEC. 457. DEFINITION.
In this subtitle, the term "customs revenue function" means the following:
(1) Assessing and collecting customs duties (including antidumping and countervailing duties and duties imposed under safeguard provisions), excise taxes, fees, and penalties due on imported merchandise, including classifying and valuing merchandise for purposes of such assessments;
(2) Processing and denial of entry of persons, baggage, cargo, and mail, with respect to the assessment and collection of import duties.
(3) Detecting and apprehending persons engaged in fraudulent practices designed to circumvent the customs laws of the United States.
(4) Enforcing section 337 of the Tariff Act of 1930 and provisions relating to import quotas and the marking of imported merchandise, and providing Customs Recordations for copyrights, patents, and trademarks.
(5) Services for the import data for compilation of international trade statistics.
(6) Enforcing reciprocal trade agreements.
(7) Functions performed by the following personnel support staff of the United States Customs Service on the day before the effective date of this Act: Import Specialists, Entry Specialists, Drawback Specialists, National Import Specialists, Pines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists, and other employees;
(8) Functions performed by the following offices, with respect to any function described in any of the paragraphs through (7), the associated support staff, of the United States Customs Service on the day before the effective date of this Act: the Office of Information and Technology, the Office of Laboratory Services, the Office of the Chief Counsel, the Office of Congressional Affairs, the Office of International Affairs, and the Office of Training and Development.

SEC. 458. GAO REPORT TO CONGRESS.
Not later than 3 months after the effective date of this Act, the Comptroller General of the United States shall submit to the Congress a report on the activities performed by the executive branch, specifying each agency that performs such function.

SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.
(a) IN GENERAL.—The Secretary shall ensure that adequate resources are available to assure that the levels of customs revenue services provided on the day before the effective date of this Act shall continue to be provided.
(b) NOTIFICATION OF CONGRESS.—The Secretary shall notify the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate at least 180 days prior to the Secretary’s determination, which would—
(1) result in any significant reduction in customs revenue services, including hours of operation, provided at any office within the Department or any port of entry;
(2) eliminate or relocate any office of the Department which provides customs revenue services; or
(3) eliminate any port of entry.
(c) DEFINITION.—In this section, the term "customs revenue functions" means those customs revenue functions described in paragraphs (1) through (3) of section 457.

SEC. 460. REPORTS TO CONGRESS.
The United States Customs Service shall, on and after the effective date of this Act, continue to submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate any report required, on the day before the effective date of this Act, to be so submitted under any provision of law.

SEC. 461. CUSTOMS USER FEES.
Section 13031(f) of the Consolidated Omnibus Budget Reconciliation Act of 1985 (19 U.S.C. 58c(f)) is amended—
(1) in paragraph (1), by striking subparagraph (B) and inserting, after (B), the following:
"(B) amounts deposited into the Customs Commercial and Homeland Security Automation Account under paragraph (5);"
(2) in paragraph (4), by striking, "(other than the excess fees determined by the Secretary under paragraph (5));" and
(3) by striking paragraph (5) and inserting the following:
"(5)(A) There is created within the general fund of the Treasury a separate account that shall be known as the ‘Customs Commercial and Homeland Security Automation Account’. In each of fiscal years 2003, 2004, and 2005 there shall be deposited into the Account from fees collected under subsection (a)(9)(A), $250,000,000.

"(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 as amounts as are available to that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise imported into the United States, and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph shall be available for obligation only through such fiscal year.

"(C) In adjusting the fee imposed by section (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be deposited in the Account in fiscal year 2006 by the amount by which total fees deposited to the Account during fiscal years 2003, 2004, and 2005 exceed total appropriations from that Account."

TITLE V—EMERGENCY PREPAREDNESS AND RESPONSE

SEC. 501. UNDER SECRETARY FOR EMERGENCY PREPAREDNESS AND RESPONSE.
The Secretary, acting through the Under Secretary for Emergency Preparedness and Response, shall be responsible for the following:
(1) Establishing standards and certifying emergency preparedness response providers for terrorist attacks, major disasters, and other emergencies.
(2) With respect to the Nuclear Incident Response Team, the Secretary shall have the authority, and control over them when they are not operating as an organizational unit of the Department.

SEC. 502. TRANSITION PERIOD.
(a) NUCLEAR INCIDENT RESPONSE TEAM.—At the direction of the Secretary (in connection with an actual or threatened terrorist attack, major disaster, or other emergency within the United States), the Nuclear Incident Response Team shall operate as an organizational unit of the Department. While so operating, the Nuclear Incident Response Team shall be subject to the direction, authority, and control of the Secretary.

(b) CONSTRUCTION.—Nothing in this title shall be understood to limit the ordinary responsibility of the Secretary of Energy, and the Administrator of the Environmental Protection Agency for organizing, training, equipping, and utilizing their respective entities in the Nuclear Incident Response Team, or (subject to the provisions of this title) from exercising direction, authority, and control over them when they are not operating as a unit of the Department.

(c) DIRECTION OF EMERGENCY FUNCTION DURING TRANSITION PERIOD.—(1) To the extent the Department of Energy has a duty under a covered
contract to indemnify an element of the Nuclear Incident Response Team, the Department and the Department of Energy shall each have that duty, whether or not the Nuclear Incident Response Team is continuing as an organizational element of the Department.

(2) Paragraph (1) applies only to a contract in effect on the date of the enactment of this Act, and to be reenacted or renewed or that contract carried out after the date of the enactment of this Act.

SEC. 504. DEFINITION.

For purposes of this title, the term "Nuclear Incident Response Team" means a resource that includes—

(1) those entities of the Department of Energy that perform radiological emergency response functions, including accident response, search response, advisory, and technical operations functions; radiological exposure functions at the medical assistance facility known as the Radiation Emergency Assistance/Training Site (REACT/TS), radiological assistance functions, and related functions; and

(2) those entities of the Environmental Protection Agency that perform radiological emergency response and support functions.

SEC. 505. CONDUCT OF CERTAIN PUBLIC-HEALTH-RELATED ACTIVITIES.

(a) IN GENERAL.—With respect to all public health-related activities to improve State, local, and tribal health care and response to chemical, biological, radiological, and nuclear and other emerging terrorist threats carried out by the Department of Health and Human Services (including the Public Health Service), the Secretary of Health and Human Services shall set priorities and preparedness goals and further develop a coordinated strategy for such activities in coordination with the Secretary of Homeland Security.

(b) EVALUATION OF PROGRESS.—In carrying out subsection (a), the Secretary of Health and Human Services shall collaborate with the Secretary of Homeland Security in developing specific benchmarks and outcome measurements for evaluating progress toward achieving the priorities and goals described in such subsection.

TITLE VI—MANAGEMENT

SEC. 601. UNDER SECRETARY FOR MANAGEMENT.

(a) IN GENERAL.—The Secretary, acting through the Under Secretary for Management, shall be responsible for the management and administration of the Department, including the following:

(1) The budget, appropriations, expenditures of funds, and movement and use of funds, and financial management.

(2) Procurement.

(3) Human resources and personnel.

(4) Information technology and communications systems.

(5) Facilities, property, equipment, and other material resources.

(6) Security for personnel, information technology and communications systems, facilities, property, equipment, and other material resources.

(7) Identification and tracking of performance measures relating to the responsibilities of the Department.

(8) Grants and other assistance management programs.

(9) The transition and reorganization process, to ensure an efficient and orderly transfer of functions and personnel to the Department, including the development of a transition plan.

(10) The conduct of internal audits and management analyses of the programs and activities of the Department.

(11) Any other management duties that the Secretary may designate.

(b) AIRCRAFT ENFORCEMENT.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the Air National Guard.

(A) Maintenance of all immigration statistical information of the Bureau of Border Security.

Such statistical information shall include information and statistics of the type contained in the publication entitled "Statistical Yearbook of the Immigration and Naturalization Service" for any given calendar year, and a continuation of such service (as in effect immediately before the date on which the transfer of functions specified under section 411 takes effect), including region-by-region data on the appropriate number of applications and petitions filed by an alien (or filed on behalf of an alien) and denied by such bureau, and the reasons for such denials, disaggregated by category of denial and application or petition type.

(B) Establishment of standards of reliability and validity for immigration statistics collected by the Bureau of Border Security, pursuant to the Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following programs:

(A) The Border Patrol program.

(B) The detention and removal program.

(C) The intelligence program.

(D) The inspections program.

(E) The inspections program.

SEC. 602. CHIEF FINANCIAL OFFICER.

Notwithstanding section 902(a)(1) of title 31, United States Code, the Chief Financial Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 603. CHIEF INFORMATION OFFICER.

Notwithstanding section 3506(a)(2) of title 44, United States Code, the Chief Information Officer shall report to the Secretary, or to another official of the Department, as the Secretary may direct.

SEC. 604. ESTABLISHMENT OF OFFICE FOR CIVIL RIGHTS AND CIVIL LIBERTIES.

The Secretary shall establish in the Department an Office for Civil Rights and Civil Liberties, the head of which shall be the Director for Civil Rights and Civil Liberties. The Director shall—

(1) review and assess information alleging abuses of civil rights, civil liberties, and racial and ethnic profiling by employees and officials of the Department;

(2) make public through the Internet, radio, television, or newspaper advertisements information on the responsibilities and functions of, and how to contact, the Office; and

(3) submit to the President of the Senate, the Speaker of the House of Representatives, and the appropriate committees and subcommittees of the Congress on a semiannual basis a report on the implementation of this section, including the use of funds appropriated to carry out this section, and detailing any allegations of abuses described in paragraph (1) and any actions taken by the Department in response to such allegations.

TITLE VII—MISCELLANEOUS

Subtitle A—Inspector General

SEC. 701. AUTHORITY OF THE SECRETARY.

(a) IN GENERAL.—Notwithstanding the last two sentences of section 3(a) of the Inspector General Act of 1978 (5 U.S.C. App.), the Inspector General shall, with the concurrence of the Attorney General, investigate any matter that the Inspector General determines to be a significant impairment to the interests of the United States.

(b) NOTIFICATION REQUIRED.—If the Secretary exercises any power under subsection (a) or (b), the Secretary shall notify the Inspector General of the Department in writing stating the reasons for such exercise.

(c) OVERRIDES.—The exercise of authority by the Secretary described in subsection (b) should not be construed to override the right of any committee of Congress to access any information it seeks.

(d) OVERTIME RESPONSIBILITY.—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 81 the following:

"SPECIAL PROVISIONS CONCERNING THE DEPARTMENT OF HOMELAND SECURITY

"SEC. 8J. Notwithstanding any other provision of law, in carrying out the duties and responsibilities specified in this Act, the Inspector General of the Department of Homeland Security shall have oversight responsibility for the investigations performed by the Office of Internal Affairs of the United States Customs Service and the Office of Inspections of the United States Secret Service. The head of each such office shall promptly provide the Inspector General the significant activities being carried out by such office."

Subtitle B—United States Secret Service

SEC. 711. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the United States Secret Service, which shall be maintained as a distinct entity within the Department, including the functions of the Secretary of the Treasury relating thereto.

Subtitle C—Critical Infrastructure Information

SEC. 721. SHORT TITLE.

This subtitle may be cited as the "Critical Infrastructure Information Act of 2002".

SEC. 722. DEFINITIONS.

In this subtitle:

(1) AGENCY.—The term "agency" has the meaning given it in section 551 of title 5, United States Code.

(2) COVERED FEDERAL AGENCY.—The term "covered Federal agency" means the Department of Homeland Security.

(3) CRITICAL INFRASTRUCTURE INFORMATION.—The term "critical infrastructure information" means information that is critical to the public domain and related to the security of critical infrastructure or protected systems—
A critical infrastructure protection program may be designated as such by one of the following:

(1) The President.

(2) The Secretary of Homeland Security.

SEC. 724. PROTECTION OF VOLUNTARILY SHARED CRITICAL INFRASTRUCTURE INFORMATION.

(a) PROTECTION.—

(1) IN GENERAL.—Notwithstanding any other provision of law, critical infrastructure information (including the identity of the submitting person or entity) that is voluntarily submitted to a covered Federal agency for use by that agency for protective purposes shall not, if provided to a State or local government for purposes other than for the purpose of protecting critical infrastructure and protected systems, if analysis, warning, interdependency study, recovery, reconstitution, or other informational purposes, when accompanied by an express statement specified in paragraph (2)—

(A) shall be exempt from disclosure under section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act); (B) shall not be subject to any agency rules or judicial doctrine regarding ex parte communications with a decision making official; (C) shall not, without the written consent of the person or entity submitting such information, be used directly by such agency, any other Federal, State, or local authority, or any third party, in any criminal, civil, or administrative proceeding or in any State law or federal law if such information is submitted in good faith; (D) shall not, without the written consent of the person or entity submitting such information, be used or disclosed by any officer or employee of the United States for purposes other than the purposes of this subtitle, except—

(i) in furtherance of an investigation or the prosecution of a criminal act; or

(ii) when disclosure of the information would be—

(I) to either House of Congress, or to the extent of matter within its jurisdiction, any committee or subcommittee thereof, any joint committee thereof, or subcommittee of any such joint committee; or

(II) to the Comptroller General, or any authorized representative of the Comptroller General, in the course of the performance of the duties of the General Accounting Office;

(E) shall not, if provided to a State or local government or government agency—

(i) be used or disclosed to any State or local law requiring disclosure of information or records;

(ii) otherwise be disclosed or distributed to any party by said State or local government or government agency without the written consent of the person or entity submitting such information; or

(iii) be used other than for the purpose of protecting critical infrastructure or protected systems, or in furtherance of an investigation or the prosecution of a criminal act; or

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) The express statement—

(A) the acknowledgement of receipt by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government; (B) the maintenance of the identification of such information as voluntarily submitted to the Government for purposes of and subject to the provisions of this subtitle; (C) the care and storage of such information; and

(D) the protection and maintenance of the confidentiality of such information so as to permit sharing of such information within the Federal Government and with State and local governments, and the issuance of notices and warnings related to the protection of critical infrastructure and protected systems, in such manner as to protect from public disclosure the identity of the submitting person or entity, or information that is proprietary, business sensitive, relates specifically to the submitting person or entity, and is otherwise not appropriately in the public domain.

Penalty.—Whoever, being an officer or employee of the United States or of any department or agency thereof, knowingly publishes, divulges, discloses, or makes known in any manner or to any extent not authorized by law, any critical infrastructure information protected from disclosure by this subtitle coming to him in the course of this employment or official duties or by reason of any examination or investigation made by, or return, report, or record made to or filed with, such department or agency or officer or employee thereof, shall be fined under title 18 of the United States Code, imprisoned not more than one year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may issue warnings, alerts, and warnings to relevant companies, targeted sectors, other governmental entities, or the
general public regarding potential threats to critical infrastructure as appropriate. In issuing a warning, the Federal Government shall take appropriate actions to protect from disclosure—

1. whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and
2. whether such contracts were to be made permanent, whether additional safeguards are needed with respect to the use of such authorities.

(c) DEFINITION OF NONTRADITIONAL GOVERNMENT CONTRACTOR.—In this section, the term ‘‘nontraditional Government contractor’’ has the same meaning as the term ‘‘nontraditional Government contractor’’ as defined in section 465(e) of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

SEC. 732. PERSONAL SERVICES.

The Secretary—

1. may procure the temporary or intermittent services of experts or consultants (or organizations thereof) under section 3109 of title 5, United States Code; and
2. may, whenever necessary due to an urgent homeland security need, procure temporary (not to exceed one year) personal services, including the services of experts or consultants (or organizations thereof), without regard to the pay limitations of such section 3109.

SEC. 733. SPECIAL STREAMLINED ACQUISITION AUTHORITY.

(a) AUTHORITY.—(1) The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department would be seriously impaired without the use of such authorities.

(2) The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Not later than the date that is seven days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Governmental Affairs of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and
(B) the justification for such determination.

(b) USE OF HEADQUARTERS FACILITY.

The Secretary may designate certain employees of the Department, including the services of experts or consultants (or organizations thereof), on a temporary and an intermittent basis to perform personal services described in subsection (a), without regard to the pay limitations of such section 3109.

SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.

(a) AUTHORITY.—(1) The Secretary may use the authorities set forth in this section with respect to any procurement made during the period beginning on the effective date of this Act and ending September 30, 2007, if the Secretary determines in writing that the mission of the Department would be seriously impaired without the use of such authorities.

(2) The authority to make the determination described in paragraph (1) may not be delegated by the Secretary to an officer of the Department who is not appointed by the President with the advice and consent of the Senate.

(3) Not later than the date that is seven days after the date of any determination under paragraph (1), the Secretary shall submit to the Committee on Governmental Affairs of the House of Representatives and the Committee on Governmental Affairs of the Senate—

(A) notification of such determination; and
(B) the justification for such determination.

(b) SPECIAL ACQUISITION PROCEDURES.—(1) With respect to procurements described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 411 of the Office of Federal Procurement Policy Act (41 U.S.C. 420c) to be $5,000,000.

(2) Section 411(c) of the Office of Federal Procurement Policy Act is amended—

(A) by striking ‘‘$10,000,000’’ and inserting ‘‘$5,000,000’’; and

(b) IN GENERAL.—(1) Subject to the requirements of the Public Buildings Act of 1959 (40 U.S.C. 688 et seq.), the Administrator of General Services shall construct a public building to serve as the headquarters for the Department.

(b) LOCATION AND CONSTRUCTION STANDARDS.—The headquarters shall be constructed to such standards and specifications and at such a location as the Administrator of General Services determines. In selecting a site for the headquarters facility, the Administrator shall give preference to parcels of land that are federally owned.

(c) USE OF HEADQUARTERS FACILITY.—The Administrator of General Services shall make the headquarters facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator’s agreement under subsections (b) of the Small Business Act of 1953 (40 U.S.C. 644) and shall carry out the functions described in such section.
be appropriated to the Secretary such amounts as may be necessary to pay the annual charges for General Services Administration furnished space and services.

**Subtitle A—Support Anti-terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)**

**SEC. 751. SHORT TITLE.** This subtitle may be cited as the “Support Anti-terrorism by Fostering Effective Technologies Act of 2002” or the “SAFETY Act.”

**SEC. 752. ADMINISTRATION.**

(a) In general.—The Secretary shall be responsible for the administration of this subtitle.

(b) Qualification of Qualified Anti-terrorism Technologies.—The Secretary may designate anti-terrorism technologies that qualify for protection under the system of risk management set forth in this subtitle in accordance with criteria that shall include, but not be limited to, the following:

(1) Prior and extensive use of the United States government in public and demonstrated substantial utility and effectiveness.

(2) Availability of the technology for immediate deployment in public and private settings.

(3) Existence of extraordinarily large or extraordinarily unquantifiable potential third party liability risk exposure to the Seller or other provider of such anti-terrorism technology.

(4) Substantial likelihood that such anti-terrorism technology will not be deployed unless protected under a system of risk management provided under this subtitle are extended.

(5) Magnitude of risk exposure to the public if such anti-terrorism technology is not deployed.

(6) Identification of scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce the risk of harm.

(c) Regulations.—The Secretary may issue such regulations, after notice and comment in accordance with section 553 of title 5, United States Code, as may be necessary to carry out this subtitle.

**SEC. 753. LITIGATION MANAGEMENT.**

(a) Federal cause of action.—(1) There shall exist a Federal cause of action for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller. The substance and scope of decision for any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred and is inconsistent with or preempted by Federal law.

(2) Such appropriate district court of the United States shall have original and exclusive jurisdiction over all actions for any claim for loss of property, personal injury, or death arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller.

(b) Federal Rules.—In an action brought under this section for damages the following provisions apply:

(1) No punitive damages intended to punish or deter, but, proportionate damages, or other damages not intended to compensate a plaintiff for actual losses may be awarded, nor shall any party be liable for interest prior to the judgment.

(2) Damages may be awarded against a defendant only in an amount directly proportional to the percentage of responsibility of such defendant for the harm to the plaintiff, and with few nonpecuniary damages, such as pain and suffering, inconvenience, physical impairment, mental anguish, disfigurement, loss of enjoyment, of life, loss of society and companionship, loss of consortium, hedonic damages, injury to reputation, and any other nonpecuniary losses.

(c) Collateral Sources.—Any recovery by a plaintiff from a source other than the defendant in connection with an action shall be reduced by the amount of collateral source compensation, if any, that the plaintiff has received or is entitled to receive as a result of such acts of terrorism that result or may result in loss to the Seller.

(d) Government contractor defense.——(1) Should a claim be filed for a claim arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act and such claims result or may result in loss to the Seller, there shall be a rebuttable presumption that the government contractor defense applies in such lawsuit. This presumption shall only be overcome by evidence showing that the Seller acted fraudulently or with willful misconduct in submitting information to the Secretary during the course of the Secretary’s consideration of such technology under this subsection. This presumption of the government contractor defense shall apply regardless of whether the claim against the Seller arises from a sale of the product to Federal Government or non-Federal Government customers.

(2) The party responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product or service is responsible for (i) relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph (3), have been deployed in defense against such act and such claims result or may result in loss to the Seller.

(3) For those products reviewed and approved by the Secretary, the Seller will issue a certificate of conformance to the Seller and place the product on the Product Approved List for Homeland Security.

(e) Exclusion.—Nothing in this section shall in any way limit the ability of any person to seek any form of recovery from any person, government, or other entity that:

(i) attempts to commit, knowingly participates in, aids and abets, or commits any act of terrorism, or any criminal act related to or resulting from such act of terrorism; or

(ii) participates in a conspiracy to commit any such act of terrorism, or any criminal act.

**SEC. 754. RISK MANAGEMENT.**

(a) In general.—(1) Any person or entity that sells or otherwise provides a qualified anti-terrorism technology to non-federal government customers shall, by its liability insurance of more than the maximum liability insurance of all other commercial entities providing the same technology, maintain liability insurance of more than the maximum liability insurance of all other commercial entities providing the same technology, under which such act of terrorism result or may result in loss to the Seller or any other entity, including, but not limited to, the following:

(B) REQUIREMENTS.

(i) Loss of or damage to property of others;

(ii) Costs of remedial action taken as a result of such loss of or damage to property of others;
entities.
to State and local authorities and commercial
against its contractors, including but not limited
tain circumstances for third-party claims
85-804 to provide for indemnification under cer-
Government with authority under Public Law
ily injury, or loss of or damage to property, in-
competitive service.
rectly affects national security; and
any provision of law referred to in any of the
the civil service;
by
provision of law referred to in section 2302(b)(1)
reprisal for whistleblowing;
equal work, and protection of employees against
established under subsection (a) shall
—
(a) AUTHORITY.
—
(1) IN GENERAL.—Subpart I of part III of title
“CHAPTER 97—DEPARTMENT OF
HOMELAND SECURITY
“Sec.
—
9701. Establishment of human resources
management system.
—
§9701. Establishment of human resources
management system.
—
(a) IN GENERAL.—Notwithstanding any other
provision of this title, the Secretary of Home-
land Security may, in regulations prescribed
jointly by the Secretary of the Office of Per-
sonnel Management, establish, and from time to
time adjust, a human resources management
system for some or all of the organizational
units of the Department of Homeland Security.
(b) SYSTEM REQUIREMENTS.—Any system estab-
lished under subsection (a) shall—
(1) be flexible;
(2) be contemporary;
(3) not waive, modify, or otherwise affect—
(A) the public employment principles of merit
and fitness set forth in section 2301, includ-
ing the principles of hiring based on merit, fair
affirmative action; or any other merit consider-
etions, equal pay for equal work, and protection of employees against
reprimal for whistleblowing;
(b) any provision of section 2302, relating to
prohibited personnel practices;
(C)(1) any provision of law referred to in sec-
tion 202(b)(1); or
(ii) any provision of law implementing any
provision of law referred to in section 202(b)(1)
by—
(1) providing for equal employment
opportunities for persons with disabilities;
(2) providing any right or remedy available
for any employee or applicant for employment in
the civil service;
(3) any other provision of this title (as
described in subsection (c)); or
(4) any rule or regulation prescribed under
any provision of law referred to in any of the
preceding subparagraphs of this paragraph;
(4) the table of chapters and sections of
chapter 1 of subchapter II of chapter 53 of title 5,
United States Code, for official actions taken as a mem-
ber of an advisory committee that is exempted by the Secretary
or another Federal official, and
transferred authority may not be exercised by
any person except as otherwise provided in the dele-
gation or by law, any function delegated under this Act may be
redelegated to any subordinate.
SEC. 765. MILITARY ACTIVITIES.
Nothing in this Act shall confer upon the Sec-
retary or any other Federal official, the military defense of the United
States or other military activities, nor shall anything in this Act limit the existing authority of the De-
partment of Defense or any other Federal official, except to
engage in warfighting, the military defense of the
United States, or other military activities.
SEC. 766. REGULATORY AUTHORITY.
Except as otherwise provided in this Act, this
Act vests no new regulatory authority in the Secretary or any other Federal official, and
transfers to the Secretary or another Federal of-
icial any only such regulatory authority as exists on the date of enactment of this Act within any
agency, program, or function transferred to the Department pursuant to this Act, or that on
which any transfer or delegation of regulatory au-
tority of any other executive agency, except to the
extent that this Act transfers such authority
from the agency.
SEC. 767. PROVISIONS REGARDING TRANSFERS FROM DEPARTMENT OF ENERGY.
(a) SEPARATE CONTRACTING.—To the extent
that programs or activities transferred by this
Act to the Department of Homeland Security are being
transferred from the Department of Energy.
(b) Authority under paragraph (1)(A) does not extend to the
abolition of any agency, entity, organizational unit, pro-
gram, or function established or required to be maintained by
this Act.
(b) Authority under paragraph (1)(B) does not
extend to the abolition of any agency, enti-
y, organizational unit, program, or function es-
blished or required to be maintained by stat-
ute.
(b) TRANSFER OF APPROPRIATIONS.—
(1) IN GENERAL.—Except as otherwise speci-
ically provided by law, not to exceed two percent of
any appropriation available to the Secretary in any fiscal year may be transferred between
such appropriations, except that not less than 15 days’ notice shall be given to the Committees
on Appropriations of the Senate and House of Representatives before any such transfer is
made.
(2) EXPIRATION OF AUTHORITY.—The authority under paragraph (1) shall expire two years after the
date of enactment of this Act.
SEC. 764. MISCELLANEOUS AUTHORITIES.
(a) SEAL.—The Department shall have a seal,
whose design is subject to the approval of the
President.
(b) GIFTS, DEVISES, AND REQUESTS.—With
respect to the Department, the Secretary shall
have the same authorities that the Attorney
General has with respect to the Department of
Justice under section 524(d) of title 28, United
States Code.
(c) PARTICIPATION OF MEMBERS OF THE ARMED FORCES.—With respect to the
Department, the Secretary shall have the same au-
thorities that the Secretary of Transportation has with respect to the Department of
Transportation under section 324 of title 49, United States Code.
(d) DELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation or by law, any
function delegated under this Act may be
delegated to any subordinate.

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a national laboratory of the Department of Energy, the Secretary of Homeland Security and the Secretary of Energy shall ensure that contracts for such programs and activities between the Department of Homeland Security and such operator are separate from the contracts of the Department of Energy with such operator.  

SEC. 767. COUNTERNARCOTICS OFFICER. The Secretary shall appoint a senior official in the Department to assume primary responsibility for coordinating policy and operations within the Department and between the Department and other Federal departments and agencies with respect to the enforcement of the United States laws prohibiting the manufacture and distribution of illegal drugs into the United States, and tracking and severing connections between illegal drug trafficking and terrorism.

SEC. 769. OFFICE OF INTERNATIONAL AFFAIRS. (a) ESTABLISHMENT. There is established within the Office of the Secretary an Office of International Affairs. The Office shall be headed by a Director, who shall be appointed by the Secretary.  

(b) DUTIES OF THE DIRECTOR. The Director shall—

(1) to promote and information and education exchange with nations friendly to the United States in order to promote sharing of best practices of interest to homeland security, Such information exchange shall include the following:

(A) Joint research and development on countermeasures.

(B) Joint training exercises of first responders.

(C) Exchange of expertise on terrorism prevention, detection, and response.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weak and another friendly nation or nations have a demonstrated expertise.

(3) To plan and undertake international conferences, exchange programs, and training activities.

(4) To manage international activities within the Department in coordination with other Federal officials with responsibility for counter-terrorism matters.

SEC. 770. PROHIBITION OF THE TERRORISM INFORMATION AND PREVENTION SYSTEM. Any and all activities of the Federal Government to implement the proposed component program of the Citizen Corps as Operation TIPS (Terrorism Information and Prevention System) are hereby prohibited.

SEC. 771. REVIEW OF PAY AND BENEFIT PLANS. Notwithstanding any other provision of this Act, the Secretary shall, in consultation with the Director of Personnel Management, review the pay and benefit plans of each agency whose functions are transferred under this Act to the Department and, within 90 days of the effective date of this Act, submit a plan to the President of the Senate and the Speaker of the House of Representatives and the appropriate committees and subcommittees of the Congress, for ensuring, to the maximum extent practicable, the elimination of disparities in pay and benefits throughout the Department, especially among law enforcement personnel, that are inconsistent with merit system principles set forth in section 307, the Secretary, acting with the concurrence of the Secretary of Homeland Security, shall reimburse the Department of Homeland Security for the enhancement of domestic preparedness against the consequences of terrorist attacks.

SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA. The Secretary (or the Secretary’s designee) shall work in consultation with the Mayor of the District of Columbia (or the Mayor’s designee) for the purpose of integrating the District of Columbia into the planning, coordination, and execution of homeland security activities. The Secretary shall ensure that the District of Columbia is provided with any information the Secretary of Homeland Security deems appropriate to permit the District of Columbia to carry out its homeland security activities.

SEC. 773. TRANSFER OF THE FEDERAL LAW ENFORCEMENT TRAINING CENTER. There shall be transferred to the Attorney General the functions, personnel, assets, and liabilities of the Federal Law Enforcement Training Center, including any functions of the Secretary of the Treasury relating thereto.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

SEC. 801. DEFINITIONS. For purposes of this title:

(1) The term “agency” includes any entity, organizational unit, program, or function.

(2) The term “transition period” means the 12-month period beginning on the effective date of this Act.

SEC. 802. REORGANIZATION PLAN. (a) SUBMISSION OF PLAN.—Not later than 60 days after the date of the enactment of this Act, the President shall transmit to the appropriate congressional committees a reorganization plan regarding the following:

(1) The transfer of agencies, personnel, assets, and obligations to the Department pursuant to this Act.

(2) Any consolidation, reorganization, or streamlining of agencies transferred to the Department pursuant to this Act.

(b) PLAN ELEMENTS.—The plan transmitted under subsection (a) shall contain, consistent with this Act, such elements as the President deems appropriate, including the following:

(1) Identification of any functions of agencies transferred to the Department pursuant to this Act that will not be transferred to the Department under the plan.

(2) Specification of the steps to be taken by the Secretary to organize the Department, including the delegation of functions and the assignment of functions transferred to the Department among officers of the Department in order to permit the Department to carry out the functions transferred under the plan.

(3) Specification of the funds available to each agency that will be transferred to the Department as a result of transfers under the plan.

(4) Specification of the funds available to the Department in unexpended funds transferred in connection with transfers under this Act.

(5) Specification of any proposed disposition of property, facilities, contracts, records, and other assets and obligations of agencies transferred under the plan.

(6) Specification of the proposed allocations within the Department of the functions of the agencies and subdivisions that are not related directly to securing the homeland.

(c) MODIFICATION OF PLAN.—The President may, on the basis of consultations with the appropriate congressional committees, modify or rescind any part of the plan until that part of the plan becomes effective in accordance with subsection (d).

(d) EFFECTIVE DATE.—(1) IN GENERAL.—The reorganization plan described in this section, including any modifications or revisions of the plan under subsection (d), shall become effective for an agency on the earlier of—

(A) the date specified in the plan (or the plan as modified pursuant to subsection (d)), except that such date may not be earlier than 90 days after the date of the enactment of this Act; and

(B) the date specified in this Act.  

(2) SPECIFICATION OF THE STEPS TO BE TAKEN BY THE SECRETARY TO PERMIT THE TRANSFER OF THE DEPARTMENT TO THE SECRETARY TO CARRY OUT ITS FUNCTIONS UNDER THE PLAN.—At least 90 days before the effective date of this Act, the President shall submit to the appropriate congressional committees a reorganization plan to the appropriate congressional committees pursuant to subsection (a); and

(3) MODIFICATION OF THE PLAN.—Nothing in this subsection may be construed to require the transfer of functions, personnel, records, balances of appropriations, or other assets of an agency on a single date.

(4) SUPERSEDES EXISTING LAW.—Paragraph (1) shall apply notwithstanding section 905(b) of title 5, United States Code.

Subtitle B—Transitional Provisions

SEC. 811. TRANSITIONAL AUTHORITIES. (a) PROVISION OF ASSISTANCE BY OFFICIALS.—Until the transfer of an agency to the Department, any official having authority over or responsible for the responsibilities described in the Act before the effective date of this Act shall provide to the Secretary such assistance, including the use of personnel and assets, as the Secretary may request in preparing for the transfer and integration of the agency into the Department.

(b) SERVICES AND PERSONNEL.—During the transition period, upon the request of the Secretary, the head of any agency or official assigned to the Department, the President is authorized to transfer to the Secretary to fund the purposes authorized in this Act—

(1) for administrative expenses related to the establishment of the Department of Homeland Security, not to exceed two percent of the unobligated balance of any appropriation enacted prior to October 1, 2002, available to such agency;

(2) for purposes of which the funds were appropriated, not to exceed three percent of the unobligated balance of any appropriation available to such agency; except that not less than 15 days’ notice shall be given to the Committees on Appropriations of the House of Representatives and the Senate before such funds transferred to the Department for such purposes.

(c) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of

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the Senate to the appointment of an officer required by this Act to be appointed by and with such advice and consent, the President may designate any officer whose appointment was required by this Act to be made by and with the advice and consent and who was such an officer immediately before the effective date of this Act (and who continues in office or immediately before such date continues in such office and in such capacity as the same is filled as provided in this Act). While so acting, such officers shall receive compensation at the higher of:

(A) the rates provided by this Act for the respective offices in which they act; or
(B) the rates provided for the offices held at the time such officer was so appointed by and with the advice and consent of the Senate.

(2) Nothing in this Act shall be understood to require the advice and consent of the Senate to the appointment by the President to a position in the executive branch of the Government of the United States of an officer whose agency is transferred to the Department pursuant to this Act and whose duties following such transfer are germane to those performed before such transfer.

(c) Transfer of Personnel, Assets, Obligations, and Functions.—Upon the transfer of an agency to the Department:

(1) All personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriation to, or to be made available, in connection with the programs, activities, functions, duties, or the corresponding organizational units or functions of the Department.

(2) The Secretary shall have all functions relating to the agency that any other official could by law exercise in relation to the agency immediately before such transfer, and shall have in addition all functions vested in the Secretary by this Act or other law.

Paragraph (1) shall not apply to appropriations transferred under section 762(b).

(f) Prohibition on Use of Transportation Trust Funds.—(1) In General.—Notwithstanding any other provision of this Act, no funds derived from the Highway Trust Fund, Airport and Airway Trust Fund, Inland Waterway Trust Fund, Harbor Maintenance Trust Fund, or Oil Spill Liability Trust Fund may be transferred to, made available to, or obligated by the Secretary or any other official in the Department.

(2) Limitation.—This section shall not apply to security-related funds provided to the Federal Aviation Administration for fiscal years preceding fiscal year 2003 for (A) operations, (B) facilities and equipment, or (C) research, engineering, and development.

SEC. 812. SAVINGS PROVISIONS.

(a) Completed Administrative Actions.—(1) Completed administrative actions of an agency shall not be affected by the enactment of this Act or the transfer of such agency to the Department, but shall continue in effect according to their terms until amended, modified, superseded, terminated, set aside, or revoked in accordance with law by an officer of the United States or a court of competent jurisdiction, or by operation of law.

(2) Pursuant to paragraph (1), the term ‘‘completed administrative action’’ includes orders, determinations, rules, regulations, personnel actions, permits, agreements, grants, contracts, certificates, licenses, registrations, and privileges.

(b) Pending Proceedings.—Subject to the authority of the Secretary under this Act—

(1) pending proceedings in an agency, including notices of proposed rulemaking, and applications for licenses, permits, certificates, grants, and financial assistance, shall continue notwithstanding the enactment of this Act or the transfer of the agency to the Department, unless discontinued or modified under the same terms and conditions to the same extent that such discontinuance could have occurred if such enactment or transfer had not occurred; and

(2) orders issued in such proceedings, and payments made pursuant to such orders, shall issue in the same manner and on the same terms as if this Act had not been enacted or the agency had not been transferred, and any such orders shall continue in effect until amended, modified, superseded, terminated, set aside, or revoked by an officer of the United States, a court of competent jurisdiction, or by operation of law.

(c) Pending Civil Actions.—Subject to the authority of the Secretary under this Act, pending civil actions shall continue notwithstanding the enactment of this Act or the transfer of an agency to the Department, and in such civil actions, proceedings, appeals taken, and judgments rendered and enforced in the same manner and with the same effect as if such enactment or transfer had not occurred.

(d) References.—References relating to an agency that is transferred to the Department in statutes, Executive orders, rules, regulations, decrees, or declarations of authority that precede such transfer or the effective date of this Act shall be deemed to refer, as appropriate, to the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions. Statutory reporting requirements that applied in relation to such an agency immediately before the effective date of this Act shall continue to apply to such transfer or the agency by name.

(e) Employment Provisions.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (b) of this section), the Director of the Office of Personnel Management, pursuant to the authority of the Secretary under this Act, shall have all functions relating to employment in the Department, to its officers, employees, or agents, or to its corresponding organizational units or functions.

(2) Nothing in this Act shall be understood to permit the Director of the Office of Personnel Management to exercise in relation to an agency transferred to the Department pursuant to this Act, any functions transferred by this Act, as the Director may deem necessary to accomplish the purposes of this Act.

SEC. 813. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency transferred by this Act are terminated, all personnel, assets, and obligations held by, used, arising from, or made available to, or by the agency transferred by this Act, the terms and conditions of employment, including compensation, of any employee so transferred, shall continue in effect until amended, modified, superseded, or terminated, or pursuant to the authority of the Secretary under this Act; and

SEC. 814. INCIDENTAL TRANSFERS.

The Director of the Office of Management and Budget, in consultation with the Secretary, is authorized and directed to make such additional incidental dispositions of personnel, assets, and obligations held, used, arising from, or made available to, or by the agency transferred by this Act, as the Director may deem necessary to accomplish the purposes of this Act.

SEC. 815. NATIONAL IDENTIFICATION SYSTEM OVERSIGHT.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 816. CONFORMING OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General of such agency may continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b) of this Act.

SEC. 817. REAL PROPERTY.

With respect to any function transferred by or under this Act (including under a reorganization plan that becomes effective under section 802) and exercised on or after the effective date of this Act, reference in any other Federal law to any department, commission, or agency or function of which such real property is transferred shall be deemed to refer to the Secretary, other official, or component of the Department to which such function is so transferred.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

SEC. 901. INSPECTOR GENERAL ACT OF 1978.

Section 11 of the Inspector General Act of 1978 (Public Law 95–452) is amended—

(1) by inserting “Department of Homeland Security,” after “Transportation,” each place it appears; and

(2) by striking ‘‘;’’ and each place it appears in paragraph (1) and inserting ‘‘;’’.

SEC. 902. EXECUTIVE SCHEDULE.

(a) In General.—Title 5, United States Code, is amended—

(1) in section 5312, by inserting ‘‘Secretary of Homeland Security,” as a new item after ‘‘Affairs,”

(2) in section 5313, by inserting ‘‘Deputy Secretary of Homeland Security,” as a new item after ‘‘Affairs,”

(3) in section 5314, by inserting ‘‘Under Secretary, Department of Homeland Security,” as a new item after ‘‘Affairs,”


(b) SPECIAL EFFECTIVE DATE.—Notwithstanding section 4, the amendment made by subsection (a)(5) shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

SEC. 903. UNITED STATES SECRET SERVICE.

(a) In General.—(1) The United States Code is amended in section 202 of title 3, and in sections 2306, 3056 of title 18, by striking ‘‘Treasury’’, each place it appears and inserting ‘‘of Homeland Security’’.

(2) Section 208 of title 3, United States Code, is amended by striking ‘‘of Treasury’’ each place it appears and inserting ‘‘of Homeland Security’’.

(b) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the United States Secret Service to the Department.

SEC. 904. COAST GUARD.

(a) Title 14, U.S.C.—Title 14, United States Code, is amended in sections 1, 3, 5, 95, 145, 516, 666, 669, 673, 673a (as redesignated by subsection (e)(1)), 674, 687, and 688 by striking ‘‘of Transportation’’ each place it appears and inserting ‘‘of Homeland Security’’.

(b) TITLE 10, U.S.C.—(1) Title 10, United States Code, is amended in sections 1019(a), 1031(b)(1), 1033, 1034, 1036, 1037, 1203, 1408, 1409(a), 179, 513(d), 575(b)(2), 580(e)(6), 651(a), 671(a), 708(a), 715(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1018(b)(2), 1030(b)(1), 1062, 1063, 1064(f), 1065(c), 1059(a), 1059(b)(1), 1077(a), 1074(c)(1), 1098(g)(2), 1090, 1091, 1124, 1143, 1143a(h), 1144, 1145(e), 1146, 1148, 1150(c), 1152(a), 1153, 1168, 1179, 1180, 1194, 1229, 1408(h)(8), 1408(h)(d), 1463(a)(2), 1482(b)(2), 1510, 1552(a)(1), 1565(f), 1588(f)(14), 1589, 2002(a), 2032(d), 2306(b), 2323(b)(2), 2357(c), 2396(b), 2410a, 2457(a), 2572(a), 2581(b)(1), 2750(a), 2754(a), 2734a, 2775, 2803(b)(2), 2835, 2836, 4745(a), 5031(a), 7361(b), 10143(b)(2), 10146(a), 10147(a).
(10) Section 1034(a) of Public Law 105–45 (21 U.S.C. 1505a(a)) is amended by striking “of Transportation” and inserting “of Homeland Security”.  

(11) The Military Selective Service Act is amended—  

(A) in section 4(a) (50 U.S.C. App. 454(a)), by striking “of Transportation” in the fourth paragraph and inserting “of Homeland Security”;  

(B) in section 4(b) (50 U.S.C. App. 454(b)), by striking “of Transportation” both places it appears and inserting “of Homeland Security”;  

(C) in section 6(d)(1) (50 U.S.C. App. 456(d)(1)), by striking “of Transportation” both places it appears and inserting “of Homeland Security”;  

(D) in section 9(c) (50 U.S.C. App. 459(c)), by striking “Secretaries of Army, Navy, Air Force, or Transportation” and inserting “Secretary of a military department, and the Secretary of Homeland Security with respect to the Coast Guard.”; and  

(E) in section 15(e) (50 U.S.C. App. 463(e), by striking “of Transportation” both places it appears and inserting “of Homeland Security”.  

(e) TECHNICAL CORRECTION.—(1) Title 14, United States Code, is amended by redesignating section 673 (as redesignated by section 309 of Public Law 104–324) as section 673a.  

(2) The table of sections at the beginning of chapter 17 of such title is amended by redesignating the item relating to such section as section 673a.  

(f) EFFECTIVE DATE.—The amendments made by this section (other than subsection (e)) shall take effect on the date of transfer of the Strategic National Stockpile of Homeland Security.  

(SECTION 905. STRATEGIC NATIONAL STOCKPILE AND SMALLPOX VACCINE DEVELOPMENT.  

(a) In General.—Section 121 of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 361b–12) is amended—  

(1) in subsection (a)(1), by striking “Secretary of Health and Human Services” and inserting “Secretary of Homeland Security”;  

(b) by inserting the “Secretary of Health and Human Services and” and “the Secretary of Veterans Affairs” and  

(c) by inserting “of Health and Human Services” after “as determined by the Secretary”; and  

(2) in subsections (a)(2) and (b), by inserting “of Health and Human Services” after “Secretary” each place it appears.  

(b) EFFECTIVE DATE.—The amendments made by this sections (other than subsection (a)) shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department of Homeland Security.  

(SECTION 906. BIOLOGICAL AGENT REGISTRATION; PUBLIC HEALTH SERVICE ACT.  

(a) PUBLIC HEALTH SERVICE ACT.—Section 351A of the Public Health Service Act (42 U.S.C. 265a) is amended—  

(1) in subsection (a)(1)(A), by inserting “as defined in subsection (l)(9)” after “Secretary”;  

(2) in subsection (b)(2), by inserting “Department of Health and Human Services” after “Secretary” each place it appears.  

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of transfer of the select agent registration enforcement programs and activities of the Department of Health and Human Services to the Department of Homeland Security.  

(SECTION 907. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.  

(a) AMENDMENT TO PROTECTION ACT.—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 901(a)(2)) is repealed.  

(b) LAW ENFORCEMENT AUTHORITY.—The Act of June 1, 1948 (40 U.S.C. 318–318d; chapter 359; 62 Stat. 281) is amended to read as follows:  

"SECTION 1. SHORT TITLE.  

This Act may be cited as the ‘Protection of Public Property Act’."  

(SECTION 2. LAW ENFORCEMENT AUTHORITY OF SECRETARY OF HOMELAND SECURITY FOR PROTECTION OF PUBLIC PROPERTY.  

(a) In General.—The Secretary of Homeland Security (in this Act referred to as the ‘Secretary’) shall protect the buildings, grounds, and property that are owned, occupied, or se- 

(b) Officers and Agents.—(1) Designation.—The Secretary may designate employees of the Department of Home- 

(c) Penalties.—A person violating a regula- 

(d) REGULATIONS.—(1) In General.—The regulations which implement the provisions of this Act may be promulgated by the Secretary.  

(2) PUBLIC HEALTH SECURITY AND BiotERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 210(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 361b–12) is amended—  

(1) in subsection (a)(1), by striking “Secretary of Health and Human Services” and inserting “Secretary of Homeland Security”;  

(2) in subsection (a)(2), by inserting “Secretary of Health and Human Services” after “Secretary” each place it appears.  

(b) EFFECTIVE DATE.—The amendments made by this sections (other than subsection (a)) shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department of Homeland Security.
“(2) APPLICABILITY OF REGULATIONS.—The Secretary may—
“(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under subsection (a) of this section and enforce the regulations as provided in this section; or
“(B) utilize the authority and regulations of the requesting agency if agreed to in writing by the agencies.
“(3) FACILITIES AND SERVICES OF OTHER AGENCIES.—When the Secretary determines it to be economical and in the public interest, the Secretary may utilize the facilities and services of Federal, State, and local law enforcement agencies, with the consent of the agencies.
“(e) CONSTRUCTION.—For the protection of property owned or occupied by the Federal Government and persons on the property, the Secretary may enter into agreements with Federal agencies and with State and local governments to obtain authority for officers and agents designated under this section to enforce Federal laws and State and local laws concurrently with other Federal law enforcement officers and with State and local law enforcement officers.
“(f) adversely and ATTORNEY GENERAL APPROVAL.—The powers granted to officers and agents designated under this section shall be exercised in accordance with guidelines approved by the Attorney General.
“(g) LIMITATION ON STATUTORY CONSTRUCTION.—Nothing in this section shall be construed to—
“(1) preclude or limit the authority of any Federal law enforcement agency; or
“(2) restrict the authority of the Administrator of General Services to promulgate regulations affecting property under the Administrator’s custody and control.”.

SEC. 908. TRANSPORTATION SECURITY REGULATIONS

Title 49, United States Code, is amended—
“(1) in section 114(2)(B), by inserting “or the Secretary of Homeland Security, as appropriate,” (2) in section 114(2)(B), by inserting “rati- fied or after” after “unless”.

SEC. 909. RAILROAD SECURITY LAWS

Title 49, United States Code, is amended—
“(1) in section 2006 by inserting in the second sentence, “, including security,” after “railroad safety” and “the Secretary of Homeland Security” after “Secretary of Transportation”;
“(2) in section 2014—
“(A) in subsection “(a)” after “the Secretary of Homeland Security”, as appropri- ate,” after “to the Secretary” in subsection (a) and, after “Secretary” in subsection (b)(1)(A)(iii) and (B)(iv), the first place it appears, (C) in each of subsections (a)(4) and (c)(1) of section 2006, by inserting “or appointed after the Chief Information Officer designated” and (D) in subsection (e)(2) after “The Chief Information Officer designated”,
“(2) TITLE 44.

SEC. 910. NATIONAL OCEANOGRAPHIC PARTNER- SHIP PROGRAM

Section 70922 of title 10, United States Code, is amended by adding at the end the following paragraph:
“(14) Other Federal officials the Council con- siders appropriate.”.

SEC. 911. NATIONAL OCEANOGRAPHIC PARTNER- SHIP PROGRAM

SEC. 912. CHIEF FINANCIAL OFFICER

Section 901(b)(1) of title 31, United States Code, is amended—
“(1) by redesignating subparagraphs (G) through (P) as subparagraphs (H) through (Q), respectively; and
“(2) by inserting the following new subpara- graph after subparagraph (P):
“(‘‘(Q) The Department of Homeland Security.’’).

SEC. 913. CHIEF INFORMATION OFFICER

(a) CLINGER-COHEN ACT.—(1) The provisions enacted in section 5125 of the Clinger-Cohen Act of 1996 (division E of Public Law 104-106, 110 Stat. 624) shall apply to the Chief Information Officer designated in subsection (c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting “or appointed after “The Chief Information Officer designated”.
“(b) TITLE 44.—Chapter 35 of title 44, United States Code, is amended—
“(1) in section 3506(a)(2) after “(A)” in paragraph (2);
“(2) in each of subsections (a)(4) and (c)(1) of section 3506, by inserting “or appointed after “The Chief Information Officer designated” and (3) in subsection (a)(1) of section 3506, by in- serting “or appointed after “The Chief Informa- tion Officer designated’’.

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL

There is established within the Executive Of- fice of the President a council to be known as the “Homeland Security Council” (in this title referred to as the “Council”).

SEC. 1002. FUNCTION

The function of the Council shall be to advise the President on homeland security matters.

SEC. 1003. MEMBERSHIP

(a) The members of the Council shall be the fol- lowing:
“(1) The President.
“(2) The Vice President.
“(4) The Attorney General.
“(5) The Secretary of Health and Human Serv- ices.
“(6) The Director of Central Intelligence.
“(7) The Secretary of Defense.
“(8) The Secretary of the Treasury.
“(9) The Secretary of State.
“(10) The Secretary of Energy.
“(11) The Secretary of Agriculture.
“(12) Such other individuals as may be des- ignated by the President.

SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordi- nating the policies and functions of the United States Government relating to homeland secu- rity, the Council shall—
“(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting rec- ommendations to the President;
“(2) oversee and review homeland security poli- cies of the Federal Government and to make re- commendations to the President, and
“(3) perform such other functions as the Presi- dent may direct.

SEC. 1005. HOMELAND SECURITY BUDGET

The Director of the Office of Management and Budget shall prepare for the President a Federal homeland security budget to be delivered to the Congress as part of the President’s annual budget request.

SEC. 1006. STAFF COMPOSITION

The Council shall have a staff, the head of which shall be a civilian Executive Secretary, who shall be appointed by the President. The President is authorized to fix the pay of the Exec- utive Secretary at a rate not to exceed the rate of pay payable to the Executive Secretary of the National Security Council.

SEC. 1007. RELATION TO THE NATIONAL SECU- RITY COUNCIL

The President may convene joint meetings of the Homeland Security Council and the National Security Council with participation by members of either Council or as the President otherwise directs.

The CHAIRMAN. No amendment to the amendment in the nature of a sub- stitute is in order except those printed in House Report 107-615 and amend- ments on bloc described in section 3 of House Resolution 502.

Except as specified in section 4 of the resolution or the order of the House of today, each amendment printed in the report shall be offered only in the order printed, may be offered only by a Mem- ber designated in the report, shall be considered read, debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to previous question, and shall not be subject to a demand for a division of the question.

It shall be in order at any time for the chairman of the Select Committee on Homeland Security or his designee to offer amendments on bloc consisting of amendments printed in the report not earlier disposed of or germane modifications of any such amendment. Amendments on bloc shall be consid- ered read, except that modification amendments reported, shall be given for 20 minutes, equally divided and controlled by the chairman and ranking minority member or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

The original proponent of an amend- ment included in the amendments on bloc may insert a statement in the CONGRESSIONAL RECORD immediately before disposition of the amendment on bloc.

The chairman of the Committee of the Whole may recognize for consider- ation of any amendment out of the order printed, but not sooner than 1 hour after the chairman of the Select Committee on Homeland Security or his designee announces from the floor a request to that effect.

It is now in order to consider amend- ment No. 1. printed in House Report 107-615.

AMENDMENT NO. 1 OFFERED BY MR. OBERRSTAR

Mr. OBERRSTAR. 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. OBERSTAR.

Strike section 502(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 503(1) of the bill, strike "major disasters".

In the matter preceding subparagraph (A) of section 503(3) of the bill, strike "and major disasters".

In section 501(3)(D) of the bill, strike "or major disaster".

In section 501(4) of the bill—

(1) strike "and major disasters";

(2) strike "or major disasters"; and

(3) strike "or disasters".

In section 505(5) of the bill, strike and "disasters".

Strike section 506(6) of the bill and insert the following:

(6) in consultation with the Director of the Federal Emergency Management Agency, consolidating existing Federal Government emergency response plans for terrorist attacks into the Federal Response Plan referred to in section 506(b).

In section 502(1) of the bill, strike the text after "15"

((1)) and preceding "Integrated" and insert "The".

At the end of title V of the bill, insert the following (and conform the table of contents of the bill accordingly):

SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY.

(a) In general.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) of mitigation, by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) of preparedness, by building the emergency response mission to FEMA effectively, by mitigating against, respond to, and recover from any hazard by planning, training, and exercising;

(C) by conducting emergency operations to save lives and property through positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through restoring critical public services;

(D) of recovery, by rebuiling communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and

(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(b) FEDERAL RESPONSE PLAN.—


(2) REVISION OF RESPONSE PLAN.—Not later than 10 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

(3) MEMORANDUM OF UNDERSTANDING.—Not later than 60 days after the date of enactment of this Act, the Secretary and the Director of the Federal Emergency Management Agency shall adopt a memorandum of understanding to address the roles and responsibilities of their respective agencies under this title.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Minnesota (Mr. OBERSTAR) and a Member opposed each will control 10 minutes.

The Chair recognizes the gentleman from Minnesota (Mr. OBERSTAR).

Mr. OBERSTAR. Mr. Chairman, I yield myself 2½ minutes.

Mr. Chairman, over the past decade, the Federal Emergency Management Administration has come to be recognized as one of our most effective and widely respected Federal agencies. It has helped tens of thousands of our fellow citizens devastated by natural disasters, such as floods, fires, earthquakes, hurricanes, tornadoes and blizzards. But if we transfer FEMA to the Department of Homeland Security, we run the risk of undermining the mission and the effectiveness of the one agency, I should not say the one, but one of the few agencies of this government that touches the lives of Americans daily, that works effectively and smoothly and responds to the needs of American citizens where they are when disaster strikes.

Over the past several years, FEMA has responded to 927 federally declared disasters and 77 major disasters, natural hazards, floods, fire, hurricane, earthquake and tornado, responding effectively, helping Americans devastated, and, in the process, earning the respect and admiration of the Congress, our first responders, and other nations who have come to study our system to see how it works and try to emulate it.

Since 1976, FEMA has responded to 927 federally declared disasters and 77 major disasters, natural hazards, floods, fire, hurricane, earthquake and tornado, responding effectively, helping Americans devastated, and, in the process, earning the respect and admiration of the Congress, our first responders, and other nations who have come to study our system to see how it works and try to emulate it.

The former director of FEMA, James Lee Witt, who four years of effective FEMA to this highly respected, efficient status that we all admire today, said that its effectiveness was directly dependent upon its ability to stay out of the large bureaucratic maze of Washington agencies and was given permission to revise and extend his remarks.

Mr. WELDON of Pennsylvania. Mr. Chairman, I rise in opposition to the amendment, in spite of my high respect for the author of the amendment. I agree with the gentleman on the support for FEMA and on his support for James Lee Witt, who is a good friend of mine. In fact, I talk to James Lee on a regular basis. I was with James on a number of those disasters at the Murrah Building bombing, Hurricane Andrew, Hurricane Hugo, the Wildlands fires in California and Colorado, Loma Prieta, Northridge, and I was with Joe Allbaugh up at the World Trade Center in 93.

Let me tell you, Mr. Chairman, and I want all of my colleagues to listen, because 360 have joined with me and with my colleague, the gentleman from Maryland (Mr. HOYER), in joining the Fire Caucus; and when you signed up to join the Fire Caucus, you support the firefighters that you would work with them, that you would listen to them, because each of you in your district have hundreds of firefighters, both paid and volunteer, who are directly dependent upon its ability to stay out of the large bureaucratic maze of Washington agencies and was given permission to revise and extend his remarks.

Mr. Chairman, what did those firefighters say about this amendment? What are the fire fighting organizations saying? Let me read it into the RECORD, Mr. Chairman. Your constituents, when you belong to the Fire Caucus, and all of my colleagues on both sides of the aisle who belong better listen, the International Association of Fire Chiefs, the International Association of Fire Fighters, the International Society of Fire Service Instructors, the International Fire Service Training Association, the National Fire Protection Association, the National Volunteer Fire Council, the North American Fire Training Directors, are all unanimous. 1.2 million men and women in this country from 32,000 departments have said on the record, their first recommendation on their position paper for the Office of Homeland Security is that the Federal Emergency Management Administration be at the core of the Department of Homeland Security.

So if you are a Member of the Fire Caucus and you support this amendment, you are slopping your firefighters across the face like they do not matter. I am going to remind them. So I encourage my colleagues to vote against this amendment and support the firefighters, including the memory of my good friend Ray Downing.

Mr. OBERSTAR. Mr. Chairman, I yield myself 15 seconds.

Mr. Chairman, notwithstanding the gentleman’s enthusiasm, I do not think
that is a fair characterization of our amendment. It is not a slap in the face to firefighters. Our amendment is not a slap in the face to firefighters, with all due respect to the gentleman.

Mr. WELDON of Pennsylvania. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. OBERTAR. Mr. Chairman, I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Every fire organization opposes this amendment. Every one.

Mr. OBERTAR. Mr. Chairman, it is an overcharacterization, to use the gentleman's language.

Mr. COSTELLO. Mr. Chairman, I rise in support of the amendment offered by myself, the gentleman from Minnesota (Mr. OBERTAR), and the gentleman from Indiana (Mr. ROMNEY). This amendment will retain the independence of the Federal Emergency Management Agency rather than incorporate it within the Department of Homeland Security.

In the past 20-plus years, FEMA has become one of the best government agencies with responsibility for responding to, planning for, recovering from, and mitigating against disasters. FEMA currently coordinates the response activities of more than 25 federal agencies and numerous nongovernmental organizations with more than 2,500 full-time employees and over 5,000 standby disaster reservists.

The traditional role of FEMA includes advising on building codes and floodplain management; teaching people how to get through a disaster, helping equip local and State emergency preparedness; coordinating the Federal response to a disaster; and the list goes on and on. Mr. Chairman, these core responsibilities are unrelated to homeland security, but are of the utmost importance to our Nation.

Our amendment today will guarantee that FEMA will continue to focus on these tasks to prepare our Nation for disasters. Under our amendment, FEMA will remain independent and will not be absorbed into a large bureaucracy, a bureaucracy with no experience addressing these issues. Without the continuation of FEMA's independent role, we cannot ensure that the government will be able to effectively respond to and recover from disasters.

Mr. Chairman, FEMA has responded, as the ranking member, the gentleman from Minnesota (Mr. OBERTAR), has indicated, to over 1,000 federally declared disasters and emergency declarations. They have done the job very well. I believe that they need to maintain their independence in order for us to continue with that agency that has been very effective, both in its homeland security role and its national preparedness role, as an independent agency.

Mr. Chairman, I urge my colleagues to join me in support of this amendment.

Mr. ARMLEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERY).

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

Mr. Chairman, I oppose this amendment for two reasons. Number one, FEMA is central to the success of a Department of Homeland Security because it is the critical link to emergency responders.

Secondly, I oppose this amendment because FEMA will be stronger and in a better position to help natural disasters as a part of the Department of Homeland Security rather than out on its own as some independent agency.

Now, emergency responders are the central element of homeland security, not just in responding after something happens but in preventing things from happening. Through this FEMA structure and its 10 regional offices already established across the country, with its relationships it already has with State and local folks, information that comes into the Federal Government can be disseminated to the folks on the ground who need to know it and, therefore, they can help, better help prevent terrorism. And, at the same time, if they have information that they think we need to know in Washington, they have a channel of communication that they can use to come back up the other way.

FEMA is going to be the way we provide grants and training and information and planning to emergency responders. That is why it must be in this Department and it is central to our efforts to be successful.

But as we prepare to be better equipped to deal with terrorism, we are also better equipped to deal with tornados, hurricanes and floods and the things that FEMA has grown to do very well. If we go to the site of a disaster after it happens, it is pretty hard to tell the difference between whether it is a terrorist event or a flood. FEMA can do both well, as it is strengthened with the resources and with the relationships and as that critical channel of communication in the Department of Homeland Security.

Mr. Chairman, I urge my colleagues to oppose this amendment. This amendment will weaken the Department and weaken our security.

Mr. OBERTAR. Mr. Chairman, I yield 1 minute to the gentlewoman from Hawaii (Mrs. MINK).

Mrs. MINK of Hawaii. Mr. Chairman, I thank the gentleman for yielding me this time. I had an amendment which I submitted which is just about identical to this amendment that should follow, and I thank the gentleman for yielding me this time. This is a critical issue that we are debating tonight, this very amendment. I chair the Subcommittee on National Security that has oversight of FEMA, and we have oversight of terrorism at home and abroad. This is the central proposal of the Hart-Rudman, to keep FEMA as part of the homeland security. Preparedness, risk management, consequence management, emergency responders, it is the critical link to State and local responders.

I never figured out why a natural disaster, be it fire, chemical, biological, is any different than a man-made disaster, be it chemical, biological, or nuclear. The bottom line to me is we need to keep this as the central core of homeland security.

We have an amendment that I think will take some of the concerns of the author of this amendment, the Young amendment that should follow, and I think that is a happy compromise and will deal with the concerns of the ongoing FEMA responsibilities to continue. But the bottom line is this is the critical link to the responders, the State, and local responders. We need to keep FEMA as part of the homeland security office.

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

In response to the gentleman from Pennsylvania who spoke a moment ago and talked about the support of local fire departments, they all ought to be reminded of the headline in the Washington Post saying, “FEMA’s Influence May Be Cut Under New Department. The influence of the Federal Emergency Management Agency may be considerably diminished as Congress drafts legislation to create the new department.”

Mr. Chairman, I reserve the balance of my time.
Mr. ARMLEY. Mr. Chairman, it is my pleasure to yield 1 minute to the gentleman from Michigan (Mr. SMITTY).

Mr. SMITTY of Michigan. Mr. Chairman, just a comment. I chair the Subcommittee on Science which has oversight of the U.S. Fire Administration and the first responders.

The fact is that we need the experience of FEMA in this new Department of Homeland Security. I understand the argument that it would be nice to keep them separate, but the fact is they are the most experienced body. They have the tools, they have the equipment, they have the experience. I think we are not going to diminish what they are doing now, but we are probably going to expand the capabilities of what they do in responding to natural disasters.

The next amendment, I think, makes it clear that we have to keep FEMA together in this new Department of national security, and I trust that the gentleman making this first amendment is going to support that amendment, but I would say to my colleagues, vote against this amendment. The U.S. Fire Administration, the fire responders, the first responders believe that it is important that they stay in FEMA and that FEMA be part of this new homeland security.

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

Mr. Chairman, the Brookings Institution studied this proposal for a Department of Homeland Security and reached the same conclusion as former FEMA Director James Lee Witt with this observation:

"There is very little day-to-day synergy between the preventive and protective functions of the border and transportation security entities in the Department and the emergency preparedness and response functions a consolidated FEMA contributes. There is, therefore, little to be gained in bringing these very different entities under the same organizational roof. And the costs are not insignificant."

"FEMA," the report says, "would likely become less effective in performing its current mission in case of natural disasters, as time, effort, and attention are inevitably diverted to other tasks within the larger organization."

Prior to the time when we enacted the Stafford Act which statutes so overwhelmingly established in 1979, after we had shed its disaster, civil defense role, the Federal Government had had no coordinated or effective response to natural disasters, but FEMA became that response agency.

Now, if we create this really effective agency into a big bureaucracy, we know what happens. We all know in this Chamber what happens when a small agency gets into a big department and the big appetite for more money to be shuffled around with glibness. We can go from the agency to the next and suddenly, FEMA's will just dissipate and fritter away.

Mr. Chairman, I am in the enviable position of rising in support of the unanimous position of the Committee on Transportation and Infrastructure in reporting out our responsibilities toward homeland security, and that is the recommendation to keep FEMA as an independent agency.

All right. This is July 2002. Let us fast forward to July 2003. The majority has prevailed. FEMA is a box in the middle of the Department of Homeland Security. Flood waters are swirling around your city. You call for help. You get the Department of Homeland Security. The switchboard sends your call to the Under Secretary's office which looks up "disaster" on their organizational chart and sends you to the Congressional Liaison Office, which then promises to get a message back to you in 24 hours. Eventually, they find FEMA, by which time you are on the roof of your house waving a white handkerchief and screaming for help. FEMA, the word comes back, sorry, is looking for suspected terrorists some place in the hinterland of America and will get back to you as soon as we can.

This Department of Homeland Security is a bureaucracy in search of a mission. Do not give them FEMA's mission. It is too important to waste on this misguided department. There is that old barnyard saying, "If it ain't broke, don't fix it." FEMA ain't broke. Don't fix it by ruining it and sending it into the Department of Homeland Security. It is nimble, quick, lean, effective as an independent agency today. Keep it that way. Help your city, help your State, help yourself, help your firefighter by keeping FEMA as an independent agency where it belongs and has been effective.

Mr. ARMLEY. Mr. Chairman, I yield myself the remaining time.

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Mr. Chairman, there must be a reason why every firefighter organization in America has asked that FEMA be included in the Department of Homeland Defense, not only all the firefighters in this great land and all their organizations, but a dozen other professional emergency service organizations. Why is that? I think the gentlewoman from California (Ms. PELOSI) gives us some insight into why that would be the case. Throughout all of the hearings we held, the Administration's line of the mark-up, the gentlewoman from California said repeatedly locality, locality, locality.

When America is safe in our communities, America is safe. We know, we understand how a wildfire can go from the agency to the next and suddenly, FEMA's will just dissipate and fritter away.

Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate subsequent paragraphs accordingly.

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The text of the amendment is as follows:

Amendment No. 2 offered by Mr. Young of Alaska. Strike section 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 502(1) of the bill, strike "Except as provided in section 402, the" and insert "The".

At the end of title 5 of the bill, add the following (and conform the table of contents of the bill accordingly):

SEC. 506. ROLE OF FEDERAL EMERGENCY MANAGEMENT AGENCY

(a) In General.—The functions of the Federal Emergency Management Agency include, but are not limited to, the following:

(1) All functions and authorities prescribed by the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5121 et seq.).

(2) Carrying out its mission to reduce the loss of life and property and protect the Nation from all hazards by leading and supporting the Nation in a comprehensive, risk-based emergency management program—

(A) by taking sustained actions to reduce or eliminate long-term risk to people and property from hazards and their effects;

(B) by building preparedness, by building the emergency management profession to prepare effectively for, mitigate against, respond to,
and recover from any hazard by planning, training, and exercising;
(C) of response, by conducting emergency operations to save lives and property through prompt deployment of emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical care to those in need, and through allocation of critical public services;
(D) of recovery, by rebuilding communities so individuals, businesses, and governments can function on their own, return to normal life, and protect against future hazards; and
(E) of increased efficiencies, by coordinating efforts relating to preparedness and response activities to maximize efficiencies.

(3) REVISION OF RESPONSE PLAN.—Not later than 60 days after the date of enactment of this Act, the Director of the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan established under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12666 (59 Fed. Reg. 47491).

(4) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Emergency Management Agency, FEMA. This was recommended by the January 30, 2002 letter, is to oversee consequence management functions. But a terrorist attack, or a weapons of mass destruction—terrorist incident.”

Thus, ONP should be kept with the other training programs under the Under Secretary of the Border and Transportation Security and outside of FEMA.

Mr. Chairman, I have a dear colleague letter which I will include in the RECORD.

WASHINGTON, DC, July 25, 2002.

OPPOSE THE YOUNG (AK) AMENDMENT TO MOVE THE OFFICE OF NATIONAL PREPAREDNESS BACK TO FEMA

Dear Colleague: In the event of a terrorist attack, it is essential that there be a single office within the federal government to coordinate state and local first responders. This office must assure coordination in training, equipment selection, acquisition, and use by first responders in both crisis management and consequence management.

Crisis management is a primarily law-enforcement function. It involves intelligence, surveillance, tactical operations, negotiations, forensics, and criminal investigations, arrest, evidence collection and prosecutions. First responders include law enforcement, firefighters and other emergency responders, who must be trained together to assure a coordinated response.

However, it has been stated that it will NOT provide training and equipment needs to first responders for law enforcement’s crisis management functions. But a terrorist attack on the Federal government and a crisis event. Such an event requires a law enforcement response different from a response to a natural disaster.

In sharp contrast to FEMA’s natural disaster mission, the reason for the creation of FEMA’s Office of National Preparedness (ONP) was to coordinate consequence management and limit the damage as a result of a weapons of mass destruction (WMD) incident. ONP’s mission fits more appropriately with the other first responder programs.

Select Committee’s bill merging the Office of National Preparedness with the Office of Domestic Preparedness reporting to
the Under Secretary of Border and Transportation Security in essential to assuring the required federal coordination of state and local first responders, and assuring that they receive both law enforcement/crisis management training and consequence management training.

Mr. Young will offer an amendment to return the Office of National Preparedness to FEMA. Such a move would effectively gut any hope for a coordinated federal effort in this vital mission. Lack of coordination will cost lives. The attached article from last week’s New York Times vividly highlights this point and points out that the lack of a coordinated response by state and local law enforcement and firefighters likely caused additional avoidable casualties on September 11. We must make sure that any future terrorist threats that are addressed with a coordinated response, managed by a single office in the new Department of Homeland Security.

Moreover, such an office must be housed within the Under Secretary line of authority which has the needed law enforcement components, expertise and resources to assure that the crisis management component is given its proper emphasis. That is accomplished by the Select Committee’s bill.

As former FEMA director James Lee Witt stated “A Department of Homeland Security that has a focused mission and does not include a patchwork of unrelated programs will have a much greater chance at success. A successful Department of Homeland Security will ensure that horrible events, such as the WTO attacks, continue to be extremely rare occurrences and much less common than the hundreds of floods, tornados, and hurricanes that affect our nation each year.”

Many believe that the Office of National Preparedness has already distracted FEMA from its primary mission and created a balanced focus for an agency which generally responds to natural disasters. For that reason, if we are to prevent a terrorist attack we need a single office for a coordinated response. ONP should not go back to FEMA. Oppose the Young amendment.

Sincerely,

F. JAMES SENSENBNRNER, Jr.
Chairman, Committee on the Judiciary.

JOHN CONYRNS, Jr.,
Ranking Member, Committee on the Judiciary.

LAMAR SMITH,
Chairman, Subcommittee on Crime, Terrorism and Homeland Security.

HENRY J. HYDE,
Chairman, Committee on International Relations.

SAXBY CHAMBLISS,
Chairman, Subcommittee on Terrorism and Homeland Security of the House Intelligence Committee.

ROBERT C. SCOTT,
Ranking Member, Subcommittee on Crime, Terrorism and Homeland Security.

Mr. Chairman, this dear colleague letter was sent out a few days ago in opposition to the Young amendment to move the Office of National Preparedness back to FEMA. I would like to read the signatures on this letter, Mr. JAMES SENSENBINNER, Chairman, Committee on the Judiciary; JOHN CONYRNS, Ranking Member, Committee on the Judiciary; it is signed by me, Chairman, Subcommittee on Crime, Terrorism and Homeland Security; HENRY HYDE, Chairman, Committee on International Relations; SAXBY CHAMBLISS, Chairman, Subcommittee on Terrorism and Homeland Security; and ROBERT C. SCOTT, Ranking Member, Subcommittee on Crime, Terrorism and Homeland Security.

H.R. 5005, the Homeland Security Act as reported by the Select Committee, has put FEMA in the Emergency Response division under the Department of Homeland Security (DHS) and placed FEMA’s Office of National Preparedness (ONP) in the Border Security division with the other offices that train first responders. This structure is essential to ensure that the Department maintains its focus on prevention of terrorist acts.

Critically, the Border Security Division will assume responsibility over several different offices that administer training to all state and local responders, including offices, fire fighters, and other emergency responders. These offices were previously housed at the Department of Justice and FEMA.

Their new location in DHS will provide an integrated program, with the requisite expertise, to lead a comprehensive and coordinated effort to train our first responders, including law enforcement and consequence management training for a terrorist threat or attack.

Federal law enforcement authorities notify first responders of threats and the first responders must have crisis management training and equipment to respond appropriately. They must have the selection, and disruption skills, which are law enforcement skills. They will need fundamental law enforcement training to detect or collect evidence that will help prevent a future or halt an ongoing attack.

All first responders need these skills—including fire fighters and other emergency providers. Such skills will save lives. Such skills will help first responders prevent secondary attacks.

This is why the Office of National Preparedness (ONP) must be placed in the Border Security Division with the Office of Domestic Preparedness, and the National Domestic Preparedness Office training programs. Together, these programs will ensure a coordinated effort to provide first responders with the necessary law enforcement training as well as consequence management training.

This structure will create “one-stop shopping” that provides all the necessary training and assistance to state and local responders. “One-stop shopping” for ONP is placed back into FEMA because as Director Albaugh stated in a March 13, 2002 letter to the Judiciary Committee, FEMA will not provide law enforcement training.

Separating ONP from FEMA will not create duplication and fragmentation of federal assistance programs. In fact, it will eliminate such redundancy. Placing ONP back into FEMA will guarantee an inconsistent uncoordinated program where some first responders receive only consequence or clean up training and other responders will receive both crisis and consequence training.

Furthermore, placing ONP with the other training programs outside of FEMA will in no way harm its relationship with the U.S. Fire Administration (USFA). USFA assists ONP to organize training, planning and exercises for emergency responders. It will continue to do so regardless of ONP’s location. Currently, the USFA assists the Department of Justice in their planning, planning and training. Emergency responders and no one has suggested that the USFA should be moved over to Justice.

ONP does not belong in FEMA. I urge my colleagues to oppose the Young Amendment. Mr. YOUNG of Alabama, Mr. Chairman, if I can remind my good friend from Texas, they all came from the Committee on the Judiciary that signed that letter.

Mr. Chairman, I yield 2 minutes to the gentleman from Ohio (Mr. LATOURETTE), chairman of a very, very important subcommittee under the Committee on Transportation and Infrastructure that handles FEMA.

Mr. LATOURETTE, Mr. Chairman, I thank the chair for yielding me time.

Mr. Chairman, I want to preface my statement by making clear that I support our first responders and the vital work they do in protecting our citizens.

I also want to indicate my tremendous respect for the gentleman from Texas (Mr. SMITH) and the fine work he does for Congress and in the Committee on the Judiciary. But I am sad. I am sad because when we were dealing with the supplementary appropriations bill in this Congress, there is a turf battle that has developed. A turf battle that the President of the United States said we should not be having as we establish a Department of Homeland Security.

And the Committee on Judiciary sadly continues to come before the Members of our body and say they want to keep a program that the President of the United States says he wants to abolish, has defunded in the budget he sent here in February, and we have a fight over $175 million. And who is better to distribute that money to the first responders across America?

Is it a department within the Department of Justice or is it FEMA? The Department of Justice’s Office of Justice Programs is continuing to fund duplicative and overlapping programs. Our subcommittee has held numerous hearings on preparedness and response. The GAO has issued several reports on the issue. The subcommittee’s findings and independent studies are consistent in their message to the Congress, we must stop spending money on duplicative and overlapping programs.

Mr. Chairman, I respectfully request every member of the Committee on the Judiciary, but they are wrong. The gentleman from Alaska (Chairman YOUNG) is right and we need to support his amendment.

Mr. OBERSTAR, Mr. Chairman, I yield myself 30 seconds.

Mr. Chairman, this amendment supported by the chairman of the Committee on Transportation and Infrastructure is well-intentioned. In true sea captain fashion, he
is trying to repair the ship that has got a leak in the hull, and the leak in the hull is this scheme of taking an effective, functioning, useful agency that delivers goods, puncturing a hole in it and sending it over to the Department of Homeland Security where it serves no useful purpose that that department...

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

Mr. YOUNG of Alaska. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. SMITH), an outstanding supporter of the firefighters of America to speak on my amendment.

(Mr. WELDON of Pennsylvania asked and was given permission to revise and extend his remarks.)

Mr. WELDON of Pennsylvania. Mr. Chairman, we are here tonight, I hope, to help the people who are our first responders. We were not here to help Brooksing Institution. We are not here to help The Washington Post. We are not here to help the members of the Committee on the Judiciary. They are not out fighting fires. They are not out there dealing with disasters. They were not at the World Trade Center.

The first responders of this country have spoken. All of their national associations met, and the date of this document, which I will insert in the record, this document is their combined position paper on the creation of the Office of Homeland Security. It is not me. It is every firearm service organization. Do you belong to any of them? Do you belong to the fire caucus? Are you listening to your firefighters? Your paid firefighters, your volunteers, your chiefs, because they thought this through. And what is their first recommendation?

The Federal Emergency Management Agency which is tasked with emergency preparedness and response missions must be at the core of the Department of Homeland Security.

Now, speaking of what the leadership on the Committee on the Judiciary says. My friend from Texas (Mr. SMITTI) the Committee on the Judiciary, says this should be separate. Well, he ought to go back and talk to the firefighters in Texas because they do not want that. The fire service of this country, including all of those firefighters from Texas want the Office of Homeland Security to control FEMA and as a part of FEMA they want the U.S. fire administration.

Mr. Chairman, I cannot believe we are having this debate because this is not about a bunch of bureaucrats or politicians in Washington who are going to leave here and go respond to disasters. This is about the people who we are going to upon whom we might have told us what they want in black and white.

I will say it again, if we ignore what they want, I do not know what else we call it if it is not a slap across the face. It is a punch in the mouth because it is clearly stated what they want, and what we are saying is we do not care what you want. We do not care what you say. We do not care what you ask for. We do not care that you are the fire chief. We do not care that you are the firefighters. We are going to tell you from Washington inside the Beltway that we know better than you do because Brooksing Institution told us how to organize this Department.

Vote for the firefighters. Vote for this amendment, and vote down the President's position paper. And new training can track the positions of firefighters inside buildings.

These are some important components of this report for a Department of Homeland Security. We ask for both Congress and the administration to give these their every consideration as they lay the groundwork for a new federal agency. Firefighters we are going to tell you. We do not care what you say. We do not care what you ask for. We do not care that you are the fire chief. We do not care what you are telling us. We are going to tell you from Washington.

The American fire and emergency service was very encouraged when the President proposed the creation of the Department of Homeland Security, especially since it has long advocated the need for a central point-of-contact for terrorism preparedness. Much has changed in the post-September 11th world, but one thing has remained constant: America's fire service must have the adequate personnel, training, and equipment to respond to critical incidents, including terrorist attacks, hazardous materials and emergency medical services incidents, technical rescues and fires. These, plus many others, is what makes the fire service America's all-hazards first responders.

In developing a new department, Congress and the administration must consider a number of crucial issues or the department will fall short of meeting its desired intent:

1. The Federal Emergency Management Agency, which emergency preparedness and response missions must be at the core of the Department of Homeland Security. This guiding principle must manifest itself during the planning and development of a new department. To achieve this end, it is imperative that the fire and emergency service has significant representation at the table throughout the entire planning process.

2. The definition of a “first responder” must be broad from the onset, placing heavy emphasis on response times and exposure to risks. First responders are fire and rescue, emergency medical services personnel and other first responders will always be first to arrive at the scene that must be properly staffed, trained, and equipped in order to make a positive difference at the “moment of truth.” It is imperative that the first responders are given the required support needed to enhance their level of readiness and decrease their exposure to risks.

Priorities

ASSISTANCE TO FIREFIGHTERS GRANT PROGRAM

The Assistance to Firefighters grant program, commonly referred to as the FIRE Act program, is a model of efficiency. This can be attributed to the fact that it is a competitive funding program. Funding support to local fire departments for basic fire fighting needs. Another important element of this grant program is that applications are peer-reviewed by fire service experts and grants are made on the basis of needs. Full community participation is assured by the matching grant requirement.

It is crucial that the firefighters grant program remains separate and distinct from any new funding programs for first responders and that it be fully funded. The grants authorized in the bipartisan Oberstar amendment.

The tragic events of September 11th forever changed in the post-September 11th world, but one thing has remained constant: the firefighters. We are going to tell you the firefighters. We are going to tell you what we are saying is we do not care what you say. We do not care what you ask for. We do not care that you are the fire chief. We do not care what you are telling us. We are going to tell you from Washington.
$3.5 billion first responder grant program. The program is uniquely positioned to promote desperately needed coordination between neighboring jurisdictions and various first response agencies. To ensure that the money is wisely spent, several principles should be included in the program.

First, at least 90 percent of the money must reach the local level. The funding should go to the States, but it should not stop there. While terrorism is an attack upon our Nation, every terrorist attack is first an attack upon a local community. The ability of our Nation to effectively combat terrorism is therefore inextricably intertwined with the ability of our local communities to respond to such attacks. Thus, a paramount job of the Federal Government is to provide the critical resources to local emergency response operations.

Secondly, the State agencies that distribute this funding must include all first responder interests in the decision making process. Too often the fire service is left out of discussions at the State level. This oversight must be corrected.

Thirdly, the States must expedite the funding to local governments. States are already undertaking risk assessments for terrorism preparedness, so within a limited amount of time the funding should be distributed to local governments.

Finally, funding from State and local governments is part of the requirement for receiving Federal funds, then State and local in-kind contributions should meet, in full, that requirement.

**STANDARDIZATION OF EQUIPMENT**

The InterAgency Board for Equipment Standardization and InterOperability (IAB) is designed to coordinate and coordinate local, state, and federal standardization, interoperability, and responder safety to prepare for, respond to, mitigate, and recover from any incident by identifying requirements for chemical, biological, radiological, nuclear or explosive incident response equipment. In addition to radio communication systems, interoperability applies to a firefighter’s protective gear, rescue equipment, for instance, air cylinders of one manufacturer of self contained breathing apparatus cannot be interchanged with those from another. The purpose of the IAB is to ensure standardized and compatible equipment for use by emergency response personnel. The First Responder grant program should require that the Standardized Equipment List (SEL) prepared by the IAB be utilized for the purchase of equipment as much as possible by the federal grant.

SAFECOM

SAFECOM was formed as an e-government initiative with its purpose to improve wireless radio communications among and between local authorities. Recently, the scope of SAFECOM was expanded to include state and local government and the lead agency was changed to FEMA. Since this is the primary federal initiative to improve wireless radio communications and interoperability for local fire and emergency medical services departments it is essential for the fire service to have representation on advisory committees to SAFECOM. Local public safety first responders must have appropriate input to federal SAFECOM decision makers.

**Conclusion**

Future events will require continuous review and evaluation of all federal programs designed to mitigate the potential impact of terrorist attacks and other major disasters. In highlighting the primary theme of this report, it is imperative that those agencies at the local level, the fire and emergency services, emergency medical services and law enforcement—serve a primary role in the development of all federal initiatives designed with national homeland security initiatives.

Mr. OBERSTAR. Mr. Chairman, I yield myself 1½ minutes.

I love the enthusiasm of the gentleman from Pennsylvania, Mr. Chairman. He can get fired up and enthusiastic, but let me make it clear to this body that the gentleman from Pennsylvania does not speak alone for firefighters across America. They have been misguided. I do not know who wrote their position paper for them, but it is clear that the firefighters that I have talked to in my district have said we did not think this is a particularly good idea.

FEMA works well now. What is going to happen to the Office of Fire Training and the small grants for small communities when this effective agency is swallowed up into the guts of a huge bureaucracy of 170,000 people? And for all the enthusiasm of my good friend, and I admire this gentleman and we have worked together on a number of matters; for all his enthusiasm, Mr. Chairman, I warrant we will be back here a year from now when the gentleman from Pennsylvania and others who might be so misguided as to vote for keeping the position of the Select Committee on Homeland Security, be back here saying, what has happened to the money? We need more funds for FEMA; we need more funds for firefighting. It is being swallowed up by the Department; these dollars have been shifted around.

Does the gentleman from Pennsylvania have a firewall to protect the funds for FEMA from being swallowed up into some other part of the Department of Homeland Security? Not on my colleague’s life. It is not part of this bill. There is no way to protect FEMA from the overarching, swarming arms of the Department of Homeland Security.

Mr. YOUNG of Alaska. Mr. Chairman, I yield 2 minutes to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, the gentleman from Minnesota (Mr. OBERSTAR) is still arguing his first amendment maybe. If we break off part of FEMA and that part of FEMA gets the $3.5 billion that we are talking about for additional training, then we move the whole U.S. fire administration away and we move the rest of FEMA away from that kind of decision.

I support the Young amendment, which would ensure that the Federal Emergency Management Agency’s Office of National Preparedness is not broken off from the rest of FEMA and does not become part of the Under Secretary for Border Transportation and Security, but that it remains with FEMA, with the rest of FEMA as part of the Under Secretary for Emergency Preparedness and Response.

I think we all agree that emergency preparedness response activities will provide a critical role in the new Department of Homeland Security and has properly been selected as one of the four primary functions of the Department. I am chairman of the Committee on Science, Subcommittee on Research, and a Member that is actively involved in the first responder activities overseeing the U.S. fire administration.

All of the fire organization first responders think that FEMA should not be broken up, that the Young amendment should be passed; and I can tell my colleagues that there is no better agency to lead in this effort than FEMA. FEMA has the right personnel, the right resources and considerable experience demonstrating their ability to lead.

For these reasons, I believe that it is extremely important that we should protect and even expand FEMA’s leadership role in this area. Most important, in protecting this role is keeping FEMA responsible for the $3.5 billion first responder grant initiative that the President proposed in his budget this year.

This is what the Young amendment does; and Mr. Chairman, let me emphasize that in the administrative policy that the President sent over today, they support the Young amendment. Unfortunately, with some political maneuvering from the Judiciary, it was mixed up in this, and I think the whole body should support the Young amendment, keeping FEMA together and keeping it active and keeping it organized and helping our first responders.

Mr. OBERSTAR. Mr. Chairman, could the Chair advise the time remaining.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) has 5 minutes remaining. The gentleman from Alaska (Mr. YOUNG) has 1½ minutes remaining. The gentleman from Alaska (Mr. YOUNG) has the right to close.
Mr. OBERSTAR. Mr. Chairman, I yield myself such time as I may consume.

For the purpose of propounding a question to the chairman of our distinguished committee, Mr. Chairman, I would ask the gentleman from Alaska if he has any information about plans of the administration, any assurances in writing about the status of the first responder program and the status of the firefighter grant program in the new Department of Homeland Security?

Mr. YOUNG of Alaska. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Alaska.

Mr. YOUNG of Alaska. Mr. Chairman, the information I have, and again, I do not have anything in writing, they have testified in favor of my amendment, have written in favor of the amendment; and I think it is up to the Congress and I talked to the gentleman from Pennsylvania (Mr. WELDON) about it to make sure, as this new agency is created, we fund FEMA in toto as it should be to carry forth its duties.

If the gentleman would further yield to me, what I am trying to do here is, I told the gentleman, if I had my way, I would be supporting the gentleman’s amendment, as the committee did, but realistically, I do not think that is possible. So I have to do what is best for FEMA, and keep it as an entity and not have it split up because that would be a disaster, as the gentleman and I know. So that is really what I am trying to do is put everything back together again. I think it was inadvertently split apart.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, I just want to return to a letter of the International Association of Firefighters that was referenced in a previous debate on the floor to point out that the association says the Fire Act, meaning the small community grant program and the first responder proposal, serve different purposes and one should not subsume the other. That is what is going to happen if we swallow this agency, FEMA, up into this huge bureaucracy.

Mr. SMITH of Michigan. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Michigan.

Mr. SMITH of Michigan. Mr. Chairman, we have a bill in the Committee on Science, the Subcommittee on Research. This bill that I introduced makes it very clear that the fire grant program is separate and distinct and the U.S. Fire Administration is still going to continue to administer that program separate from what might be broken off from FEMA.

Mr. OBERSTAR. Mr. Chairman, I appreciate the gentleman’s bill, but it is not part of the Homeland Security Department, is not part of the administration or the legislator’s amendment. It is not part of the legislation pending before us, and it is sort of kind of a pig in a poke, is a promise in waiting, is not a good service to the firefighters of this country.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, I would just remind my good friend that it was not his committee that created the fire grant program. It was this gentleman who brokered the fire grant program as an addition to the defense authorization bill. It was not the gentleman, it was not James Lee White who requested money for the firefighters which the gentleman is now so desperately saying is going to be taken away.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, the gentleman’s enthusiasm is wonderful. No speaker, Mr. Chairman, has impugned the gentleman’s standing. In fact, I have praised the gentleman’s enthusiasm for the firefighters. In fact, I have been a most unexpected advocate of FEMA, and then the gentleman’s colleague, now Secretary in waiting for the Department of Homeland Security, was a member of this body when I held hearings on the proposal of the Reagan administration to, in effect, disband FEMA, and we reestablished FEMA. I asked the gentleman from Pennsylvania, Mr. Ridge, to be the sponsor of the legislation so that we would have bipartisan support for it.

FEMA is an entity that we keep it together, we split up FEMA, and I admire the work that the gentleman from Pennsylvania in the well has done on the fire grant program; and I do not want it to be swallowed up in some huge bureaucracy and crossbred with some other program.

Mr. WELDON of Pennsylvania. Mr. Chairman, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Mr. Chairman, I am grateful for the outstanding work the gentleman’s done, and I would remind him, when I first came to Congress and the gentleman was in the majority, he had dismantled the U.S. Fire Administration. He had put the fire academy under the National Emergency Management Training Center so the firefighters in this country were totally at a loss because he had taken away everything that had stood for them.

Mr. OBERSTAR. Mr. Chairman, reclaiming my time, the gentleman impugns to me an action that I did not take. The gentleman impugns to me an action that I did not take that was initiated by an administration and an action that I was not in support of.

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself the remaining time.

I would like to just say a couple of small things about this. I hope the gentleman from Minnesota understands what I am saying; I am confident he does. I hope the rest of the committee understands that FEMA separated, as proposed by the ad hoc committee, would be a disaster. The President supports my position. I believe every member of the committee other than the Committee on the Judiciary supports my position, and I ask for a “yes” vote on this very important document.

Much has been said tonight about who supports the firefighters the most. I will say the gentleman from Pennsylvania (Mr. WELDON) is outstanding in that arena, but I also say that the gentleman from Minnesota (Mr. OBERSTAR) is outstanding in that arena, and the gentleman from Minnesota’s (Mr. OBERSTAR) intent to keep FEMA outside of the separate agency should be admired.

I do not think it is a reality, but in saying that, if it is not outside, let us make it whole. Let us make it as one. Let us make it an entity where we know where the money is going. Let us not make it an entity that goes into another agency that has frankly misused their dollars, has not used them correctly. In fact, the GAO says that, and I think it has been raised up before that let us keep this agency intact, let us make sure it works, let us make sure our constituents can be responded to if there is a national man-made disaster, so we have somebody to turn to and they have somebody to listen to and our constituents are served.

That is all I am asking in this amendment. I urge a quick passage of this amendment.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Alaska (Mr. YOUNG).

The amendment was agreed to.

Mr. ARMLEY. Mr. Chairman, pursuant to section 4 of House Resolution 502 and the order of the House of earlier today, I announce that the amendment by the gentleman from California (Mr. WAXMAN), No. 3 in the House Report 107-615, may be offered after consideration of the amendment numbered 16. Because the committee will rise this evening immediately after consideration of amendment No. 16, the amendment from California’s (Mr. WAXMAN) amendment will be the first amendment in order tomorrow morning.

The CHAIRMAN. It is now in order to consider amendment No. 4 printed in House Report 107-615.

AMENDMENT NO. 4 OFFERED BY MR. COX

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. Cox:

In section 201(5), insert the following before the period at the end:

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 4 offered by Mr. COX:
technological assets that support such systems".

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. COX) and a Member opposed to control 5 minutes.

The Chair recognizes the gentleman from California (Mr. COX).

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

This amendment will specifically include cybersecurity as a function of the Department of Homeland Security. The amendment is supported by the Bush administration, and it was crafted with the assistance of the Committee on Energy and Commerce; and, Mr. Chair-

man, I would like to commend the distinguished gentleman from Louisiana (Mr. TAUZIN), the chairman of the Committee on Energy and Commerce, and the distinguished gentleman from Michigan (Mr. DINGELL), the ranking member, for their work in putting together this provision.

□ 2315

Just this week, the Committee on Government Reform received testimony warning of the significant threat of attacks on the Nation's information infrastructure. We learned how terrorists or hostile foreign states are building the capability to launch computer attacks on critical systems with the aim of severely damaging or disrupting national defense and other critical operations.

While much of this information is necessarily secret, there is ample open source information we can discuss on the floor this evening.

The Washington Post, in a recent page one story on cyberattacks stated, "Terrorists are at the threshold of using the Internet as a direct instrument of bloodshed. The new threat bears little resemblance to familiar financial disruptions by hackers responsible for viruses and worms. It comes, instead, at the meeting points of computer and the physical structures that they control. By disabling or taking command of the floodgates in a dam, for example, or of substations handling 300 volts of electric power, an intruder could use virtual tools to destroy real world lives and property."

The amendment that I am offering will make it clear that responsibility for mounting a coordinated national effort at cybersecurity rests with the Department of Homeland Security. Specifically, it will designate the position of Under Secretary for Information Analysis and Infrastructure Protection as the individual in the United States government who is specifically charged with cybersecurity. It provides that the Under Secretary is responsible for preventing and defeating computer attacks aimed at America's electric power production, our electric power distribution, including power grids, our information systems, including commercial and public telecommunication systems, satellites, the banking system, electronic commerce, and emergency preparedness systems, including our civil defense network.

This amendment is needed for two reasons: First, while the base bill gives the new Department of Homeland Security the responsibility of protecting our nation's information infrastructure, this term is left largely undefined. When it comes to our Nation's information technology and communications infrastructure, we want there to be no mistake, no ambiguity. This amendment will define the term "infrastructure" in this Act, we are talking about more than roads and sewers.

By naming the specific threats we know that we face today, and by carefully enumerating the major critical information systems we intend to protect, we will be certain of consolidating both responsibility and authority for this function in one person in the Department of Homeland Security. That is why this amendment is needed is to ensure that the Department of Homeland Security will work to protect not just the government's, but the entire Nation's critical communications, power grids, and other infrastructure assets. As much as 90 percent of our Nation's critical information technology infrastructure, such as financial records, energy distribution, and communication systems are privates owned and managed. Cybersecurity is, thus, an issue that goes far beyond the Federal Government's own assets.

Last November, in testimony before the House Committee on Energy and Commerce, Representative Dave McCurdy, now the head of the Internet Security Alliance, reported that the private sector is under constant widespread and destructive cyberattack. He noted that over 80 percent of the Internet is owned and operated by the private sector.

Two years ago, the Carnegie Mellon Software Engineering Institute documented more than 20,000 incidents of cyberattacks against private U.S. firms. Last year, the following year, in 2001, that number of cyberattacks nearly doubled.

The CHAIRMAN. Does any Member claim time in opposition to the amendment?

If not, the question is on the amendment offered by the gentleman from California (Mr. COX).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 5 printed in House Report 107-615.

AMENDMENT NO. 5 OFFERED BY MR. ISRAEL

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 5 offered by Mr. ISRAEL:

SEC. 309. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE

(a) ESTABLISHMENT.—There is established within the Department of a Homeland Security and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—(1) The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergen-

ce first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of state, including economically disadvantaged commu-

nities. The individuals appointed as members of the Advisory Committee shall be appointed in such a manner so that a majority of the members of the Advisory Committee are from regions that are not already represented on the Advisory Committee.

(2) The Advisory Committee shall consist of from two to five of the following:

(A) Members of the Congress;

(B) Citizens of the United States who are experts in specific areas of national security, including:

i. Civil defense and emergency preparedness systems, including our civil defense network;

ii. Power production, our electric power distribution, including power grids;

iii. Information systems, including commercial, public, and private telecommunication systems, satellites, the banking system, electronic commerce, and

iv. Critical infrastructure, including our civil defense network, power production, our electric power distribution, including power grids, our information systems, including commercial and public telecommunication systems, satellites, the banking system, electronic commerce, and

(c) The Advisory Committee shall meet at least quarterly for the purpose of discussing matters relevant to the subjects designated under this amendment and shall be provided access to any agency records and personnel necessary to discharge its functions.

(d) The Advisory Committee shall keep a record of all its meetings and shall provide such records to the Chair of the Committee on Homeland Security and Technology Advisory Committee (in this section referred to as the "Advisory Committee"). The Advisory Committee shall make recommendations with respect to the activities of the Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.
I offer this amendment in the belief that we should value our first responders, but also accept their invaluable advice.

Ms. PELOSI. Mr. Chairman, will the gentleman yield?

Mr. ISRAEL. I yield to the gentlewoman from California.

Ms. PELOSI. Mr. Chairman, I want to commend the gentleman for his leadership. This combines two very important issues having to do with the Department of Homeland Security, one of which is the use of science and technology. To the extent that this new Department can maximize the technological capabilities, I believe it will be more successful.

And as the distinguished majority leader quoted me as saying earlier in the debate, localities, localities, localities, that is the most important consideration that we should have when we talk about where the threat exists, where the need for resources are. Communication with those localities is where we should begin and end the development of protecting the American people.

So I commend the gentleman for his leadership, for his entrepreneurial spirit of his suggestion, and I hope the body will accept it. I urge my colleagues to support it.

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

The CHAIRMAN. The question is on consideration of amendment No. 6 printed in House Report 107-615.

AMENDMENT NO. 6 OFFERED BY MS. RIVERS

Ms. RIVERS. Mr. Chairman, I offer an amendment. The CHAIRMAN. The Clerk will designate the amendment. The text of the amendment is as follows: Amendment No. 6 offered by Ms. Rivers:

At the end of title III, insert the following new section: SEC. 309. INQUIRIES.

(a) OFFICE.—The Secretary, acting through the Under Secretary of Science and Technology shall, in consultation with the Secretary of Defense, establish an office to serve as a point of entry for individuals or companies seeking guidance on how to pursue proposals to develop or deploy products that would contribute to homeland security. Such office shall refer those seeking guidance on Federal funding, regulation, acquisition, or other matters to the appropriate unit of the Department or to other appropriate Federal agencies.

(b) FUNCTIONS.—The Under Secretary for Science and Technology shall work in conjunction with the Technical Support Working Group (organized under the April, 1982, National Security Decision Directive Number 55) in performing the following functions:

(1) screen proposals described in subsection (a), as appropriate;

(2) assess the feasibility, scientific and technical merits, and estimated cost of proposals screened under paragraph (1), as appropriate;

(3) identify areas where existing technologies may be easily adapted and deployed to meet the homeland security agenda of the Federal Government; and

(4) develop and oversee the implementation of homeland security technology demonstration events, held at least annually, for the purpose of improving contact among technology developers, vendors, and acquisition personnel.

Amend the table of contents accordingly.

The CHAIRMAN. Pursuant to House Resolution 502, the gentlewoman from Michigan (Ms. RIVERS) is recognized.

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

This past fall, when the anthrax outbreak hit Capitol Hill, a company in my district approached me with a product they had developed they felt could be of significant use in the decontamination efforts here in Washington.

For weeks, my staff and I tried to get this company in touch with the correct agency or find someone willing to learn about the product and determine if it could be of use.

Whether or not this company did indeed have the miracle cure is not the point, rather there should be an easier way to facilitate contact between scientists and developers, local level and decision-makers within the Federal Government. This amendment speaks to that very need.

Now, it is my understanding that the elements of my amendment, which was added in the Committee on Science, have actually been folded into this bill, and I am very pleased to hear that, I want to thank the chairman of the Committee on Science, the gentleman from New York (Mr. ISRAEL), and all of your colleagues who supported the amendment in committee, for his leadership in this matter.

I would also like to thank the gentlewoman from California (Ms. HART), the gentleman from Virginia (Mr. WINTER), the gentleman from Connecticut (Mr. SHAYS), the gentleman from Georgia (Mr. CHAMBLS), for the bipartisan cooperation that occurred in getting effective practical language into the manager's amendment. And, Mr. Chairman, the gentlewoman from Texas (Mr. HALL) was helpful as well.

This amendment specifically tasks the Under Secretary for Science and Technology to work with the Technical Support Working Group, TSWG, a Defense Department group that has the infrastructure in place to help mobilize existing technologies for our national security needs.

Homeland Security and TSWG will work together to review proposals, assess their feasibility, and identify areas where current technology could be adapted and deployed immediately. This would be tremendous progress from the status quo.

Through them and a couple of issues, like a point of entry for individuals or companies seeking guidance in interaction with the government, in other words, we must have an open door for people with unsolicited ideas who do not know how to work their way around the Federal Government, these are not a part of the language currently in the bill. I believe that we can

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary of Science and Technology additional reports on specific policy matters as it considers appropriate.

(1) FACExEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

Amend the table of contents accordingly.
work together to develop in conference information to clarify and improve this, and I believe the language can be achieved relatively easily.

Ms. PELOSI. Mr. Chairman, will the gentlewoman yield?

Ms. RIVERS. Mr. Chairman, I commend the gentlewoman for her leadership on this important issue.

As the chairman knows, on the Permanent Select Committee on Intelligence, where we both serve, we have a great need for "needs and leads." Certainly, the Federal Government and the intelligence community and the Department of Homeland Security benefits from leads that it receives from businesses coming forward with new entrepreneurial ideas that we have not even thought of.

We also have many needs that we are reaching out to businesses to fill. The Office of Inquiries within the Department of Science and Technology would act as a point of entry, as the gentlewoman suggested. It is an excellent idea to accommodate the system of "needs and leads," and also contributes to maximizing the technological capabilities of our country to make the Department of Homeland Security even more successful in protecting the American people.

The gentlewoman from Michigan has done a great service in successfully pushing this amendment. I commend her for it, and I urge my colleagues to support it.

Ms. RIVERS. Mr. Chairman, I ask unanimous consent that my amendment be withdrawn.

The CHAIRMAN. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

The CHAIRMAN. The amendment is withdrawn.

It is now in order to consider amendment No. 7 printed in House Report 107–615.

AMENDMENT NO. 7 OFFERED BY MS. WOOLSEY

Ms. WOOLSEY. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 7 offered by Ms. WOOLSEY: At the end of title III, insert the following new section:

SEC. 309. HOMELAND SECURITY INSTITUTE.

(a) Establishment.—The Secretary shall establish a federally funded research and development center known as the "Homeland Security Institute" (in this section referred to as the "Institute").

(b) Administration.—The Institute shall be administered as a separate entity by the Secretary.

(c) Duties.—The duties of the Institute shall be determined by the Secretary, and mayinclude the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructure and the effectiveness of the systems deployed to reduce those vulnerabilities.

(2) Economic and policy analysis to assess the distributed costs and benefits of alternative approaches to enhancing security.

(3) Evaluation of the effectiveness of measures designed to enhance the security of critical infrastructure, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards would improve interoperability and effective utilization of tools developed for field operators and first responders.

(5) Assistance for Federal agencies and departments in establishing testbeds to evaluate the effectiveness of technologies under development and to assess the appropriateness of such technologies for deployment.

(6) Design of metrics and use of those metrics to evaluate the effectiveness of homeland security programs throughout the Federal Government, including all national laboratories.

(7) Design of and support for the conduct of homeland security-related exercises and simulations.

(8) Creation of strategic technology development plans to reduce vulnerabilities in the Nation's critical infrastructure and key resources.

(d) Consultation with Institute Activities.—The Institute shall consult with the Government and other organizations described in subsection (c) to the extent appropriate.

(e) Annual Reports.—The Institute shall transmit to the Secretary and the Congress an annual report on the activities of the Institute under this section.

Amend the table of contents accordingly.

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

Mr. Chairman, my amendment requires the Secretary to create a Homeland Security Institute. It will be an independent, federally-funded research and development center: A think tank. That same style organization that will contract with the Department to provide objective analysis and to advise on science and technology issues.

In the Committee on Science, we voice-voted with no opposition the creation of this institute. I was pleased that the gentleman from New York (Mr. BOEHEMERT) supported it in committee, and hope that he will also support it this evening. Since it was dropped in the version by the gentleman from Texas (Mr. ARMELY), I commend the Committee on Rules for bringing it before the House for consideration.

The concept for a homeland security institute is based on the key recommendation from the National Academy of Sciences' June 2002 report entitled Making the Nation Safer: The Role of Science and Technology in Countering Terrorism. Government agencies, including the Departments of Defense, DOE, DHS and the National Science Foundation, currently sponsor more than 35 institutes like this amendment proposes.

Let me give an example of how the institute could work. First responders from different jurisdictions and departments often have difficult times communicating during a crisis. An appropriate role for the institute would be to work with Federal, State and local agencies to develop the technology and implement the standards necessary to communicate effectively in a crisis.

The fact is that existing Federal agencies may not have the expertise to supply the data and breadth of technical expertise needed. Many of those with the necessary analytical and technical skills necessary do not work for the government. Instead, it is more likely that they could be working at one of these institutions, like the Rand Corporation or the Institute for Defense Analysis, or in academia.

Considering the technical nature of the threats before us, the brightest minds of our time must be at the table. Just because these individuals do not draw their paycheck from the Treasury Department does not mean that we should not tap their expertise.

Mr. Chairman, this amendment will ensure that the Department of Homeland Security has outside objective expertise available at all times. I hope that the committee will support my amendment.

The CHAIRMAN. Does any Member claim the time in opposition to the amendment?

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

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from California (Ms. WOOLSEY).

The CHAIRMAN. The amendment is now in order to consider amendment No. 8 printed in House Report 107–615.

AMENDMENT NO. 8 OFFERED BY MR. CARPIN

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 8 offered by Mr. CARDIN: In section 401(1), add the following at the end:

"The functions, personnel, assets, and obligations of the Customs Service so transferred shall be maintained as a distinct entity within the Department.".

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Maryland (Mr. CARDIN) and the gentleman from Texas (Mr. ARMELY) each will control 5 minutes.

The Chair recognizes the gentleman from Maryland (Mr. CARDIN).

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

Mr. Chairman, this amendment is consistent with the underlying legislation. It would treat the U.S. Customs Service in a similar way that the Service and the Coast Guard are treated under the bill. All three of these agencies have critical homeland security functions as well as non-homeland security functions.

It does not affect the provisions in the bill that deal with the trade and revenue functions of the Customs Service that was included in the bill. That actually has a greater protection than would be for the nontrade and revenue
services within the Customs Agency. This affects about 75 percent of the agency, and 25 percent is already covered under the trade and revenue functions.

Basically this provides for congressional oversight in the Customs Service. This is particularly important because it deals with such a large part of the agency involved.

The Secretary, the administration, would have the ability to reorganize the Customs Service upon giving notice to Congress, and we would be preserving congressional oversight in regards to the functions of the Customs Service.

I think this is an amendment that is totally consistent with the way that we have treated other agencies that are going into this new Department. I would encourage Members to accept this amendment.

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

Mr. Chairman, the gentleman from Maryland (Mr. CARDIN) is a very well respected member of the committee of jurisdiction, and it is quite appropriate for the gentleman to raise this subject.

Mr. CARDIN. Mr. Chairman, this is a subject that was considered, as many subjects were, with respect to, I think, a very fundamental question, to what extent do we want to maintain a synthesis of activities that complement one another and be able to coordinate these activities in such a way as to create some sort of symbiosis that would give us better efficiencies in the use of resources, complements in the process information-sharing between them, and coordinated efforts with respect to either discovery or interdiction.

It has been the position of the committee as negotiated with the White House, and one of the things that we on our Select Committee were quite pleased about was the manner in which the Committee on Ways and Means worked out details with the White House.

My position on this matter would be that it risks upsetting this very carefully agreed-upon provision from this committee, and I believe it runs counter to the overall larger plan which we see in so many agencies to keep resources together, keep people working with one another, and complement them with respect to their resource capabilities.

In all due respect, I must resist the gentleman’s amendment.

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

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

Mr. Chairman, let me assure the gentleman from Texas (Mr. ARMNEY) that this amendment does not affect at all the underlying provisions concerning trade and revenue functions within the Customs Service. They actually have much greater protection than is provided in this amendment for the rest of the agency.

I would just encourage the majority leader to please look at page 50 of the underlying bill where the language is identical to where it says the Coast Guard in the Department of Transportation, which shall be maintained as a distinct entity within the department. I believe this is unambiguously identical language for the remainder of the Customs Service. It is the remainder, not that which is included with the arrangements worked out between the gentleman from California (Mr. THOMAS) and the White House on the revenue functions and on the trade functions.

We are dealing here with the other functions of the agency. It provides for appropriate congressional oversight without interfering with the trade and revenue functions of the Customs Service.

This amendment says that there will be an entity that deals with the nontrade and revenue-related aspects of the U.S. Customs Service that is not trade and revenue-related. It is totally consistent with how other agencies that are being transferred into homeland security are handled as far as flexibility within the executive branch and oversight within the congressional branch. It does not provide the same protections as we provide for the revenue and trade functions, so it is not at all inconsistent with what was worked out as far as the trade and revenue functions of the Customs Service.

Without this amendment, we have, I think, a void in the legislation. I do not think that it is, quite frankly, properly drafted without this. I really look at this almost as a technical amendment in order to assure that the 75 percent of the agency that is being transferred over that they do exist. Otherwise, we have the United States Customs Service, which is really only 25 percent of the whole. This makes it clear that 75 percent is being transferred over to the new agency, and 25 percent is protected as far as the revenue and the trade function. The other 75 percent is treated as we have treated other agencies which are being transferred over, which is not as great. I urge Members to accept my amendment.

Mr. ARMNEY. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, the gentleman from Ohio (Mr. PORTMAN) asked me to convey that the Committee on Ways and Means carefully considered the Customs Service transfer, and came up with what he felt was an elegant recommendation which the Select Committee accepted. The Committee on Ways and Means decided that the Customs Service is vital to homeland security and central to an effective department; splitting the agency made no sense; and trade and tariff collection policy must remain at Treasury.

The solution is to place the whole Customs Service in homeland security, but the trade and tariff collection policy will continue to be managed by the Treasury Department.

The gentleman from Ohio (Mr. PORTMAN) feels this is a good solution. The President urged the Congress to overcome their jurisdictional concerns to come together for the good of the entire country. The gentleman from Ohio (Mr. PORTMAN) feels that the Committee on Ways and Means are champions, and has had jurisdiction over the Customs Service since 1789. It knows the Customs Service is vital to homeland security.

Mr. ARMNEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERY) to close on our side.

Mr. THORNBERY. Mr. Chairman, I yield the balance of my time to the gentleman from Connecticut (Mr. SHAYS).
the objects to make sure that bombs are not coming over the border.

In other words, that is a much harder thing to separate. So that 75 percent that used to be the Customs Service is going to be weaved into this one team with the border patrol and with the APHIS inspectors and another border security entity, not separate entities that are on their station at the border, but one entity with the same bosses, the same regulations, the same uniforms, the same databases and the same radio. The extent that this amendment keeps the Customs Service out separate, it makes it harder to have one team at the border so we can be secure.

Mr. Chairman, I think this amendment should be rejected.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Maryland (Mr. CARDIN).

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

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Maryland (Mr. CARDIN) will be postponed.

It is now in order to consider amendment No. 9 printed in House Report 107-615.

AMENDMENT NO. 9 OFFERED BY MR. HUNTER

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 9 offered by Mr. HUNTER:

At the end of chapter 1 of subtitle B of title IV, add the following:

SEC. 416. SENSE OF CONGRESS REGARDING CONSTRUCTION OF FENCING NEAR SAN DIEGO, CALIFORNIA.

It is the sense of Congress that completing the 14-mile border fence project required to be carried out under section 102(b) of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1103 note) should be a priority for the Secretary.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. HUNTER) and the gentlewoman from California (Ms. PELOSI) each will control 5 minutes.

The CHAIRMAN. The gentleman from California (Mr. HUNTER).

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

Mr. Chairman, this is an amendment that would offer a sense of Congress stating that the border fence which lies in the 14-mile border sector between San Diego and Tijuana be completed. We have now completed some 12 miles of that 14-mile border fence.

When we started that fence, that corridor was considered to be the most prolific corridor in North America. Through that corridor came most of the cocaine that was smuggled into the country as well as most of the illegal aliens and was an area which was very dangerous, in which massive violence took place and an average of 10 people a year were murdered on the border. It is also an area that is just a couple of miles south of the west coast's biggest naval base at San Diego. It is also of extremely difficult terrain, rugged terrain. It includes Smugglers Canyon and a number of other canyon areas feeding out into the Pacific Ocean.

Since we have built the 12 miles of fence there is a lot so far and it is a double fence that is very, very difficult to pass through, but since we have built the 12 miles that is completed, we have cut down the average of 10 murders a year, murders which took place by armed gangs, some of which had automatic weapons, we have cut that down to almost zero, where we have almost no murders on the border. It is also an area of vulnerability, once again because it is an area where terrorists can and do try to pass quickly and upon crossing the international border be within only a couple of miles of the San Diego naval base.

This resolution just very simply states that it is a sense of Congress that would move on the fence. It has been several years since we have attempted to get that last 2 miles of fence completed, and because of environmental work which has taken a long time, that vulnerability still exists.

I would ask that we pass this. It is consistent with present law that says that the entire 14 miles should be completed. In fact, there is a mandate in the law passed in, I believe, 1996, signed by the President, stating that the entire 14 miles in that smugglers' corridor should be completed. Right now only 12 miles are completed, we have 2 to go, and if we do not do that, we are going to continue to have a stretch of vulnerability there which at some point could do detriment.

I would ask that we pass this.

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

Ms. PELOSI. Mr. Chairman, the gentleman from California knows the very high regard in which I hold him and it is with great reluctance that I oppose his amendment.

Mr. Chairman, I am pleased to yield 4½ minutes to the gentleman from California (Ms. PELOSI) who has earned a great reputation for working closely with her community on this very issue.

Mrs. DAVIS of California. Mr. Chairman, I have great respect for my San Diego colleague. I know how hard he has worked to secure additional security supporting our military and is in line to take the reins as the chair of the Committee on Armed Services. We traveled recently together to Afghanistan and visited with our troops fighting the war on terrorism. It is with this understanding that I agree on this important amendment.

As is, having a fence in San Diego, as well as the other side of the border, should not equate to having a false sense of security for the border. It is a complex issue that we need to consider and that the border fence by itself is not the answer.

Finally, I have heard from several other border patrol agents, agents who spend very lonely hours patrolling the border, who are concerned that the construction of the fence could trap them and leave them without an escape route should they come under attack.

If we are serious about border security, we should enhance the quality of the existing fence and not create a lane between fences that endangers the lives of both U.S. agents and would-be border crossers.

Technology to improve border security exists in San Diego and around the Nation and is available off-the-shelf. Rather than relying on a Maginot Line along the border, we should rely upon our expertise and employ sophisticated technology to buttress protection through improved monitoring, surveillance and dispatch.

As well as its obvious security benefits, the current infrastructure footprint will ease personnel requirements. In addition, a technology-based infrastructure system clearly meets the stated goals of the INS in creating a permanent deterrence through certainty of detection and apprehension and to reduce the current enforcement footprint. The term infrastructure does not immediately equate to fence and the mere construction of a fence does not meet the "certainty of detection" criterion.

Transforming our technology along the border has further benefits. At the best of intentions that I rise in opposition to his amendment because the San Diego border fence project creates a false sense of security, endangers border patrol agents and diverts needed resources. The project's goal is to create a 14-mile long layer of three separate fences intended to prevent anyone from crossing the border from Mexico into the United States.

During our borders, as you all know, has long been a challenge, particularly because doing so must be balanced among our chief goal of protecting security and yet enabling legitimate cross-border trade and promoting commerce and protecting civil liberties. Clearly, we need a sustainable border infrastructure plan that can accommodate the projected growth in legal border crossings. However, instead of viewing the border landscape as one filled with obstacles that cripple us, we should use this as an opportunity to bring about long-needed change.

Border security is critically important to protect the country from terrorism and to stem the flow of undocumented immigrants. However, the border fence represents a false sense of security. Those who wish to bypass the fence can transit either through a long gap in the fence or in the water beyond the fence. Furthermore, the construction of the triple fence requires expending huge sums of money while destroying the landfill areas and negating the millions of dollars already expended in the area to preserve the estuary that exists there.

Finally, I have heard from several border patrol agents, agents who spend very lonely hours patrolling the border, who are concerned that the construction of the fence could trap them and leave them without an escape route should they come under attack. If we are serious about border security, we should enhance the quality of the existing fence and not create a lane between fences that endangers the lives of both U.S. agents and would-be border crossers.

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Transforming our technology along the border has further benefits. At the best of intentions that I rise in opposition to his amendment because the San Diego border fence project creates
Mr. PELOSI. Mr. Chairman, I yield the balance of my time to the gentle-
woman from California (Mrs. DAVIS).

Mrs. DAVIS of California. Mr. Chair-
man, I think the area we are talking about is one that we believe now with
our new department and with some greater priorities that are set as well
with the community, that we can pro-
vide the protection that we need, that
we can provide the protection for the
agents, but we can also do what is best
for this last 2 miles, especially in an
area that has a lot of binational cross-
ings.

The CHAIRMAN. The question is on
the amendment offered by the gen-
tleman from California (Mr. HUNTER).

The amendment was agreed to.

The CHAIRMAN. It is now in order
to consider amendment No. 10 printed in

AMENDMENT NO. 10 OFFERED BY MR. OSE

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

The CHAIRMAN. The Clerk will des-
ignate the amendment.

The text of the amendment is as fol-
lows:

Amendment No. 10 offered by Mr. OSE:

At the end of title VI add the following:

SEC. 601. CONSOLIDATION AND CO-LOCATION
OF OFFICES.

Not later than 1 year after the date of the
enactment of this Act, the Secretary shall
develop and submit to the Congress a plan
for consolidating and co-locating—

(1) any regional offices or field offices of
agencies that are transferred to the Depart-
ment under this Act, if such offices are lo-
cated in the same municipality; and

(2) portions of regional and field offices of
other Federal agencies, to the extent such
offices perform functions that are trans-
ferred to the Secretary under this Act.

The CHAIRMAN. Pursuant to House
Resolution 502, the gentleman from Cali-
fornia (Mr. OSE) and a Member op-
posed each will control 5 minutes.

The Chair recognizes the gentleman
from California (Mr. OSE). Mr. OSE. Mr. Chairman, I yield my-
self such time as I may consume.

As a subcommittee chairman over on
Government Reform, I would like to
offer this good-government amendment
which relates to the regional and field
offices in the proposed department. Be-
fore I do that, I want to make sure that
I compliment my good friend the gen-
tleman from Massachusetts (Mr. TIERNEY) who is the subcom-
mittee ranking member with whom I have
worked very closely on the the Presi-
dent’s bill and drafting bipartisan amend-
ments to perfect it. The Presi-
dent’s proposal includes moving agen-
cies which currently have 10 different
regional and field office structures into
the new department. Neither the Presi-
dent’s bill nor the special committee sub-
stitute mentions any changes in
these regional and field offices, al-
though changes could be made under the
select committee’s section 763(a)
reorganization authority, to consoli-
date or discontinue organiza-
tional units.

My amendment would require the
new department’s under secretary for
management to develop a consolida-
tion/collocation plan within 1 year. The
plan would examine consolidating and
collocating regional and field offices in
each of the cities with any existing re-
gional or field office in the transferred
agencies. My amendment would retain
the old Department of Homeland
Security office in each of these cities.

Staff in these consolidated/collocated
offices could be cross-trained to re-
pond to the full range of functions
which may need to be performed lo-
cally. By preparing and pre-
paredness and response, consolidation
and collocation should result in over-
head and other efficiency savings.

Five examples of existing and dif-
f erent regional or field office networks
are in the Agriculture Department’s
Animal and Plant Health Inspection
Service, known as APHIS; the Justice
Department’s Immigration and Natu-
r alization Service; the Department
of Transportation’s Coast Guard; the De-
partment of Treasury’s Customs Bu-
reau; and the Department of Treasury’s
Secret Service.

I urge my colleagues to support this
government efficiency amendment. I
want to reiterate my appreciation for the
time and effort and participation of my good friend from Massachus-
etts whom I would now like to recognize to
elaborate on how helpful collocation
could be for local first responders.

Mr. Chairman, I yield to the gen-
tleman from Massachusetts (Mr. TIERNEY).

Mr. TIERNEY. Mr. Chairman, I thank the gentleman.

I rise in support of this amendment
that was, as was said, to make a plan
regarding the consolidation of officers
and the cross-training of Federal em-
ployees that ought to be consolidated in
the new Department of Homeland
Security. I want to thank and com-
mend the gentleman from California
(Mr. OSE) with whom I serve in the
Committee of Government Reform
Subcommittee on Energy Policy, Nat-
ural Resources and Regulatory Affairs.
As he stated, we have had the oppor-
tunity to work together in a bipartisan
way to suggest improvements to the
bill, and I thank him for his leadership.
In the course of this debate we must
keep the focus where it truly belongs:
our marshaling our country’s best ideas
and resources and skills to coordinate
our fight against terrorism, streamline
government, and make Americans
safer. We need to do this for the fami-
ilies who lost loved ones on September
11 and in the October anthrax attacks,
for the American people who expect us
to protect them, and for our children
so that future generations may grow up
in a free and open society.

Nowhere is it felt more keenly than
our local communities. All acts of ter-
rorism, whether they affect one com-
pany or the entire community, that each
company has to be prepared for cri-
sis response and catastrophe manage-
ment. Since September 11, we have

requirements for tighter security. It is
time to provide them with the tools
and the technology they need and to
send them a clear message that we
value the work that they do.

In addition, I believe that we can in-
TEGRATE existing technologies to in-
crease interagency cooperation and
data flow, thereby eliminating overlap
and waste and streamlining processes,
all while being mindful of civil rights.
Moreover, leveraging technology will
also serve to increase binational co-
operation.

Rather than constructing an old
fashioned triple layered wall along the
border, a wall that creates a false sense
of security, enormity, cost, or penal-
izes and diverts our needed re-
sources, we should shelve old methods
and embrace the new methods that this
Department of Homeland Security will
undoubtedly employ.

I urge my colleagues to allow this
new department the flexibility to de-
evelop its own priorities without bur-
dening them with antiquated projects
and defeat this amendment.

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

Mr. Chairman, I have respect for my
colleagues, but let me just say that the
opposition which has been stated to the
border fence is, at best, bizarre. When we
stand on this fence, Mr. Chairman,
there were 300 drug trucks a month full
of cocaine and marijuana which were
hurting across the border in these un-
controlled areas, in this mountainous
region, the region extending from Otay
Mesa down to the point where we had
scores of border patrolmen who were
hurt and injured because they were
pelted with rocks from the other side of
the border and we had an average
again of about 10 people a year mur-
dered by the armed gangs, many with
automatic weapons, which moved back
and forth across what was known as a
no-man’s land. In fact, it was so bad
that Joseph Wampaugh wrote the book
“Lines of Fire” about this no-
man’s land that existed on the U.S.-
Mexican border. Since we have built
that fence, the first 12 miles of fence,
we have totally eliminated the 300 drug
trucks a month that were coming across,
we have knocked down the 12
murders to almost zero, and people that
live on both sides of the border
have expressed, and the border patrol
reports are very clear, that this fence
has been a center of stability, it is a
moderate fence, a double fence, it has
a large overhang, it has not hurt
anybody. In fact, it has prevented 10
murders a year.

The idea that you do not complete
the last 2 miles of that fence once
again is, at best, a bi-
zare notion. I would hope that we
would be rational and simply build the
last 2 miles of what the border patrol
has said is one of the greatest deter-
rents to illegal crossing and could be a
deterrent to the crossing of a terrorist
who lost loved ones on September
11 and in the October anthrax attacks,
for the American people who expect us
to protect them, and for our children
so that future generations may grow up
in a free and open society.

Nowhere is it felt more keenly than
our local communities. All acts of ter-
rorism, whether they affect one com-
pany or the entire community, that each
company has to be prepared for cri-
sis response and catastrophe manage-
ment. Since September 11, we have

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on the west coast.

miles south of the biggest naval base
in the United States.

organization into that area just a few
miles south of the biggest naval base
in the west coast.
heard from our local first responders from across the country who have risen
to the occasion, protecting communities
as the first line of defense against terrorism. In my own district, as across America, they have
marshaled their resources to track down
leads of potential terrorist threats and
buy more equipment, from upgraded
weapons to technology to biohazard
masks and suits. They have increased
hazmat training for handling sus-
picious packages and stepped up pa-
trols around potential terrorist targets
like water and gas supplies, nuclear
power plants, harbors and airports.
They want the government to work
with them, to train with them, to com-
municate with them, and to respond
with them to any potential attack.
And now it is time for us to step up and
help them. We must respond with co-
operation, with communication, and
with coordination at all levels of gov-
ernment.
Before we can work with the
local first responders, we have to be
confident that the Federal agencies can
work with one another. Coleen
Rowley’s bureaucratic nightmare was a
cautious tale. We simply must train
personnel within different agencies
that have different cultures and dif-
ferent skills to talk to one another, to
communicate with them, and to respond
with them to any potential attack.
And now it is time for us to step up and
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cautious tale. We simply must train
personnel within different agencies
that have different cultures and dif-
ferent skills to talk to one another, to
share information before disaster
strikes.
That is why I join Mr. Ose in intro-
ducing this “good government” amend-
ment to ensure that local first
responders have a primary point of con-
tact and coordination within the Fed-
eral Government and to ensure that these
field officers work together.
No matter how Congress resolves the
issue of who is in and who is out of this
agency, and I frankly hope that we will
end up with a leaner 21st century re-
sponse rather than a bloated 19th cen-
tury structure, we are not going to ef-
fectively fight terrorism from Wash-
ington.
Any improved Department should consist of agencies that can
work together. Mr. Chairman. And,
again, I thank the gentleman from
California (Mr. Ose) for helping to
work with this problem.
Mr. OSE. Mr. Chairman, I yield back
the balance of my time.
Mr. Chairman, I rise to introduce an
amendment to title VII of S. 1934. The
amendment would establish goals for the participation by
local first responders in homeland security activities as the first line of defense
against terrorism.
I close by asking my colleagues to
get this new agency off to a good start.
In a new era where we must be smarter
and faster than our foe, we cannot af-
ford to ignore the smartest and fastest
of them all. America’s innovative
small businesses.
I urge support of the bipartisan Velázquez-Issa-Wilson amendment.
Ms. VELÁZQUEZ. Mr. Chairman, I
yield back the balance of my time.
Mr. HASTINGS. Mr. Chairman, I offer an amendment.
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language in title VII directs the Secretary to comply with the laws protecting equal employment opportunity and providing whistleblower protections. It further states that nothing in the act shall be construed as exempting the Department from the requirements that are applicable to all other executive agencies.

Mr. Chairman, we have heard Governor Ridge and the gentleman from Texas (Mr. ARMSTRONG), our majority leader, along with various members of the administration assure us that all equal employment opportunity laws and whistleblower protections will be applicable to the new Secretary. This amendment simply puts those assurances, curiously absent from the bill at this point, in writing. I will point out that every agency in the Federal Government must comply with equal employment opportunity and whistleblower protection laws. This includes the Departments of Army, Navy and Air Force and CIA and NSA, just to name a few.

Not one Secretary or director from these departments and agencies, all actively engaged in national security, has ever come to Congress seeking exemption from these laws.

I am puzzled by the exemptions the administration is seeking for the new Department. On May 15, 2002, the President signed PL 107-174, the No Fear Act, into law. It prohibits Federal agencies from retaliating against a claimant who has won a judgment relating to discrimination or whistleblower laws.

That law, which the House passed, and I might add the vote was 412 to 0, further strengthened the EEO and whistleblower protections. On the other hand, this latest legislation sets even higher standards of ethics and accountability for the Federal Government, while, on the other hand, the administration is seeking exemption from the standards for the new Secretary and the new Department of Homeland Security.

There is much to be lost and little to be gained by creating laws and then granting exceptions so that those laws do not apply equally to all.

Mr. Chairman, there is nothing partisan or even controversial about this amendment. It ensures that the protections guaranteed to all Federal employees are afforded to employees of the new Department as well.

I urge my colleagues on both sides of the aisle to support this amendment.

One thing I thank the gentleman from Texas (Mr. ARMSTRONG) and the gentlewoman from California (Ms. FLOSTERS) for the fine work that they have done on behalf of all of us, as well as the colleagues who have joined with them.

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

The CHAIRMAN. Does any Member rise in opposition?

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

Mr. Chairman, I would say my opposition is mild. I am using this opportunity to point out what we believe is a fact, and I would say that the gentleman from Texas (Mr. POTMANN) particularly wanted this to be pointed out. We would note that the Select Committee bill provides on page 185, section 761, that any human resources management system established under the committee bill must not waive, modify or otherwise affect among the public employment principles of merit and fitness, including protection of employees against reprisal for whistleblowing, that is line 15, and any provisions of law provided for equal employment opportunity through affirmative action, and that is line 23.

Our opposition is just merely to point out that we think it is covered. We think it is there already. But we are certainly known of the gentleman from Florida (Mr. HASTINGS).

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

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

Mr. Chairman, I thank my good friend from Connecticut. I would urge him to what he says is no doubt correct, but I know that if we pass this amendment, we will know.

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

The CHAIRMAN. The question occurs on the amendment offered by the gentleman from Florida (Mr. HASTINGS).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 13 printed in House Report 107-615.

AMENDMENT NO. 13 OFFERED BY MR. KINGSTON.

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 13 offered by Mr. KINGSTON.

Add at the end of subtitle G of title VII the following:

SEC. 761. FEDERAL LAW ENFORCEMENT TRAINING CENTER.

(a) IN GENERAL.—The transfer of an authority or an agency under this Act to the Department of Homeland Security does not affect training agreements already entered into with the Federal Law Enforcement Training Center and the Attorney General. This decision was made based upon years of thorough research that established the need to consolidate our federal law enforcement training and to trend towards proliferating and redundant law enforcement training throughout the government. Congress supported this decision by funding the construction of facilities for FLETC in Glyanco, Georgia.

Since its inception in 1970, FLETC has almost tripled its original 30,000 trainees and now houses around 80 agencies. The efficiency of a consolidated training site has benefited both the American taxpayer as well as every agency involved, a fact which is not questioned by the White House and not requested by the Select Committee on Homeland Security, but apparently suggested by the Committee on the Judiciary, caught me off guard as the representative who represents the headquarters of FLETC at Glyanco, Brunswick, Georgia.

This is the law enforcement training center which trains the Capitol Hill Police, the Secret Service, the Bureau of Alcohol, Tobacco and Firearms and many others, in fact, 74 total government agencies. One of the things I have found during my 10 years I have had the honor of representing it is, because there are 74 agencies, lots of people have ideas about just peeling off one of those agencies and putting their training in their own district or one particular area.

What I have been concerned about is the Treasury has been a great balancing ground for the smaller agencies to train in, and if we move it to the Department of Justice and they are competing with the FBI, they become somewhat of a second-tier emphasis for the Department of Justice. So I am concerned about that move.

What my amendment does, Mr. Chairman, it simply says if you do vote that the training will continue, and it will continue in the facilities which are in Maryland and in New Mexico and in Georgia. So it is very straightforward.

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

The CHAIRMAN. Does anyone rise in opposition to the amendment?

The gentleman from Georgia may conclude his remarks.

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

Mr. Chairman, I submit for the RECORD some comments on the question of moving FLETC out of Treasury into the Department of Justice.
training available from the best teachers while eliminating the red undancy in infra-structure that multiple sites would provide.

WHY FLETC SHOULD STAY IN TREASURY

The President’s Homeland Security De
partment consists of nine agencies with law enforcement/security functions. All
nine (Immigration and Naturalization Ser-
vice, United States Border Patrol, Federal
Aviation Agency, Transportation Secu-
rity Administration, United States Coast
Guard, United States Secret Service, and GSA Fed-
eral Property) are participants in FLETC and will account for sixty-nine of the
students and 55 percent of the student weeks projections identified for FY 2003. Although
many other law enforcement agencies with the DOJ, DOJ will merely make up 7
percent of FLETC students.

Transferring FLETC to the Department of Justice (DOJ) will not serve to streamline any operations within our government. FLETC should remain within the Department of Treasury with a guarantee that the agencies that are transferring continue their training agreements with the Treasury Department.

HISTORICAL DETAILS ABOUT WHY FLETC HAS REMAINED IN TREASURY

In the past, there have been many at-
ttempts by the Justice Department to absorb FLETC, usually in conjunction with a new
administration coming to power. Each time, a proposal was crafted and studies were conducted that concluded that such a move was not in the best interests of our Federal law enforce-
ment. When FLETC was established, there was a discussion over who should be in charge of the new center. Treasury seemed logical, because they were the only agency with expertise in management and law enforce-
ment training. Such a conclusion, however, led logically to management of law enforce-
ment under Treasury, partly because the Center’s success, the re-
sistance to the idea, was dropped. Throughout the 1980’s Treasury peri-
odically sent out feelers to gauge the reac-
tion to bringing the FLETC into the Justice fold. Frank Keating, a former FBI agent, as-
sistant secretary of Treasury and then as as-
sociate attorney general, saw the relation-
ship between the two departments from both perspectives. Convinced that the Center
properly belonged under Treasury, partly be-
cause it thrived there and partly because he philosophically supported the diffusion of federal law enforcement, Keating resisted the idea of Justice making a steal. “. . . I
know that on a number of occasions [as asso-
ciate attorney general] the senior levels of the Justice Department talked to me . . . of the need to merge FLETC into Justice.” . . .

In his view, FLETC belonged in Treasury. “It makes far more sense to have a viable
law enforcement training center than has no connection with the FBI.” Keating strongly believed, “because the missions of the small-
ler agencies and the FBI are distinct, would be clouded, and their self-respect and their confidence and their ability to run them-
sew would be jeopardized by this nine-thousand pound gorilla coming down there to take over.”

The sporadic, almost half-hearted sugges-
tions that Justice take over the training were tributes to the Center’s success, the re-
sult of envy more than anything else. They sprang, too, from a superficial analysis that
Justice’s primary in federal law enforcement

I also appreciate the gentleman

 Again, concerns relating to the establish-
ment of a national police force were ex-
pressed, the assurance of additional agencies were applying for entry as consolidated training participants. No single watershed event defused the tension. Instead, the
FLETC simply redoubled its efforts to meet the needs of each customer, distributed scarce resources in an equitable and rational manner. Instead of giving it all to itself to
training excellence. The concerns gradually subsided.

Halway through President Carter’s admin-
istration, the President’s reorganization
project for federal law enforcement reached a tentative conclusion that the FLETC
should be transferred to the Justice Depart-
ment. Unwilling to lose one of Treasury’s most successful bureaus, Treasury officials
lobbied hard against any such transfer. And once again, our agency ex-
pressed concern over the notion of Justice’s stewardship of the FLETC. This time, the issue was resolved by strengthening the role of the Board of Directors, establishing three
standing management committees (for budg-
et and personnel, policy and program develop-
ment, and longrange planning), and in-
cluding the Justice’s Criminal Division on the board in an observer and advisory role.

The new board structure confirmed what the board members had campaigned for all along. Treasury’s organizational stewardship over the Center, but FLETC be-
longed to all the agencies, large and small. The board members would not be ignored nor would they allow any agency to try to
look interesting in their interests—and their inter-
est in the Center. Consolidated training
meant not just common training, but joint management.

Early in President Reagan’s tenure, Jus-
tice officials seriously considered an effort to gain management control of the Center.

Author General William French Smith
 agreed to support the concept if Secretary of
Treasury Donald Regan would not oppose it. When Regan said no, it was dropped. Throughout the 1980’s Justice peri-
odically sent out feelers to gauge the reac-
tion to the FLETC into the Justice fold. When Regan resisted the idea, it was

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

Mr. KINGSTON. I yield to the

gentleman from Texas.

Mr. ARMEY. I want to begin, Mr. Chairman, by thanking the gentleman
from South Carolina for his interest in this matter. It is a matter of grave concern to all of us. This is an important agency that performs an important function, and we would want this agency to be complete and continuing. I also appreciate the gentleman’s enormous interest in keeping this agency located in his great State, where in fact it has been a great service to the Nation.

I want to say to the gentleman from South Carolina that I appreciate his efforts.

Mr. SMITH of Texas, Mr. Chairman, I rise in support of this amendment. I am in full support of the Federal Law Enforcement Training Center-FLETC, which was established in 1970, is an interagency law enforcement train-
ing program that trains Federal, State, local,
private entities and foreign law enforcement. In Fiscal Year 2003, FLETC trained over 54,000 law enforcement students. Those students were from law enforcement offices within the Department of Agriculture, Commerce, HHS, Interior, Justice, Treasury, Defense, the Capitol Police,
The Judiciary Committee and the Select Committee, in their wisdom, decided that the Department of the Treasury, which will lose both the Customs Service and the Secret Service, should no longer be responsible for FLETC.
This means the Department of Treasury will only have two remaining law enforcement offices—BATF and IRS investigators. Treasury will lose the bulk of their law enforcement and will have one of the smallest law enforcement contingents of any Department.
It was decided that FLETC go to the Department of Justice because its mission is consistent with the mission of the Department of Justice. The primary mission of the Department of Justice is law enforcement; specifically it is directed “to enforce the nation’s laws, provided public safety, help prevent and control crime, provide just punishment for criminals, and ensure the fair and impartial administration of justice.”
FLETC’s mission is “to serve as the Federal government’s leader and provider of world-class law enforcement training.” It makes sense that a bureau with such a mission be included as part of a Department with the same mission and that is the flagship law enforcement in the Federal Government.
The primary mission of the Treasury Department is to maintain a strong economy and manage the finances of the United States Government. It does not make sense, in light of the transfer of almost all of the law enforcement bureaus out of the Department of Treasury in this Homeland Security legislation, that we would continue to require that the centralized training for Federal law enforcement be located at the Department of Treasury.
The Department of Justice is not a stranger to the operations of FLETC. In fact, DOJ is one of five voting members of the FLETC Board of Directors that establishes training policy, programs and standards. Additionally, the administration has been aware of this proposal for weeks and has not objected. They understand that this is not intended to diminish FLETC’s role, but rather enhance it and expand it in a Department that will pay attention to it, provide for it, and nurture it.
I can assure the gentleman from Georgia that our intention in transferring the Federal Law Enforcement Training Center to the Department of Justice is to ensure that law enforcement remains and continues to be in the part of the government responsible for law enforcement. I can also assure the gentleman from Georgia that it is our intention to see that FLETC continue its current operations at its current location and continue to carry out current training agreements. We expect that this transfer would have a minimal impact on the day-to-day operations and training activities of FLETC and, at the same time, maximize the effectiveness of our training system for federal law enforcement personnel.
I thank the gentleman for bringing this matter to our attention with this amendment and look forward to working with him to ensure that the high quality of training of federal law enforcement agents continues at FLETC.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Georgia (Mr. KINGSTON). The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 14 printed in House Report 107-615.

AMENDMENT NO. 14 OFFERED BY MR. ROGERS OF KENTUCKY

Mr. ROGERS of Kentucky. Mr. Chairman, I offer an amendment.
The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 14 offered by Mr. Rogers of Kentucky:
At the appropriate place in the bill, add the following new section:

SEC. 4. JOINT ENTERGENCY TASK FORCE.

(a) Establishment—The Secretary may establish and operate a Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorism threats to the United States and taking appropriate actions to prevent harm to the United States.

(b) Structure—It is the sense of Congress that the Secretary should model the Joint Interagency Homeland Security Task Force on the approach taken by the Joint Interagency Task Force for drug interdiction at Key West, Florida, and Alameda, California, to the maximum extent feasible and appropriate.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Kentucky (Mr. ROGERS) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Kentucky (Mr. ROGERS). Mr. ROGERS of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

First I want to thank the majority leader for working with us and our staff on this amendment. He worked well into the night with us yesterday, last night, getting this together, and I believe it has been thoroughly vetted by both sides of the aisle by the appropriate authorizing committees.

This is a simple amendment. It grants permissive authority to the new Homeland Security Secretary for the creation of a Joint Interagency Homeland Security Task Force completely at the discretion of the new Secretary, in no way impeding his flexibility or authority in running the new Department. It does not grant any new authorities or components of the task force not already authorized by the Congress, and the task force, if created, is suggested to be modeled in the language of the amendment, Mr. Chairman, after the existing joint interagency task forces for drug interdiction currently operating as we speak in two places, Key West, Florida, for the East, and Alameda, California for the West.

Mr. Chairman, the reason I suggest this type of a boiler room operation is the fact that these existing task forces for drug interdiction are efficient, they are lean, they are highly successful operations on the war on drugs, and while the task of protecting the homeland is vastly more complicated and different than any single drug mission, these centers are appropriate templates for how the various elements of our government should and can work together in a lean, mean machine war room.

These centers coordinate every aspect of the counterdrug operation, from intelligence-gathering, detection and monitoring, to the actual seizure and apprehension, of those involved. These existing JIATF centers promote security cooperation and interagency efficiency. That is the exact kind of a concept we should be implementing in our defense of the homeland, a combination of intelligence, invitational, and intelligence agencies, working together in the same place. Given the irreplaceable link between terrorist activity and illegal drugs, these existing centers already have firsthand knowledge and expertise in homeland defense and could prove to be a very valuable tool to the new Secretary as a template for the war on terrorism.

We have taken great care, Mr. Chairman, to craft the amendment in such a way that it will not be perceived as expanding the powers of the Secretary beyond what is already envisioned in the bill. Both the Committee on Armed Services and the Committee on the Judiciary have made helpful comments on our original draft. We have incorporated their changes in this language, and I appreciate their help as well.

Mr. Chairman, in closing, this amendment is simple. It seeks to establish a functioning invitational task force within the new Department, where coordination among the various agencies of the government, the various components who remain under their own control, and we simply draw and operate this machinery for the particular task at hand from all agencies of the government.

The amendment in no way impedes the authority of the new Secretary from carrying out his mission. It is merely a suggestion for another important, I think, and useful tool in the Department’s arsenal.

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

Mr. SANDLIN. Mr. Chairman, I rise in opposition to the amendment, and I yield myself such time as I may consume.

I am afraid with this amendment we are headed once again down a dangerous slippery slope and setting a dangerous precedent. My good friend and colleague mentioned that he wants to build an efficient, lean, mean machine, and there lies the very danger. By declaring our citizens and our civil liberties, we do not need a lean, mean machine. That is not what is anticipated by our Constitution; that is not what law enforcement in this country is about. Soldiers do not need to be reading Miranda rights with automatic rifles in hand; that is not their purpose. That is not what they are trained for. That is not what they do.
In this country we have posse comitatus, we have had that since 1878, and it makes it a crime to deploy Federal troops as enforcers of civilian law. That has worked in this country for 124 years. The United States has always recognized a great importance in the separation of the duties of the military and the duties of our domestic law enforcement. There is a good reason why it has stood that test of time.

The military has a role in protecting our country. Domestic enforcement has a role in protecting our country, but they are separate roles. I noticed this morning that The New York Times had this to say, and I quote: “The idea of military forces roaming the Nation, enforcing the laws sounds like a bad Hollywood script or life in a totalitarian society.” Further, I notice that Tom Ridge, the homeland security chief, said in a radio interview that this expansion, this abandoning of posse comitatus would “go against our institutional founding.”

There are good, practical reasons for keeping the military out of our domestic law enforcement. The mindset is completely different. In our country we have professional, well-trained law enforcement officers. People who have been trained to observe constitutional protections for our citizens. They know about the procedure of criminal law. Soldiers, on the other hand, are trained in the use of force, not the niceties of procedure. Those roles are necessary in our country; both are important. Neither role should be mixed.

The Christian Science Monitor said that the military exists to protect our country, not to run it. Clearly, the military and civilian forces should cooperate, they should work together in anticipating threats and responding to threats, but they must be separated. The Armed Forces should not be involved in domestic police tasks that are best left to the law enforcement professionals of this country.

Mr. Chairman, posse comitatus has stood the test of time. This is not a totalitarian State; this is not a police State. We have domestic laws that protect our citizens; we have military to protect our shores. That has worked, it has stood the test of time. Our country is strong and secure because of the hard work of our military in protecting our borders. We have freedom fighters all across the world right now protecting those rights guaranteed by our Constitution. We have police that are keeping our homeland safe here in America. They are working well together, but they are recognizing the fact they have separate roles.

Mr. Chairman, I feel like that the amendment we are considering today would blur that line, would mix that line, and we would have the military roaming the country, as The New York Times says, trying to enforce the laws of our Nation.

Mr. Chairman, while this is a permissive amendment, as was mentioned by my friend and colleague, permissive is too much. It is never okay to violate the Constitution. It is never okay to send the military roaming across the land enforcing domestic laws and arresting our citizens. It is never okay to have a soldier without training in procedure attempting to protect the constitutional rights of our citizens who are innocent until proven guilty. We have rights under our Constitution. Permissive is way too broad.

Let us respect posse comitatus. Let us make sure our military does its job and observes its role. Let us make sure that our domestic police know their role and are able to stand up for the Constitution. We can protect our Constitution, stand up for our citizens, and still fight terrorism all across the country.

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

Mr. Rogers of Kentucky. Mr. Chairman, I yield myself such time as I may consume.

This provision has been vetted by the Committee on the Judiciary of the House, the Committee on Armed Services of the Select Committee on Homeland Security under the leadership of the majority leader, and we have changed it accordingly at their suggestions.

Number two, the majority leader’s amendment today, his manager’s amendment, will reaffirm the posse comitatus belief that we have in this country, the law, in fact.

But most importantly, the joint task forces in Alameda and Key West only use Defense Department assets outside of the U.S. border. There are not going to be any soldiers roaming the streets of this country, for gosh sakes. We do it just exactly like the task forces now do on the drug war using the DOD assets. It sets outside of the U.S. border. The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. Rush:

SEC. 7. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary of the Department of Homeland Security an office to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The office established under subsection (a) shall—

1. coordinate the activities of the Department relating to State and local government;

2. assess, and advocate for, the resources needed by State and local government to implement the national strategy for combating terrorism;

3. provide State and local government with regular information, research, and technical support to assist local efforts at securing the home;

4. develop a process for receiving meaningful input from State and local governments into national strategy for combating terrorism and other homeland security activities.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Illinois (Mr. Rush) and a Member opposed each will control 5 minutes.

The CHAIRMAN. The amendment is offered by the gentleman from Illinois (Mr. Rush). Mr. Rush. Mr. Chairman, I yield myself such time as I may consume.

A recent poll revealed that a vast majority of local governments, 95 percent, to be exact, have plans for dealing with natural disasters. However, only 49 percent of this Nation’s local governments are equipped to protect and prepare its residents against acts of terror.

But, Mr. Chairman, the good news outweighs the bad. The good news is that local governments which have not developed plans to deal with terrorism now have an opportunity to build and coordinate an effective response plan from the ground up. The good news is that local governments, which already have response plans, are in a perfect position to improve upon current programs, and the good news is that the Federal Government now has the unique opportunity to coordinate with local governments so that access to Federal information and expertise become an integral part of the local response picture in these programs.
Mr. Chairman, the first step in preparing for acts of terror comes through communications and cooperation on all levels of government. The administration understands this principle. The American people understand this principle. And I am confident that those of us who are in the people’s House will understand this important principle as well by adopting this amendment. I urge a yes vote on this amendment.

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

The CHAIRMAN. Does any Member rise in opposition?

Mr. ARMEY. Mr. Chairman, I will claim the time in opposition.

The CHAIRMAN. The gentleman from Texas (Mr. ARMEY) is recognized for 5 minutes.

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

Mr. Chairman, let me say to the gentleman from Illinois (Mr. RUSH) I do not intend to oppose his amendment, but I did want to point out that we have addressed this very same question in page 13 of the bill. The difference between the gentleman’s position offered in his amendment and our bill is we take it as a function of the Secretary. You want to elevate it to the position of an Office of the Secretary. Assuming that we would be effective in achieving the desired objectives in either case, the difference would be a modest difference, from my point of view, of our desire to have the amount of employee agency adds, bureaucrats, in this city, let us say, as opposed to the field.

I would suggest that perhaps as we move forward, the gentleman from Illinois (Mr. RUSH) and I might get together, take a look at that, and see if we could reconcile our modest differences and prepare ourselves to work with the other body towards the maximum effective fulfillment of the objectives both of us outlined.

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

Mr. ARMEY. I yield to the gentleman from Illinois.

Mr. RUSH. Mr. Chairman, I want to thank my friend and I certainly do not have any objections to us working this out. I just want to make sure that we understand that there is a point in my amendment which calls for a specific location for this information to rest with a vehicle for this information to be transmitted, whereas I think the original language just said that it is going to happen, but nothing was in place for it to really rest in and a location was not there and a central place was not there. And with my amendment, I tried to create a vehicle and a specific location for this information to be gathered and transmitted both up and downstream.

Mr. ARMEY. Mr. Chairman, I thank the gentleman for his observations. That is the singular difference, what we are trying to do and how we are trying to do it. Mr. Chairman, I will yield back my time with the understanding that I will have the added pleasure of working with the gentleman between now and our work with the other body.

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

The CHAIRMAN. The question is on consideration amendment No. 16 printed in House report 107-615.

AMENDMENT NO. 16 OFFERED BY MR. SHAYS

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment offered by Mr. SHAYS:

At the end of subtitle G of title VII insert the following:

SEC. 7 . REPORTING REQUIREMENTS.

(a) BIENNIAL REPORTS.—Every 2 years the Secretary shall submit to Congress a report:

(1) assessing the progress of the Department in:

(A) implementing this Act; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened; and

(2) recommending any conforming changes to facilitate the new Department’s operations and allow Congress to measure results and meet our oversight responsibilities.

(b) ADDITIONAL REPORT.—Not later than 1 year after the effective date of this Act, the Secretary shall submit to Congress a report—

(1) assessing the progress of the Department in:

(A) implementing this Act; and

(B) ensuring the core functions of each entity transferred to the Department are maintained and strengthened;

(2) recommending any conforming changes to facilitate the new Department’s operations and allow Congress to measure results and meet our oversight responsibilities; and

(3) assessing the status of each State to the responsibilities specified in section 501.

These biannual reports are needed to make sure the new Department is achieving the results Congress intends, while not micromanaging so large a reorganization effort.

Additionally, the amendment would require a one-time report to Congress no later than a year after enactment of this Act, ensuring the maintenance of core functions transferred to the new Department and recommending statutory changes to facilitate the new Department’s operations and allow Congress to measure results and meet our oversight responsibilities.

I applaud the work of my Committee on Government Reform and Subcommittee on National Security colleague, the gentlewoman from California (Ms. WATSON) who joins me in offering this amendment. Her approach to oversight is thoughtful, thorough and bipartisan. I do urge support for this amendment.

Mr. Chairman, I yield to the gentleman from California (Ms. WATSON).

Ms. WATSON of California. Mr. Chairman, I would like to thank the distinguished gentleman from Connecticut (Mr. SHAYS) for putting forward this needed amendment to the Homeland Security Act of 2002.

This amendment would create a mechanism for the Secretary of Homeland Security to report to Congress on the status of America’s emergency preparedness. This type of information is crucial for Congress to make informed decisions about funding and oversight of our Nation’s homeland security.

The bill that we are considering sets out an institutional structure for homeland security. Yet this structure is only one of three elements necessary to effectively secure our homeland. Number two is a comprehensive homeland security strategy with the administration producing and submitted to Congress earlier this month. The third element is having a method to assess the progress of our efforts to secure our homeland from attack. This is where our amendment comes in.

By creating a mechanism for the Secretary of Homeland Security to report on the progress of the Federal Government and the various State governments in preparing for emergencies, Congress can better supply the resources necessary to defend our country. In particular, it is important to have a sense of what the various States are doing to prepare themselves.

By requiring the Secretary of Homeland Security to evaluate the preparedness of State governments, we do not seek to impose a particular mandate on the State or demand that their planning conforms to a federally dictated one-size-fits-all approach. Instead, we seek a candid assessment of how well States are doing to prepare themselves for emergencies so that we might identify breakdowns in our homeland security infrastructure.
In any emergency, State governments will be tested. The Federal government can supply additional resources and expertise, but often State officials will be the first on the scene in case of a disaster. We will continue to rely on State governments to play a crucial role in emergency preparedness.

I urge Members to permit the Shays-Watson amendment to be introduced during the floor consideration of H.R. 5005.

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

The CHAIRMAN. The question is on the amendment offered by the gentleman from Connecticut (Mr. SHAYS).

The amendment was agreed to.

Mr. ARMEDY. 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. THORNBERY) 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. 5005) to establish the Department of Homeland Security, and for other purposes, had come to no resolution thereon.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess until approximately 8:30 a.m. today.

Accordingly (at 12 o'clock and 40 minutes a.m.), the House stood in recess until approximately 8:30 a.m. today.

☐ 0800

AFTER RECESS

The recess having been declared as an approximate time of reconvening and having expired, the House was called to order by the Speaker pro tempore (Mr. HASTINGS of Washington) at 8 a.m.

CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. SENSENBRONNER submitted the following conference report and statement on the bill (H.R. 333) to amend title 11, United States Code, and for other purposes:

CONFERENCE REPORT (H. REPT. 107-617)

The committee of conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 333), to amend title 11, United States Code, and for other purposes, having met, after full and free conference, have agreed to recommend and do recommend to their respective House as follows:

That the House recede from its disagreement to the amendment of the Senate and agree to the same with an amendment as follows:

In lieu of the matter proposed to be inserted by the Senate amendment, insert the following:

SECTION 1.—SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) Short title.—This Act may be cited as the “Bankruptcy Abuse Prevention and Consumer Protection Act of 2002”.

(b) Table of Contents.—The table of contents for this Act is as follows:

TITLE I—NEEDS-BASED BANKRUPTCY

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 101. Conversion.
Sec. 102. Dismissal or conversion.
Sec. 103. Sense of Congress and study.
Sec. 104. Notice of alternatives.
Sec. 105. Debtor financial management training test program.
Sec. 106. Credit counseling.
Sec. 107. Schedules of reasonable and necessary expenses.

Subtitle B—Priority Child Support

Sec. 211. Definition of domestic support obligation.
Sec. 212. Priorities for claims for domestic support obligations.
Sec. 213. Requirements to obtain confirmation of discharge in cases involving domestic support obligations.
Sec. 214. Exceptions to automatic stay in domestic support obligation proceedings.
Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support.
Sec. 216. Continued liability of property.
Sec. 217. Protection of domestic support claims against preferential transfer motions.
Sec. 218. Disposable income defined.
Sec. 219. Collection of child support.
Sec. 220. Non dischargeability of certain educational benefits and loans.

Subtitle C—Other Consumer Protections

Sec. 221. Amendments to discourage abusive bankruptcy filings.
Sec. 222. Sense of Congress.
Sec. 223. Additional amendments to title 11, United States Code.

Sec. 224. Protection of retirement savings in bankruptcy.
Sec. 225. Protection of education savings in bankruptcy.
Sec. 226. Definitions.
Sec. 227. Restrictions on debt relief agencies.
Sec. 228. Disclosures.
Sec. 229. Requirements for debt relief agencies.
Sec. 230. GAO study.
Sec. 231. Protection of personally identifiable information.
Sec. 232. Consumer privacy ombudsman.
Sec. 233. Prohibition on disclosure of name of minor children.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start.
Sec. 302. Discouraging bad faith repeat filings.
Sec. 303. Curbng abuse filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended confirmation of consumer debt collateral.
Sec. 306. Giving secured creditors fair treatment in chapter 13.
Sec. 307. Domiciliary requirements for exemptions.
Sec. 308. Reduction of homestead exemption for fraud.
Sec. 309. Protecting secured creditors in chapter 13 cases.
Sec. 310. Limitation on luxury goods.
Sec. 311. Automatic stay.
Sec. 312. Extension of period between bankruptcy discharges.
Sec. 313. Definition of household goods and antiques.
Sec. 314. Debt incurred to pay nondischargeable debts.
Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases.
Sec. 316. Dismissal for failure to timely file schedules or provide required information.
Sec. 317. Adequate time to prepare for hearing on confirmation of the plan.
Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases.
Sec. 320. Prompt relief from stay in individual cases.
Sec. 321. Chapter 11 cases filed by individuals.
Sec. 322. Limitations on homestead exemption.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate.
Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals.
Sec. 325. United States trustee program filing fee increase.
Sec. 326. Sharing of compensation.
Sec. 327. Fair valuation of collateral.
Sec. 328. Defaults based on nonmonetary obligations.
Sec. 329. Clarification of postpetition wages and benefits.
Sec. 330. Nondischargeability of debts incurred through violations of laws relating to the provision of lawful goods and services.
Sec. 331. Delay of discharge during pendency of certain proceedings.
TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS
Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinancing of security interest.
Sec. 404. Executory contracts and unexpired leases.
Sec. 405. Creditors and equity security holders committees.
Sec. 406. Amendment to section 366 of title 11, United States Code.
Sec. 407. Amendments to section 330(a) of title 11, United States Code.
Sec. 408. Postpetition disclosure and solicitation.
Sec. 409. Preferences.
Sec. 410. Venue of certain proceedings.
Sec. 411. Period for filing plan under chapter 11.
Sec. 412. Fees arising from certain ownership interests.
Sec. 413. Creditor representation at first meeting of creditors.
Sec. 414. Definition of disinterested person.
Sec. 415. Factors for compensation of professional persons.
Sec. 416. Appointment of elected trustee.
Sec. 417. Utility service.
Sec. 418. Bankruptcy fees.
Sec. 419. More complete information regarding assets of the estate.
Sec. 421. Flexible rules for disclosure statement and plan.
Sec. 422. Definitions.
Sec. 423. Standard form disclosure statement and plan.
Sec. 424. Uniform national reporting requirements.
Sec. 425. Uniform reporting rules and forms for small business cases.
Sec. 426. Duties in small business cases.
Sec. 427. Plan filing and confirmation deadlines.
Sec. 428. Plan confirmation deadline.
Sec. 429. Duties of the United States trustee.
Sec. 430. Scheduling conferences.
Sec. 431. Serial filer provisions.
Sec. 432. Expanded grounds for dismissal or conversion and appointment of trustee.
Sec. 433. Study of operation of title 11, United States Code, with respect to small businesses.
Sec. 434. Payment of interest.
Sec. 435. Priority for administrative expenses.
Sec. 436. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.
Sec. 437. Appointment of committee of retired employees.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS
Sec. 501. Petition and proceedings related to petition.
Sec. 502. Applicability of other sections to chapter 9.

TITLE VI—BANKRUPTCY DATA
Sec. 601. Improved bankruptcy statistics.
Sec. 602. Uniform rules for the collection of bankruptcy data.
Sec. 603. Audit procedures.
Sec. 604. Sense of Congress regarding availability of bankruptcy data.

TITLE VII—BANKRUPTCY TAX PROVISIONS
Sec. 701. Treatment of certain liens.
Sec. 702. Treatment of fuel tax claims.
Sec. 703. Notice of request for a determination of taxes.
Sec. 704. Rate of interest on tax claims.
Sec. 705. Priority of tax claims.
Sec. 706. Priority property taxes incurred.
Sec. 707. No discharge of fraudulent taxes in chapter 13.
Sec. 708. No discharge of fraudulent taxes in chapter 11.
Sec. 709. Stay of tax proceedings limited to prepetition taxes.
Sec. 710. Periodic payment of taxes in chapter 11 cases.
Sec. 711. Avoidance of statutory tax liens prohibited.
Sec. 712. Payment of taxes in the conduct of business.
Sec. 713. Tardily filed priority tax claims.
Sec. 714. Income tax returns prepared by tax authorities.
Sec. 715. Discharge of the estate's liability for unpaid taxes.
Sec. 716. Requirement to file tax returns to confirm chapter 11 plans.
Sec. 717. Standards for tax disclosures.
Sec. 718. Setoff of tax refunds.
Sec. 719. Special provisions related to the treatment of State and local taxes.
Sec. 720. Dismissal for failure to timely file tax returns.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES
Sec. 801. Amendment to add chapter 15 to title 11, United States Code.
Sec. 802. Other amendments to titles 11 and 28, United States Code.

TITLE IX—FINANCIAL CONTRACT PROVISIONS
Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions.
Sec. 902. Authority of the corporation with respect to failed and failing institutions.
Sec. 903. Amendments relating to transfers of qualified financial contracts.
Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts.
Sec. 905. Clarifying amendment relating to master agreements.
Sec. 907. Bankruptcy law amendments.
Sec. 908. Recordkeeping requirements.
Sec. 909. Exemptions from contemporaneous execution requirement.
Sec. 910. Damage measure.
Sec. 911. SIPC stay.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN
Sec. 1001. Permanent reenactment of chapter 12.
Sec. 1002. Debt limit increase.
Sec. 1003. Certain claims owed to governmental units.
Sec. 1004. Definition of family farmer.
Sec. 1005. Elimination of requirement that family farmer and spouse receive over $50 percent of income from farming operation in year prior to bankruptcy.
Sec. 1006. Prohibition of retroactive assessment of disposable income.
Sec. 1007. Family fishermen.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS
Sec. 1101. Definitions.
Sec. 1102. Disposal of patient records.
Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses.
Sec. 1104. Appointment of ombudsman to act as patient advocate.
Sec. 1105. Debtor in possession; duty of trustee to transfer patients.
Sec. 1106. Exclusion from program participation not subject to automatic stay.

TITLE XII—TECHNICAL AMENDMENTS
Sec. 1201. Definitions.
Sec. 1202. Adjustment of dollar amounts.
Sec. 1203. Extension of time.
Sec. 1204. Technical amendments.
Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1206. Limitation on compensation of professional persons.
Sec. 1207. Effect of conversion.
Sec. 1208. Allowance of administrative expenses.
Sec. 1209. Exceptions to discharge.
Sec. 1210. Effect of discharge.
Sec. 1211. Protection against discriminatory treatment.
Sec. 1212. Property of the estate.
Sec. 1213. Preferences.
Sec. 1214. Postpetition transactions.
Sec. 1215. Disposition of property of the estate.
Sec. 1216. General provisions.
Sec. 1217. Abandonment of railroad line.
Sec. 1218. Contents of plan.
Sec. 1219. Bankruptcy cases and proceedings.
Sec. 1220. Knowing disregard of bankruptcy law or rule.
Sec. 1237. Reclamation trust.
Sec. 1238. Providing requested tax documents to the court.
Sec. 1239. Encouraging creditworthiness.
Sec. 1240. Property no longer subject to redemption.
Sec. 1241. Trustees.
Sec. 1242. Bankruptcy forms.
Sec. 1243. Direct appeals of bankruptcy matters to courts of appeals.
Sec. 1244. Involuntary cases.
Sec. 1245. Federal election late fees and penalties as nondischargeable debt.

TITLE XIII.—CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced disclosures under an open end credit plan.
Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling.
Sec. 1303. Disclosures related to “introductory” rates.
Sec. 1304. Internet-based credit card solicitations.
Sec. 1305. Disclosures related to late payment deadlines and penalties.
Sec. 1306. Prohibition on certain actions for failure to incur finance charges.
Sec. 1307. Dual use debt card.
Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
Sec. 1309. Clarification of clear and conspicuous requirements.

TITLE XIV.—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1401. Effective date; application of amendments.

TITLE I.—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting “or consents to” after “requests”.

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(I) in the first sentence—

(i) by striking the section heading and inserting the following:

“§707. Dismissal of a case or conversion to a case under chapter 11 or 13”;

and

(ii) by striking subsection (b)—

(A) by inserting “(I) after “(b);”;

(B) in paragraph (1), as so redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking “but not at the request or suggestion of” and inserting “trustee, bankruptcy administrator, or”;

(II) by inserting “, or, with the debtor’s consent, convert such a case to a case under chapter 11 or 13 of this title,” after “consumer debts;”;

and

(III) by striking “a substantial abuse” and inserting “an abuse”;

and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following—

“(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse if the debtor’s current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

(I) $10,000; or

(ii) $6,000, whichever is greater; or

“(ii) $10,000.

(iii) The debtor’s monthly expenses shall be the debtor’s applicable monthly expense amounts specified under the National Standards and Local Standards and the debtor’s actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, or, as in effect on the date of the entry of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor’s monthly expenses shall include the debtor’s reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor’s monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor’s monthly expenses may also include advance payments for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

(II) In addition, the debtor’s monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor’s immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

(III) In addition, for a debtor eligible for chapter 13, the debtor’s monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

(IV) In addition, a debtor’s monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

(V) In addition, the debtor’s monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities for similar size households issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such expenses are reasonable and necessary.

(VI) The debtor’s average monthly payments on account of secured debts shall be calculated as the sum of—

(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain the market value of the debtor’s principal residence, motor vehicle, or other property necessary for the support of the debtor and the debtor’s dependents, that serves as collateral for secured debts; divided by 60.

(VII) The debtor’s expenses for payment of all prior priority taxes (including any security deposit and penalty) shall be calculated as the total amount of debts entitled to priority, divided by 60.

(R) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

(I) documentation for such expense or adjustment to income necessary and reasonable.

(II) A detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor’s current monthly income reduced by the amount determined under clauses (ii), (iii), and (iv) of subparagraph (A)(i) when multiplied by 60 to be less than the lesser of—

(I) 25 percent of the debtor’s nonpriority unsecured claims, or $6,000, whichever is greater; or

(ii) $10,000.

(As) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor’s current monthly income, and the calculations and determinations that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

(2) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not apply or has been rebutted, the court shall consider—

(A) whether the debtor filed the petition in bad faith; or

(B) the totality of the circumstances (including whether the debtor seeks to reject a personal service contract and the financial need for such rejection as sought by the debtor) of the debtor’s financial situation, financial condition, and demonstrated abuse.

(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in procuring a motion filed under section 707(b), including reasonable attorneys’ fees.

(i) a trustee files a motion for dismissal or conversion under this subsection; and

(ii) the court—

(A) grants such motion; and

(B) finds that the action of the attorney for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

(C) an attorney to make an assessment of an appropriate civil penalty against the attorney for the debtor; and

(i) the payment of such civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.
shall constitute a certification that the attorney has—

(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, motion; and

(ii) determined that the petition, pleading, or written motion—

(I) is well grounded in fact; and

(ii) is not filed by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

(2) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information contained in the schedules filed with such petition is incorrect.

(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own motion, may dismiss the case under section 707(b) if the current monthly income of the applicable State for a one-earner family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

(B) In a case that is not a joint case, current monthly income of the household shall not be considered for purposes of subparagraph (A) if—

(i)(I) the debtor and the debtor’s spouse are separated under applicable nonbankruptcy law; or

(ii) the debtor and the debtor’s spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

(iii) the debtor files a statement under penalty of perjury—

(1) specifying that the debtor meets the requirements of subsection (I) or (II) of clause (i); and

(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor’s spouse attributed to the debtor’s current monthly income.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

(10A) ‘‘current monthly income’’—

(A) means current monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor’s spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

(I) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

(II) the first day of the calendar month in which such income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor’s spouse), on a regular basis for the household expenses of the debtor or the debtor’s dependents (and in a joint case the debtor’s spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act as defined in section 220 of title 20 (as defined in section 2301 of title 18 on account of their status as victims of such terrorism;’’.

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting ‘‘(a)’’ before ‘‘The trustee shall’’; and

(2) by adding at the end the following:

(10I) With respect to a debtor who is an individual in a case under this chapter—

(A) the United States trustee or bankruptcy administrator shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor’s case would be presumed to be an abuse under section 707(b); and

(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

(2) The United States trustee or bankruptcy administrator shall, at the end of the 12-month period beginning on the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the action of the United States trustee or bankruptcy administrator does not believe that a motion would be appropriate, if the United States trustee or bankruptcy administrator determines that the debtor’s case should be presumed to be an abuse under section 707(b) and the product of the debtor’s current monthly income multiplied by 12 exceeds 15 percent of gross income of the debtor for the year in which the contributions are made and;
SEC. 103. SENSE OF CONGRESS AND STUDY.
(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service guidelines prepared to set up guidance for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code;

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the effectiveness of the training curriculum, such materials, and such programs and their costs.

SEC. 106. CREDIT COUNSELING.
(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

“(h) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless that individual has, during the 180-day period preceding the date of filing of the petition of that individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

(b) Paragraph (1) shall apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of the bankruptcy court of that district determines that the approved nonprofit budget and credit counseling agencies for that district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from that agency by reason of the requirements of paragraph (1).

(c)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

(i) describes exigent circumstances that merit a waiver of the requirement of subparagraph (1); and

(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1). But in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except for cause, may order an additional 15 days.

(2) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(A) by striking at the end the following:

“(I) After the filing of the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor—

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of—

(1) the services provided by the credit counseling industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups; and

(2) in paragraph (1), by striking ‘‘or’’ at the end;
who resides in a district for which the United States trustee or bankruptcy administrator of such district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete such instructional course by reason of the requirements of this section.

“(3) Each United States trustee or bankruptcy administrator who makes a determination described in paragraph (2) shall review that determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.”

(c) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee or bankruptcy administrator of such district determines that the approved instructional courses are not adequate to service the additional individuals who would be required to complete such instructional course by reason of the requirements of this section.

“(3) Each United States trustee or bankruptcy administrator who makes a determination described in paragraph (2) shall review that determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.”

(4) At the conclusion of the probationary period under clause (A) of paragraph (1), the United States trustee or bankruptcy administrator may only approve for an additional 1-year period, and for successive 1-year periods thereafter, any agency or instructional course that has demonstrated, during the probationary or subsequent period that such agency or instructional course—

(1) has met the standards set forth under this section during the probationary period; and

(2) can satisfy such standards in the future.

(5) Not later than 30 days after any final determination under paragraph (3) occurs, if such instructional course is approved for any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate district court of the United States.

(6) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that willfully violates the provision for safekeeping and payment of client funds, provide adequate counseling with respect to client funds, deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

(2) The United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

(1) be a nonprofit budget and credit counseling agency, the majority of the board of directors of which—

(i) are not employed by the agency; and

(ii) will not directly or indirectly benefit financially from the outcome of a credit counseling session;

(2) if a fee is charged for counseling services, charge a reasonable fee, and provide services without any fee;

(3) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

(4) provide full disclosures to clients, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by the debtor and how such costs will be paid;

(5) provide adequate counseling with respect to client credits that includes an analysis of their current situation, what brought them to that financial status, and how they can develop a plan to handle the problem without incurring negative amortization of their debts;

(6) provide trained counselors who receive no commissions or bonuses based on the counseling session outcome, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subsection (h); and

(7) demonstrate adequate experience and background in providing credit counseling; and

(8) provide adequate and ongoing support services to provide continuing support services for budgeting plans over the life of any repayment plan.

(4) The United States trustee or bankruptcy administrator shall only approve an instructional course concerning personal financial management—

(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

(A) trained personnel with adequate experience and training in providing effective instruction and services;

(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course or program entirely through the Internet, if such instructional course or program is effective; and

(D) the preparation and distribution of reasonable records (which shall include the debtor’s bankruptcy case number) to permit evaluation of the effectiveness of such instructional course or program, including any evaluation of satisfaction of instructional course or program requirements for each debtor attending such instructional course or program which shall be available for inspection by the Executive Office for United States Trustees, the United States trustee, bankruptcy administrator, or chief bankruptcy judge for the district in which such instructional course or program is offered; and

(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

(B) is otherwise likely to increase substantially debtor understanding of personal financial management.

(5) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

(6) The United States trustee or bankruptcy administrator shall notify the clerk that a credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).
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(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

"H.111. Credit counseling agencies; financial management instructional courses.

(1) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

"(i) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated."

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering chapter 13 plans for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Consumer Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

"(ii) if, at the time the petition is filed, the debtor has not received payments required to be made under the plan in the manner required by the plan (including any amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

"(j) Subsection (a)(2) does not operate as an injunction against reaffirmation of a debt under any such chapter shall not be precluded from reaffirming a debt under any such chapter if the court determines by clear and convincing evidence, that

"(1) such claim contains a security interest in real property that is the principal residence of the debtor;

"(2) such act is in the ordinary course of business between the creditor and the debtor; and

"(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.

 SEC. 202. DISCLOSING ABUSE OF REAFFIRMATION PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, is amended by adding at the end the following:

"(1) in subsection (c), by striking paragraph (2) and inserting the following:

"(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;"; and

"(2) by adding at the end the following:

"(e) The disclosures required under subsection (d) of section 524 of title 11, United States Code, as amended, shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement, statement, declaration, motion and order described in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

"(b) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases ‘Before agreeing to reaffirm a debt, review these important disclosures’ and ‘Summary of Reaffirmation Agreement’ are required to be conspicuously displayed.

"(c) The disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms ‘Amount Reaffirmed’ and ‘Annual Percentage Rate’ must be used where indicated.

"(3) The disclosure statement required under this paragraph shall consist of the following:

"(A) The statement: ‘Part A: Before agreeing to reaffirm a debt, review these important disclosures.’

"(B) Under the heading ‘Summary of Reaffirmation Agreement’, the statement: ‘This Summary is made pursuant to the requirements of the Bankruptcy Code.’

"(C) The ‘Amount Reaffirmed’, using that term, which shall be—

"(i) the total amount which the debtor agrees to reaffirm, and

"(ii) the total of any other fees or cost accrued as of the date of the disclosure statement.

"(D) In conjunction with the disclosure of the ‘Amount Reaffirmed’, the statements—

"(i) ‘The amount of debt you have agreed to reaffirm’, and

"(ii) ‘Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.’

"(E) The ‘Annual Percentage Rate’, using that term, which shall be—

"(i) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms ‘credit’ and ‘open end credit plan’ are defined in section 101 of the Truth in Lending Act, then—

"(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of this title, if the debtor has received payments required under the plan and is not in default of any periodic payments required under the plan, is the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

"(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the balance included in the amount reaffirmed, or

"(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subsection (I) and the simple interest rate under subsection (II).

"(ii) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms ‘credit’ and ‘open end credit plan’ are defined in section 101 of the Truth in Lending Act, then—

"(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the reaffirmation agreement with respect to the debt, or if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

"(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identified by items or types and the original amount of each such balance included in the amount reaffirmed, or

"(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subsection (I) and the simple interest rate under subsection (II).

"(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure statement given under the Truth in Lending Act, by statuting ‘The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.’

"(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by statuting ‘If a security interest or lien in goods or property is asserted over some or all of the obligations with reasonable specificity to the extent then known by the disclosing party, then

"(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

"(i) by making the statement: ‘Your first payment in the amount of $ is due on but the future payment amount may be different. Consult your credit agreement, as applicable.’, and stating the amount of the first payment and the due date of that payment in the places provided below.

"Your payment schedule will be:’, and describing the repayment schedule with the number, amount and due dates or period of payments scheduled to repay the obligations reaffirmed to the extent then known by the disclosing party, or

"(iii) by describing the debtor’s repayment obligations with reasonable specificity to the extent then known by the disclosing party.

"(I) The following statement: ‘Note: When this disclosure refers to what a creditor ‘may’ do, it does not use the word ‘may’ to mean that the creditor specific permission. The word ‘may’ is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your right to refrain from the action that the law requires, talk to the attorney who helped you negotiate this agreement. If you don’t have
an attorney helping you, the judge will explain the effect of your reaffirmation when the reaffirmation hearing is held.

"(3) The reaffirmation agreement is not effective, even though you have signed it."

1. Read the disclosures in this Part A carefully. You are required to reaffirm a debt if the creditor believes in good faith to be effective. If you do not reaffirm, the debtor must have signed the reaffirmation agreement.

2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and completed and signed reaffirmation agreement.

3. If you were represented by an attorney during the negotiation of the reaffirmation agreement, the attorney must have signed the certification in Part C.

4. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, you must have completed and signed Part E.

5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

6. If you were represented by an attorney during the negotiation of the reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

7. If you were not represented by an attorney during the negotiation of the reaffirmation agreement, the agreement is presumed to be an undue hardship if the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your agreement. The bankruptcy court must approve the agreement as consistent within your best interests, except that no court approval is required if the agreement is for a consumer debt secured by a mortgage, deed of trust, security deed or other lien on your real property, like your home.

"Your right to rescind a reaffirmation. You may rescind your reaffirmation agreement any time before the bankruptcy court enters a discharge order or within 60 days after the agreement is filed with the court, whichever is longer. To rescind, you must notify the creditor that the agreement is canceled."

"What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy. That means that if you default on your reaffirmed debt after your bankruptcy is over, you may be liable to pay the debt. If you reaffirm a debt and are not able to pay the debt, you may be subject to enforcement actions including wage garnishment or seizure of your property if you are not able to make your payments."

"Are you required to enter into a reaffirmation agreement by law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

"If your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A "lien" is often referred to a security interest, deed of trust, mortgage, or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State law or that the court determines you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property determined by the parties or determined by the court.

(2) The motion, which may be used if approval of the agreement by the court is required before it is to be effective, and shall be signed and dated by the moving party, shall consist of the following:

"Part E: Motion for Court Approval (To be completed only if this reaffirmation is to be effective and shall be signed and dated by the moving party, shall consist of the following):

"(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement.

"(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith that it is effective.

"(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

"If you were represented by an attorney in connection with this reaffirmation agreement, you must have signed a completed and signed reaffirmation agreement, which the debtor shall sign and file prior to filing with the court, shall contain the following:

"Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

"Signature:"

"(B) In the case of reaffirmations in which a presumption of undue hardship has been established and signed reaffirmation agreements were signed under subsection (m)(2), subparagraph (B) is not applicable.

"(C) In the case of a reaffirmation agreement subsection (m)(2), subparagraph (B) is not applicable.

"D) The statement in support of reaffirmation agreements, which the debtor shall sign and date prior to filing with the court, shall contain the following:

"Part D: Debtor's Statement in Support of Reaffirmation Agreement.

1. I believe this agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is sufficient to meet the necessities of my family and monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total less than my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the court how I can afford to make the payments necessary to keep my property or my wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement.

2. I received a copy of the Reaffirmation Disclosure Statement in Part A and signed reaffirmation agreement.
the preceding sentence, the individuals described under subsection (b) shall address violations of title 11 of the United States Code, to determine the overall treatment of such proceedings within the context of such process, and shall include in such study consideration of—

(1) the policies and activities of creditors with respect to reaffirmation; and

(2) whether consumers are fully, fairly, and consistently informed of their rights pursuant to such title.

200. REPORT TO THE CONGRESS.—Not later than 18 months after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive practices or other practices that impair the ability of a consumer to receive a fair and meaningful opportunity to reaffirm a consumer credit obligation under section 1228(a).
SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

‘‘(5) for a domestic support obligation,’’; and

(B) by striking paragraph (18); and

(4) in subsection (c), by striking ‘‘or’’ and inserting ‘‘and’’;

(B) in paragraph (3), by striking the period at the end and inserting ‘‘; and’’; and

(C) by striking at the end the following:

‘‘(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(8) only if the plan provides that all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.’’;

(9) in section 1325(b)—

(A) in paragraph (9), by striking ‘‘; and’’ and inserting ‘‘; and’’;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following—

‘‘(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 523(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and’’;

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following—

‘‘(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first becomes payable after the date on which the petition is filed; and’’;

(11) in section 1326(a), in the matter preceding paragraph (1), by inserting ‘‘, and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, and that amount provided for by the plan) have been paid’’ after ‘‘completion by the debtor of all payments under the plan’’;

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following—

‘‘(2) under subsection (a)—

(A) of the commencement or continuation of a civil action or proceeding—

(i) for the establishment of patriernity;

(ii) for the establishment or modification of an order for domestic support obligations;

(iii) for the collection of the debtor’s income; or

(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate or

(v) regarding domestic violence;

(B) of the collection of a domestic support obligation from property that is not property of the estate;

(C) with respect to the withholding of income that is property of the estate or property of the debtor, except a domestic support obligation under a judicial or administrative order;

(D) of the withholding, suspension, or restriction of drivers’ licenses, professional and occupational licenses, professional and recreational licenses under State law, as specified in section 496(a)(16) of the Social Security Act;’’;

(7) in section 1307(c)—

(A) in paragraph (9), by striking ‘‘or’’ at the end;

(B) in paragraph (10), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

‘‘(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed;’’.

(8) in section 1322(a)—

(A) in paragraph (2), by striking ‘‘and’’ at the end;

(B) in paragraph (3), by striking the period at the end and inserting ‘‘; and’’; and

(C) by adding at the end the following:

‘‘(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(8) only if the plan provides that all of the debtor’s projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.’’;

(9) in section 1322(b)—

(A) in paragraph (9), by striking ‘‘; and’’ and inserting ‘‘; and’’;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following—

‘‘(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 523(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and’’;

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following—

‘‘(8) the debtor is required by a judicial or administrative order or statute to pay a domestic support obligation, the debtor has paid all amounts payable under such order or statute for such obligation that first becomes payable after the date on which the petition is filed; and’’;

(11) in section 1326(a), in the matter preceding paragraph (1), by inserting ‘‘, and in the case of a debtor who is required by a judicial or administrative order to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or statute that are due on or before the date of the certification (including amounts due before the petition was filed, and that amount provided for by the plan) have been paid’’ after ‘‘completion by the debtor of all payments under the plan’’;

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENCE TRANSFER MOTIONS.

Section 547 of title 11, United States Code, is amended to read as follows:

‘‘(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;’’;

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting ‘‘to which subsection (a)(10) applies, the trustee shall—’’ after ‘‘(A)(i) provide written notice to the holder’’;

(2) in subsection (a), by striking ‘‘and’’ at the end;

(B) in paragraph (7), by striking the period and inserting ‘‘; and’’; and

(C) by adding at the end the following—

‘‘(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and’’;

(1) in a case described in subsection (a)(2) to which subsection (a)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(2) to such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(2) if with respect to the debtor there is a claim for a domestic support obligation, provide written notice to such holder and to such State child support enforcement agency of—

(i) the granting of the discharge;

(ii) the last known address of the debtor;

(iii) the last known name and address of the debtor’s employer; and

(iv) the name of each creditor that holds a claim that—

(1) is not discharged under paragraph (2), (4), or (14)(A) of section 524(a); or

(II) was reaffirmed by the debtor under section 524(c).

(A)(ii) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(i) the last known address of the debtor.

(B) Notwithstanding any other provision of law, no creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.’’;

DUTIES OF TRUSTEE UNDER CHAPTER 11—

Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ‘‘and’’ at the end;

(B) in paragraph (7), by striking the period and inserting ‘‘; and’’; and

(C) by adding at the end the following—

‘‘(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and’’;

(1) in a case described in subsection (a)(2) to which subsection (a)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(2) to such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) in the notice required by clause (i) the name, address, and telephone number of such holder; and

(1) in a case described in subsection (a)(2) to which subsection (a)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(2) to such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

(B)(i) provide written notice to such State child support enforcement agency of such claim; and

(ii) in the notice provided under clause (i) the name, address, and telephone number of such holder; and

(1) in a case described in subsection (a)(2) to which subsection (a)(6) applies, the trustee shall—

(A)(i) provide written notice to the holder of the claim described in subsection (a)(2) to such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

(ii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;
(iv) the name of each creditor that holds a claim that—

(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

(II) was reaffirmed by the debtor under section 524(c).

(ii) by adding at the end the following:

(iii) whether the debtor will be able to retain the debtor’s home, car, or other property after commencing a case under this title;

(iv) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(vi) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(vii) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;

(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a borrower who is an individual; and

(C) by adding at the end the following:

(II) was reaffirmed by the debtor under section 524(c).

(3) in subsection (c)(1) of a bankruptcy petition preparer may—

(A) by striking

(II) was reaffirmed by the debtor under section 524(c).

(B) The legal advice referred to in subparagraph (A) includes—

(i) whether the debtor will be able to retain

(ii) concerning—

(I) the tax consequences of a case brought under this title;

(II) the dischargeability of tax claims;

(iii) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

(iv) concerning how to characterize the nature of the debtor’s interests in property or the debtor’s debts; or

(v) concerning bankruptcy procedures and rights.

(6) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor’s dependents, for—

(A) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded by a governmental unit or nonprofit institution;
or the bankruptcy administrator.

This paragraph may be issued on the motion of
the court that is exempt from the estate if the debtor
has failed to comply with a previous order
of the court.

A bankruptcy petition preparer shall notify
the debtor of any such maximum amount before
preparing any document for filing for a debtor or
accepting any fee from the debtor.

(C) in paragraph (2), as so redesignated—

(i) by striking "Within 10 days after the date
of filing of the bankruptcy petition preparer
shall file a" and inserting "A";

(ii) by inserting "by the bankruptcy petition
preparer shall be filed together with the
petition,"

(iii) by adding at the end the following:

If rules or guidelines setting a maximum fee for
services have been promulgated or prescribed
under paragraph (1), the declaration under this
paragraph shall include a certification that the
bankruptcy petition preparer complied with the
notification requirement under paragraph (1).

(D) by striking paragraph (3), as so redesignated,

and inserting the following:

(3)(A) The court shall disallow and order the
immediate refund of any fee referred to in paragraph (2) found to be
in excess of the value of any services—

(i) rendered by the preparer during the 12-month period immediately preceding the date of
filing of the petition; or

(ii) found to be in violation of any rule
or guideline promulgated or prescribed under
paragraph (1).

(B) All fees charged by a bankruptcy peti-
tion preparer may be forfeited in any case in
which the bankruptcy petition preparer fails to comply with this subsection or subsection (b),
and

(C) An individual may exempt any funds re-
covered under this paragraph under section
522(b)."

(E) in paragraph (4), as so redesignated, by
striking "or the United States trustee" and in-
serting "the United States trustee, the bank-
ruptcy administrator, or the court, on the initia-
tive of the court,"

(E)(i) in subsection (I), by striking the matter
preceding subparagraph (A) and inserting the
following:

"(I) If a bankruptcy petition preparer vio-
lates or is found to have violated any act that
draws the court to be fraudulent, unfair, or deceptive,
on the motion of the debtor, trustee, United
States trustee, or bankruptcy administrator, and
after a hearing with respect to that violation or act, the court shall order the
bankruptcy petition preparer to pay to the deb-
tor—"

(ii) in subparagraph (B)—

(i) by striking "or has not paid a penalty" and
inserting "has not paid a penalty; and"

(ii) by inserting "or failed to disgorge all fees
ordered to be paid to the United States
Trustee, the bankruptcy administrator, or the
court, under this section,"

(B) in paragraph (2)—

(i) in subparagraph (A)(i), by striking "a violation of which subjects a person to
criminal penalties;" and

(ii) in subparagraph (B)—

(i) by striking "or has not paid a penalty," and
inserting "has not paid a penalty; and"

(ii) by inserting "or failed to disgorge all fees
ordered by the court" after "a penaltyimposed under this section,"

(C) as redesignating paragraph 3 as para-
graph (4); and

(C) by inserting after paragraph (2) the fol-
lowing:

(3) The court, as part of its contempt power,
may enjoin a bankruptcy petition preparer that
has failed to comply with a previous order
issued under paragraph (2) to cease an act that
renders this paragraph may be issued on the motion of
the court, the trustee, the United States trustee,
or the bankruptcy administrator; and

(II) A bankruptcy petition preparer who
fails to comply with any provision of subsection
(b), (c), (d), (e), (f), or (g) may be fined not
more than $500 for each such failure.

(2) The court shall triple the amount of a
fine assessed under paragraph (1) in any case in
which the court finds that a bankruptcy peti-
tion preparer—

(A) advised the debtor to exclude assets or
income that should have been included on appli-
cable schedules;

(B) advised the debtor to use a false Social
Security account number;

(C) failed to inform the debtor that the debt-
or was false at the time this file was opened;

(D) prepared a document for filing in a man-
ner that failed to disclose the identity of the
preparer;

(E) The debtor, the trustee, a creditor, the
United States trustee, or the bankruptcy admin-
istrator may file a motion for an order imposing
a fine on the bankruptcy petition preparer for each
violation of this section.

(3)(A) Fines imposed under this subsection in
districts served by United States trustees
shall be paid to the United States trustee, who
shall deposit an amount equal to such fines in
a special account of the United States Trustee
System Fund referred to in section 586(e)(2)
of title 28. Amounts deposited under this subpara-
graph shall be used to reimburse the enforcement of this section on a national basis.

(B) Fines imposed under this subsection in
districts served by United States trustees
shall be deposited as offsetting receipts to the
fund established under section 1931 of title 28,
and shall remain available until expended
to carry out the purposes specified by the
amount paid out of such appropriation for ex-

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11,
UNITED STATES CODE.

Section 507(a) of title 11, United States Code, is amended by inserting after paragraph (9) the following:

(10) Tenth, allowed claims for death or per-
sonal injuries resulting from the operation of a
motor vehicle or vessel if such operation was un-
lawful because intoxication, from using alcohol, a drug, or another substance,"

SEC. 224. PROTECTION OF RETIREMENT SAVINGS
IN BANKRUPTCY.

(a) In General.—Section 522 of title 11, United States Code, is amended by inserting after paragraph (3) the following:

"(3) Property listed in this paragraph is—

(A) any property

and

(B) by striking paragraph (2) and inserting the following:

"(2) Property listed in this paragraph is prop-
erly that is specified under subsection (d), un-
less the State law that is applicable to the debt-
or under paragraph (3)(A) specifically does not so authorize;"

(C) by inserting "by striking (b)(1) Notwithstanding" and in-
serting "(b)(1) Notwithstanding;"

(D) by striking paragraph (2) and inserting paragraph (2); and

(E) by striking each place it appears and inserting "(par-
graph (2)); and

(F) by striking "Such property is—;” and

(G) by adding at the end the following:

"(4) For purposes of paragraph (3)(C) and
subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retire-
mament that has not received a favorable deter-
mination under section 7805 of the Internal
Revenue Code of 1986, and that determination is in effect as of the date of the
ordering of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from
the estate.

(B) If the retirement funds are in a retire-
mament fund that has not received a favorable deter-
mination under such section 7805, those funds are exempt from the estate if the debtor dem-
"(i) no prior determination to the contrary
has been made by a court or the Internal
Revenue Service; and

"(ii) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

"(II) the retirement fund fails to be in
substantial compliance with the applicable require-
ments of the Internal Revenue Code of 1986 and the
debtor is not materially responsible for that fail-
ure.

(C) A direct transfer of retirement funds from
1 fund or account that is exempt from taxation
under section 401, 403, 408, 408A, 414, 457, or
501(a) of the Internal Revenue Code of 1986,
under section 401(a)(1) of the Internal Revenue
Code of 1986, or otherwise, shall not cease to
carry an exemption under paragraph (3)(C) or
subsection (d)(12) by reason of that direct trans-
fer.

"(D)(i) Any distribution that qualifies as an
equal follows distribution within the meaning of
section 402(c) of the Internal Revenue Code of
1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph
(3)(C) or subsection (d)(12) by reason of that dis-
tribution.

(ii) A distribution described in this clause is an amount that—
educe from the fund or account that is exempt from taxation under section
401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and
"(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days
after the date of the distribution.

(3) by inserting after paragraph (1), by strik-
ing "subsection (b)(1)" and inserting "sub-
section (b)(2); and

(4) by adding at the end the following:

"(12) Retirement funds to the extent that those
funds are in a fund or account that is exempt
from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986;
and
"(A) in the matter preceding paragraph (1), by strik-
ing "subsection (b)(1)" and inserting "subsection (b)(2); and

"(B) in paragraph (2) and inserting the following:

"(2) Property listed in this paragraph is prop-
erly that is specified under subsection (d), un-
less the State law that is applicable to the debt-
or under paragraph (3)(A) specifically does not so authorize;"

"(C) by striking (b)(1) Notwithstanding and in-
serting "(b)(1) Notwithstanding;"

"(D) by striking paragraph (2) and inserting paragraph (2); and

"(E) by striking each place it appears and inserting paragraph (2); and

"(F) by striking "Such property is—;” and

"(G) by adding at the end the following:

"(4) For purposes of paragraph (3)(C) and
subsection (d)(12), the following shall apply:

(A) If the retirement funds are in a retire-
mament that has not received a favorable deter-
mination under section 7805 of the Internal
Revenue Code of 1986, and that determination is in effect as of the date of the
ordering of the case under section 301, 302, or 303 of this title, those funds shall be presumed to be exempt from
the estate.

(B) If the retirement funds are in a retire-
mament fund that has not received a favorable deter-
mination under such section 7805, those funds are exempt from the estate if the debtor dem-

84 of title 5, that satisfies the requirements of section 8433(g) of such title; but this paragraph may not be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title.

(c) LIMITATIONS ON DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 215, is amended by adding at the end the following:

“(19) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(g) of the Internal Revenue Code of 1986; or

(B) a loan from the thrift savings plan described in subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title; but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b) of the Internal Revenue Code of 1986, constitutes a claim or a debt under this title.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

“(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amount of such loan shall not be treated as disposable income under section 1325.”

(e) ASSET LIMITATION.—

(1) LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

“(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of that Code or a simple retirement account under section 408(p) of that Code, the aggregate value of such assets excepted under this section, without regard to amounts attributable to roll-over contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(4) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 in a case filed by an individual, except that such amount may be increased if the interests of justice so require.”.

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—

(Paras. (2) and (4) of section 104(f) of title 11, United States Code, are amended by inserting “$522(n),” after “$522(d),”.

§256. Protection of Education Savings in Bankruptcy.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking “or” at the end;

(B) by redesignating paragraph (5) as paragraph (9); and

(C) by inserting after paragraph (4) the following:

“(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of filing of the petition, but—

(A) only the designated beneficiary of such account was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were placed in such account; and

(B) only to the extent that such funds—

(i) are not pledged or promised to any entity in connection with any extension of credit; and

(ii) are not loans or contributions (as described in section 970(e) of the Internal Revenue Code of 1986); and

(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

(D) any person that is an officer, director, employee, or agent of a person who provides such assistance or of such preparer;

(B) a nonprofit organization which is exempt from income taxes under section 501(c)(3) of the Internal Revenue Code of 1986; and

(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to incur more debt in contemplation of such person filing a case under this title; or

(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or a simple retirement account under such Code or a simple retirement account under such Code.

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—

(Paras. (2) and (4) of section 104(f) of title 11, United States Code, is amended by inserting “$101(3),” after “sections” each place it appears.)

§227. Restrictions on Debt Relief Agencies.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

“§526. Restrictions on debt relief agencies

(1) A debt relief agency shall not—

(i) fail to perform any service that such agency informed an assisted person or prospective assisted person to provide in connection with a case or proceeding under this title;

(ii) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue and misleading;

(iii) represent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, that such person—

(A) is not liable to the debtor or to any creditor of the debtor; or

(B) is not liable to any creditor or debtor relief agency has received, for actual damages, for reasonable attorneys fees and costs if such agency is found, after notice and a hearing, to have—

(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, for reasonable attorneys fees and costs if such agency is found, after notice and a hearing, to have—

(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person; or

(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case
under another chapter of this title because of such agency’s intentional or negligent failure to file any required document including those specified in section 521; or

“(C) the agency had intended or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.”

“(B) disclose to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that the conveyance has violated or is violating this section, the State—

“(A) may bring an action to enjoin such violations;

“(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

“(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorney fees as determined by the court.”

“The district court of the United States for any district located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

“(g) any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

“(A) enjoin the violation of such section; or

“(B) impose an appropriate civil penalty against such person.

“(h) No provision of this section, section 527, or section 528 shall be interpreted to (1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such laws are inconsistent with those sections, or and then only to the extent of the inconsistency; or

“(2) be deemed to limit or curtail the authority or ability to file a voluntary bankruptcy petition before that court.

“(i) (A) The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 525, the following:

“§526. Restrictions on debt relief agencies.”

“SEC. 228. DISCLOSURES.

“(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

“(1) the written notice required under section 342(b)(1) of this title; and

“(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

“(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

“(B) all assets and all liabilities are required to be accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 of this title must be stated in those documents where requested after reasonable inquiry to establish such value;

“(C) current monthly income, the amounts spent per month in a case under chapter 13, disposable income (determined in accordance with section 707(b)(2), are required to be stated after reasonable inquiry; and

“(D) if any bankruptcy assistance services are provided during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction including, in some instances, criminal sanctions.

“(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) with the following statement, to the extent applicable, or other similar statement:

“The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person: ‘IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARE.

‘If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARE TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PREPARE WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

‘The following information helps you understand what must be done in a routine bankruptcy court to help you evaluate how much service you need. Although bankruptcy can be complex, many people are represented by attorneys. Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different types of debt relief made available by the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared. You will file these documents with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required meeting of creditors where you may be questioned by a court official called a ‘trustee’ and by creditors.

‘If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so and a creditor is not permitted to coerce you into reaffirming your debts.

‘If you choose to file a chapter 13 case in which you repay your creditors what you can over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation of your plan which will be before a bankruptcy judge.

‘If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what needs to be done from someone familiar with that type of relief.

‘Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can represent you in court.

‘Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or at a time specified by the court, the information shall be reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, or other similar statement that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title. A25JY7

‘(2) any liability under paragraph (2); and

‘(3) costs of the action and reasonable attorney fees as determined by the court.”

“(C) The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526 the following:

“§527. Disclosures.”

“SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

“(a) Enforcement.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 227 and 228, is amended by adding at the end the following:

“§528. Requirements for debt relief agencies

“(a) A debt relief agency shall—

“(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person’s petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

“(A) the services the agency will provide to such assisted person; and

“(B) the fees or charges for such services, and the terms of payment;

“(b) A debt relief agency—

“(1) shall provide each assisted person with a copy of the fully executed and completed contract;

“(2) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

“(4) clearly and conspicuously use the following statement in such advertisement: ‘We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code,’ or a substantially similar statement.

“(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title.

“(2) A description of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement;

“(2) Statements as of ‘federally supervised repayment plan’ or ‘Federal debt restructuring help’ or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

“(2) An advertisement, directed to the general public, indicating that the debt relief agency
provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

“(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

“(B) include the following statement: ‘We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.’ or a similar statement.’

b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227 and 228, is amended by inserting after the item relating to section 527, the following:

‘‘528. Requirements for debt relief agencies.’’.

SEC. 220. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by debtors who are individuals under such title, the names and social security numbers of such debtors to the extent necessary to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

SEC. 231. PROHIBITION OF PERSONALLY IDENTIFIABLE INFORMATION.

(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following:

‘‘...except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not disclose any personally identifiable information to any person unless—

(A) such sale or such lease is consistent with such policy; or

(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease; and

(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.’’.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41A) the following:

‘‘(41A) ‘personally identifiable information’ means—

‘‘(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

(ii) the geographical address of a physical place of residence of such individual;

(iii) the address (including an e-mail address) of such individual;

(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

(v) a social security account number issued to such individual; or

(vi) the account number of a credit card issued to such individual; or

(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

(ii) any other information concerning an individual, if undisclosed, will result in contacting or identifying such individual physically or electronically;’’.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the United States Code is amended by inserting after section 331 the following:

‘‘§332. Consumer privacy ombudsman

(a) If a hearing is required under section 363(b)(1) of this title, the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

(b) The consumer privacy ombudsman may appear and be heard in the hearing and provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personal information under section 363(b)(1)(B) of this title. Such information may include presentation of—

(1) the debtor’s privacy policy;

(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.’’.

(b) COMPENSATION OF CONSUMER PRIVACY OM- BUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended by adding at the end thereof the following:

‘‘(C) for purposes of subparagraph (B), a case—

(1) if a single or joint case was pending under chapter 7, 11, or 13 in which the individual was a debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 11 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any other matter shall terminate upon the date of such dismissal; and

(B) the debtor shall be required to provide adequate protection as ordered by the court; or

(2) if a single or joint case of the debtor was pending within the preceding 1-year period and was dismissed, other than a case refiled under a chapter other than chapter 11 after dismissal under section 707(b)—

(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any other matter shall terminate upon the date of such dismissal; and

(B) the debtor shall be required to provide adequate protection as ordered by the court; or

(C) for purposes of subparagraph (B), a case is presumptively filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary).

(iii) as to all creditors, if—

(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney); or

(bb) provide adequate protection as ordered by the court; or

(cc) perform the terms of a plan confirmed by the court under chapter 11, or 13 or any other reason to conclude that the later case will be confirmed—

(aa) if a case under chapter 7, with a discharge given under section 727, and

(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

(ii) as to any creditor that commenced an action after subsection (a) or (b) in which the individual was a debtor if, as of the date of dismissal of such case, that action was..."
SEC. 303. CURRING ABUSIVE FILINGS.

(a) In GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking “or” at the end;

(2) in paragraph (3), by striking the period at the end and inserting “; or”; and

(3) by adding the following:

“(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real estate, if the court finds that the filing of the bankruptcy petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

(A) a transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval;

(B) multiple bankruptcy filings affecting the real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, the information contained in the subsection shall be binding in any other case under this title purporting to affect the real property filed not later than 2 years after the date of entry of such order by the court, except that a debtor in a subsequent case may move for relief from such order based upon changed circumstances before notice or a hearing.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title XI, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

(A) in paragraph (4), by striking “and” and inserting “, and”;

(B) in paragraph (5), by striking the period at the end and inserting “; and”;

(C) by adding at the end the following:

“(6) in a case under chapter 17 of this title in which the debtor is an individual, not retain possession of any collateral to which a creditor holds a security interest which has the effect of placing in the possession of the collateral to which the creditor has a security interest, the debtor shall be permitted to repossess the collateral following the entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice not later than 45 days after the first meeting of creditors under section 341(a), either—

“(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

“(B) if the bankruptcy case was filed in violation of section 522(f), 544, 545, 547, 548, or 549 of this title.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLY.

Title XI, United States Code, is amended—

(1) in section 305, by redesignating subsection (h) as subsection (i);”.

(2) in paragraph (1), by striking “and” and inserting “; and”;

(3) in paragraph (2), by striking “or” and inserting “, or”;

(4) in paragraph (3), by striking “and” and inserting “; and”;

(5) by adding at the end the following:

“(I) in a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a creditor’s claim on or after the date of entry of an order under section 362(d)(4) as to that property in any prior bankruptcy case for a period of 2 years after entry of such an order, except that the debtor, in a subsequent case, may move the court for relief from such order based upon changed circumstances or for other good cause shown, after notice not later than 45 days after the first meeting of creditors under section 341(a), either—

“(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

“(B) if the bankruptcy case was filed in violation of section 522(f), 544, 545, 547, 548, or 549 of this title.

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) In GENERAL.—Section 1325(a)(3)(B)(i) of title 11, United States Code, is amended to read as follows:

“(i)(1) the plan provides that—

“(I) the holder of such claim retain the lien securing such claim until the earlier of—

“(aa) the payment of the underlying debt determined under section 1322(a)(9); or

“(bb) discharge under section 1328; and

“(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall be retained by such holder to the extent recognized by applicable nonbankruptcy law; and”;

“(2) the plan provides that—

“(I) the holder of such claim retain the lien securing such claim until the earlier of—

“(aa) the payment of the underlying debt determined under section 1322(a)(9); or

“(bb) discharge under section 1328; and

“(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall be retained by such holder to the extent recognized by applicable nonbankruptcy law; and”;

“(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 106—

(1) in paragraph (2), by striking “or” and inserting “and”;

(2) in paragraph (3), by striking “or” and inserting “and”;

(3) by adding at the end the following:

“(4) if a single or joint case is filed by or on behalf of one or more debtors, the stay under subsection (a) shall not go into effect upon the filing of the later case; and

(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;”;

“(B) if, within 30 days after the filing of the later case, a party in interest requests the court to issue a stay with respect to the later case, a party in interest requests the court to issue a stay with respect to the later case; and

“(ii) the stay under subsection (a) shall not go into effect upon the filing of the later case; and

“(C) a stay imposed under subparagraph (B) shall be effective on the date of entry of the order allowing the stay to go into effect; and

“(D) for purposes of subparagraph (B), a case is presumptively not filed in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

“(i) as to all creditors if—

“(A) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;”;

“(ii) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or amend the petition or any other documents as required by this title or the court without substantial excuse (but mere inadherence of a deadline shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney); failed to provide adequate protection as ordered by the court; or

“(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 13, with a confirmed plan that will be fully performed; or

“(ii) as to any creditor that commenced an action or took any action under section 522(f), 544, 545, 547, 548, or 549 of this title, purporting to affect the real property or personal property as is permitted by applicable nonbankruptcy law; and

“(3) if the debtor fails to so act within the 45-day period specified in subsection (a)(6), either

“(A) if the debtor is ineligible under section 109(g) to be a debtor in a bankruptcy case; or

“(B) if, within 30 days after the filing of the petition, the debtor fails to file or amend the petition or any other documents as required by this title or the court without substantial excuse (but mere inadherence of a deadline shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), or

“(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;”;

“(B) if the bankruptcy case was filed in violation of section 522(f), 544, 545, 547, 548, or 549 of this title.

SEC. 307. TREATMENT IN CHAPTER 13.

When the debtor does not complete the plan or otherwise comply with the terms of the plan confirmed by the court, or

“(III) the petition or any other documents as required by this title or the court without substantial excuse (but mere inadherence of a deadline shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor’s attorney), or

“(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;”;

“(B) if the bankruptcy case was filed in violation of section 522(f), 544, 545, 547, 548, or 549 of this title.

SEC. 308. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) In GENERAL.—Section 1325(a)(3)(B)(i) of title 11, United States Code, is amended to read as follows:

“(i)(1) the plan provides that—

“(I) the holder of such claim retain the lien securing such claim until the earlier of—

“(aa) the payment of the underlying debt determined under section 1322(a)(9); or

“(bb) discharge under section 1328; and

“(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall be retained by such holder to the extent recognized by applicable nonbankruptcy law; and”;
(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following:

“Notwithstanding subsection (a), the value of an interest in or title to property that becomes due after the order for relief under this chapter shall be determined under applicable nonbankruptcy law; provided, however, that if the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, the payments required under subsection (A) shall be not less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or”.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 363(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B)—

(A) by striking “in the converted case, with allowed secured claims in cases under chapter 12” and inserting “in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapter 12”;

(B) by striking the period and inserting “;”;

(c) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (13) the following:

“(13A) ‘debtor’s principal residence’—

“(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

“(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;”;

and

(2) by inserting after paragraph (27), the following:

“(27A) ‘incidental property’, means, with respect to a debtor’s principal residence—

“(A) means a single-family residence in the area where the real estate is located;

“(B) means all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, and insurance proceeds; and

“(C) all replacements or additions;”.

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3) of title 11, United States Code, as so designated by section 106, is amended—

(1) in subparagraph (A)—

(A) by striking “180 days” and inserting “730 days”;

and

(B) by striking “, or for a longer portion of such 180-day period than in any other place” and inserting “, or if the debtor’s domicile has not been located at a single State for such 730-day period in which the debtor’s domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place”;

and

(2) by adding at the end the following:

“If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for exemptions, the debtor may elect to exempt property that is specified under subsection (d).”.

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522(b)(3) of title 11, United States Code, as amended by section 224, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, subject to subsections (o) and (p), “before “any property’;”;

and

(2) by adding at the end the following:

(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

“(1) real or personal property that the debtor or a dependant of the debtor uses as a residence;

“(2) a cooperative that owns property that the debtor or a dependant of the debtor uses as a residence;

“(3) a burial plot for the debtor or a dependant of the debtor; or

“(4) real or personal property that the debtor or a dependant of the debtor claims as a homestead,

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under section 522(f), the interest in that property that the debtor had held the property so disposed of.”.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 363(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking “and” at the end;

(2) in subparagraph (B)—

(A) by striking “in the converted case, with allowed secured claims in cases under chapter 12” and inserting “in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapter 12”;

(B) by striking the period and inserting “;”;

and

(3) by adding at the end the following:

“(C) with respect to cases converted from chapter 13—

“(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of the petition, after deducting any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13, and

“(ii) unless of the default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.”.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

“(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (b), the leased property shall be treated as personal property and a security interest securing the debt that is the subject of the lease shall be retained by the trustee with evidence of such payment, including the amount and date of payment; and

“(p)(2) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

(2) A payment made under paragraph (1)(A) shall be considered by the court as payment of the payment under section 503(b).

(3) Subject to section 363, the court may, upon notice and hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor with evidence of the existence of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 522(a)(2)(C) of title 11, United States Code, is amended to read as follows:

“(C) for purposes of subparagraph (A)—

“(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by the debtor or on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

“(II) any advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title are presumed to be nondischargeable; and

“(III) the terms ‘consumer’, ‘credit’, and ‘open end credit plan’ have the same meanings as in section 103 of the Truth in Lending Act; and

“(IV) the term ‘luxury goods or services’ does not include goods or services reasonably necessary for the support of the debtor or a dependent of the debtor.”.

SEC. 311. AUTOMATIC STAY.

(a) IN GENERAL.—Section 362(b)(1) of title 11, United States Code, as so designated by sections 224 and 303, is amended by inserting after paragraph 21, the following:
"(22) subject to subsection (n), under subsection (a)(1), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained a judgment for possession of such property against the debtor;" 

"(23) subject to subsection (o), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained a judgment for possession of such property against the debtor;" 

"(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not otherwise stayed;" 

(b) LIMITATIONS.—Section 362 of title 11, United States Code, as amended by sections 106 and 365, is amended by adding at the end the following: 

"(n) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that was due during the 30-day period preceding the date of the filing of the bankruptcy petition.

(C) the debtor files an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall apply, unless ordered to apply by the court under this subsection.

(D) the clerk of the court shall hold a hearing within 10 days after the filing and service of such objection if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

(E) if the debtor demonstrates to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

(F) if the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

(i) relief provided under subsection (a)(1) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

(G) if a debtor, in accordance with paragraph (4), files with the petition and serves upon the lessor under subsection (a), a petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2), subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(1) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

(H) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure."
SEC. 314. DEBT INCURRED TO PAY NON-DISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a)(1) of title 11, United States Code, is amended by inserting after paragraph (1) the following:

"(1A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1)."

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by inserting at the end of paragraph (1) the following:

"(1A) shall be provided to such address unless with such notice is filed, in which such entity is a creditor.

"(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) of this title (including a stay imposed under section 362(b) of this title) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor requests to receive correspondence effective under this section of the order for relief.

"(3) The court shall dismiss the case under chapter 13 if the debtor fails to comply within 30 days after request of such creditor requests to receive correspondence that is required to be provided under this section.

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (c), by striking "; and" and inserting "; and (C) if a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case under chapter 7 or 13 if the debtor fails to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

"(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case under chapter 7 or 13 if the debtor fails to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

"(2) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then such plan shall make available to such creditor a copy of such plan—

"(A) at a reasonable cost; and

"(B) not later than 5 days after such request is filed.

"(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

"(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

"(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

"(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

"(A) the identity of any person who contributed, and the amount contributed, to the house-
“(3) Not later than 540 days after the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, the Director of the Administrative Office of the United States Courts shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report that—

(A) assesses the effectiveness of the procedures established under paragraph (1); and

(B) if appropriate, includes proposed legislation to—

(i) further protect the confidentiality of tax information; and

(ii) provide penalties for the improper use by any person in the preparation required to be provided under this section.

“(i) If requested by the United States trustee or by the trustee, the debtor shall provide—

(A) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

(B) such other personal identifying information relating to the debtor that establishes the identity of the debtor.”

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 321 of title 11, United States Code, as amended by sections 196, 225, 305, and 315, is amended to read as follows:

“(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(b)(5), if an individual debtor in a voluntary case under chapter 7 or 12 fails to file an information required under subsection (a)(1) within 45 days after the filing of the petition commencing the case, the case shall be automatically dismissed effective on the 46th day after the filing of the petition.

“(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request of the court an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

“(1) Subject to paragraph (4) and upon request of the debtor made within 45 days after the filing of the petition commencing a case described in paragraph (1), the court may allow the debtor an additional period of not exceed 45 days to file the information required under subsection(a)(1) if the court finds justification for extending the period for the filing.

“(2) In any other case, the court may dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1) and that the best interests of creditors would be served by administration of the case.”

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking “After” and inserting the following:

“(a) Except as provided in subsection (b) and after

(b) by adding at the end following:

“(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.”

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

“(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; and

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $252 per month for each individual in excess of 4; and

the plan may provide for payments over a period that is longer than 5 years.

“(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $252 per month for each individual in excess of 4, the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but in no event may the court approve a period that is longer than 5 years.”

“(3) in section 1325(b)(1)(B), by striking “three-year period” and inserting “applicable commitment period”; and

“(4) in section 1325(b), as amended by section 102, by adding at the end the following:

“(F) For purposes of the subsection, the ‘applicable commitment period’—

(A) subject to subparagraph (B), shall be—

(i) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

(1) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; and

(2) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $252 per month for each individual in excess of 4; and

(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.”

and

(4) in section 1325(c), by striking “three years” and inserting “the applicable commitment period under section 1325(b)(1)(B)”.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting “(1)” after “(e)” and;

(2) by adding at the end the following:

“(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

(B) that 60-day period is extended—

(i) by agreement of all parties in interest; or

(ii) by the court for a specific period of time if the court finds for good cause, as described in findings made by the court.”

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) In general.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding—

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended by adding at the end the following:

“§ 1115. Property of the estate.

“(a) In a case concerning a debtor who is an individual, property of the estate includes, in addition to the property specified in section 541,—

“(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

“(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.”

“(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.”

“(c) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

“(d) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended by adding at the end the following:

“(2) in a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the allowed amount of such claim; and

(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(1)(B)) that is expected to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payment of disposable income, whichever is longer.”

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,
(d) EFFECT OF CONFIRMATION.—Section 1111(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking “The confirmation of a plan does not discharge an individual debtor and inserting “A discharge under this chapter does not discharge a debtor who is an individual”; and

(2) by striking at the end the following:

“5. In a case in which the debtor is an individual—

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may not grant a discharge to the debtor who has not completed payments under the plan unless—

(i) for each allowed unsecured claim, the value of the estate of the debtor has been substantially diminished, upon request of the claimant or of the United States trustee, or the holder of an allowed unsecured claim, to—

(I) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

(II) extend or reduce the time period for such payments; or

(III) alter the amount of the contribution to a creditor under a payment provision provided by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

(ii) Sections 1121 through 1128 of this title and the requirements of section 1129 of this title apply to any modification under subsection (a).

(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.”

SEC. 322. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE EXTERNAL REVENUE CODE OF 1986, OR A TAX-DEFERRED annuity under section 403(b) of the Internal Revenue Code of 1986, except that such amount under this clause shall not constitute disposable income, as defined in section 1225(b)(2) of this title; or

“(ii) a health insurance plan regulated by State law whether or not subject to such title.”

SEC. 323. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

“(1) For a case commenced—

(A) under chapter 7 of title 11, $150; or

(B) under chapter 13 of title 11, $75.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 506(b) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking “one-half” and inserting “three-fourths”; and

(2) in paragraph (4), by striking “one-half” and inserting “one hundred percent.”

SEC. 324. EXCLUSION OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking “pursuant to section 330(b) of this title” and inserting “under section 330(a) of this title.”

SEC. 325. FAIR VALUATION OF COLLATERAL.

Section 506 of title 11, United States Code, is amended by—
(1) inserting “(1)” after “(a);” and
(2) by adding at the end the following:
“(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of filing the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.”.

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—
(1) in subsection (b),—
(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following:
“(other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible or impracticable to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonmonetary lease obligation, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;”;
and
(B) in paragraph (2)(D), by striking “penalty rate obligation” and inserting “penalty rate or penalty provision”;
(2) in subsection (c),—
(A) in paragraph (2), by striking “or” at the end;
(B) in paragraph (3), by striking “; or” at the end and inserting a period; and
(C) by striking paragraph (4);
(3) in subsection (d)—
(A) by striking paragraphs (5) through (9); and
(B) by redesignating paragraph (10) as paragraph (9); and
(4) in subsection (f)(1) by striking “; except that” and all that follows through the end of the paragraph and inserting a period.

(b) CREDITS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—
(1) in subparagraph (A), by inserting “of a kind described in section 365(b)(2) of this title expressly does not require to be cured” before the semicolon at the end;
(2) in subparagraph (C), by striking “and” at the end;
(3) by redesigning subparagraph (D) as paragraph (E); and
(4) by inserting after subparagraph (C) the following:
“(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and”.

SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1) of title 11, United States Code, is amended to read as follows:
“(A) the actual, necessary costs and expenses of preserving the estate including—
(1) the services or commissions for services rendered after the commencement of the case; and
“(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after the commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award or judgment granting such wages were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of preservation of the estate including current employees, or of nonpayment of domestic support obligations, during the case under this title;”.

SEC. 330. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF LAWS RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.

(a) DEBTS INCURRED THROUGH VIOLATIONS OF LAW RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.—Section 522(a) of title 11, United States Code, as amended by section 224, is amended—
(1) in paragraph (18), by striking “or” at the end;
(2) in paragraph (19), by striking the period at the end and inserting “; or”;
and
(3) by adding at the end the following:
“(D) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor (including any court-ordered damages, fine, penalty, or attorney fee cost owed by the debtor), that arises from—
“(A) the violation by the debtor of any Federal or State statutory law, including but not limited to violations of title 18, that results from intentional actions of the debtor that—
(i) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing lawful goods or services;
(ii) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship or
(iii) intentionally damage or destroy the property of a facility, or attempt to do so, because such facility lawfully provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship;
(B) a violation of a court order or injunction that protects access to a facility that or a person who provides lawful goods or services or the provision of lawless goods or services if—
(i) such violation is intentional or knowing; or
(ii) such violation occurs after a court has found that the debtor previously violated—
(I) such court order or injunction; or
(II) any other court order or injunction that protects access to the same facility or the same person;
except that nothing in this paragraph shall be construed to affect any expressive conduct (including peaceful picketing, peaceful prayer, or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States.”;
(b) RESTITUTION.—Section 522(q)(13) of title 11, United States Code, is amended by inserting “or under the criminal law of a State” after “federal or State statutory law,”.

SEC. 331. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHARTER 11.—Section 330, United States Code, as amended by section 106, is amended—
(1) in paragraph (10), by striking “or” at the end;
(2) in paragraph (11), by striking the period at the end and inserting “; or”;
and
(3) by inserting after paragraph (11) the following:
“(12) the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—
“(A) section 522(q)(1) may be applicable to the debtor; and
“(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);”.
(b) CHAPTEr 11.—Section 1114(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:
“(C) unless after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—
“(i) section 522(q)(1) may be applicable to the debtor; and
“(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);”.

SEC. 332. NONDISCHARGEABILITY OF DEBTS INCURRED THROUGH VIOLATIONS OF LAWS RELATING TO THE PROVISION OF LAWFUL GOODS AND SERVICES.

(b) C HAPTER 11.—Section 1114(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:
“(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);”.

(d) CHAPTEr 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—
(1) in subsection (a) by striking “As” and inserting “Subject to subsection (d), at,”;
(2) in subsection (b) by striking “At” and inserting “Subject to subsection (d), at,”;
and
(3) by adding at the end the following:
“(b) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of entry of the order granting the discharge finds that there is no reasonable cause to believe that—
“(I) section 522(q)(1) may be applicable to the debtor; and
“(II) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B);”.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS


SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:
“(49) ‘securities self regulatory organizations’ means either a securities association registered under title III of the Securities Exchange Act of 1934 or a national securities exchange
registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934;”.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (24) the following:

“(25) unless the court orders otherwise, after a final determination of a claim, that the credit of a person in a bankruptcy proceeding is not entitled to the protection of the automatic stay under section 362(a) of title 11, United States Code, because the person is an object of prosecution by the United States for violations of customs law;”.

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

“(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.”.

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTERESTS.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking “10” each place it appears and inserting “20”.

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

“(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the lessor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessee, if the trustee does not assume or reject the unexpired lease by the earlier of—

(i) the date that is 120 days after the date of the order for relief; or

(ii) the date of the entry of an order confirming the plan.

(B) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on motion of the lessor or lessee for cause.

(C) if the court grants an extension under clause (i), the court may grant a subsequent extension, without further written consent of the lessor in each instance.”.

(b) EXCEPTION.—Section 365(d)(1) of title 11, United States Code, is amended by striking “subsection” the first place it appears and inserting “subsections (b) and (c)”. 

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

“(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor or equity security holder (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) of sufficient amount which, in comparison to the annual gross revenue of that creditor, is disproportionately large.”.

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

“(3) A committee appointed under subsection (a) shall—

(A) provide access to information for creditors who—

(i) hold claims of the kind represented by that committee; and

(ii) are not appointed to the committee;

(B) solicit and receive comments from the creditors described in subparagraph (A); and

(C) subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).”.

SEC. 406. AMENDMENT TO SECTION 365 OF TITLE 11, UNITED STATES CODE.

Section 365 of title 11, United States Code, is amended by adding at the end the following:

“(1) by redesignating the second subsection (g) (as added by section 222(a) of Public Law 103-394) as subsection (i);

(2) in subsection (i), as so redesignated, by inserting “subject to the prior rights of holders of securities interests in such goods or the proceeds of such goods” after “consent of a creditor”; and

(3) by adding at the end the following:

“(j)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a security interest in property of the debtor that is 18 months after the date of the order for relief under this chapter.

(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7-209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, or any successor to such section to section 7-209.”.

SEC. 407. AMENDMENTS TO SECTION 340A OF TITLE 11, UNITED STATES CODE.

Section 340(a) of title 11, United States Code, is amended—

(1) in paragraph (3), by striking “(A)” and inserting “(A)—”;

(B) by inserting “and” in a manner consistent with any other provision of title 11 or any other Federal law that is not a bankruptcy law, or any requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor which may include an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 11, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

“(g) Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or any other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor which may include an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 11, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.”.

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking “dwellings” the first place it appears; and

(2) by inserting “ownership” or inserting “ownership,”.

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following:

“Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or any other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor which may include an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 11, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.”.

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

“(14) ‘disinterested person’ means a person that—

(A) is not a creditor, an equity security holder, or an insider;

(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason.”.

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, is amended—

(1) by redesignating subparagraph (D) as subparagraph (E);

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

(3) by inserting after subparagraph (D) the following:

“(E) with respect to a professional person, unless the person has otherwise demonstrated skill and experience in the bankruptcy field; and”.

SEC. 416. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting “or”, or a nonconsumer debtor against a noninsider of less than $10,000,” after “$5,000.”.
SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by striking "(1)" after "(b)"; and

(2) by adding at the end the following:

"(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report under subsection (a); and

"(B) Upon the filing of a report under subparagraph (A)—

"(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

"(ii) the service of any trustee appointed under subsection (d) shall terminate.

"(C) The court may relieve any dispute arising out of an election described in subparagraph (A).

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking "subsection (b)" and inserting "subsections (b) and (c)"; and

(2) by adding at the end the following:

"(c)(1) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

"(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

"(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

"(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may consider—

"(i) the existence of security before the date of filing of the petition;

"(ii) the payment by the debtor of charges for utility service in a timely manner before the date of filing of the petition; and

"(iii) the availability of an administrative expense priority.

"(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of filing of the petition, without notice or order of the court.

SEC. 418. BANKRUPTCY FEES.

Section 303 of title 28, United States Code, is amended—

(1) in subsection (a), by striking "Notwithstanding section 193 of this title, the" and inserting "The"; and

(2) by adding at the end the following:

"(1)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installment.

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) In general—

(1) Disclosure.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States, after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms directing debtors under chapter 11 of title 11, United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) Information.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) Purpose.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor’s interest in any entity referred to in subsection (a) is capable of paying under the payment of allowed claims against debtor.


SEC. 431. FLEXIBLE RULES FOR DISCLOSURE.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the value of additional information to creditors and other parties in interest, and the cost of providing additional information; and

(2) in subsection (b)(1), by striking paragraph (A) and inserting the following:

"(A) Notwithstanding subsection (b), in a small business case—

"(i) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

"(ii) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 307 of title 28; and

"(C) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing; and

"(B) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing.

SEC. 432. DEFINITIONS.

(a) In this section—

"§ 1102(a)(1) a committee of unsecured creditors or an official committee of creditors for a case in which the United States is also a debtor under this title and excluding any committee of unsecured creditors that has aggregate noncontingent, liquidated and unsecured claims against the debtor in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently robust to provide effective oversight of the debtor; and

"(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders).

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting “debtor” after “small business”.

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting after section 101(51D), “after 101(3),” each place it appears, and—

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between disclosure and confidentiality for—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) Reporting Required.—

(1) In general.—Chapter 3 of title 11, United States Code, is amended by inserting after section 306 the following:

"§ 306. Debtor reporting requirements

“(a) For purposes of this section, the term ‘profitability’ means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

“(b) A small business debtor shall file periodic financial reports that include all of the information required by this section and the Federal Rules of Bankruptcy Procedure and

“(1) the debtor’s profitability;

“(2) reasonable approximations of the debtor’s projected cash receipts and cash disbursements over a reasonable period;

“(3) financial and other reports containing information including—

“(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

“(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;

“(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A), the court may refer the debtor to mediation and

“(C) such other matters as are in the best interests of the debtor and creditors, and in the
public interest in fair and efficient procedures under chapter 11 of this title.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

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States Code, is amended by striking subsection (b) and inserting the following:

“(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1106(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 11, other than under section 1106, or dismiss the case, if the movant establishes cause.

“(2) The relief provided in paragraph (1) shall not be available if the court, absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest, properly and timely has made applicable a provision of law that establishes that:

“(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

“(B) the grounds for granting such relief include an act or omission of the debtor other than the filing of the petition or the commencement of such case.

“(i) for which there exists a reasonable justifica-
tion for the act or omission; and

“(ii) that existed within a reasonable period of time fixed by the court.

“(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after the date of the petition or the commencement of such case, unless the court finds that certain circumstances prevent the court from meeting the time limits established by this paragraph.

“(4) For purposes of this subsection, the term ‘cause’ includes:

“(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

“(B) gross mismanagement of the estate;

“(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

“(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

“(E) failure to comply with an order of the court;

“(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or any rule applicable to a case under this chapter;

“(G) failure to attend the meeting of creditors convened under section 341(a) or an examination conducted under section 342 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

“(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee or the bankruptcy admin-
istrator;

“(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the order for relief;

“(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

“(K) failure to pay any fees or charges required under chapter 123 of title 28;

“(L) readmissibility of an order of confirmation under section 1144;

“(M) inability to effectuate substantial consummation of a confirmed plan;

“(N) material default of the debtor with respect to a confirmed plan;

“(O) termination of a confirmed plan by reason of a occurrence of a condition specified in the plan; and

“(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the petition is filed.

“(5) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

“(c) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE—Section 1106(a)(11) of title 11, United States Code, is amended—

“(1) in paragraph (1), by striking ‘‘or’’ at the end;

“(2) in paragraph (2), by striking the period at the end and inserting ‘‘; or’’; and

“(3) by adding at the end the following:

“(D) failure timely to provide information or attend meetings reasonably requested by the United States trustee or the bankruptcy administrator.

“(E) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

“(F) failure to comply with an order of the court;

“(G) gross mismanagement of the estate;

“(H) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the order for relief;

“(I) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

“(J) failure to pay any fees or charges required under chapter 123 of title 28;

“(K) readmissibility of an order of confirmation under section 1144;

“(L) inability to effectuate substantial consummation of a confirmed plan;

“(M) material default of the debtor with respect to a confirmed plan;

“(N) termination of a confirmed plan by reason of a occurrence of a condition specified in the plan; and

“(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the petition is filed.

“(6) The court shall commence the hearing on a motion under this subsection not later than 30 days after the date of the petition or the commencement of such case, unless the court finds that certain circumstances prevent the court from meeting the time limits established by this paragraph.

“SEC. 444. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO A CONFIRMED PLAN; NOTIFICATION FOR THE ACT OR OMISSION; AND CERTIFICATION FOR THE ACT OR OMISSION;

“Not later than 3 years after the date of enactment of this Act, the Comptroller General of the United States, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, shall:

“(1) conduct a study to determine—

“(A) the internal and external factors that cause small businesses, especially sole proprietors, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

“(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

“(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representa-
tives a report summarizing that study.

“SEC. 445. PAYMENT OF INTEREST.

“Section 362(d)(3) of title 11, United States Code, is amended—

“(1) by inserting ‘‘or 30 days after the court determines that the debtor is subject to this para-

graph, whichever is later’’ after ‘‘90-day pe-
riod’’; and

“(2) by striking subparagraph (B) and inserting the following:

“(B) the debtor has commenced monthly payments that—

“(i) may, in the debtor’s sole discretion, notwith-
sanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to which the creditor is secured by such real estate (other than a claim secured by a judgment lien or by an unsecured statutory lien); and

“(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor’s interest in the real estate.

“SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PENSION PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

“(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by section 106, is amended—

“(1) in paragraph (4), by striking ‘‘and’’ at the end;

“(2) in paragraph (5), by striking the period at the end and inserting ‘‘; and’’; and

“(3) by adding at the end the following:

“(B) DUTIES OF TRUSTEES.—Section 704(a)(2) of title 11, United States Code, as amended by sections 102 and 219, is amended—

“(1) in paragraph (9), by striking ‘‘and’’ at the end;

“(2) in paragraph (10), by striking the period at the end; and

“(3) by adding at the end the following:

“(B) if, at the time of the commencement of the case, the debtor served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator.

“(c) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

“(1) perform the duties of the trustee, as specified in paragraphs (2), (3), (7), (8), (9), (10), and (11) of section 704(a)

“SEC. 447. APPOINTMENT OF COMMITTEE OF REITED EMPLOYEES.

“Section 1114(d) of title 11, United States Code, is amended—

“(1) by striking ‘‘appoint’’ and inserting ‘‘order the appointment of’’; and

“(2) by adding at the end the following:

“‘The United States trustee shall appoint any such committee.’’

“TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

“SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITIONS.

“(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ‘notwithstanding section 301(b)’ before the period at the end of subsection (b).

“(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

“(1) by inserting ‘‘(a)’’ before ‘‘A voluntary’’; and

“(2) by striking the last sentence and inserting the following:

“(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.”

“SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

“Section 901(a) of title 11, United States Code, is amended—

“(1) by inserting ‘‘555, 556, after ‘‘553,’’; and

“(2) by inserting ‘‘559, 560, 561, 562’’ after ‘‘557.’’

“TITLE VI—BANKRUPTCY DATA

“SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

“(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

“§ 159. Bankruptcy statistics

“(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized form for submission to the Chief Judge of the Administrative Office of the United States Courts (referred to in this section as the ‘Director’).
§589b. Bankruptcy data

(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and
(2) periodic reports by debtors in possession or trustees in chapter 11 of title 11.

(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) to (1) create a compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (a) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system.

(Rules proposing the forms referred to in subsection (a), the Attorney General shall draft and submit to Congress a report describing the purpose and likely effect of such proposed forms. Such report shall be submitted no later than 2 years after the date of enactment of this Act.)

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information which the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such procedures shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;
(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;
(C) require audits for schedules of income and expenses which reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of greater income or higher expenses than the norm or generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

"(6) make such reports as the Attorney General, directly, or through the use of independent certified public accountants, may require in cases, by district, in which a material misstatement of income or expenditures is reported."

(2) by adding at the end the following:

"(1)(1) The United States trustee for each district is authorized to contract with auditors to perform audits, in any manner prescribed under this Act; and

(2) by adding at the end the following:

"(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if
one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

"(B) If a material misstatement of income or expenses is reported, the United States trustee shall—

"(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to 18 U.S.C. § 1581; and

"(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding, filing a motion for an order of discharge pursuant to section 727(d) of title 11.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as amended by section 109, is amended in each of paragraphs (3) and (4) by inserting "or an auditor appointed under section 586(f) of title 18 after "serving in the case''.

(d) AMENDMENTS TO SECTION 724 OF TITLE 11, U.S.C.—Section 724(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking "or" at the end;

(2) in paragraph (3), by striking the period at the end and inserting "; or";

and

(3) by adding at the end the following:

"(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

(1) in the first sentence, by inserting "at the address and in the manner designated in paragraph (1) after "determination of such tax";

(2) by striking "A payment and inserting "A payment upon";

(3) by striking "(A) such governmental unit" and inserting "(i) such governmental unit";

(4) by striking "(B) such governmental unit" and inserting "(ii) such governmental unit";

(5) by striking "(C) upon payment" and inserting "(B) upon payment";

(6) by striking "(D) upon payment" and inserting "(C) upon payment";

(7) by striking "(b)" and inserting "(2)";

and

(8) by inserting before paragraph (2), as so designated, the following:

(b)(1)(A) The clerk shall maintain a listing under which a Federal, State, or local governmental unit responsible for the collection of taxes within the United States—

(i) designate an address for service of requests under this subsection; and

(ii) describe where further information concerning additional requirements for filing such requests may be found.

(b)(2) If a governmental unit referred to in subparagraph (A) does not designate an address and provide that address to the clerk under that subparagraph, any request made under this subsection may be served at the address for filing a tax return or protest with the appropriate taxing authority of that governmental unit.''

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) In GENERAL—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

§511. Rate of interest on tax claims.

(1) If any provision of this title requires the payment of interest on a tax claim or on an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable law.

(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.''

(b) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

"§511. Rate of interest on tax claims.''

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(6) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting "for a taxable year ending on or before the date of the filing of the petition" after "gross receipts";

(B) in clause (i), by striking "for a taxable year ending on or before the date of the filing of the petition"; and

(C) by striking clause (ii) and inserting the following:

(ii) assessed within 240 days before the date of the filing of the petition, exclusive of

(1) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

(2) any time during which a stay of proceedings against collections was in effect in a case commenced under this title during that 240-day period, plus 90 days; and

an otherwise applicable time period specified in paragraph (A) for any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a case commenced under this title during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.''

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(6)(B) of title 11, United States Code, is amended by striking "assessed" and inserting "incurred.''

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES.

Section 520(a)(3) of title 11, United States Code, as amended by section 314, is amended by striking "paragraph (1)(1)" and inserting "paragraph (1)(3)."

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES.

Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

"(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

"(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 507(a)(6) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

"(B) for a tax or customs duty with respect to which the debtor—

"(i) made a fraudulent return; or

"(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.''

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(9) of title 11, United States Code, is amended by striking the "debtors" and inserting "a corporate debtor’s tax liability for a taxable period the bankruptcy court may determine, in the exercise of its discretion, is not in the best interest of the estate and the debtor who is an individual for a taxable period ending before the order for relief under this title’’.

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 13.

Section 1129(a)(9) of title 11, United States Code, is amended...
(1) in subparagraph (B), by striking “and” at the end; (2) in subparagraph (C), by striking “deferred cash payments,” and all that follows through the end of the paragraph, and inserting “regular installment payments in cash—” “(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim, (ii) over a period ending not later than 5 years after the date of the entry of the order for relief, whichever is earlier, or 20 years; and (iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made under the claim of a creditor under section 112(b); and (3) by adding at the end the following: “(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(6), for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).”.

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.
Section 545(b) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: “, except in any case in which the person entitled to receive such return, purchase, or other property is a purchaser described in section 6523 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law.”.

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 900(b) of title 28, United States Code, is amended— (1) in subparagraph (a) before “Any”, “Any” and “Any”; and (2) by adding at the end the following: “(B) a tax under subsection (a) shall be paid on or before the due date of the tax under applicable bankruptcy law, unless— “(1) the tax is a property tax secured by a lien against property that is abandoned within a reasonable period of time after the lien attaches by the trustee of a bankruptcy estate under section 554 of title 11; or “(2) payment of the tax is excused under a specific provision of title 11.”.

(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if— (1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or (2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 507(a)(6) of title 11 as the priority of that tax.”.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting “whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,” before “or except”; “(c) IN GENERAL.—ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended— (1) in subparagraph (B), by striking “and” at the end; (2) in subparagraph (C), by adding “and” at the end; and (3) by adding at the end the following: “(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to pay for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense.”.

SEC. 713. FILING OF PREPETITION TAX RETURNS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1307 of title 11, United States Code, as amended by sections 102, 213, and 306, is amended— (1) by redesignating subsections (e) and (f) as subsections (j) and (k), respectively; and (2) by inserting after subsection (d) the following: “(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, which ever is in the best interest of the creditors and the estate.”.

(b) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: “, except that in a case under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit or on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed after such confirmation is statutorily required.”

(c) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—In the case of a petition that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall, as soon as practicable after the date of enactment of this Act, propose for adoption amended Federal Rules of Bankruptcy Procedure which provide that— (1) notwithstanding the provisions of Rule 3067(f), in cases under chapter 13 of title 11, United States Code, an objection to the confirmation of a plan filed by a governmental unit or on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed after such confirmation is statutorily required.”

(b) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

“§1308. Filing of prepetition tax returns
(a) Not later than the day before the date on which the meeting of the creditors is first scheduled to be held under section 341(a), if the debtor is not required to file a plan under applicable bankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition. “(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor to file either the returns or an additional period of time to file any unfilled returns, but such additional period of time shall not extend beyond— “(A) for any return that is not past due as of the date of the filing of the petition, the later of— “(i) the date that is 120 days after the date of that meeting; or “(ii) the date on which the return is due under the last automatic extension of time for filing that return to whom it has been timely filed, and for which request is timely made, in accordance with applicable nonbankruptcy law. “(2) After notice and a hearing, and order entered before the filing of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for— “(B) any return that is not past due as of the date of the filing of the petition, and for which request is timely made, in accordance with applicable nonbankruptcy law.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.
Section 112(a)(1) of title 11, United States Code, is amended—
SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (25) the following:

"(26) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate or entity are not taxed to or claimed by the estate, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence does not apply to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in a case in which a setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax refund, the estate may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the estate an adequate payment (within the meaning of section 361) for the secured claim of that authority in the setoff under section 360(a)."

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) In General.—Title 11, United States Code, is amended to read as follows:

"§346. Special provisions related to the treatment of state and local taxes.

"(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deduction, or credit of such estate or entity is not taxed to or claimed by the estate, such income, gain, loss, deduction, or credit shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence does not apply to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in a case in which a setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax refund, the estate may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the estate an adequate payment (within the meaning of section 361) for the secured claim of that authority in the setoff under section 360(a)."

(b) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deduction, or credit of such estate or entity is not taxed to or claimed by the estate, such income, gain, loss, deduction, or credit shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence does not apply to a taxable period that ended before the order for relief against an income tax liability for a taxable period that also ended before the order for relief, except that in a case in which a setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax refund, the estate may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the estate an adequate payment (within the meaning of section 361) for the secured claim of that authority in the setoff under section 360(a).

Title VIII—Ancillary and Other Cross-Border Cases

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) In General.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

"CHAPTER 15—Ancillary and Other Cross-Border Cases

"Sec. 1501. Purpose and scope of application.

"Subchapter I—General Provisions

"Sec. 1502. Definitions.


"Sec. 1504. Commencement of ancillary case.

"Sec. 1505. Authorization to act in a foreign country.

"Sec. 1506. Public policy exception.

"Sec. 1507. Additional assistance.

"Sec. 1508. Interpretation.

"Subchapter II—Access of Foreign Representatives and Creditors to the Court

"Sec. 1509. Right of direct access.

"Sec. 1510. Limited jurisdiction.

"Sec. 1511. Commencement of case under section 303 or 305.

"Sec. 1512. Participation of a foreign representative in a case under this title.

"Sec. 1513. Access of foreign creditors to a case under this title.

"Sec. 1514. Notification to foreign creditors concerning a case under this title.

"Subchapter III—Recognition of a Foreign Proceeding and Relief

"Sec. 1515. Application for recognition.

"Sec. 1516. Presumptions concerning failure of the foreign court to grant relief.

"Sec. 1517. Order granting recognition.

"Sec. 1518. Subsequent information.

"Sec. 1519. Relief that may be granted upon filing of form of recognition, in possession, or after hearing.

"Sec. 1520. Effects of recognition of a foreign main proceeding.
§1501. Purpose and scope of application

(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives—

(1) cooperation between—

(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

(2) greater legal certainty for trade and investment;

(3) fair and efficient administration of cross-border insolvencies that protect the interests of all creditors, and other interested entities, including the debtor;

(4) protection and maximization of the value of the debtor’s assets; and

(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

(b) Services abroad—

(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

(2) assistance is sought in a foreign country in connection with a case under this title;

(3) a foreign proceeding and a case under this title with respect to the same debtor are taking place concurrently; or

(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

(c) This chapter does not apply to—

(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 106(b); and

(2) an individual, or an individual and such individual’s spouse, who has debts within the limits specified in section 106(e) who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

(d) A case under this chapter has the same effect with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

§1502. Definitions

For the purposes of this chapter, the term—

(1) ‘debtor’ means an entity that is the subject of a foreign proceeding;

(2) ‘establishment’ means any place of operations where the debtor carries out a nontransitory economic activity;

(3) ‘foreign court’ means a judicial or other authority competent to control or supervise a foreign proceeding;

(4) ‘foreign main proceeding’ means a foreign proceeding taking place in the country where the debtor has its headquarters, main interests; and

(5) ‘foreign nonmain proceeding’ means a foreign proceeding, other than a foreign main proceeding, taking place in a country where the debtor has an establishment.

(6) ‘trustee’ includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

(7) ‘recognition’ means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter;

(8) ‘within the territorial jurisdiction of the United States’, when used with reference to property of a debtor, refers to tangible property located within the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or execution of an order necessary to prevent the foreign representative from obtaining comity or cooperation from the courts in the United States.

§1503. International obligations of the United States

(a) To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

(b) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States, the United States courts shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

(1) just treatment of all holders of claims against or interests in the debtor’s property;

(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

(3) prevention of preferential or fraudulent dispositions of property of the debtor;

(4) distribution of the debtor’s property substantially in accordance with the order prescribed by this title; and

(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

§1508. Interpretation

(a) In interpreting this chapter, the court shall consider its international objectives and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

(b) In a case under this chapter, the court may impose consistent with the policy of this chapter—

(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that case;

(3) a court in the United States shall grant comity or cooperation to the foreign representative;

(4) a request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of the order granting recognition under section 1517;

(5) if the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

(6) Whether or not the court grants recognition and subject to section 1518, a foreign representative is subject to applicable nonbankruptcy law.

(7) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

§1510. Limited jurisdiction

(a) Upon recognition of a foreign representative, the court may—

(1) an involuntary case under section 303; or

(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be notified of the foreign representative’s intent to commence a case under subsection (a) prior to such commencement.

§1512. Participation of a foreign representative in a case under this title

(a) Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case pending in the United States relating to the foreign representative.

(b) The foreign representative in the recognized proceeding may appear before a court in the United States to assist the court in discharge of its duties.

(c) The foreign representative in the recognized proceeding must provide any other assistance that may be required by the United States courts.
§1514. Notification to foreign creditors concerning a case under this title

(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, after the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

(c) When a notification of commencement of a case under this title is to be given to foreign creditors, the notification shall—

(1) indicate the time period for filing proofs of claim and specify the place for their filing; and

(2) include whether secured creditors need to file their proofs of claim; and

(3) contain any other information required to be included in the notification to creditors under this title and the orders of the court.

(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

§1515. Application for recognition

(a) A foreign representative applies to the court for recognition of the foreign proceeding in which the foreign representative has been appointed or authorized by a foreign court to represent the foreign representative.

(b) A petition for recognition shall be accompanied by—

(1) a certified copy of the decision confirming the appointment and appointing the foreign representative;

(2) a certificate from the foreign court affirming the existence of the foreign proceeding and of the appointment of the foreign representative; or

(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court, concerning the existence of the foreign proceeding and of the appointment of the foreign representative.

(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

(d) A foreign proceeding referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

§1516. Presumptions concerning recognition

(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so construe the decision or certificate.

(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

(c) In the absence of evidence to the contrary, the debtor’s registered office, or habitual residence in the foreign proceeding, is presumed to be the center of the debtor’s main interests.

§1517. Order granting recognition

(a) Subject to section 1506, after notice and a hearing, an order granting a foreign proceeding shall be entered if—

(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or a foreign nonmain proceeding within the meaning of section 1502;

(2) the foreign representative applying for recognition is a person or body; and

(3) (2) the petition meets the requirements of section 1515.

(b) The foreign proceeding shall be recognized—

(1) as a foreign main proceeding if it is taking place in the country where the debtor has the center of its main interests; or

(2) as a foreign nonmain proceeding if the decision or certificate referred to in section 1502 sets; and

(c) A petition for recognition shall also be served on the creditors, grant relief of a provisional nature, including—

(1) staying execution against the debtor’s assets; and

(2) entrusting the administration or realization of all or part of the debtor’s assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(3) any relief referred to in paragraph (3), (4), or (5) of section 1520(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

(d) The court may not enjoin a police or regulatory act, proceeding or action taken under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

(f) The exercise of rights not subject to the standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency proceeding under this chapter.

§1520. Effects of recognition of a foreign main proceeding

(a) Upon recognition of a foreign proceeding that is a foreign main proceeding under sections 361 and 362, the debtor shall give due weight to possible prejudice to creditors in the notified class or category, and of notification would be more appropriate. No letter or other formality is required.

(b) When a notification of commencement of a case under this title is to be given to foreign creditors, the notification shall—

(1) indicate the time period for filing proofs of claim and specify the place for their filing; and

(2) include whether secured creditors need to file their proofs of claim; and

(3) contain any other information required to be included in the notification to creditors under this title and the orders of the court.

(d) Any rule of procedure or order of the court as to notice or the filing of a claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

§1518. Subsequent information

From the time of filing the petition for recognition of the foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

(1) any substantial change in the status of the foreign proceeding or the status of the foreign representative or other person acting for the foreign representative; and

(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

§1519. Relief that may be granted upon filing petition for recognition

(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, authorize the foreign representative to operate the debtor’s assets located in the United States to the same extent as the foreign representative may operate the debtor’s assets located in the foreign country, where necessary to preserve the value of assets that, by their nature or because of circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

(2) staying execution against the debtor’s assets; and

(3) any relief referred to in paragraph (3), (4), or (5) of section 1520(a).

(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

(d) The court may not enjoin a police or regulatory act, proceeding or action taken under this section.

(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

(f) The exercise of rights not subject to the standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency proceeding under this chapter.

§1521. Relief that may be granted upon recognition

(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to preserve the value of assets, the court may, at the request of the foreign representative, grant any appropriate relief, including—

(1) staying the commencement or continuance of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a); and

(2) staying execution against the debtor’s assets; and

(3) any relief referred to in paragraph (3), (4), or (5) of section 1520(a).

(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court; and

(f) Entering relief granted under section 1519(a) and

(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522(a)(10), 524, 541, 547, 548, 550, and 724(a).

(g) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor’s assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.
the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

“(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

“(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

“(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraphs (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(d) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

§1522. Protection of creditors and other interested persons

“(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are not harmed.

“(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor’s business under section 1526(a)(3) of this title, to conditions it considers appropriate, including the giving of security or the filing of a bond.

“(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

“(d) Section 1109(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

§1523. Actions to avoid acts detrimental to creditors

“(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

“(b) When the foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that the order relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

§1524. Intervention by a foreign representative

“Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

SUBCHAPTER VII—COORDINATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

§1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

“(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with foreign courts or foreign representatives, either directly or through the trustee.

“(b) The court is entitled to communicate directly with, or to request information or assistance directly from, foreign courts or foreign representatives, subject to the rights of parties in interest to notice and participation.

§1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

“(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

“(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with foreign courts or foreign representatives.

§1527. Forms of cooperation

“Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

“(1) appointment of a person or body, including an examiner, to act at the direction of the court;

“(2) communication of information by any means considered appropriate by the court;

“(3) coordination of the administration and supervision of the debtor’s assets and affairs;

“(4) approval or implementation of agreements concerning the coordination of proceedings; and

“(5) any other concurrent proceedings regarding the same debtor.

SUBCHAPTER V—CONCURRENT PROCEEDINGS

§1528. Commencement of a case under this title after recognition of a foreign main proceeding

“After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(c) or 1534(c) of chapter 13, if such other assets are subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

§1529. Coordination of a case under this title and a foreign proceeding

“If a foreign proceeding and a case under another chapter of this title are taking place concurrently regarding the same debtor, the court shall seek court cooperation under sections 1525, 1526, and 1527, and the following shall apply:

“(1) If the case in the United States is taking place at the time the petition for recognition of the foreign proceeding is filed—

“(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the foreign proceeding;

“(B) even if the foreign proceeding is recognized as a foreign main proceeding, section 1520 does not apply;

“(2) If a case in the United States under this title commences after recognition, or after the filing of the petition for recognition, of the foreign proceeding—

“(A) any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States;

“(B) if the foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if the relief granted in the case in the United States;

“(C) in granting, extending, or modifying relief granted to a representative of a foreign main proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding;

“(D) in achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 362.

§1530. Coordination of more than 1 foreign proceeding

“In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

“(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

“(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

“(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating the coordination of the proceedings.

§1531. Presumption of insolvency based on recognition of a foreign main proceeding

“In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

§1532. Rule of payment in concurrent proceedings

“Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvent or reorganization may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionate to the payment the creditor has already received.”

(b) Clerical Amendment.—The table of chapters for title II, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

“15. Ancillary and Other Cross-Border Cases............................................1501”.

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE

(a) Applicability of Chapters.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: “and this chapter, sections 307, 362(h), 555 through 557, and 559 through 562 apply in a case under chapter 15;”;

and

(2) by adding at the end the following:

“(b) Chapter 15 applies only in a case under such chapter, except that—

“(1) sections 1505, 1513, and 1514 apply in all cases under this chapter; and

“(2) section 1509 applies whether or not a case under this title is pending.”.

(b) Definitions.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

“(23) ‘foreign proceeding’ means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

“(24) ‘foreign representative’ means a person or entity, including a person appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor’s assets or affairs or to act as a representative of the foreign proceeding;”.

(c) Amendments to Title 28, United States Code.—Section 1409 of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking “and” at the end;

(B) in subparagraph (O), by striking the period at the end and inserting “;” and “;”;

and

(C) by adding at the end the following:

“1501.”.
“(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.”.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking “nothing in” and inserting “Except with respect to a case under chapter 15 of title 11, nothing in”.

(3) DUTIES OF TRUSTEE.—Section 586(a)(2) of title 28, United States Code, is amended by striking “or 13” and inserting “13, or 15”.

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows: “§1410. Venue of cases ancillary to foreign proceedings

“A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

(1) in which the debtor has its principal place of business or principal assets in the United States;

(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court;

(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought and any foreign representative.”.

(d) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in subsection (a), by striking paragraph (3) and inserting the following: “(3)(A) a foreign insurance company, engaged in such business in the United States;

(3)(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States);”;

(2) in section 303, by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking “, 304,” each place it appears;

(6) in section 306(a) by striking paragraph (2) and inserting the following: “(2) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted and;

(7) in section 508—

(A) by striking subsection (a); and

(B) in subsection (b), by striking “(b)”.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended to read as follows: “(e)(8)(D) means—

(1) in respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade;

(2) in respect to a foreign futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of a contract market or board of trade that is cleared by such clearing organization; or

(3) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (IV), (VI), (VII), or (VIII); and

(I) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, in connection with any agreement or transaction referred to in this clause;”.

(b) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows: “(iii) COMMODITY CONTRACT.—The term ‘commodity contract’ means—

(1) in respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade; or

(II) in respect to a foreign futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization;

(III) with respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(IV) in respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(V) in respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;”.

(3) in respect to a foreign futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of a contract market or board of trade that is cleared by such clearing organization; or

(IV) in respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(V) in respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;”.

(4) in respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade; or

(II) in respect to a foreign futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(III) with respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(IV) in respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(V) in respect to a leverage transaction, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules or regulations of, a contract market or board of trade that is cleared by such clearing organization; or

(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;”.

(2) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, in connection with any agreement or transaction referred to in this clause;”.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows: “(iv) REPURCHASE AGREEMENT.—The term ‘repurchase agreement’ which definition also applies to a reverse repurchase agreement—

(1) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers’ acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferor of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests in a simultaneous agreement by such transferee to transfer to the transferor of such certificates of deposit, eligible bankers’ acceptances, securities, mortgage loans, or interests as described above, at a date

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certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

(II) does not include any repurchase obligation under a repurchase agreement in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

(V) means any master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV), and (V) includes any swap agreement under this clause only with respect to each agreement or transaction referred to in such subclause.

For purposes of this clause, the term ‘qualified foreign financial contract’ means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).

Sec. 903. Amendments relating to transfers of qualified financial contracts.

(a) Transfers of qualified financial contracts to financial institutions. Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended to read as follows:

"(vii) Transfer. The term ‘transfer’ means every assignment, sale, conveyance, conveyance of title, exchange, renunciation, relinquishment, gift, conveyance or transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding.

"(viii) Qualified financial contracts. ‘Qualified financial contracts’ means any agreement or transaction referred to in paragraph (9) of this subsection that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction referred to in subclause (I), (III), or (IV), and (v) includes any swap agreement under this clause only with respect to each agreement or transaction referred to in such subclause.

Notwithstanding the provisions of subparagraphs (A) and (B), and sections 1821 and 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

(b) Technical and conforming amendments. Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ‘or the exercise of rights or powers by’ after ‘the appointment of’.

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.
to such qualified financial contracts, netting substantially, or other credit enhancements are enforceable to the same extent as permitted under section 403 of the Federal Deposit Insurance Act of 1991.

(3) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

(4) RIGHTS AGAINST RECEIVER AND TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating subparagraphs (A) through (I) of subsection (e) respectively;

(2) by inserting after paragraph (A) the following new paragraph:

(II) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a contract or agreement relating to any qualified financial contract to which an insured depository institution or any affiliate of such person has been appointed or which is other- wise subject to the rules of a clearing organization, a member, or clearing organization, shall have the same meaning as the term “clearing organization” as defined in section 11 of the Federal Deposit Insurance Act; and

(3) by amending paragraph (14)(A) to read as follows:

(A) disaffirm or repudiate all qualified financial contracts between—

(i) any person or any affiliate of such person, and

(ii) the depository institution in default; or

(4) by amending paragraph (15) to read as follows:

The term “payment” means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to li- quidate an unmatured obligation.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4022) is amended—

(1) by striking subsection (d) and inserting the following:

(d) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between two or more financial institutions, clearing organizations, or members, or clearing organizations, shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code).

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

(4) by redesignating paragraph (A) through (B) as subparagraphs (C) and (D) respectively.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating subparagraphs (A) through (I) of subsection (e) respectively;

(2) by inserting after paragraph (A) the following new paragraph:

(II) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a contract or agreement relating to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver with respect to any such contract or contract relating to one or more netting contracts between—

(i) any person or any affiliate of such person, and

(ii) the depository institution in default; or

(B) disaffirm or repudiate some or all of the qualified financial contracts referred to in subparagraph (A) with respect to such person or any affiliate of such person, and

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

(3) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements) in which the master agreement shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not covered by the master agreement, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991—

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4022) is amended—

(1) in the master agreement defined in paragraph (A) in subparagraph (A)(ii), by inserting before the semicolon “,” and is exempt from such reg- istration by order of the Securities and Ex- change Commission;

(2) in subparagraph (B), by inserting before the period “,” that has been granted an exemp- tion under section 4(c)(1) of the Commodity Ex- change Act, or that is a multilateral clearing or- ganization (as defined in section 408 of this Act)

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

(2) an uninsured national bank or an un- insured State bank that is a member of the Fed- eral Reserve System, if the national bank or State member bank is not eligible to make appli- cation to become an insured bank under section 5 of the Federal Deposit Insurance Act and

(C) by amending subparagraph (C), so redesign- nated, to read as follows:

(3) any branch or office of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that estab- lished the branch or agency, as those terms are defined in section 5(b)(1) of the International Banking Act of 1978;

(3) in paragraph (11), by inserting before the period “and any other clearing organization when such clearing organization has a netting contract”;

(4) by redesignating paragraph (14) (A)(ii) to read as follows:

(iii) means a contract or agreement between 2 or more financial institutions, clearing organi- zations, or members that provides for netting payments and future payment obligations or net- ment entitlements (including liquidation or close out values relating to such obligations or ent- itlements) among the parties to the agreement; and

(5) by adding at the end the following new paragraph:

(5) PAYMENT.—The term “payment” means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to li- quidate an unmatured obligation.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4022) is amended—

(1) by striking subsection (d) and inserting the following:

(d) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between two or more financial institutions, clearing organizations, or members, or clearing organizations, shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code); and

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

(4) by redesignating paragraph (A) through (B) as subparagraphs (C) and (D) respectively.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating subparagraphs (A) through (I) of subsection (e) respectively;

(2) by inserting after paragraph (A) the following new paragraph:

(II) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a contract or agreement relating to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

(A) disaffirm or repudiate all qualified fin- ancial contracts between—

(i) any person or any affiliate of such per- son, and

(ii) the depository institution in default; or

(B) disaffirm or repudiate some of the qual- ified financial contracts referred to in subpara- graph (A) with respect to such person or any affiliate of such person, and

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

(3) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any pre- ceding clause of this subparagraph (or any mas- ter agreement for such master agreement or agreements), together with all supplements to such master agreement shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not covered by the master agreement, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991—

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4022) is amended—

(1) in the master agreement defined in paragraph (A) in subparagraph (A)(ii), by inserting before the semicolon “,” and is exempt from such reg- istration by order of the Securities and Ex- change Commission;

(2) in subparagraph (B), by inserting before the period “,” that has been granted an exemp- tion under section 4(c)(1) of the Commodity Ex- change Act, or that is a multilateral clearing or- ganization (as defined in section 408 of this Act)
than paragraphs (8)(E),(8)(F), and (9)(B) of section 11(e) of the Federal Deposit Insurance Act and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970, and any contract, obligation, or guaranty, and the covered contractual payment entitlements of a member of a clearing organization and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code); and (c) adding at the end the following new subsection:

“(b) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement pursuant to one or more netting contracts between any two members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E),(8)(F), and (9)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND ESTATE OR CONSERVATOR OF AN INSURED FEDERAL BRANCH OR AGENCY, A CORPORATION CHARTERED UNDER SECTION 25A OF THE FEDERAL RESERVE ACT, OR AN INSURED STATE MEMBER BANK OPERATING, OR OPERATING AS, A MULTILATERAL CLEARING ORGANIZATION PERSISTENT TO SECTION 409 OF THIS ACT, AND any uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, which operates, or operates as, a multilateral clearing organization pursuant to section 25A of the Federal Reserve Act, which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (2)(B), (5), (6), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

“SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

“(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(ii) by striking “means a contract and inserting “means—”;

(iii) by striking (A) by striking “a contract and inserting “by or to a for-

reimbursement obligation by or to a for-}

(b) any combination of agreements or trans-}

actions referred to in subparagraphs (A) and (B);}
Act, and the Legal Certainty for Bank Products

including the Securities Act of 1933, the Securities

definition, or treatment of any swap agreement

to challenge or affect the characterization, defi-

(i) through (v), including any guarantee or re-

agreements or transactions referred to in clause

contains an agreement or transaction that is not

ments to any such master agreement, and with-

(iv) any option to enter into an agreement or

transactions referred to in this subparagraph;

(v) a master agreement that provides for an

agreement or transaction referred to in clause

(i), (ii), (iii), or (iv); or

(vi) any security agreement or arrangement or

other credit enhancement related to any agree-

ment or transaction referred to in this sub-

paragraph, including any guarantee or reim-

bursement obligation by or to a stockbroker, se-

ter agreement, guarantees for an agreement or,

or financial participant in connection with any

agreement or transaction referred to in this sub-

paragraph, except to the damages in connection

with any such agreement or transaction, mea-

sured in accordance with section 562 of this title;

(B) is applicable for purposes of this title only,

and shall not be construed or applied so as to

to challenge or affect the characterization, defi-

nition, or treatment of any swap agreement

under any other statute, regulation, or rule, in-

cluding the Securities Act of 1933, the Securities

Exchange Act of 1934, the Public Utility Holding

Company Act of 1935, the Trust Indenture Act

of 1939, the Investment Company Act of 1940,

the Investment Advisers Act of 1940, the Secur-

ities Investor Protection Act of 1940, the Com-

modity Exchange Act, the Gramm-Leach-Bliley

Act, and the Legal Certainty for Bank Products

Act of 2000; (2) in section 741(7), by striking paragraph (7) and inserting the following:

‘‘(7) ‘‘securities contract’’ means—

(A) an agreement or transaction that is simi-

lar to an agreement described in any one or more of paragraphs (1) through (5) of section 561(a), or any other agreement described in paragraphs (6) through (5) of section 561(a) that is not a commodity contract, or that is not a swap agreement, or that is not a security agreement described in paragraphs (6) through (5) of section 561(a); and

(B) an agreement entered into by or with a secu-

rities intermediary for the purpose of providing a service or benefit to or for the benefit of a customer in connection with a securities contract, a forward contract, a repurchase agreement, or a swap agreement, or in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements, as defined in section 561(a) or (b), or any other agreement or transaction referred to in paragraph (7) of section 561(a); or

(C) an agreement or transaction that is similar to an agreement described in any one or more of paragraphs (1) through (5) of section 561(a), or any other agreement entered into by or with a securities intermediary for the purpose of providing a service or benefit to or for the benefit of a customer in connection with a securities contract, a forward contract, a repurchase agreement, or a swap agreement, or in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements, as defined in section 561(a) or (b), or any other agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a securities contract provided that such agreement or transaction is similar in all material respects to a securities contract as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a securities contract, a forward contract, a repurchase agreement, or a swap agreement, or in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements.

(D) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a swap agreement provided that such agreement or transaction is similar in all material respects to a swap agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a swap agreement.

(E) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a repurchase agreement provided that such agreement or transaction is similar in all material respects to a repurchase agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a repurchase agreement.

(8) in section 561(b), by inserting after paragraph (7) the following:

‘‘(7) ‘‘swaps’’ means—

(A) agreements or transactions referred to in paragraph (7) of section 561(a) that are similar in all material respects to a swap agreement as defined in section 561(a) and are entered into by or with a securities intermediary in connection with a swap agreement in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements, as defined in section 561(a) or (b), or any other agreement or transaction referred to in paragraph (7) of section 561(a).

(B) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a repurchase agreement provided that such agreement or transaction is similar in all material respects to a repurchase agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a repurchase agreement.

(C) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a swap agreement provided that such agreement or transaction is similar in all material respects to a swap agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a swap agreement.

(9) in section 561(c), by inserting after paragraph (7) the following:

‘‘(7) ‘‘swaps’’ means—

(A) agreements or transactions referred to in paragraph (7) of section 561(a) that are similar in all material respects to a swap agreement as defined in section 561(a) and are entered into by or with a securities intermediary in connection with a swap agreement in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements, as defined in section 561(a) or (b), or any other agreement or transaction referred to in paragraph (7) of section 561(a).

(B) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a repurchase agreement provided that such agreement or transaction is similar in all material respects to a repurchase agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a repurchase agreement.

(C) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a swap agreement provided that such agreement or transaction is similar in all material respects to a swap agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a swap agreement.

(10) in section 561(d), by inserting after paragraph (7) the following:

‘‘(7) ‘‘swaps’’ means—

(A) agreements or transactions referred to in paragraph (7) of section 561(a) that are similar in all material respects to a swap agreement as defined in section 561(a) and are entered into by or with a securities intermediary in connection with a swap agreement in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements, as defined in section 561(a) or (b), or any other agreement or transaction referred to in paragraph (7) of section 561(a).

(B) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a repurchase agreement provided that such agreement or transaction is similar in all material respects to a repurchase agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a repurchase agreement.

(C) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a swap agreement provided that such agreement or transaction is similar in all material respects to a swap agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a swap agreement.

(11) in section 561(e), by inserting after paragraph (7) the following:

‘‘(7) ‘‘swaps’’ means—

(A) agreements or transactions referred to in paragraph (7) of section 561(a) that are similar in all material respects to a swap agreement as defined in section 561(a) and are entered into by or with a securities intermediary in connection with a swap agreement in connection with the exercise of any rights, including rights of netting, of the customer in connection with those agreements, as defined in section 561(a) or (b), or any other agreement or transaction referred to in paragraph (7) of section 561(a).

(B) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a repurchase agreement provided that such agreement or transaction is similar in all material respects to a repurchase agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a repurchase agreement.

(C) an agreement or transaction referred to in paragraph (7) of section 561(a) shall be considered to be a swap agreement provided that such agreement or transaction is similar in all material respects to a swap agreement as defined in section 561(a) and is entered into by or with a securities intermediary in connection with a swap agreement.
(g) **TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.**—Section 555 of title 11, United States Code, is amended—

(1) by amending the heading to read as follows—

"§555. Contractual right to liquidate, terminate, or accelerate a securities contract"; and

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration".

(h) **TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.**—Section 556 of title 11, United States Code, is amended—

(1) by amending the heading to read as follows—

"§556. Contractual right to liquidate, terminate, or accelerate commodities contract or forward contract";

(2) in the first sentence, by striking "liquidation" and inserting "liquidation, termination, or acceleration"; and

(3) in the second sentence, by striking "As used" and all that follows through "right," and inserting "As used in this section, the term ‘contractual right’ includes a right set forth in a rule or by operation of any provision of this title or the termination, liquidation, or acceleration of one or more."

(i) **SECURITIES CONTRACTS, AS DEFINED IN SECTION 761(7).**

(1) commodity contracts, as defined in section 761(7);

(2) forward contracts;

(3) repurchase agreements;

(4) swap agreements; or

(5) master netting agreements, shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

(j) **PARTIES TO A CONTRACT.**

(1) A party may exercise its contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under sections 555, 556, and 559 for each individual contract covered by the master netting agreement in issue.

(k) **ACHELERATION OF COMMODITIES OR FORWARD CONTRACTS.**

(1) In subsection (a), the terms "commodity contract", "forward contract", and "derivatives transaction execution facility" are used.

(l) **SECURITIES CONTRACTS.**

(1) In subsection (a), the terms "commodity contract", "commodity broker", and "commodity clearing organization" are used.

(m) **CONTRACTUAL RIGHT TO TERMINATE.**

(1) In subsection (a), the term "contractual right to terminate" is defined.

(n) **CONTRACTUAL RIGHT TO ACCELERATE.**

(1) In subsection (a), the term "contractual right to accelerate" is defined.

(o) **CONTRACTUAL RIGHT TO LIQUIDATE.**

(1) In subsection (a), the term "contractual right to liquidate" is defined.

(p) **CONTRACTUAL RIGHT TO TERMINATE, LIQUIDATE, OR ACCELERATE A COMMODITIES OR FORWARD CONTRACT.**

(1) In subsection (a), the term "contractual right to terminate, liquidate, or accelerate a commodities or forward contract" is defined.
not been abrogated or rendered ineffective by
the Commodity Futures Trading Commission;

(b) any other netting agreement between a
clearing organization (as defined in section 761) and
another entity that has been approved by
the Commodity Futures Trading Commission.

(c) As used in this section, the term ‘contractual
right’ shall include any provision of a
netting agreement or of a rule or bylaw of a derivatives clearing organization (as
declared in the Commodity Exchange Act), a
multilateral clearing organization (as defined in the
Federal Deposit Insurance Corporation
Improvement Act of 1991), a national securities
exchange, a national securities association, a
securities clearing agency, a contract market
designated by the Commodity Exchange Act, a
derivatives transaction execution facility regis-
tered under the Commodity Exchange Act, or a
board of trade (as defined in the Commodity
Exchange Act) or in a resolution of the governing
board thereof, and a right, whether or not evi-
denced in writing, arising under common law,
under law merchant, or by reason of normal
business practice.

‘(d) Any provisions of this title relating to
securities contracts, commodity contracts, forward
contracts, repurchase agreements, swap agree-
ments, or master netting agreements shall apply
in a case under chapter 15, so that enforcement of
contractual provisions of such contracts and agreements in accordance with their terms will not be limited by operation of
any provision of this title or by order of a
court in any case under this title, and to limit
avoidance powers to the same extent as in a pro-
ceding under sections 7 or 11 of this title (enforce-
ment not to be limited based on the pres-
ence or absence of assets of the debtor in the
United States).

(2) CONFORMING AMENDMENT.—The table of
sections for chapter 5 of title 11, United States
Code, is amended by inserting after the item re-
lating to section 551 the following:

‘§561. Contractual right to liquidate, terminate,
liquidate, accelerate, or offset under a mas-
ter netting agreement and across contracts;
proceedings under

Title 11, United States Code, is amended by inserting after section 766 the following:

‘§767. Commodity broker liquidation and for-
ward contract merchants, commodity bro-
kers, stockbrokers, financial institutions, fi-
nancial participants, securities clearing agen-
cies, swap participants, repo particip-
ants, and master netting agreement par-
ticipants

‘Notwithstanding any other provision of this
title, the exercise of rights by a forward contract
merchant, commodity broker, stockbroker,
financial institution, financial participant, se-
curities clearing agency, swap participant, repo
participant, or master netting agreement partici-
 pants shall not affect the priority of any unsecured claim it may have after the ex-
ercise of such rights.

(m) STOCKBROKERS.—Title 11, United States
Code, is amended by inserting after section 752 the following:

‘§753. Stockbroker liquidation and forward
contract merchants, commodity brokers,
stockbrokers, financial institutions, finan-
cial participants, securities clearing agen-
cies, swap participants, repo participants,
and master netting agreement participants

‘Notwithstanding any other provision of this
title, the exercise of rights by a forward contract
merchant, commodity broker, stockbroker, fi-
nancial institution, securities clearing agency, swap
participant, repo participant, financial participant,
or master netting agreement participant under
this title shall not affect the priority of any unsecured claim it may have after the ex-
ercise of such rights.

(n) SETOFF.—Section 553 of title 11, United States
Code, is amended—

(1) in subsection (a)(2)(B)(i), by inserting be-
fore the semicolon the following: ‘‘(except for a
setoff of a kind described in section 762(b)(6),
762(b)(7), 762(b)(17), 762(b)(27), 553, 555, 556, 560,
and 561);’’;

(2) in subsection (a)(3)(C), by inserting before the
period the following: ‘‘(except for a setoff of a
kind described in section 762(b)(6), 762(b)(7),
762(b)(17), 762(b)(27), 553, 555, 556, 560, or 561 of
this title);’’ and

(3) in subsection (b)(1), by striking ‘‘762(b)(14),’’ and
inserting ‘‘762(b)(17),’’

(o) SECURITIES CONTRACTS, COMMODITY
CONTRACTS, AND FORWARD CONTRACTS.—Title 11,
United States Code, is amended—

(1) in section 362(b)(6), by striking ‘‘financial
institutions’’ and across terms appearing and
inserting ‘‘financial institution, financial par-
ticipant,’’;

(2) in sections 362(b)(7) and 546(f), by insert-
ing ‘‘or financial participant’’ after ‘‘repo par-
ticipant’’ each place such term appears;

(3) in section 546(e), by inserting ‘‘financial partici-
 pant,’’ after ‘‘financial institution,’’;

(4) in section 548(d)(2)(B), by inserting ‘‘fi-
nancial participant,’’ after ‘‘financial institu-
tion,’’;

(5) in section 548(d)(2)(C), by inserting or ‘‘fi-
nancial participant’’ after ‘‘repo participant’’;

(6) in section 548(d)(2)(D), by inserting ‘‘or fi-
nancial participant’’ after ‘‘swap participant’’;

(7) in section 555—

(A) by inserting ‘‘financial participant’’, and

(B) by striking the second sentence and insert-
ning the following: ‘‘As used in this section, the
term ‘contractual right’ includes a right set forth in a rule or
bylaw of a derivatives clearing organization (as
declared in the Commodity Exchange Act), a
multilateral clearing organization (as defined in the
Federal Deposit Insurance Corporation
Improvement Act of 1991), a national securities
exchange, a national securi-
ties association, a securities clearing agency, a
contract market designated under the
Commodity Exchange Act, a derivatives
transaction execution facility registered under the
Commodity Exchange Act, or a board of trade (as
defined in the Commodity Exchange Act), or in
a resolution of the governing board thereof, and
a right, whether or not evidenced in writing, arising
under common law, under law merchant,
or by reason of normal business practice;’’;

(8) in section 556, by inserting ‘‘financial partici-
 pant’’, after ‘‘commodity broker’’;

(9) in section 559, by inserting ‘‘financial partici-
 pant’’ after ‘‘repo participant’’ each place
such term appears; and

(10) in section 560, by inserting ‘‘financial partici-
 pant’’ after ‘‘swap participant’’.

(p) CONFORMING AMENDMENTS.—Title 11,
United States Code, is amended—

(1) in the table of sections for chapter 7—

(A) by amending the items relating to sections
555 and 556 to read as follows:

‘‘555. Contractual right to liquidate, termi-
nate, or accelerate a securities contract.

556. Contractual right to liquidate, termi-
nate, or accelerate a commodities con-
tract or forward contract.’’;

and

(B) by amending the items relating to sections
559 and 560 to read as follows:

‘‘559. Contractual right to liquidate, termi-
nate, or accelerate a repurchase agree-
ment.

560. Contractual right to liquidate, termi-
nate, or accelerate a swap agreement.’’;

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to sec-
tion 766 the following:

‘‘767. Commodity broker liquidation and forward
contract merchants, commodity brokers,
stockbrokers, financial institutions, financial partici-
pants, swap participants, repo participants,
and master netting agreement participants.’’

(3) SEC. 908. RECORDKEEPING REQUIREMENTS.
Section 11(e)(6) of the Federal Deposit Insur-
ance Act (12 U.S.C. 1813(e)(6)) is amended by
adding at the end the following new subpara-
graph:

‘‘RECORDKEEPING REQUIREMENTS.—The
Corporation, in consultation with the appro-
priate Federal banking agencies, may prescribe
regulations requiring more detailed record-
keeping by any insured institution with respect to qualified financial contracts (in-
cluding market valuations) only if such insured depository institution is in a troubled condition
(as such term is defined by the Corporation
pursuant to section 32).’’

(4) SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS
EXECUTION REQUIREMENT.
Section 13(e)(2) of the Federal Deposit Insur-
ance Act (12 U.S.C. 1813(e)(2)) is amended to
read as follows:

‘‘EXEMPTIONS FROM CONTEMPORANEOUS
EXECUTION REQUIREMENT.—An agreement to
provide for the lawful collateralization of—
‘‘(A) deposits of, or other credit extension by,
a Federal, State, or local governmental entity,
or any depository referred to in section
11(a)(2), including an agreement to provide col-
lateral in lieu of a surety bond;’’

(B) bankruptcy estate funds pursuant to sec-
tion 345(b)(2) of title 11, United States
Code;

(C) extensions of credit, including any over-
draft, from a Federal reserve bank or Federal
home loan bank; or

‘‘(D) one or more qualified financial con-
tracts, as defined in section 11(e)(6)(D),
shall not be deemed to give rise to para-
graph (3)(B) solely because such agreement was
not executed contemporaneously with the acqui-
sition of the collateral or because of pledges, de-
lay, or substitution of the collateral made in accordance with such agreement.’’

(5) SEC. 910. DAMAGE MEASURE.
(a) IN GENERAL.—Title 11, United States
Code, is amended—

(1) by inserting after section 561, as added by
section 907, the following:

‘‘§562. Timing of damage measurement in
connection with swap agreements, securities
contracts, forward contracts, commodity
contracts, repurchase agreements, and mas-
ter netting agreements

‘‘If the trustee results in a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as
defined in section 761), repurchase agreement, or master netting agreement pursuant to section
365(a), or if a forward contract merchant, stock-
broker, financial institution, securities clearing
agency, repo participant, financial participant,
master netting agreement participant, swap
participant liquidates, terminates, or accelerates
such contract or agreement, damages shall be
measured as of the earlier of—

‘‘(1) the date of such contract or agreement;
and

(2) the date or dates of such liquidation, ter-
mination, or acceleration.

‘‘There are no commercially reason-
able determinants of value as of any date
referred to in paragraph (1) or (2) of subsection

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(a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

(1) in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee, has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.; and

(2) in the case of objections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

“SEC. 561. TIMING OF DAMAGE MEASURED IN CONNECTION WITH SWAP AGREEMENTS. In section 509 of title 11, United States Code, the terms ‘agreement’ and ‘swap agreement,’ respectively, shall be interpreted to include a right set forth in a rule or bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under laws merchant, or by reason of normal business practice.”.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) In general.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Consolidated and Further Continuing Appropriations Act, 1999 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(2) EFFECTIVE DATE.—(A) shall take effect on the date of the enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 202 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (i).
“§351. Disposal of patient records—

If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a contract or agreement in place to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

(1) The trustee shall—

(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider, if applicable law permits the insurance provider to make that claim, by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

(B) during the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that patient records are not claimed by the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

(2) If, after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(4) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(5) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(6) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(7) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(8) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by the patient during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to destroy the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

"§351. Disposal of patient records—"

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1105. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

(1) APPOINTMENT OF OMBUDSMAN.—Title 11, United States Code, as amended by section 323, is amended by inserting after section 322 the following:

"§332. Appointment of patient care ombudsman—"

(2) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting after paragraph (1), (2), and (3) the following:

"(A) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman Program Ombudsman under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

(B) If the debtor is not a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman Program Ombudsman under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman Program under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

(3) AN OMBUDSMAN APPOINTED UNDER SUBPARAGRAPH (A) SHALL—

(A) monitor the quality of patient care provided to patients of the debtor to the extent necessary under the circumstances, including investigating patients and physicians;

(B) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor;

(C) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

(4)(A) An ombudsman appointed under subsection (a)(1) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

(B) An ombudsman appointed under subsection (a)(2)(A)(i) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, as amended by section 232, is amended by adding the following:

"§332. Appointment of ombudsman—"

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SEC. 1204. TECHNICAL AMENDMENTS.  
Title 11, United States Code, is amended—  
(1) in section 109(b)(2), by striking “subsection (c) or (d) of”; and  
(2) in section 522(b)(1), by striking “product” each place it appears and inserting “products”.  

SEC. 1205. PENALTY FOR PERSONS WHO NEGLECT OR UNDUELY PREPARE BANKRUPTCY PETITIONS.  
Section 110(h)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking “attorneys” and inserting “attorneys”.  

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.  
Section 328(a)(1) of United States Code, is amended by inserting “on a fixed or percentage fee basis,” after “hourly basis.”.  

SEC. 1207. EFFECT OF CONVERSION.  
Section 348(h)(2) of title 11, United States Code, is amended by inserting “of the estate” after “property” the first place it appears.  

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.  
Section 506(b)(4) of title 11, United States Code, is amended by inserting “subparagraph (A), (B), (C), (D), or (E)” of before “paragraph” (3); and  

SEC. 1209. EXCEPTIONS TO DISCHARGE.  
Section 523, and of title 11, United States Code, as amended by sections 215 and 314, is amended—  
(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14A);  
(2) in subsection (a)(9), by striking “motor vehicle” and inserting “motor vehicle, vessel, or aircraft”; and  
(3) in subsection (e), by striking “a insured” and inserting “an insured”.  

SEC. 1210. EFFECT OF DISCHARGE.  
Section 524(a)(3) of title 11, United States Code, is amended by striking “section 523” and all that follows through “that” and inserting “section 523, 1228(a)(1), or 1328(a)(1), or that”.  

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.  
Section 525(b) of title 11, United States Code, is amended—  
(1) in paragraph (1), by inserting “student” before “grant” the second place it appears; and  
(2) in paragraph (2), by striking “the program operated under part B, D, or E” of and inserting “any program operated under”.  

SEC. 1212. PROPERTY OF THE ESTATE.  
Section 541 of title 11, United States Code, is amended by inserting “365 or” before “342”.  

SEC. 1213. PREFERENCES.  
(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—  
(1) in subsection (b), by striking “sections (c) and (d)” of; and  
(2) by adding at the end the following:  
“(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the commencement of the case, the transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.”.  
(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.  

SEC. 1214. POSTPETITION TRANSACTIONS.  
Section 549(c) of title 11, United States Code, is amended—  
(1) by inserting “an interest in” after “transfer” of each place it appears;  
(2) by striking “such property” and inserting “such property or any interest in such property”; and  
(3) by striking “the interest” and inserting “such interest”.  

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.  
Section 726(b) of title 11, United States Code, is amended by striking “take” and inserting “receive”.  

SEC. 1216. GENERAL PROVISIONS.  
Section 901(a) of title 11, United States Code, is amended by inserting “1123(d),” after “1123(b),”.  

SEC. 1217. ABANDONMENT OF RAILROAD LINE.  
Section 1170(c)(1) of title 11, United States Code, is amended by striking “section 11347” and inserting “section 11326(a)”.  

SEC. 1218. CONTENTS OF PLAN.  
Section 1122(a)(1) of title 11, United States Code, is amended by striking “section 11347” and inserting “section 11326(a)”.  

SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.  
Section 1334(d) of title 28, United States Code, is amended—  
(1) by striking “made under this subsection” and inserting “made under subsection (c)”; and  
(2) by striking “This subsection” and inserting “Subsection (c) and this subsection”.  

SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.  
Section 556(a) of title 11, United States Code, is amended—  
(1) in the first undesignated paragraph—  
(A) by inserting “(1) the term before “bankruptcy””; and  
(B) by striking the period at the end and inserting “;”; and  
(2) in the second undesignated paragraph—  
(A) by inserting “The term” before “the term” “document”; and  
(B) by striking “this title” and inserting “title 11”.  

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.  
(a) SALE OF PROPERTY OF ESTATE.—Section 365 of title 11, United States Code, is amended by striking “only” and all that follows through the end of the subsection and inserting “only”—  
“(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a nongovernmental business, trust, or charitable organization or trust; and  
“(2) to the extent not inconsistent with any relief granted under subsection (d), (e), or (f) of section 362.”.  
(b) INFORMATION FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213, 312, and 331, is amended by adding at the end the following:  
“(2) the transfer of a plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a nongovernmental business, trust, or charitable organization or trust.”.  
(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:  
“(i) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under such conditions as would apply if the debtor had not filed a case under this title.”.  
(d) APPLICABILITY.—The amendments made by this section shall be effective on and after the date of the petition.  

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section include the attorney general of the State in which the debtor is incorporated, formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court in the United States for the transfer of property.

SEC. 1225. PROTECTION OF VIRTUAL OR PHYSICAL MONEY SECURITY INTERESTS.—
Section 549(f)(2)(B) of title 11, United States Code, is amended by striking ‘‘20’’ and inserting ‘‘30’’.

SEC. 1226. BANKRUPTCY JUDGESHIPS.—
(a) SHORT TITLE.—This section may be cited as the ‘‘Bankruptcy Judgeship Act of 2002’’.
(b) TEMPORARY JUDGESHIPS.—
(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:
   (A) One additional bankruptcy judge for the eastern district of California.
   (B) Three additional bankruptcy judges for the district of Maryland.
   (C) Four additional bankruptcy judges for the district of Delaware.
   (D) Two additional bankruptcy judges for the southern district of Florida.
   (E) One additional bankruptcy judge for the southern district of Georgia.
   (F) Three additional bankruptcy judges for the district of Massachusetts.
   (G) One additional bankruptcy judge for the eastern district of Michigan.
   (H) One additional bankruptcy judge for the southern district of Mississippi.
   (I) One additional bankruptcy judge for the district of New Jersey.
   (J) One additional bankruptcy judge for the eastern district of New York.
   (K) One additional bankruptcy judge for the northern district of New York.
   (L) One additional bankruptcy judge for the district of North Carolina.
   (M) One additional bankruptcy judge for the eastern district of North Carolina.
   (N) One additional bankruptcy judge for the eastern district of Pennsylvania.
   (O) One additional bankruptcy judge for the middle district of Pennsylvania.
   (P) One additional bankruptcy judge for the district of Puerto Rico.
   (Q) One additional bankruptcy judge for the western district of Tennessee.
   (R) One additional bankruptcy judge for the eastern district of Texas.
   (S) One additional bankruptcy judge for the district of South Carolina.
   (T) One additional bankruptcy judge for the district of New Jersey.

(2) VACANCIES.—
(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—
   (i) occurring 5 years or more after the appointment of the bankruptcy judge appointed under paragraph (1) to such office; and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;
   (C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—
   (i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—
   (i) occurring 5 years or more after the respective 1st and 2d vacancy dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (F) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (G) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (H) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (I) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.
   (J) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—
   (i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1); and
   (ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge, shall not be filled.

SEC. 1227. RECLAMATION.—
(a) RIGHTS AND POWERS OF THE TRUSTEE.—
(1) Except as provided in subsection (d) of this section, and subject to the prior rights of holders of security interests in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller’s business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods.
   (A) Not later than 45 days after the date of receipt of such goods by the debtor; or
   (B) Not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.
   (2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 507.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, is amended by adding at the end the following:
   ‘‘(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor’s business.’’.

SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.—
(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual seeking bankruptcy under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or chapter 13 of title 11, United States Code, unless requested tax documents have been filed with the court.
United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall include any procedures to implement this paragraph. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS. (a) APPEALS.—Subject to subsection (b)(8) of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking “Subject to subsection (b),” and inserting “Subject to subsections (b) and (d),”;

(2) in subsection (d)—

(A) by inserting “(1)” after “(d);” and

(B) by adding at the end the following:

“(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certifies—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals of the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree is necessary to prevent the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

(i) on its own motion on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A), then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

(C) The parties may supplement the certification with a short statement of the basis for the certification.

(d) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

(2) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.

(b) PROCEDURAL RULES.—(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such appeals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, a bankruptcy court, or a bankruptcy appellate panel may not take a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(c) REPORT AND REGULATIONS.—(1) In subsection (c)(1) of section 707 of title 11, United States Code, is amended by striking “it” and inserting “the appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certifies—

(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals of the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

(iii) an immediate appeal from the judgment, order, or decree is necessary to prevent the progress of the case or proceeding in which the appeal is taken; or

(iv) the court of appeals authorizes the direct appeal of the judgment, order, or decree.

(2) The Federal Rules of Appellate Procedure. For purposes of paragraph (1) of rule 5—

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate, before the agency.

(B) a reference in such subdivision to the parties requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(A) be filed with the clerk not later than 10 days after the order or decree is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(4) FILING OF PETITION WITH ATTACHMENT.—A petition requesting permission to appeal, that is based on a certification made under subsection (B) of section 158(d)(2), shall—

(A) be filed with the clerk not later than 10 days after the order or decree is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—

(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) APPLICATION OF RULES.—The Federal Rules of Appellate Procedure shall apply in the courts or panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. INVOLUNTARY CASES.

(a) AMENDMENTS.—Section 535(b) of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting “as to liability or amount” after “bona fide dispute”; and

(B) striking “if such claims and inserting “if such noncontingent, undisputed claims” and

(2) in subsection (b)(2), by inserting “to li-
(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to agreements commenced under title 11 of the United States Code before such date.

SEC. 1235. FEDERAL ELECTRON LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14)(a) the following:

"(16) Any civil penalty or fines imposed under Federal election law;"

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

"(II)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance with an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: (the blank space to be filled in by the creditor)."

"(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical annual percentage rate minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: (the blank space to be filled in by the creditor)."

"(C) With respect to subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical annual percentage rate minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: (the blank space to be filled in by the creditor)."

"(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an individual account that is greater than 47 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (A).

"(E) The Board shall, by rule, periodically re-calculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C)."

"(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission, as applicable, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as applicable. The toll-free telephone number disclosed by the creditor to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C), as applicable, may be obtained.

"(ii) The Board shall establish and maintain for 12 months after disclosing the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act, with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to automated devices through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B), as applicable, may be obtained.

"(iii) The Board shall establish a toll-free telephone number disclosed by the Federal Reserve System (hereafter in this title referred to as the "Board") shall promulgate regulations implementing the requirements of subsection (A), (B), or (C), as applicable, of this section.

"(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: (the blank space to be filled in by the creditor)."

"(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the "Board") shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the best method of making available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, and the next obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers are making the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost of repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted
under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. DISCLOSURES REQUIRED FOR CREDIT EXTENSIONS SECURED BY A DWELLING

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127a(a)(13) of the Truth in Lending Act (15 U.S.C. 1637(a)(13)) is amended—

(A) by striking "CREDIT APPLICATION" and inserting the following:

"CREDIT APPLICATION.—Section 127a(a)(13) of the Truth in Lending Act (15 U.S.C. 1637(a)(13)) is amended—

(B) by striking paragraph (13) and inserting the following paragraph (13):

"(13) the term 'credit extension' defined in section 122(a)(15) of the Truth in Lending Act (15 U.S.C. 1637(a)(15)) as in effect on or after the date of enactment of this Act, means the extension of credit to a consumer for consumer credit purposes, but such term shall not include a consumer credit transaction described in subsection (a)(15) of section 122(a)(15) of the Truth in Lending Act (15 U.S.C. 1637(a)(15)), or a consumer credit transaction described in subsection (a)(15) of section 122(a)(15) of the Truth in Lending Act (15 U.S.C. 1637(a)(15)), unless such consumer credit transaction is made for purposes of a consumer durable good or service that will be used primarily for personal, family, or household purposes, and is not otherwise described in paragraph (13) of section 122(a)(15) of the Truth in Lending Act (15 U.S.C. 1637(a)(15))."

SEC. 1303. DISCLOSURES RELATED TO INTEREST RATES

(a) INTEREST RATES.—Section 127(c)(6)(B) of the Truth in Lending Act (15 U.S.C. 1637(c)(6)(B)) is amended—

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c)(6) of the Truth in Lending Act (15 U.S.C. 1637(c)(6)) is amended by adding at the end the following:

"(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT PENALTIES

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of

"(D) DEFINITIONS.—In this paragraph—

(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a consumer account that will apply after the temporary introductory period described in paragraph (1) of this subsection unless such rate is fixed for a period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

(ii) the term 'temporary introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(7) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

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the Truth in Lending Act (15 U.S.C. 1637(h)) is amended by adding at the end the following:

“(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

(‘‘(A) The date on which that payment is due or, if different, the earliest date on which a payment is due after the expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.’’)

(b) REGULATORY IMPLEMENTATION.—(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1309. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

“(b) CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to the effective date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.”

(b) REGULATORY IMPLEMENTATION.—(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and make a report containing an analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693q), as in effect at the time of the report, and the implementation of such section by the Federal Reserve System or other appropriate Federal agencies, would have the effect of liability protection for consumers;

(2) the extent to which any voluntary industry self-regulatory rules have or have not been adopted in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of bankruptcy cases filed under title 11, United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1308. CLASSIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Housing Finance Agency, shall promulgate regulations to provide guidance regarding the meaning of the term ‘‘clear and conspicuous’’, as used in subparagraphs (A), (B), and (C) of section 127(b)(4) and subparagraphs (A), (B), and (C) of section 127(c)(4)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made pursuant to section 127(c)(6)(A) of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this Act, the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) LIMITATIONS ON DOMESTIC EXEMPTION.—The amendments made by sections 308 and 322 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

And the Senate agree to the same.

From the Committee on Energy and Commerce, for consideration of title XIV of the Senate amendment, and modifications committed to conference:

BILLY Tauzin, JOE BARTON

From the Committee on Education and the Workforce, for consideration of sec. 1403 of the Senate amendment, and modifications committed to conference:

JOHN BOHRER, CHUCK GRASSLY, Jon KYL, MIKE DEWINE, PATRICK LEAHY, ORRIN HATCH, JEFF SESSIONS, JIMMIE STARK, MITCH MCCONNELL.

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. 395, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, 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 to the bill, H.R. 395, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, 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 conference, and minor drafting and clerical changes.

Sec. 1. Short Title; References; Table of Contents

The short title of this measure is the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002.

TITLE I—Nondischargeability

Sec. 101, Conversion

Section 101 is identical to section 101 of the House bill and the Senate amendment. Under current law, section 706(c) of the Bankruptcy Code provides that a court may not convert a chapter 7 case unless the debtor requests such conversion. Section 101 of the conference report amends this provision to allow a chapter 7 case to be converted to a case under chapter 12 or chapter 13 on request or consent in certain circumstances.

Sec. 102, Dismissal or Conversion

Section 102 of the conference report reflects a compromise between section 102 of the House bill and the Senate amendment, although many of the components of this provision are derived from identical counterparts in the House bill and the Senate amendment.

This provision implements the conference report’s principal consumer bankruptcy reforms: needs-based debt relief. Under section 707(b) of the Bankruptcy Code, a chapter 7 case filed by a debtor who is an individual may be dismissed for substantial abuse only on motion of the court or the United States Trustee. It specifically prohibits such dismissal at the suggestion of any party in interest.

SPENCER BACHUS, F. James SENSENBRENNER, Jr., JOE BIDEN, CHARLES SCHUMER, George W. GEKAS, ORRIN HATCH, Chuck GRASSLY, Jon KYL, Mike DEWINE, Jeff SESSIONS, Mitch MCCONNELL.

Managers on the Part of the Senate.
Section 102 of the conference report revises current law in several significant respects. First, it amends section 707(b) of the Bankruptcy Code to permit—in addition to the court or the United States trustee, bankruptcy administrator, or a party in interest to seek dismissal or conversion of a chapter 7 case to one under chapter 11 or 13 on consideration whether the debtor is subject to circumstances in which the debtor, if applicable, to deduct from current monthly income the continuance of actual expenses paid by the debtor that are necessary for the care and support of an elderly, chronically ill, or disabled household member or member (if the debtor is primarily providing (such individual is unable to pay for these expenses), the bills differ with respect to their respective definitions of “immediate family.” The Senate amendment’s position that the term includes, in addition to other specified entities, the debtor’s children and grandchildren.

Likewise, both the House bill and the Senate amendment permit the debtor to deduct the actual expenses for each dependent child of a debtor to attend a private, public elementary or secondary school of up to $1,000 per child if the debtor: (1) documents such expenses, and (2) provides a detailed explanation of why such expenses are reasonable and necessary. The Senate amendment contains similar, but not identical provisions regarding actual expenses paid by the debtor that are necessary for the care and support of an elderly, chronically ill, or disabled household member or member (if the debtor is primarily providing (such individual is unable to pay for these expenses), the bills differ with respect to their respective definitions of “immediate family.” The Senate amendment’s position that the term includes, in addition to other specified entities, the debtor’s children and grandchildren.

In addition, the conference report amends Bankruptcy Code section 707(b) to mandate a presumption of abuse under section 707(b), unless the debtor demonstrates special circumstances that justify an exception. The conference report changes the current standard for dismissal from “substantial abuse” to “abuse,” as defined in section 109(j). The conference report contains a number of other technical provisions with respect to these exceptions, but it otherwise contains identical provisions as those in the Senate amendment.

To determine whether the presumption of abuse applies under section 707(b) of the Bankruptcy Code, section 102(a) of the conference report requires the debtor to file a schedule of non-exempt property in addition to the schedules of current income and current expenditures, a statement of current monthly income, and a calculation of current monthly income. The conference report amends section 707(b) of the Bankruptcy Code to require a finding that a person is solvent to order the assessment of an appropriate penalty under the Bankruptcy Code to such debtor.

In a case where the presumption of abuse does not apply or has been rebutted, section 707(b) of the Bankruptcy Code requires the court to consider whether the debtor is entitled to a discharge under chapter 7, or whether the court should order the debtor to file a schedule of non-exempt property to the extent the debtor is entitled to a discharge under chapter 11, or whether the court should order the payment of a personal services contract and the debtor’s financial need for such rejection. Section 707(b) of the Bankruptcy Code

Under section 102(a)(2)(C) of the conference report, a court may on its own initiative or on motion of a party in interest in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure, order a debtor’s attorney to reimburse the trustee for all reasonable and necessary expenses incurred in enforcing the section 707(b) motion if: (1) a trustee files such motion; (2) the motion is granted; and (3) the court finds that the action of the debtor’s attorney in filing the case under chapter 7 violated rule 9011. If the court determines that the debtor’s attorney violated rule 9011, it may on its own initiative or on motion of a party in interest in accordance with rule 9011, order the assessment of an appropriate civil penalty against the debtor’s counsel and the United States trustee. The court may order the United States trustee to reimburse the bankruptcy administrator if the court finds that the action of the debtor’s attorney in filing the case under chapter 7 violated rule 9011. The conference report amends the Bankruptcy Code section 707(b) to require a finding that a person is solvent to order the assessment of an appropriate penalty under the Bankruptcy Code to such debtor.

In a case where the presumption of abuse does not apply or has been rebutted, section 707(b) of the Bankruptcy Code requires the court to consider whether the debtor is entitled to a discharge under chapter 7, or whether the court should order the debtor to file a schedule of non-exempt property to the extent the debtor is entitled to a discharge under chapter 11, or whether the court should order the payment of a personal services contract and the debtor’s financial need for such rejection. Section 707(b) of the Bankruptcy Code
of a wholly owned subsidiary includes the employees of the parent and any other subsidiary corporation of the parent. Section 102(a)(2)(C) represents a compromise among House and Senate counterparts. The provision amends section 101 of the Bankruptcy Code to define "current monthly income" as the average monthly income that the debtor receives (or in a joint case, the debtor and the debtor's spouse receive) from all sources, without regard to whether it is taxable in accordance with title 26 of the United States Code. The case may be dismissed if the debtor was convicted of such an offense, either the House bill or Senate amendment. Section 102(b) of the conference report amends Bankruptcy Code section 1325(a) to provide that bankruptcy court may only confirm a chapter 13 plan, to find that the debtor's action in filing the case was in good faith. This provision is substantively identical to section 102(b) of the House bill and the Senate amendment.

Section 102(c) of the conference report amends sections 1232(b)(1) of the Bankruptcy Code to provide for the periodic adjustment of monetary amounts specified in sections 707(b) and 1325(b)(3) of the Bankruptcy Code, as amended by this Act. This provision represents a compromise between the House and Senate amendments.

Section 102(d) of the conference report amends section 1232(b)(1) of the Bankruptcy Code to provide for the periodic adjustment of monetary amounts specified in sections 707(b) and 1325(b)(3) of the Bankruptcy Code, as amended by this Act. This provision represents a compromise between the House and Senate amendments.
The conference report on the Bankruptcy Code that is consistent with the report's findings. This provision is substantively identical to section 103 of the House bill and the Senate amendment.

Sec. 104. Notice of alternatives

Section 104 of the conference report amends section 105(b) of the Bankruptcy Code to require the clerk of the court to inform debtors of the options available to them, including the requirement for credit counseling. This provision is substantively identical to section 104 of the House bill and the Senate amendment.

Sec. 105. Debtor financial management training test programs

Section 105 of the conference report requires the Director of the Executive Office for United States Trustees to submit a report within 2 years from the date of enactment containing recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings. This provision is substantively identical to section 105 of the House bill and the Senate amendment.

Sec. 106. Credit counseling

Section 106(a) of the conference report amends section 109 of the Bankruptcy Code to require an individual— as a condition of eligibility for credit counseling to be considered for a discharge— to receive credit counseling within the 180-day period preceding the filing of a bankruptcy case by such individual. This requirement applies to debtors who requested credit counseling services from an approved nonprofit credit counseling agency, but was unable to obtain such counseling due to lack of available credit counseling and assisted the individual in performing a budget analysis. This requirement does not apply to debtors who requested credit counseling services from an approved nonprofit credit counseling agency, but was unable to obtain such counseling due to lack of available credit counseling and assisted the individual in performing a budget analysis.

Section 106(b) amends section 111 of the Bankruptcy Code to require the Director to submit a report within 2 years from the date of enactment containing recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings. This provision is substantively identical to section 106(b) of the House bill and the Senate amendment.

Section 106(c) of the conference report amends section 129 of the Bankruptcy Code to require a discharge to a chapter 13 debtor who fails to complete a personal financial management instructional course. This requirement does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator and may be appealed by the debtor.

Section 106(d) of the conference report amends section 111 of the Bankruptcy Code to require the Director to submit a report within 2 years from the date of enactment containing recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings. This provision is substantively identical to section 106(d) of the House bill and the Senate amendment.

Section 106(e) of the conference report is substantially identical to section 106(e) of the House bill and the Senate amendment. It adds section 111 to the Bankruptcy Code requiring the Director to submit a report within 2 years from the date of enactment containing recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings. This provision is substantively identical to section 106(e) of the House bill and the Senate amendment.
TITLE IV—ENHANCED CONSUMER PROTECTION

SUBTITLE A—PENALTIES FOR ABUSIVE CREDITOR PRACTICES

 Sec. 201. Promotion of alternative dispute resolution

Section 201 of the conference report is substantially identical to section 201 of the House bill and the Senate amendment. Subsection (a) amends section 502 of the Bankruptcy Code to permit the court, after a hearing, to order the debtor, to reduce or the debtor’s principal residence if the court determines that the bankruptcy courts must establish a section (a) amends section 547 of the Bankruptcy Code, section 203(a) permits a creditor to accept payments from a debtor: (1) before and after the filing of a reaffirmation agreement with the court; or (2) pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; or (2) a governmental unit. To qualify for legislation to address any abusive or coercive tactics found in connection with the reaffirmation process. Section 205 is derived from section 205 of the Senate amendment. There is no counterpart to this provision in the House bill.

SUBTITLE B—PRIORITY CHILD SUPPORT

Sec. 211. Definition of domestic support obligation

Section 211 of the conference report amends section 101 of the Bankruptcy Code to define a domestic support obligation as a debt that is expressly so designated and voluntary agreement by the debtor, and the debtor and the creditor must be in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit), without regard to whether such debt is expressly so designated. It may be established or subject to establishment by the court to collect and failure to credit payments in the manner required by the plan. The provision does not apply if the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required under the reaffirmation agreement. No reaffirmation agreement may be disapproved without notice and hearing to the debtor and creditor. The hearing must be concluded before the entry of the debtor’s discharge. The requirements set forth in this paragraph do not apply to reaffirmation agreements if the creditor is a credit union, as defined.

Sec. 212. Priorities for claims for domestic support obligations

Section 212 of the conference report amends section 503(a) of the Bankruptcy Code to accord first priority in payment to allowed secured claims for domestic support obligations that, as of the petition date, were assigned to or recovered by a governmental unit on behalf of such claimant, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Subject to these claims, section 212 accords the same payment priority to allowed unsecured claims for domestic support obligations that, as of the petition date, were assigned by a spouse, former spouse, child of the debtor, or child’s parent, legal guardian, or responsible relative of such child, without regard to whether such spouse, former spouse, child, or parent solely for the purpose of collecting the debt. Section 212 is derived from section 212 of the Senate bill and the Senate amendment.

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Section 213 requires an order to confirm a plan or discharge a debtor in a case subject to jurisdiction by the Bankruptcy Code to provide that if a chapter 13 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay all amounts payable under such order or statute that became payable postpetition as a prerequisite for confirmation.

With respect to chapter 12 cases, section 214 of the conference report amends Bankruptcy Code section 1222(a) to provide that the following of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the case: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent that such proceeding seeks division of property that is property of the estate); and (3) domestic violence. Third, it permits the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order as well as the withholding, suspension, or restriction of a driver's license, or a professional, occupational, or recreational license under state law, pursuant to section 466(a)(16) of the Social Security Act. Sixth, it allows medical obligations, as specified under title IV of the Social Security Act, to be enforced notwithstanding the automatic stay. Section 214 is substantially identical to section 214 of the House bill and the Senate amendment.

Section 215 nondischargeability of certain debts for alimony, maintenance, and support

Section 215 of the conference report amends Bankruptcy Code section 522(a)(5) to provide for the nondischargeability of certain debts that are nondischargeable under section 523(a)(5), including alimony, maintenance, or support, to the extent that the debtor received a dividend or distribution of property of the estate transferred in violation of a domestic support obligation. Section 215 is substantially identical to section 215 of the House bill and the Senate amendment.

Section 216 conversion or dismissal

Section 216 of the conference report amends section 522(a)(4) of the Bankruptcy Code to provide that a claimant or agency may request from the bankruptcy court a declaratory judgment that a certain debt that is nondischargeable under section 523(a)(5), (4), or (14A) is nondischargeable in a chapter 12 case. This provision is substantively identical to section 216 of the Senate amendment.

Section 217 collection of child support

Section 217 of the conference report amends section 522(a)(4) of the Bankruptcy Code to provide that a claimant or agency may request from the bankruptcy court a declaratory judgment that a certain debt that is nondischargeable under section 523(a)(5), (4), or (14A) is nondischargeable in a chapter 12 case. This provision is substantively identical to section 217 of the House bill and the Senate amendment.

Section 218 provisions implementing the conference report

Section 218 of the conference report amends section 522(a)(4) of the Bankruptcy Code to provide that a claimant or agency may request from the bankruptcy court a declaratory judgment that a certain debt that is nondischargeable under section 523(a)(5), (4), or (14A) is nondischargeable in a chapter 12 case. This provision is substantively identical to section 218 of the Senate amendment.

Section 219 exceptions to automatic stay

Section 219 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 219 of the House bill and the Senate amendment.

Section 220 relief from stay

Section 220 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 220 of the House bill and the Senate amendment.

Section 221 summary of amendments

Section 221 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 221 of the Senate amendment.

Section 222 exceptional provisions

Section 222 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 222 of the House bill and the Senate amendment.

Section 223 relief from stay

Section 223 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 223 of the Senate amendment.

Section 224 summary of amendments

Section 224 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 224 of the House bill and the Senate amendment.

Section 225 relief from stay

Section 225 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 225 of the Senate amendment.

Section 226 summary of amendments

Section 226 of the conference report amends section 522(a)(5) of the Bankruptcy Code to provide that an employer may provide written notice to a debtor that a debt is nondischargeable under section 523(a)(5). This provision is substantively identical to section 226 of the House bill and the Senate amendment.
should develop personal finance curricula for use in elementary and secondary schools. This provision is substantively identical to section 222 of the House bill and the Senate amendment.

Sec. 223. Additional amendments to title 11, United States Code

Section 223 of the conference report amends section 523(a)(8) of the Bankruptcy Code to provide that a debt for a qualified education loan (as defined in section 221(e)(1) of the Bankruptcy Code) be dischargeable, unless excepting such debt from discharge would impose an undue hardship on the debtor and the debtor’s dependents. This provision is substantively identical to section 222 of the House bill and the Senate amendment.

Sec. 224. Protection of retirement savings in bankruptcy

Section 224 of the conference report is substantively identical to section 222 of the Bankruptcy Code to permit a debtor to exempt certain retirement funds to the extent those monies are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code and that have received a favorable determination pursuant to Internal Revenue Service Regulations. This provision is substantively identical to section 223 of the House bill and the Senate amendment.

Subtitle C—Other Consumer Protections

Sec. 225. House and Senate amendment to provide for more effective consumer protections

Section 225 of the conference report is substantively identical to section 225 of the House bill and the Senate amendment. Subsection (a) amends section 522 of the Bankruptcy Code to provide that funds placed not later than 365 days before the filing of the bankruptcy case in a education individual retirement account that are not property of the estate if certain criteria are met. First, the designated beneficiary of such account must be a child, stepchild, grandchild or step-grandchild of the debtor during which funds were placed in the account. A legally adopted child or a foster child, under certain circumstances, may also qualify as a designated beneficiary. Second, such funds may not be pledged or promised to an entity in connection with any extension of credit and they may not be excess contributions (as described in section 4975(e) of the Internal Revenue Code). Funds deposited between 720 days and 365 days before the filing date are protected to the extent they do not exceed $150,000. Similarly, subordinates apply with respect to funds used to purchase a tuition credit or certificate or to funds contributed under section 529(b)(1)(A) of the Internal Revenue Code. Section 225(b) amends Bankruptcy Code section 521 to require a debtor to file with the court a record of any interest that the debtor has in an education individual retirement account or qualified state tuition program.

Sec. 226. Definitions

Section 226 of the conference report is substantively identical to section 226 of the House bill and the Senate amendment. Subsection (a) amends section 101 of the Bankruptcy Code to add definitions with respect to debt relief agencies. Section 226(a)(1) defines an “assisted person” as a person whose debts consist primarily of consumer debts and whose nonexempt assets are less than $150,000. Section 226(a)(2) defines “bankruptcy assistance” as any goods or services provided to an assisted person in a proceeding on behalf of a person; or providing legal representation in a case or proceeding under the Bankruptcy Code. Section 226(a)(3) defines a “debtor” as any person (including a bankruptcy petition preparer) who provides bankruptcy assistance...
to an assisted person in return for the payment of money or other valuable consideration. The definition specifically excludes certain entities. First, it does not apply to a nonprofit organization designated as a bankruptcy exemption organization under section 501(c)(3) of the Internal Revenue Code. Second, it is inapplicable to a creditor who assisted such person to the extent that the assistance is tantamount to the sub- stituting of any debt owed by the person to the creditor. Third, the definition does not apply to a depository institution (as defined in section 3 of the Federal Deposit Insurance Act), or any federal or state credit union (as defined in section 101 of the Federal Credit Union Act). Fourth, an author, publisher, distributor, or seller of works subject to copyright protection under title 17 of the United States Code when acting in such capacity are not within the ambit of this definition. Section 226(b) amends section 104 of the Bankruptcy Code to require the monetary amount set forth in the definition of an "assisted person" to be automatically adjusted to reflect the change in the Consumer Price Index.

Sec. 227. Restrictions on debt relief agencies

Section 227 of the conference report is substantively identical to section 227 of the House bill and the Senate amendment. This provision, as proposed in the Bankruptcy Code intended to proscribe certain activities of a debt relief agency. It prohibits such activity from: (1) failing to perform any service that it informed an assisted person it would provide; (2) advising an assisted person to make an untrue and misleading statement or that upon the exercise of reasonable inquiry would have been known to be untrue or misleading in a document filed in a bankruptcy case; (3) misrepresenting the services it provides and the benefits that an assisted person may receive as a result of the bankruptcy process; (4) advising an assisted person or prospective assisted person to incur additional debt in contemplation of filing for bankruptcy relief or for the purpose of paying fees for services rendered by an attorney or petition preparer in connection with the bankruptcy case. Any waiver by an attorney of the provisions under this provision are unenforceable, except against a debt relief agency.

In addition, Section 227 imposes penalties for the violation of section 526, 527 or 528 of the Bankruptcy Code. First, any contract between a debt relief agency and an assisted person is void to the extent that the violations are void and may not be enforced by any state or federal court or by any person, except an assisted person. Second, a debt relief agency is liable to an assisted person, under certain circumstances, for any fees or charges paid by such person to the agency, actual damages, and reasonable attorneys' fees and costs. The chief law enforcement officer of a state who has reason to believe that a person has violated or is violating section 526 may seek to have such violation enjoined. A court may award actual damages.

Sec. 228. Disclosures

Section 228 of the conference report requires a debt relief agency to provide certain specified written notices to an assisted person. These include the notice required under section 342(b)(1) (as amended by this Act) as well as a notice advising that: (1) all information furnished to the agency in connection with the case must be complete, accurate and truthful; (2) all assets and liabilities must be completely and accurately disclosed; (3) the information provided to the court, including the replacement value of each asset (if required) after reasonable inquiry to establish such value; (4) creditors and any Federal, State or local government (including any persons acting as a depository institution or credit union) that have any interest in determining and enforcing the monetary amount set forth in the definition of an "assisted person" for purposes of determining whether a debtor has outstanding child support obligations. This provision largely reflects section 101 to add a definition of "personally identifiable information." The term applies to information provided by an individual to a debt relief agency in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes. It includes the individual's: (1) first name or initial and that person's birth or adoption date; (2) physical home address; (3) electronic address, including an e-mail address; (4) home telephone number; (5) Social Security number (vi); (6) credit card account number. The term also includes information if it is identified that in connection with the above items: (1) an individual's place of birth, place of birth, or place of adoption; (2) any other information concerning an identified individual that, if disclosed, will result in physical or emotional contacting or identification of that person.

Sec. 229. Requirements for debt relief agencies

Section 229 adds a new provision to the Bankruptcy Code regarding a debt relief agency—not later than five business days after the first date on which it provides any bankruptcy assistance services to an assisted person the agency must provide the assisted person's bankruptcy petition being filed—to execute a written contract with the assisted person. The contract must specify clearly and conspicuously the agency will provide, the basis on which fees will be charged for such services, and the terms of payment. The assisted person must be given a copy of the fully executed and completed contract in a form the person can retain. The debt relief agency must include certain specified mandatory statements in any advertisement of its services or regarding the benefits of bankruptcy that is directed to the general public whether through the general media, seminars, specific mailings, tele- phone, electronic, or other means of contact. The court must order the United States trustee to appoint a disinterested person to serve as the consumer privacy ombudsman and to provide timely notice of the hearing to such person. It permits the ombudsman to permit the court to provide the agency with information to assist its consideration of the facts, circumstances and condition of the assisted person. The provision amends Bankruptcy Code section 330(b)(1) (as amended), the court must order the United States trustee to appoint a disinterested person to serve as the consumer privacy ombudsman and to provide timely notice of the hearing to such person. It permits the ombudsman to provide the agency with information to assist its consideration of the facts, circumstances and condition of the assisted person. The provision amends Bankruptcy Code section 330(b)(1) (as amended), the court must order the United States trustee to appoint a disinterested person to serve as the consumer privacy ombudsman and to provide timely notice of the hearing to such person.
bankruptcy case, but such debtor may not be required to disclose in the public records the child’s name. It provides, however, that the debtor may be required to disclose this information in a bankruptcy record maintained by the court, which must be available for inspection by the United States trustee, trustee or an auditor, if any. Section 233 prohibits the court, United States trustee, trustee or an auditor, if any, from disclosing such minor child’s name. Section 233 of the conference report generally reflects section 233 of the Senate amendment. Subsection (a)(2) of section 233 of the conference report states that the prohibition against disclosure pertains to the minor child’s name. Section 231 of the House bill is similar, but does not include the court, United States trustee, trustee or auditor access to the prescribed information.

**Title III—Discouraging Bankruptcy Abuse**

*Sec. 301. Reinforcement of the fresh start*

Subsection (a)(1) makes a clarifying amendment to section 522(a)(17) of the Bankruptcy Code concerning the dischargeability of court fees incurred by prisoners. Section 522(a)(17) was added to the Bankruptcy Code by the Omnibus Reclassifications Act of 1996 to exempt from discharge the filing fees and related expenses associated with a case in a court in a civil case or appeal. As the result of a drafting error, however, this provision might be construed to apply to filing fees, costs or expenses incurred by any debtor, not solely a prisoner. Section 522(a)(17) of the Senate amendment eliminates this ambiguity and makes other conforming changes to narrow its application with the original intent. This provision is substantively identical to section 301 of the House bill and the Senate amendment.

*Sec. 302. Discouraging bad faith repeat filings*

Subsection (a) amends Bankruptcy Code section 362(c) of the Bankruptcy Code to terminate the automatic stay within 30 days in a chapter 7, 11, or 13 case filed by or against an individual if such individual was a debtor in a previously dismissed case pending within the preceding one-year period. The provision does not apply to a case refiled under a chapter other than chapter 7 after dismissal of the prior chapter 7 case pursuant to section 707(b) of the Bankruptcy Code. Upon motion of a party in interest, the court may extend the automatic stay for a reasonable period of time after notice and a hearing completed prior to the expiration of the 30-day period if such party demonstrates that the latter case was filed in good faith or was stayed by the filing. For purposes of this provision, a case is presumptively not filed in good faith as to all creditors (but such presumption may be rebutted by clear and convincing evidence) if: (1) more than one bankruptcy case under chapter 7, 11 or 13 was previously filed by the debtor within the preceding one-year period; (2) the prior chapter 7, 11, or 13 case was dismissed within the preceding one-year period for the debtor’s failure to (a) file or amend without substantial excuse a document required under the Bankruptcy Code or the court, (b) provide adequate protection ordered by the court, or (c) perform the terms of a confirmed plan; or (3) there has been no substantial change in the debtor’s financial or personal affairs since the dismissal of the prior case, or there is no reason to conclude that the pending case will conclude either with a discharge or a chapter 7 case confirmation (if a chapter 11 or 13 case). In addition, section 302 provides that a case is presumptively not to be filed in good faith if the court, United States trustee or other person who obtained possession from the automatic stay in the prior case or sought such relief in the prior case and such action was pending at the time of the prior case’s dismissal. The presumption may be rebutted by clear and convincing evidence. A second or subsequent chapter 7, 11, or 13 bankruptcy case was pending in the one-year period preceding the filing of the pending case. Section 302 is substantively identical to section 302 of the House bill and the Senate amendment.

*Sec. 303. Curbing abusive filings*

Section 303 of the conference report is intended to reduce abusive filings. This provision is substantively identical to section 303 of the House bill and the Senate amendment. Subsection (a) amends Bankruptcy Code section 362(c) of the automatic stay from the automatic stay. Under this provision, cause for relief from the automatic stay may be established for a creditor whose claim is secured by an interest in real property, if the court finds that the filing of the bankruptcy case was part of a scheme to delay, hinder and defraud creditors that involved either: (1) a transfer of all or part of an ownership interest in real property without such creditor’s consent or without court approval; or (ii) multiple bankruptcy filings section 1125 permitting a debtor to continue in compliance with applicable state law governing notice of an interest in or a lien on real property, an order entered under this provision is the final order of submitting a bankruptcy case for two years from the date of entry of such order. A debtor in a subsequent case may move for relief based upon changed circumstances or for good cause shown after notice and a hearing. Section 303(a)(f) further provides that any federal, state or local governmental unit that accepts a notice of interest or lien is required to accept a certified copy of an order entered under this provision.

Subsection (b) amends Bankruptcy Code section 362(b) to exempt from the automatic stay an act to enforce any lien against or security interest in real property within two years following the entry of an order entered under section 362(d)(4). A debtor, in a subsequent case, may move for relief from such order based upon changed circumstances or for good cause shown after notice and a hearing. Section 303(b)(2) also provides that the automatic stay does not apply in a case where: (1) is ineligible to be a debtor; or (2) is a debtor who has previously filed a bankruptcy case; or (3) has been a debtor in any bankruptcy case; or (4) filed the bankruptcy case in violation of an order issued in a prior bankruptcy case; or (5) the court erroneously retains, whether the debtor will redeem the property or reaffirm the debt, or assume an unexpired lease, if the trustee does not. Likewise, the automatic stay is terminated if the debtor fails to take the action specified in the statement of intention in a timely manner, unless the statement specifies reaffirmation of the debt. Section 303(c) makes other conforming changes to narrow the circumstances or for good cause shown after notice and a hearing, that such property is of consequential value or benefit to the estate, orders adequate protection of the creditor’s interest, and if retained, whether the debtor will redeem the property or reaffirm the debt, or assume an unexpired lease, or other good cause shown.

Section 306(b) adds a new paragraph to section 362(b) of the Bankruptcy Code to require a debtor to file a statement of intention applicable to all secured debts, not just secured consumer debts. In addition, it requires the debtor to effectuate his or her stated intention within 30 days from the first date set for the meeting of creditors. If the debtor fails to timely undertake certain specified actions with respect to property the debtor owns and has leased, rented or bailed to the debtor or in which a creditor has a security interest (not otherwise avoidable under section 522(f), 544, 545, 547, 548 or 549 of the Bankruptcy Code), then nothing in the Bankruptcy Code shall prevent or limit the operation of a provision in a lease or agreement that places the debtor in default or termination of the debtor’s bankruptcy or insolvency.

**Section 306. Giving secured creditors fair treatment in chapter 13**

The conference report is substantively identical to section 306 of the House bill and Senate amendment. Subsection (a) amends Bankruptcy Code section 1326(a)(10)(B)(i) to require—as a condition of confirmation—that a chapter 13 plan provide that a secured creditor retain its lien until the earlier of when the underlying debt is paid or the debtor receives a discharge. If the case is dismissed or converted prior to completion of the plan, the secured creditor is entitled to retain its lien to the extent recognized under applicable nonbankruptcy law.

Subsection (b) adds a new paragraph (c) to Bankruptcy Code section 1326(a)(10)(B)(i) that applies the requirements set forth in section 1326(a)(10)(B)(i)(I) to a case that does not apply to a debt incurred within the two and one-half year period preceding the filing of the bankruptcy case if the debt is secured by property of the debtor that is a motor vehicle acquired for the personal use of the debtor. The collateral consists of...
of any other type of property having value, section 306(b) provides that section 506 of the Bankruptcy Code does not apply if the debt was incurred during the one-year period preceding the bankruptcy or 910-day period set forth in Section 306(b) of the conference report represents a compromise between the House bill and Senate amendment. Section 306(c)(1) of the House bill provided for a five-year period, while its Senate counterpart specified a three-year period.

Section 306(c)(1) amends section 101 of the Bankruptcy Code to define the term “debtor’s principal residence” as a residential structure (including incidental property) without regard to whether or not such structure is attached to real property. The term includes an individual condominium or cooperative unit as well as a mobile or manufactured home and a trailer.

Section 306(c)(2) amends section 101 of the Bankruptcy Code to define the term “incidental property” as property commonly conveyed or owned together with and necessary for the support or maintenance of the debtor’s principal residence. Section 306(c)(3) amends section 101 of the Bankruptcy Code to provide that the term “residence” includes all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights, water rights, escrow funds, and insurance proceeds. Further, the term encompasses all replacements and additions.

Section 306 of the conference report is substantively identical to section 307 of the Senate bill and the conference amendment. This provision amends section 309(A) of the Bankruptcy Code to extend the time that a debtor must domiciliary be in a state for 180 days to 730 days. Section 309(c)(1) amends section 309 of the Bankruptcy Code to provide that the automatic stay of section 362 and the discharge injunction of section 524 are not violated if the creditor notifies the debtor that it is willing to have the lease assumed and condition such assumption on cure of any outstanding default on terms set by the court within 60 days after the filing of the petition. Section 309(c)(2) provides that if the lease is rejected, the automatic stay under section 362 as amended and the chapter 13 codebtor stay under section 1301 are automatically terminated with respect to such property.

Section 309 amends section 522 of the Bankruptcy Code to reduce the value of a debtor’s interest in the following property that may be claimed as exempt under certain circumstances: (a) personal items used by a person that the debtor or a dependent of the debtor uses as a residence, (b) a burial plot, or (c) real or personal property that the debtor or dependent of the debtor claims as a homestead.

Section 309(b)(1) amends Bankruptcy Code section 348(f)(1)(B) to provide that valuations of property and allowed secured claims in a chapter 13 case only apply if the case is subject to the provisions of chapter 13, that such valuation is to be full as of the conversion date, and that, unless a prebankruptcy default has been fully cured at the time of conversion, then the default occurring prior to conversion shall have the effect given under applicable nonbankruptcy law. Section 309(c)(2) amends section 365 of the Bankruptcy Code to provide that if a lease of personal property is rejected or not assumed by the trustee in a timely manner, the debtor’s claim of property of the estate and the automatic stay under section 362 with respect to such property is terminated.

Regard to the chapter 13 case in which the debtor is an individual, the debtor may notify the creditor in writing of his or her desire to assume the lease. Upon being so notified, the creditor may, at its option, inform the debtor that it is willing to have the lease assumed and condition such assumption on cure of any outstanding default on terms set by the court within 60 days of such notice. If the creditor does not cure the default within 60 days, the debtor may find the lease on such terms.

Section 309(c)(2) requires the debtor, within 60 days following the filing of the bankruptcy petition, to provide evidence of any required insurance coverage with respect to the use or ownership of leased personal property or property securing, in whole or in part, an interest in the personal property or property securing, in whole or in part, an interest in the personal property.

Sec. 310. Limitation on luxury goods

Section 310 amends section 523(a)(2)(C) of the Bankruptcy Code. Under current law, consumer debts owed to a single creditor that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 60 days before the commencement of the case are presumed to be nondischargeable. Section 310 amends section 523(a)(2)(C) to provide that cash advances aggregating more than $750 that are incurred within 70 days of the filing of the bankruptcy petition are presumed to be nondischargeable. The term “luxury goods” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor. In addition, an extension of consumer credit under an open-end credit plan has the same meaning as this term has under the Consumer Credit Protection Act. With respect to the aggregate amount of consumer debts and services under this provision, section 310 of the conference report reflects a compromise between the House bill, which has a $250 thousand threshold, and the Senate amendment, which has a $750 thousand threshold.

Sec. 311. Automatic stay

Section 311 of the conference report amends section 362(b) of the Bankruptcy Code to exempt, from the automatic stay a judgment of eviction with respect to a residential leasehold. It represents a compromise between the House and Senate conference reports.

The House bill excepts the following proceeding from the automatic stay: (1) the commencement or continuing of any judicial or administrative action to reclaim, repossess, or retake property of the estate or property securing, in whole or in part, an interest in property of the estate; (2) the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor resides as a tenant, lessee, or occupant of such property; (3) the commencement of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential real property where the debtor resides as a tenant, lessee, or occupant of such property that, in the aggregate, exceed $1,075 for luxury goods or services incurred by an individual debtor within 90 days before the order for relief.

With respect to cash advances, current law provides that cash advances aggregating more than $750 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 60 days before the filing of the petition are presumed to be nondischargeable. Section 310 amends section 523(a)(2)(C) to provide that cash advances aggregating more than $750 that are incurred within 70 days of the filing of the bankruptcy petition are presumed to be nondischargeable. The term “luxury goods” does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor. In addition, an extension of consumer credit under an open-end credit plan has the same meaning as this term has under the Consumer Credit Protection Act. With respect to the aggregate amount of consumer debts and services under this provision, section 310 of the conference report reflects a compromise between the House bill, which has a $250 thousand threshold, and the Senate amendment, which has a $750 thousand threshold.
and rule on the factual or legal sufficiency of
the certification. Where the court finds for
the debtor, the clerk shall immediately serve
upon the parties a copy of the court’s order
confirming that an exception to the auto-

mation stay remains in effect. It is the intent of this section that
the clerk’s certified copy of the docket or
petition. If, within thirty days following the
filing of the petition, the lessor files with the court a cer-
tification that such an eviction has been
filed or the debtor has endangered the prop-
erty or illegally used or allowed to be used a
controlled substance on such property during
the 30-day period preceding the date of the
filing of the certification. The Senate
amendment specifies certain procedural re-
quirements with respect to certain of these
processes.

It is the intent of section 311 of the con-
ference report to create an exception to the
automatic stay after the judgment for posses-
sion has been obtained, the court to shorten this
period if the debtor demonstrates extreme hardship.

Sec. 311. Extension of period between bank-
ruptcy discharges

Section 312 of the conference report amends section 527(a)(9) of the Bankruptcy Code to extend the period before which a
subsequent chapter 7 discharge from six to 8 years.
It also amends section 1328 to prohibit the issuance of a discharge in a subsequent chap-
ter 13 case to exclude the recovery of goods that were not used during the 30 days following the filing of the petition.

Additional changes include:

- Clarifying that works of art are not household goods for purposes of non-bankruptcy law.
- Eliminating the restriction of Section 522(f)(4). Section 313 of the conference report
- Specifying amendments to section 522(f)(4) which sets forth a five-year period with respect to any
- The Senate amendment, which sets forth an additional year with respect to the recovery of goods that were not used during the 30 days following the filing of the petition.
- This provision applies to the recovery of goods that were not used during the 30 days following the filing of the petition.

Sec. 312. Determination of household goods and antiques

Section 313 represents a compromise among the House and Senate conferences. This provision is substantively similar to section 313 of the House bill and Senate amendment.

Subsection (a) amends section 522(f) of the Bankruptcy Code to codify a modified version of the Federal Trade Commission’s definition of “household goods” for purposes of the avoidance of a nonpossessory, nonpur-

pose lien in such property. It also specifies various items that are expressly not considered household goods. The

Sec. 314. Debt incurred to pay nondischargeable claims

Section 314 is substantively identical to section 314 of the House bill and Senate amendment. Subsection (a) amends section 529(a) of the Bankruptcy Code to make a claim nondischargeable if it is not entitled to special treatment under the Bankruptcy Code. Subsection (b) specifies that if an entity files a notice with the court stating an address to be used generally by all bankruptcy courts for chapter 7 and 13 cases, or by particular bankruptcy courts, as the case may be. This address must be used by the court to supply notice in such cases within 30 days following the filing of such notice where the entity is a creditor. This section also prohibits the imposition of any mone-
nary penalty for violation of the automatic -
stay or for the failure to comply with the Bankruptcy Code sections 542 and 543 unless the creditor has received effective notice under section 342. Section 315(a) of the conference report makes technically similar changes to sections 315(a) of the House bill and Senate amendment.

Section 315(b) amends section 316 of the conference report to specify additional circumstances under which a debtor must file a certificate executed by the debtor’s attorney or bankruptcy petition preparer stating that the attorney or preparer supplied the debtor with the notice required under Bankruptcy Code section 342(b). If the debtor is not represented by an attorney or bankruptcy petition preparer, then the certificate must be signed by the debtor. Should the debtor fail to comply with this requirement, the case must be dismissed unilaterally by the court requesting a copy of the plan. The conference report makes technical and clarifying revisions.

Sec. 316. Dismissal for failure to timely file schedules or provide required information

Section 316 of the conference report is similar to section 316 of the House bill and the Senate amendment. This provision amends section 521 of the Bankruptcy Code to provide that if an individual debtor in a voluntary chapter 7 or chapter 13 case fails to file all of the information required under section 521(b)(1) of the Bankruptcy Code or the order confirming a chapter 11 plan, section 321(a) provides that a chapter 13 plan may not provide for payments over a period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

If the current monthly income of the debtor and the debtor’s spouse fall below these thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

Section 319 of the conference report expresses a sense of the Congress that Federal Rule of Bankruptcy Procedure 9011 be modified to require that any document, whether signed or unsigned, including schedules, supplied to the court must be signed by a debtor. If the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

Sec. 320. Prompt relief from stay in individual cases

Section 320 of the conference report is substantially identical to section 320 of the House bill and the Senate amendment. This provision amends section 320 of the Bankruptcy Code to provide that the automatic stay in effect on the date that a case under chapter 7, 11, 12, or 13 of the Bankruptcy Code, all property of the estate to hold such hearing at an earlier time if the court determines that it would be in the best interests of creditor and the estate to hold such hearing at an earlier date and there is no objection to such earlier hearing. The conference report states that section 320 of the conference report does not include this exception.

Sec. 321. Chapter 13 plans to have a 5-year duration in certain cases

Section 321 of the conference report is substantially identical to section 318 of the House bill and the Senate amendment. Section (1) amends Bankruptcy Code sections 1322(d) and 1325(b) to specify that a chapter 13 plan may not provide for payments over a period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

If the current monthly income of the debtor and the debtor’s spouse fall below these thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

Sec. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure

Section 319 of the conference report expresses a sense of the Congress that Federal Rule of Bankruptcy Procedure 9011 be modified to require that any document, whether signed or unsigned, including schedules, supplied to the court must be signed by a debtor. If the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

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If the current monthly income of the debtor and the debtor’s spouse fall below these thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

Sec. 320. Prompt relief from stay in individual cases

Section 320 of the conference report is substantially identical to section 320 of the House bill and the Senate amendment. This provision amends section 320 of the Bankruptcy Code to provide that the automatic stay in effect on the date that a case under chapter 7, 11, 12, or 13 of the Bankruptcy Code, all property of the estate to hold such hearing at an earlier time if the court determines that it would be in the best interests of creditor and the estate to hold such hearing at an earlier date and there is no objection to such earlier hearing. The conference report states that section 320 of the conference report does not include this exception.

Sec. 321. Chapter 13 plans to have a 5-year duration in certain cases

Section 321 of the conference report is substantially identical to section 318 of the House bill and the Senate amendment. Section (1) amends Bankruptcy Code sections 1322(d) and 1325(b) to specify that a chapter 13 plan may not provide for payments over a period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

If the current monthly income of the debtor and the debtor’s spouse fall below these thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

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Section 321 of the conference report is substantially identical to section 318 of the House bill and the Senate amendment. Section (1) amends Bankruptcy Code sections 1322(d) and 1325(b) to specify that a chapter 13 plan may not provide for payments over a period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

If the current monthly income of the debtor and the debtor’s spouse fall below these thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.

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If the current monthly income of the debtor and the debtor’s spouse fall below these thresholds, then the duration of the plan would not be longer than the period that is not less than five years if the current monthly income of the debtor and the debtor’s spouse combined exceeds certain monetary thresholds.
Sec. 323. Excluding employee benefit plan participant contributions and other property from the estate

Section 323 of the conference report is substantively identical to section 323 of the House bill and section 324 of the Senate amendment. It amends section 541(b) of the Bankruptcy Code to exclude as property of the estate funds fund withheld or received by an employee from its employer for nonmonetary payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions are not taken into account by an employer from the wages of its employees for payment as contributions to health insurance plans regulated by State law.

Sec. 324. Exclusive jurisdiction in matters involving bankruptcy professionals

Section 324 of the conference report amends section 1334 of title 28 of the United State Code to give a district court exclusive jurisdiction of all claims or causes of action including the construction of section 327 of the Bankruptcy Code or rules relating to disclosure requirements under such provision. This provision is substantively identical to section 324 of the House bill and section 325 of the Senate amendment.

Sec. 325. United States trustee program filing fee increase

Section 325 of the conference report amends section 105 of title 28 of the United State Code to increase the filing fee for chapter 7 and chapter 13 cases respectively to $160 and $150. Subsections 325(b) and (c) amend section 507(a) of title 28 of the United States Code and sections 306 and 308 of the Judicial Improvements Act of 1990 to increase the percentage of the fees collected under section 1330 of title 28 of the United States Code that are paid to the United States Trustee System Fund.

Sec. 326. Sharing of compensation

Section 326 amends Bankruptcy Code section 504 to create a limited exception to the prohibition against fee sharing. The provision is substantively identical to section 304 of the House bill and sections 325 and 327 of the Senate amendment.

Sec. 327. Fair valuation of collateral

Section 327 of the conference report amends section 506(a) of the Bankruptcy Code to provide that if the value of an allowed claim secured by personal property that is an asset in an individual debtor’s chapter 7 or 13 case is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for selling or marketing costs, with respect to property acquired for personal, family, or household purposes, the replacement value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the case is commenced. This provision is substantively identical to section 327 of the House bill and section 326 of the Senate amendment.

Sec. 328. Defaults based on nonmonetary obligations

Section 328 of the conference report amends section 590(a) of the Bankruptcy Code to provide that an allowed claim secured by personal property that is an asset in an individual debtor’s chapter 7 or 13 case is determined based on the replacement value of such property as of the filing date of the bankruptcy case without deduction for selling or marketing costs, with respect to property acquired for personal, family, or household purposes, the replacement value is the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time the case is commenced. This provision is substantively identical to section 327 of the House bill and section 326 of the Senate amendment. Section 328 is substantively identical to section 328 of the House bill and section 327 of the Senate amendment. Subsection (a)(1)
amends section 365(b) to provide that a trustee does not have to cure a default that is a breach of a provision (other than a penalty rate or penalty provision) relating to a default that is a failure to pay a nonmonetary obligation under an unexpired lease of real property, if it is impossible for the trustee to cure the default by performing such act at and after the time of assumption of the lease. If the default arises from a failure to operate in accordance with a nonresidential real property lease, the default must be cured by performance at and after the time of assumption in accordance with the lease. Pecuniary losses resulting from such default must be compensated pursuant to section 365(c). In addition, section 328(a)(2) through (4) makes technical revisions to section 365(c). (ii) make a technical revision to section 365(d)(4) to clarify that it applies to penalty provisions. Section 328(a)(2) through (4) make technical revisions to section 365(c). (ii) make a technical revision to section 365(d)(4) to clarify that it applies to penalty provisions.

Sec. 330. Nondischargeability of debts incurred through violations of laws relating to the provision of lawful goods and services.

Section 330(a) amends Bankruptcy Code section 523(a)(2) of the Bankruptcy Code to clarify that a claim is not impaired if section 365(b)(2) (as amended by this Act) expressly does not require a default with respect to such claim to be cured. In addition, it provides that any claim or interest that arises from the failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), is impaired unless the holder of such claim or interest (other than the debtor or an insider) is compensated for any actual pecuniary loss incurred by the holder as a result of such failure.
second subsection (g) as subsection (i). In addition, section 406 amends section 546(b) (as redesignated to subject that provision to the prior rights of security interest holders. The House bill did not include this provision. Further, section 406 adds a new provision to section 546 that prohibits a trustee from avoiding a warehouse lien for storage, transportation, or handling of goods. It specifies that this prohibition must be applied in a manner consistent with any applicable state statute.

Sec. 407. Amendments to section 330(a) of title 11, United States Code

Section 407 amends Section 330(a) of the Bankruptcy Code to require that this provision be applied to the extent that the court may approve a disclosure statement as true to the extent that the court may approve a disclosure statement for a chapter 11 plan.

Sec. 408. Postpetition disclosure and solicitation

Section 408 amends section 1125 of the Bankruptcy Code to provide that a trustee may not avoid a transfer to the extent such transfer was made in the ordinary course of the business or financial affairs of the debtor and the transferee and such transfer was made either: (1) in the ordinary course of the debtor's or the transferee's business or financial affairs; or (2) in accordance with ordinary business terms. Present law requires the recipient of a preferential transfer to establish both of these grounds in order to sustain a defense to a preferential transfer proceeding. In a case in which the debts are primarily consumer debts, section 408 provides that a transfer may not be avoided if the aggregate amount of all property constituting or securing such transfer is less than $5,000.

Sec. 409. Preferences

Section 409 amends section 547(c)(2) of the Bankruptcy Code to provide that a trustee may not avoid a transfer to the extent such transfer was made in the ordinary course of the business or financial affairs of the debtor and the transferee and such transfer was made either: (1) in the ordinary course of the debtor's or the transferee's business or financial affairs; or (2) in accordance with ordinary business terms. Present law requires the recipient of a preferential transfer to establish both of these grounds in order to sustain a defense to a preferential transfer proceeding. In a case in which the debts are primarily consumer debts, section 409 provides that a transfer may not be avoided if the aggregate amount of all property constituting or securing such transfer is less than $5,000.

Sec. 410. Venue of certain proceedings

Section 410 amends Section 149(b) of title 28 of the United States Code to provide that if a preferential transfer action in the amount of $10,000 or less pertaining to a nonconsensual, or whether such person is board or other entity in which the debtor holds a substantial or controlling interest. Section 419 is intended to ensure that the debtor's interest in any of these entities is used for the payment of allowed claims against the debtor.

SUBTITLE B—SMALL BUSINESS BANKRUPTCY PROVISIONS

Sec. 431. Flexible rules for disclosure statement and plan

Section 431 of the conference report amends Section 1125 of the Bankruptcy Code to streamline the disclosure statement process and to provide for more flexibility. This provision is substantially identical to Section 431 of the House bill and the Senate amendment. Section 431(1) amends Section 1125(a)(1) of the Bankruptcy Code to require a court to consider any disclosure statement that supplies adequate information, to consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing such additional information. With regard to a small business case, section 431(2) amends Section 1125(r) to permit a court to dispense with a disclosure statement if the plan itself supplies adequate information. In addition, it provides that the court may approve a disclosure statement submitted to the court at any time.
Further, Section 431(2) provides that the court may conditionally approve a disclosure statement, subject to final approval after notice and a hearing, and allow the debtor to solicit acceptances of the plan based on such disclosure statement. The hearing on the disclosure statement may be combined with the confirmation hearing.

Sec. 432. Definitions
Subsection (c) of the conference report is substantively similar to section 431 of the House bill and the Senate amendment. This provision amends Section 101 of the Bankruptcy Code to define a “small business case” as a chapter 11 case in which the debtor is a small business debtor. Section 432, in turn, defines a “small business debtor” as a person engaged in commercial or business activities, including an affiliate of such person that is also a debtor, but excluding a person whose primary activity is the business of owning or operating real property or activities incident thereto) having aggregate noncontingent, liquidated secured and unsecured debts of not more than $2 million (excluding debts owed to a person who is an officer, director, or a holder of more than 10% of the voting stock of such person or an affiliate of such person) as of the date of the petition or the order for relief. This monetary definition is a compromise. The House and Senate antecedents specified a $1 million limit. This definition applies only in a case where the United States trustee has not appointed a creditors’ committee or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor. It does not apply to any member of a group of debtors that aggregate noncontingent, liquidated secured and unsecured debts in excess of $2 million (excluding debts owed to one or more affiliates of such debtors). This conference report also requires this monetary figure to be periodically adjusted for inflation pursuant to section 104 of the Bankruptcy Code. Sec. 433. Standard form disclosure statement and plan
Section 433 of the conference report directs the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States to propose amendments to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure for the purpose of reviewing the debtor

Section 434 of the conference report is substantively identical to section 434 of the House bill and the Senate amendment. Subsection (a) of the conference report amends Bankruptcy Code section 1127(a) to provide the following definition: The term “Creditors and other parties in interest,” with respect to the debtor, means any person having a legal or equitable interest in, or claim against, the debtor. The term “Creditor as of the date of the order for relief,” with respect to the debtor, means any person who is a creditor of the debtor as of the date of the order for relief. The term “Debtor in possession,” with respect to the debtor, means the debtor in a case in which the United States trustee to perform the following additional duties with respect to small business debtors:

Sec. 435. Uniform national reporting requirements
Section 435 of the conference report is substantively identical to section 435 of the House bill and the Senate amendment. Subsection (a) of the conference report makes a compromise between section 1121(e)(3) of the Bankruptcy Code and Federal Rules of Bankruptcy Procedure; (v) whether the debtor is timely filing tax returns; (vi) whether the debtor is paying taxes, and other administrative expenses when due. In addition, the debtor must report on such other matters that are in the best interests of the debtor and the creditors and in the public interest. If the debtor is not in compliance with such requirements, the Bankruptcy Code, and Federal Rules of Bankruptcy Procedure, or is not filing tax returns or other required governmental filings, payment of administrative expenses when due, the debtor must report: (a) the net failure, and (b) how they will be cured; (c) the debtors’ interest in having such forms be complete and unexplained to complete. The forms should also be included to help the small business debtor better understand its financial condition and plan its future. Sec. 436. Duties in small business cases
Section 436 of the conference report is substantively identical to section 436 of the House bill and the Senate amendment. Intended to implement greater administrative oversight and controls over small business chapter 11 cases, the provision requires a chapter 11 trustee or debtor to:

Sec. 437. Plan filing and confirmation deadlines
Section 437 of the conference report amends Bankruptcy Code section 1129 to require the court to confirm a plan not later than 45 days after the date on which the plan has been filed. This provision is a compromise between sections 1129 and 1123 of the Bankruptcy Code, unless this period is extended pursuant to section 1121(e)(3), as added by section 343 of this Act. The House provision specifies that a plan in a small business case must be confirmed not later than 175 days from the date of the order for relief, unless this period is extended pursuant to section 1121(e)(3). The Senate provision specifies that a plan in a small business case must be confirmed not later than 30 days from the order for relief. This provision is a compromise between section 1129 of the Bankruptcy Code, unless this period is extended after notice and hearing, or the court, for cause, orders otherwise. It further provides that a small business case must be confirmed not later than 45 days after the date on which the plan is filed. If a plan is not confirmed by the court, the court may order a confirmation deadline.

Sec. 438. Plan confirmation deadline
Section 438 of the conference report amends Bankruptcy Code section 1129 to require the court to confirm a plan not later than 90 days after it is filed. This provision amends a plan in a small business case to require the court to confirm a plan not later than 45 days after it is filed. This provision is a compromise between section 1129(e) of the Bankruptcy Code, unless this period is extended pursuant to section 1121(e)(3), as added by section 343 of this Act. The Senate provision specifies that a plan in a small business case must be confirmed not later than 175 days from the date of the order for relief, unless this period is extended pursuant to section 1121(e)(3).
§ 440. Scheduling conferences

Section 440 amends section 105(d) of the Bankruptcy Code to mandate that a bankruptcy court hold status conferences as are necessary to assist in the expeditious and economical resolution of a bankruptcy case. This provision is identical to section 440 of the House bill and the Senate amendment.

§ 441. Serial filer provisions

Section 441 of the Senate conference report is substantively similar to section 441 of the House bill and the Senate amendment. Subsection (1) amends section 362 of the Bankruptcy Code to provide that the court may award actual damages for a violation of the automatic stay committed by an entity in the good faith belief that subsection (b) of section 362 (as added by this Act) applied to the debtor. Section 441(2) adds a new subsection to section 362 of the Bankruptcy Code specifying that the automatic stay does not apply where the chapter 11 debtor: (1) is a debtor in a small business case pending at the time the subsequent case is filed; (2) was a debtor in a small business case dismissed for any reason pursuant to an order that became final in the two-year period ending on the date of the order for relief entered in the pending case; (3) was a debtor in small business case in which the court entered an order for relief on the date of the order for relief entered in the pending case; or (4) is an entity that has acquired substantially all of the assets or business of a small business debtor described in the preceding paragraphs, unless such entity establishes by a preponderance of the evidence that it acquired the assets or business in good faith and not for the purpose of evading this provision. This exception was added to the conference report as a compromise.

An exception to this provision applies to a chapter 11 case that is commenced involuntarily and involves no collusion between the debtor and its creditors. It does not apply if the court proves by a preponderance of the evidence that: (1) the filing of the subsequent case resulted from circumstances beyond the debtor’s control and which were not foreseeable at the time the prior case was filed; and (2) it is more likely than not that the court will confirm a feasible plan of reorganization, the evidence that the debtor has acquired substantially all of the assets or business of a small business debtor described in the preceding paragraphs, unless such entity establishes by a preponderance of the evidence that it acquired the assets or business in good faith and not for the purpose of evading this provision. This exception was added to the conference report as a compromise.

In addition, the provision specifies an exception to the court’s mandatory requirement applies if: (1) the debtor or a party in interest objects and establishes that there is a reasonable likelihood that a plan will be confirmed without a finding of cause; or the court finds that cause exists but contains circumstances that support the court’s finding that conversion or dismissal is not in the best interests of creditors and the estate. This exception was added to the conference report as a compromise.

§ 442. Expanded grounds for dismissal or conversion and appointment of trustee

Section 442 largely reflects the Senate position. In section 442 of the Senate amendment. Subsection (a) amends section 112(b) of the Bankruptcy Code to mandate that the court convert or dismiss a chapter 11 case, whichever is in the best interests of creditors and the estate, if the movant establishes cause, absent unusual circumstances. In this regard, the court must specify the circumstances that support the court’s finding that conversion or dismissal is not in the best interests of creditors and the estate. This exception was added to the conference report as a compromise.

In addition, the provision specifies an exception to the court’s mandatory requirement applies if: (1) the debtor or a party in interest objects and establishes that there is a reasonable likelihood that a plan will be confirmed without a finding of cause; or the court finds that cause exists but contains circumstances that support the court’s finding that conversion or dismissal is not in the best interests of creditors and the estate. This exception was added to the conference report as a compromise.
TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS
Sec. 501. Petition and proceedings related to petition
Section 501 amends sections 922(d) and 301 of the Bankruptcy Code to clarify that the court may enter an order or permit, in a chapter 9 case. This provision is substantively identical to section 501 of the House bill and the Senate amendment.

Sec. 502. Applicability of other sections to chapter 9
Section 502 of the conference report is substantively identical to section 562 of the House bill. This provision amends section 901 of the Bankruptcy Code to make the following sections applicable to chapter 9 cases: (1) section 559 (contractual right to liquidate, terminate or accelerate a security contract); (2) section 556 (contractual right to liquidate, terminate or accelerate a commodity or forward contract); (3) section 555 (contractual right to liquidate, terminate or accelerate a repurchase agreement); (4) section 560 (contractual right to liquidate, terminate or accelerate a swap agreement); (5) section 561 (contractual right to liquidate, terminate, accelerate, or offset under a master netting agreement and across contracts); (6) section 562 (damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreement).

TITiLE VI—BANKRUPTCY DATA
Sec. 601. Improved bankruptcy statistics
Section 601 amends chapter 9 of the Bankruptcy Code to require the court for each district (or the bankruptcy court clerk if one has been certified pursuant to section 156(b) of title 28 of the United States Code) to collect certain statistics for chapter 7, 11, and 13 cases in a standardized format prescribed by the Director of the Administrative Office of the United States Courts, as such information is available to the public. Not later than June 1, 2005, the Director must submit a report to Congress on the statistics collected and then must report annually thereafter. The statistics must be itemized by chapter of the Bankruptcy Code and be presented in the aggregate for each district.

The specific categories of information that must be gathered include the following:

(1) scheduled total assets and liabilities of debtor and owner of property, and average expenses;
(2) such debtors’ current monthly income, average income, and average expenses;
(3) the aggregate amount of debts discharged during the reporting period based on the difference between the total amount of scheduled debts and by categories that are predominantly nondischargeable;
(4) the average time between the filing of the bankruptcy case and the closing of the case;
(5) the number of cases in which reaffirmation agreements were filed, the total number of reaffirmation agreements filed, the aggregate number of cases in which the debtor was pro se and a reaffirmation agreement was filed, and the number of cases in which the reaffirmation agreement was approved by the court; and
(6) for chapter 13 cases, information on the number of (a) orders determining the value

Sec. 602. Audit procedures
Section 602 is substantively identical to section 603 of the House bill and the Senate amendment. Subsection (a)(2) requires the Attorney General (for judicial districts covered by United States marshals) to establish procedures to determine the accuracy, completeness, and completeness of petitions, schedules, and other information filed by debtors pursuant to sections 111, 521 and 1322 of the Bankruptcy Code, and to provide instructions to be conducted in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants. It permits the Attorney General and the Judicial Conference to develop alternative auditing standards not later than two years after the date of enactment of this Act. Section 603(a)(2) requires these procedures to: (1) establish a method of selecting appropriate qualified contractors to perform these audits; (2) establish a method of randomly selecting cases for audit, and at a maximum of at least one case out of every 250 cases being audited; (3) ensure the selection of cases in which the schedules of income and expenses reflect greater than average variances from the statistical normal for the district; (4) ensure that the selection of cases is made at random selected for audit; or (5) the number of cases in which creditors available for inspection all necessary documents or property belonging to the debtor, and the actual costs of administering, including the percentage of cases by district in which a material misstatement of income or expenditures is reported, to be made available to the public on an annual basis.

Section 603(b) amends section 586 of title 28 of the United States Code to provide the United States trustee to submit reports as directed by the Attorney General for purposes of the results of audits performed under section 603(a). In addition, it authorizes the United States trustee to contract with auditors to perform the audits specified in this provision. Further, it requires the report of each audit to be filed with the court and transmitted to the United States trustee. The report must specify material misstatements of income, expenditures or assets. In a case where a material misstatement has been reported, the clerk must forward such misstatement to creditors and the United States trustee must report it to the United States Attorney, if appropriate, for possible prosecution. The United States trustee must also take appropriate action, such as revoking the debtor’s discharge.

Section 603(c) amends section 521 of the Bankruptcy Code to make it a duty of the debtor to cooperate with an auditor. Section 603(d) amends section 727 of the Bankruptcy Code to provide the bankruptcy court as a grounds for revocation of a chapter 7 discharge the debtor’s failure to: (a) satisfactorily explain a material misstatement discovered as the result of an audit; (b) cooperate with this information available for inspection all necessary documents or property belonging to the debtor that are requested in connection with such audit; and (c) the amendments made by this provision take effect 18 months after the Act’s date of enactment.

Sec. 604. Sense of Congress regarding availability of bankruptcy data
Section 604 expresses a sense of the Congress that it is a national policy of the United States that all data collected by bankruptcy clerks in electronic form (to the extent such data is available) and to the extent such data is collected for chapter 11 of the Bankruptcy Code) should be made available to the public.
in a useable electronic form in bulk, subject to appropriate privacy concerns and safeguards as determined by the Judicial Conference of the United States. It also states that the Bankruptcy Code uses a single set of data definitions and forms to collect such data and that data for any particular bankruptcy case should be established that uses a single set of data definitions and forms to collect such data.

This provision is substantively identical to section 604 of the House bill and the Senate amendment.

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**Sec. 701. Treatment of certain tax liens**

Section 701 of the conference report is substantively identical to section 701 of the House bill and the Senate amendment. Subsection (b) amends several provisions of section 507 of the Bankruptcy Code to provide greater protection for holders of ad valorem tax liens on real or personal property of the estate. Many school boards obtain liens on real property to ensure collection of unpaid ad valorem taxes. Under current law, local governments are sometimes unable to collect these taxes despite the presence of a lien because they may be subordinated to certain claims and expenses as a result of section 724. Section 701(a) is intended to protect these tax liens among other things, erosion of their claims' status by expenses incurred under chapter 11 of the Bankruptcy Code. Pursuant to section 701(a)(1), a tax lien on real or personal property is not annulled or voided by the commencement or continuation of a case in another bankruptcy case under chapter 11, if the tax return was due within 3 years of the filing of the bankruptcy petition or if the assessment of the tax was made within 240 days of the filing of the petition. Thus, 240-day period is tolled during the time that an offer in compromise is pending (plus 30 days). Though the statute is silent, most courts have also held that a year plan 240-day time periods are tolled during the pendency of a previous bankruptcy case. Section 701(b) of the Senate amendment amends section 507(a)(8) of the Bankruptcy Code to codify the rule tolling priority periods during the pendency of a previous bankruptcy case during that 240-day period together with an additional 90 days. It also includes tolling provisions to adjust for the collection due process rights provided by the Internal Revenue Service Restructuring and Reform Act of 1998. During any period in which the government is precluded from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken against the debtor, priority is tolled for the time in which such stay was in effect. The IRS has interpreted the statute to mean that there was a stay of proceedings in a prior bankruptcy case or collection of an income tax was precluded by a confirmed bankruptcy plan, the priority is tolled, plus 90 days. This provision is substantively identical to section 706 of the House bill and the Senate amendment.

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**Sec. 702. Treatment of fuel tax liens**

Section 702 of the conference report is substantively identical to section 702 of the House bill and the Senate amendment. The provision amends section 501 of the Bankruptcy Code to simplify the process for filing of claims by states for certain fuel taxes. Rather than requiring each state to file a claim for these taxes (as is the case under current law), section 702 permits the debtor jurisdiction under the International Fuel Tax Agreement to file a claim on behalf of all states, which would then be allowed as a single claim. Under current law, a trustee or debtor in possession may request a governmental unit to determine administrative tax liabilities in order to expedite discharge of those obligations. There are no requirements as to the content or form of such notice to the government. Section 703 of the conference report amends section 506(b) of the Bankruptcy Code to require the clerk of each district to maintain a list of addresses designated by governmental units for service of section 506 notices. Pursuant to this list, and in form and in manner otherwise provided by the Bankruptcy Code, the list may also include information concerning filing requirements specified by such governmental units.

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**Sec. 703. Rate of interest on tax claims**

Under current law, there is no uniform rate of interest applicable to tax claims. As a result, varying standards have been used to determine interest. Section 704 of the conference report amends the Bankruptcy Code to add section 511 for the purpose of simplifying the interest rate calculations. If the debtor is a governmental unit (federal, state, and local), including administrative expense taxes, the interest rate shall be determined in accordance with applicable nonbankruptcy law. With respect to taxes paid under a confirmed plan, the rate of interest is determined as of the calendar month in which the plan is confirmed. This provision is substantively identical to section 704 of the House bill and the Senate amendment.

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**Sec. 705. Priority of tax claims**

Under current law, a tax claim is entitled to be treated as a preferred claim if it arises within certain specified time periods. In the case of income taxes, a priority arises, among others, if the tax return was due within 3 years of the filing of the bankruptcy petition or if the assessment of the tax was made within 240 days of the filing of the petition. Thus, the 240-day period is tolled during the time that an offer in compromise is pending (plus 30 days). Though the statute is silent, most courts have also held that a year plan 240-day time periods are tolled during the pendency of a previous bankruptcy case. Section 705 amends section 507(a)(8) of the Bankruptcy Code to codify the rule tolling priority periods during the pendency of a previous bankruptcy case during that 240-day period together with an additional 90 days. It also includes tolling provisions to adjust for the collection due process rights provided by the Internal Revenue Service Restructuring and Reform Act of 1998. During any period in which the government is precluded from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken against the debtor, priority is tolled for the time in which such stay was in effect. The IRS has interpreted the statute to mean that there was a stay of proceedings in a prior bankruptcy case or collection of an income tax was precluded by a confirmed bankruptcy plan, the priority is tolled, plus 90 days. This provision is substantively identical to section 706 of the House bill and the Senate amendment.

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**Sec. 706. Priority property taxes incurred**

Under current law, many provisions of the Bankruptcy Code are keyed to the word “assessed.” While this term has an accepted meaning in the federal system, it is not used as such as many provisions have created some confusion. To eliminate this problem with respect to real property taxes, section 706 amends section 507(a)(8)(B) of the Bankruptcy Code by replacing the word “assessed” with “incurred.” This provision is substantively identical to section 706 of the House bill and the Senate amendment.

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**Sec. 707. No discharge of fraudulent taxes in chapter 11**

Section 707 of the conference report largely reflects the Senate position as represented in section 708 of the Senate amendment. Under current law, the confirmation of a chapter 11 plan discharges a corporate debtor from most debts. Section 708 amends section 114(d) of the Bankruptcy Code to except from discharge in corporate chapter 11 case a debt specified in subsections 529(a)(2)(A) and (B) of the Bankruptcy Code owed to a domestic governmental unit. In addition, it excepts from discharge a debt owed to a person as the result of an action filed under subchapter IV of chapter 37 of the United States Code or any similar state statute. In contrast, the House renders any debt under section 529(a)(2) nondischargeable in a corporate chapter 11 case. Like the House provision and its Senate counterpart, however, section 708 excepts from discharge a debt for a transaction with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or defeat such tax.

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**Sec. 708. Stay of tax proceedings limited to prepetition taxes**

Under current law, the filing of a petition for relief under the Bankruptcy Code activates an automatic stay that enjoins the commencement or continuation of a case in the federal tax court. This rule was arguably extended in Halpern v. Commissioner, 3 which held that the tax court did not have jurisdiction to hear a case involving a postpetition year. To address this issue, section 709 of the conference report amends section 362(a)(8) of the Bankruptcy Code to reflect the Senate position as represented in its Senate counterpart. This provision is substantively identical to section 709 of the House bill and the Senate amendment.

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**Sec. 709. Periodic payment of taxes in chapter 11 cases**

Section 710 of the conference report amends section 1129(a)(9) of the Bankruptcy Code to provide that the allowed amount of priority property tax claims (as of the plan’s effective date) must be paid in regular cash installments within five years from the entry of the order for relief. The manner of payment may not be less favorable than that accorded the most favored nonpriority unsecured class of creditors under section 1125(b). In addition, it requires the same payment treatment to be accorded to secured section 507(a)(8) claims to a governmental unit. This provision is substantively identical to section 710 of the House bill and the Senate amendment.

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*3 96 T.C. 895 (1991).*
Sec. 711. Avoidance of statutory liens prohibited

The Internal Revenue Code gives special protections to certain purchasers of securities and motor vehicles notwithstanding the existence of a filed tax lien. Section 711 of the conference report amends section 711 of the Bankruptcy Code to prevent that provision’s special protections from being used to avoid an otherwise valid lien. Specifically, it prevents a “purchase’s” recovery of its purchase price for a purchase made with a lien attached or against a bona fide purchaser, if the purchaser qualified as such under section 506(c) of the Bankruptcy Code or a similar provision under state or local law. Section 711 is substantively identical to section 711 of the House bill and the Senate amendment.

Sec. 712. Payment of taxes in the conduct of business

Although current law generally requires trustees and receivers to pay taxes in the ordinary course of the debtor’s business, the payment of administrative expenses must first be authorized by the court. Section 712(a) of the conference report amends section 960 of title 28 of the United States Code to clarify that postpetition taxes in the ordinary course of business must be paid on or before when such tax is due under applicable nonbankruptcy law, with certain exceptions. This requirement does not apply if the obligation is a property tax secured by a lien against property that is abandoned under section 507(a). The lien attaches in addition, the requirement does not pertain where the payment is excused under the Bankruptcy Code. With respect to chapter 7 cases, section 712(a) provides that the payment of a tax claim may be deferred until final distribution pursuant to section 726 if the tax was not incurred by a chapter 7 debtor before the due date of the tax and finds that the estate has insufficient funds to pay all administrative expenses in full. Section 712(b) amends section 903(b)(1) to exempt a governmental unit from the requirement to file a report for payment of an administrative expense under section 903(d)(1) and section 506(b) to provide that to the extent that an allowed claim is oversecured, the holder is entitled to interest and any reasonable fees, costs, and expenses provided under state law. Section 712(d)(2), in turn, amends section 506(c) to permit a trustee to recover from a secured creditor the payment of all ad valorem property taxes. Section 712 of the conference report is substantively identical to section 712 of the House bill and the Senate amendment.

Sec. 713. Tardily filed priority tax claims

Section 713 of the conference report is substantively identical to section 713 of the House bill and the Senate amendment. This provision amends section 726(a)(1) of the Bankruptcy Code to require a claimant to file a claim under section 507 that is not timely filed pursuant to section 501 to be entitled to a distribution if such claim is filed after the date that is ten days following the mailing to creditors of the summary of the trustee’s final report or before the trustee commences final distribution.

Sec. 714. Income tax returns provide no authorities

Section 714 of the conference report is substantively identical to section 714 of the House bill and the Senate amendment. This provision amends section 522(a) of the Bankruptcy Code to provide that a return filed on behalf of a taxpayer who has provided information sufficient to complete a return constitutes filing a return (and the debt can be discharged), but that a return filed on behalf of a taxpayer based on information the Sec- retary obtains from the court or otherwise does not constitute filing a return (and the debt cannot be discharged). Section 715. Discharge of the estate’s liability for unpaid taxes

Under the Bankruptcy Code, a trustee or debtor in possession may request a prompt audit to determine postpetition tax liabilities or restate an event or request an extension of time to audit, then the trustee or debtor in pos- session’s determination of taxes will be final. In most cases, the trustee or debtor in possession’s determination of taxes will be final. In most cases, the trustee or debtor in possession obtains through testimony or other evidence sufficient to complete a return constitute a tax return filed. Section 716 of the conference report amends section 506(b) of the Bankruptcy Code to clarify that the estate is also protected if the government does not request an audit of the debtor’s tax returns. Therefore, if the govern- ment does not make a determination of postpetition tax liabilities or request extension of time to audit, then the estate’s liability for reclassified taxes is substantively identical to section 715 of the House bill and the Senate amendment.

Sec. 716. Requirement to file tax returns to confirm chapter 13 plans

Under current law, a debtor may enjoy the benefits of chapter 13 even if delinquent in the filing of tax returns. Section 716 of the conference report provides that a tax return must be filed by a chapter 13 debtor to be current on all ad valorem property taxes. The debtor in possession may request a prompt audit, then the estate obtains through testimony or other evidence sufficient to complete a return constitute a tax return filed. Section 716 of the conference report amends section 506(b) of the Bankruptcy Code to require that a chapter 13 debtor file all applicable Federal, state, and local tax returns as a condition of confirmation of chapter 13 plan (as added by section 716(b)). Section 716(b) adds section 1308 to chapter 13. This provision requires a chapter 13 debtor to be current on the filing of tax returns for the four-year period preceding the filing of the case. If the returns are not filed by the date on which the meeting of creditors is first scheduled, the trustee may hold open that meeting for a period of time to allow the debtor to file any unpaid returns. The additional period of time may not extend beyond the due date of the tax, finds that the estate has insufficient funds to pay all administrative expenses in full. Section 712(b) amends section 903(b)(1) to exempt a governmental unit from the requirement to file a report for payment of an administrative expense under section 903(d)(1) and section 506(b) to provide that to the extent that an allowed claim is oversecured, the holder is entitled to interest and any reasonable fees, costs, and expenses provided under state law. Section 712(d)(2), in turn, amends section 506(c) to permit a trustee to recover from a secured creditor the payment of all ad valorem property taxes. Section 712 of the conference report is substantively identical to section 712 of the House bill and the Senate amendment.

Sec. 717. Standards for tax disclosure

Before creditors and stockholders may be solicited to vote on a chapter 11 plan, the plan proponent must file a disclosure state- ment that provides adequate information to hold a vote and other creditors so that they can make a decision as to whether or not to vote in favor of the plan. As the tax consequences of a plan can have a significant impact on the value of the property to be distributed, section 717 amends section 1125(a) of the Bankruptcy Code to require that a chapter 11 dis- closure statement include material Federal tax consequences to the debtor, any successor to the debtor, and to a hypothetical investor that is representa- tive of the claims and interests in the case. This provision is substantively identical to section 717 of the House bill and the Senate amendment.

Sec. 718. Setoff of tax refunds

Under current law, the filing of a bank- ruptcy petition automatically stays the setoff of a prepetition tax refund against a prepetition tax obligation unless the bank- ruptcy code to provide that in a bankruptcy case, a governmental unit may obtain an extension of time from the taxing authority after application of nonbankruptcy law because of a pending action to determine the amount or legality of the tax liability. In that cir- cumstance, the governmental authority may hold the refund pending resolution of the action, unless the court, on motion of the trustee or an individual debtor, grants the taxing authority adequate protec- tion pursuant to section 361. Section 718 is substantively identical to section 718 of the House bill and the Senate amendment.

Sec. 719. Special provisions related to the treat- ment of state and local taxes

Section 719 of the conference report is substantively identical to section 719 of the House bill and the Senate amendment. This provision conforms state and local income tax administrative issues to the Internal Revenue Code. For example, under federal law, a court may dismiss a bankruptcy case if the debtor in chapter 13 plans

Sec. 720. Dismissal for failure to timely file tax returns

Under existing law, there is no definitive rule with respect to whether a bankruptcy court may dismiss a bankruptcy case if the debtor fails to file any tax return required by section 1308, the court must dismiss the case or convert it to one under chapter 7 (whichever is in the best interests of credit- ors and the estate) on request of a party in interest or the United States trustee after notice and a hearing. Section 720 of the conference report amends section 522(b) of the Bankruptcy Code to provide that in a chapter 13 case, a governmental unit’s tax claim based on a return filed under section 6213(a)(3) of the Code is allowed if the claim is not timely filed pursuant to section 502(b)(9) of the Bankruptcy Code to provide that in a chapter 13 case, a governmental unit’s tax claim based on a return filed under section 6213(a)(3) of the Code is allowed if the claim is filed within 60 days from the date on which such return is filed. Section 720(c) amends section 1197 of the Bankruptcy Code to provide that the interest on the tax claim is not allowed if the claim is filed after the 60-day filing period.

Sec. 721. Setoff of tax refunds

Under existing law, there is no definitive rule with respect to whether a bankruptcy court may dismiss a bankruptcy case if the debtor fails to file any tax return required by section 1308. Section 721 of the conference report expands section 522(b) of the Bankruptcy Code to allow a taxing authority to request that the court dismiss or convert a bank- ruptcy case if the debtor fails to file a postpetition tax return or obtain an extension. If the debtor does not file the required return or obtain an extension within 60 days from the time of the request by the taxing authority to file the return, the court must...
convert or dismiss the case, whichever is in the best interest of creditors and the estate. Section 720 is substantively identical to section 720 of the House bill and the Senate amendment.

Title VIII—Ancillary and Other Cross-Border Cases

Title VIII of the conference report adds a new chapter to the Bankruptcy Code for transnational bankruptcy cases. It incorporates the Model Law on Cross-Border Insolvency to encourage cooperation between the United States and foreign countries with respect to cross-border insolvencies. Title VIII is intended to provide greater legal certainty for trade and investment as well as to provide for the fair and efficient administration of cross-border bankruptcy cases, which protects the interests of creditors and other interested parties, including the debtor. In addition, it serves to protect and maximize the value of the debtor's assets. Title VIII is substantially identical to title VIII of the House bill and the Senate amendment.

Sec. 801. Amendment to add chapter 15 to title 11, United States Code

Section 801 introduces chapter 15 to the Bankruptcy Code, which is the Model Law on Cross-Border Insolvency ("Model Law") promulgated by the United Nations Commission on International Trade Law ("UNCITRAL") at its Thirtieth Session on May 12–30, 1997. Cases brought under chapter 15 are intended to be ancillary to cases brought in a debtor's home country. A full United States bankruptcy case is brought under another chapter. Even if a full case is brought, the court may decide under section 305 to stay or dismiss the United States case under the other chapter and limit the United States' role to an ancillary case under this chapter. If the full case is not dismissed, it will be subject to the principles of this chapter governing cooperation, communication and coordination with the foreign courts and representatives. In any case, an order granting recognition is required (as a prerequisite to the use of sections 301 and 303 by a foreign representative.

Sec. 1501. Purpose and scope of application

Section 1501 combines the Preamble to the Model Law with its article 1 (subsection (1)) with its article 15 (subsections (2) and (3)). It largely tracks the language of the Model Law with appropriate United States references. However, it adds to the language and oversees natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussion at UNCITRAL recognized that such exclusion would be necessary in countries like the United States where there are special provisions for consumer debtors in the insolvency laws.

The reference to section 109(e) essentially defines "consumer debtors" for purposes of the exclusions by incorporating the limitations of that section, but not its requirement of regular income. The exclusion adds a requirement that the debtor or debtor couple be citizens or long-term legal residents of the United States. This ensures that residents of other countries will not be able to manipulate this provision to avoid recognition of foreign proceedings in their home countries or elsewhere.

The first exclusion in subsection (c) constitutes, for the United States, the exclusion provided in article 1, subsection (2), of the Model Law. Foreign representatives of foreign proceedings which are excluded from the scope of chapter 15 may seek comity from courts other than the bankruptcy court since the limitations of section 1509(b)(2) and (3) would not apply.

The reference to section 109(b) interposes into chapter 15 the entities governed by special insolvency regimes under United States law which are currently excluded from liquidation proceedings under title 11. Section 1501 contains an exception to the section 109(b) exclusions so that foreign proceedings which are eligible for recognition and relief under chapter 15 as they had been under section 301(d). However, section 1501(d) has the effect of leaving to States the ability to deposit, escrow, trust fund or the like posted by a foreign insolvency law.

Sec. 1502. Definitions

"Debtor" is given a special definition for this chapter. Section 1502 sets out a framework that does not come from the Model Law, but is necessary to eliminate the need to refer repeatedly to "the same debtor as in the foreign proceeding." With certain exceptions, the term "person" used in the Model Law has been replaced with "entity," which is defined broadly in section 101(15) to include natural persons and legal entities, and legally match the intended breadth of the term "person" in the Model Law. The exceptions include contexts in which a natural person is excluded, such as those in which there is debt from liquidation proceedings under title 11. This ensures that debtors, persons, and legal entities are included in the term. The definition of "within the territorial jurisdiction of the United States," in subsection (7) is not taken from the Model Law. It has been added because the United States, like some other countries, asserts insolvency jurisdiction over a debtor's assets only within the actual limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to exclude from recognition a particular insolvency regime in the Enacting State. In addition, a definition of "recognition" supplements the Model Law definitions and merely simplifies drafting of various other sections of chapter 15.

Two key definitions of "foreign proceeding" and "foreign representative," are found in sections 101(23) and (24), which have also been amended. Article 4 of the Model Law is designed for recognition of foreign main proceedings, full bankruptcy cases are permitted in each country (see sections 1326 and 1329). In the United States, the court will have the power to suspend or dismiss such cases where appropriate under section 305.

Sec. 1503. International obligations of the United States

This section is taken exactly from the Model Law with only minor adaptations of terminology. Although this section makes an international obligation over chapter 15, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the intent is that the subject matter less directly related than the Model Law to a case before the court.

Sec. 1504. Commencement of ancillary case

Article 4 of the Model Law is designed for designation of the competent court which will exercise jurisdiction to the district courts. The title of this chapter emphasizes the United States policy in favor of a general rule that court others than the home country of the debtor, where a main proceeding would be brought, should usually act through ancillary proceedings in aid of the main proceedings, in preference to a system of full bankruptcies (often called "secondary proceedings") in each state where assets are found. Under the Model Law, notwithstanding the recognition of a foreign main proceeding, full bankruptcy cases are permitted in each country (see sections 1326 and 1329). In the United States, the court will have the power to suspend or dismiss such cases where appropriate under section 305.

Sec. 1505. Authorization to act in a foreign country

The language in this section varies from the wording of article 5 of the Model Law as necessary to comport with United States law and terminology. The slight alteration to the phrase in the last sentence is meant to emphasize that the identification of the trustee or other entity entitled to act under United States law, while the scope of actions that may be taken by the trustee or other entity under foreign law is limited by the foreign law.

The related amendment to section 586(a)(3) of title 28 makes acting pursuant to authorization under this section an additional power of a trustee or debtor in possession.

Sec. 1506. Petition for recognition of foreign main proceeding

The text of the Model Law and the Report on UNCITRAL, on its adoption by the General Assembly of the United Nations at its fiftieth session, Aug. 9, 1995, S. Rep. No. 104-221, which was discussed in the negotiations and adopted by UNCITRAL as an enacting country, should be consulted for guidance as to the meaning and purpose of its provisions. The development of the Model Law is described in the negotiations at UNCITRAL, in which the United States was an active participant, is recounted in the Report of the Working Group that are cited in the Report.
While the Model Law automatically authorizes an administrator to act abroad, this section requires all trustees and debtors to obtain court approval before acting abroad. That is a change from the language of the Model Law, but one that is purely internal to United States law. Its main purpose is to ensure that the court has knowledge of possibly wrongful activities, but it will have the collateral benefit of providing further assurance to foreign courts that the United States debtor or representative is under judicial authority in the world. This requirement means that the first-stage orders in reorganization cases should include authorization to act under this section where appropriate.

This section also contemplates the designation of an examiner or other natural person to act for foreign countries where appropriate. One instance might be a case in which the designated person had a special expertise relevant to that assignment. Another might be a case in which the designated person had a special expertise relevant to that assignment. Another might be a case in which the designated person had a special expertise relevant to that assignment. Another might be a case in which the designated person had a special expertise relevant to that assignment.

That requirement is a change from the language to fit United States procedural law. This section where appropriate.

Sec. 1507. Right of direct access

This section implements the purpose of article 9 of the Model Law, enabling a foreign representative to commence a case under this chapter by filing a petition directly with the court without preliminary formalities that may delay or prevent relief. It varies the language to fit United States procedural requirements and it imposes recognition of the foreign proceeding as a condition to further rights and duties of the foreign representative. If recognition is granted, the foreign representative will have full capacity under United States law (subsection (b)(1)), may request such relief in a state or federal court other than bankruptcy court (subsection (b)(2)), and may be granted comity or cooperation by such non-bankruptcy court (subsection (b)(3) and (c)). Subsections (b)(2), (b)(3), and (c) of this section are intended to be the exclusive door to ancillary assistance to foreign proceedings. The goal is to concentrate control of these questions in one court. That goal is important in a federal system like that of the United States with many different courts, state and federal, that may have pending actions involving the property of the debtor or representative. This section, therefore, completes for the United States the work of article 4 of the Model Law (“competent court”) as well as article 9.

Although a petition under current section 304 is the proper method for achieving deference by a United States court to a foreign insolvency proceeding under present law, some cases in state and federal courts under current law have granted comity suspension or dismissal of cases involving foreign proceedings without requiring representation or even referring to the requirements of that section. Even if the result is correct in a particular case, the procedure is undesirable, because it occurs in insolvency proceedings, the purpose of which is to concentrate control of these questions in one court. That goal is important in a federal system like that of the United States with many different courts, state and federal, that may have pending actions involving the property of the debtor or representative. This section, therefore, completes for the United States the work of article 4 of the Model Law (“competent court”) as well as article 9.

Subsection (d) has been added to ensure that a foreign representative cannot seek relief in courts in the United States after being denied recognition by the court under this chapter. Subsection (e) makes it easier to obtain the benefit of the Model Law. The provision is made still more matters of comity and still less matters of recognition.

Sec. 1508. Interpretation

This provision follows conceptually Model Law article 8 and is a standard one in recent UNCITRAL treaties and model laws. Changes to the language were made to express the concepts more clearly in United States vernacular.

Interpretation of this chapter and the Guide is facilitated by reference to the Guide and the Reports cited therein, which explain the reasons for the terms used and often cite their origins as well. Uniform interpretation will also be aided by reference to CLOUT, the UNCITRAL Case Law On Uniform Texts, which is a service of UNCITRAL. CLOUT is a database of case reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not every case has been reported, but they advance the crucial goal of uniformity of interpretation. To the extent that the United States courts rely on these sources, their decisions are likely to be regarded as persuasive elsewhere.

Sec. 1509. Access to foreign creditors to a case under this title

This section mandates nondiscriminatory or “national” treatment for foreign creditors, except as provided in subsection (b) and section 1514. It follows the intent of Model Law section 1509 to substitute the language required to fit into the Bankruptcy Code.104 The law as to priority for foreign claims that fit within a class given priority treatment under section 507 (for example, foreign employees and other public law claims) is unsettled. This section permits the continued development of case law on that subject and its general principle of nondiscrimination should be an important factor to be considered. At a minimum, under this section, foreign claims must receive the treatment given to general unsecured claims without regard to whether they are in a class of claims in which domestic creditors would also be subordinated. The Model Law allows for an exception to the nondiscrimination principle in non-monetary revenue and other public law claims. Such claims (such as tax and Social Security claims) have been traditionally denied enforcement in many bankruptcy court districts and the importance of full information and coordination among them.105 Article 11 does not distinguish between voluntary and involuntary proceedings, but seemingly assumes an involuntary proceeding.106 Subsection (a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, in a proceeding that has already been recognized as a main proceeding.107

Sec. 1510. Limited jurisdiction

Section 1510, article 10 of the Model Law, is modeled on section 306 of the Bankruptcy Code. Although the language referring to consent on relief is not included, the court has the power under section 1522 to attach appropriate conditions to any relief it may grant. Nevertheless, the authority in section 1522 is not intended to permit the imposition of jurisdiction over the foreign representative beyond the boundaries of the case under this chapter and any representative. The foreign representative may take, such as commencing a case under another chapter of this title.

Sec. 1511, Commencement of Case Under Section 301 or 303

This section reflects the intent of article 11 of the Model Law, but adds language that conforms to United States law or that is otherwise necessary in the United States given its many bankruptcy court districts and the importance of full information and coordination among them.108 Article 11 does not distinguish between voluntary and involuntary proceedings, but seemingly assumed an involuntary proceeding.109 Subsection (a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, in an proceeding that has already been recognized as a main proceeding.110

Sec. 1512, Participation of a foreign representative in a case under this title

This section tracks article 12 of the Model Law with slight alteration to fit into United States procedural terminology. The effect of this section is to make the recognized foreign representative a party in interest, except in an proceeding that has already been recognized as a main proceeding.111

Sec. 1513, Access of foreign creditors to a case under this title

This section mandates nondiscriminatory or “national” treatment for foreign creditors, except as provided in subsection (b) and section 1514. It follows the intent of Model Law section 1509 to substitute the language required to fit into the Bankruptcy Code. The law as to priority for foreign claims that fit within a class given priority treatment under section 507 (for example, foreign employees and other public law claims) is unsettled. This section permits the continued development of case law on that subject and its general principle of nondiscrimination should be an important factor to be considered. At a minimum, under this section, foreign claims must receive the treatment given to general unsecured claims without regard to whether they are in a class of claims in which domestic creditors would also be subordinated. The Model Law allows for an exception to the nondiscrimination principle in non-monetary revenue and other public law claims. Such claims (such as tax and Social Security claims) have been traditionally denied enforcement in many bankruptcy court districts and the importance of full information and coordination among them. Article 11 does not distinguish between voluntary and involuntary proceedings, but seemingly assumed an involuntary proceeding. Subsection (a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, in an proceeding that has already been recognized as a main proceeding.

Sec. 1514, Consent on Relief

Section 1514, article 10 of the Model Law, is modeled on section 306 of the Bankruptcy Code. Although the language referring to consent on relief is not included, the court has the power under section 1522 to attach appropriate conditions to any relief it may grant. Nevertheless, the authority in section 1522 is not intended to permit the imposition of jurisdiction over the foreign representative beyond the boundaries of the case under this chapter and any representative. The foreign representative may take, such as commencing a case under another chapter of this title.
This section ensures that foreign creditors receive proper notice of cases in the United States. As a “foreign creditor” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (“Rules”) should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.

This section follows article 15 of the Model Law with minor changes. The Rules will require amendment to provide forms for some or all of the documents mentioned in this section, to make necessary additions to Rules 1000 and 2002 to facilitate appropriate notices of the hearing on petition for recognition, and to require filing of lists of creditors and other interested persons who should receive notices. Throughout the Model Law, the form of notice procedure is left to the law of the enacting state. This section follows article 16 of the Model Law with minor changes. Although sections 1515 and 1516 are designed to make recognition as simple and expedient as possible, the court may hear proof on any element appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.

This section follows article 17 of the Model Law with minor changes. As a “foreign representative” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (“Rules”) should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.

This section follows article 18 of the Model Law with minor changes. As a “foreign representative” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (“Rules”) should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.

This section follows article 19 of the Model Law with minor changes. As a “foreign representative” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (“Rules”) should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.

This section follows article 20 of the Model Law with minor changes. As a “foreign representative” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (“Rules”) should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.

This section follows article 21 of the Model Law with minor changes. As a “foreign representative” is not a defined term, foreign addresses are used as the distinguishing factor. The Federal Rules of Bankruptcy Procedure (“Rules”) should be amended to conform to the requirements of this section, including a special form for initial notice to such creditors. In particular, the Rules must provide additional time for such creditors to file proofs of claim where appropriate and require the court to make specific orders in that regard in proper circumstances. The notice must specify that secured claims are not to be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed. If a foreign creditor has made an appropriate request under this section, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the requirement set forth in Model Law article 13(3)(a). It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time for such creditors to file proofs of claim if such creditors have a reasonable time within which to receive notice or take an action.
trustee under sections 363 and 542, unless the court orders otherwise. A foreign representative of a foreign main proceeding may need to continue a business operation to maintain value and post a bond, or authority automatically will eliminate the risk of delay. If the court is uncomfortable about this authority in a particular situation, it can “order otherwise” as part of the granting recognition.

Two special exceptions to the automatic stay are embodied in subsections (b) and (c). To prevent certain foreign countries, it may be necessary to commence an action. Subsection (b) permits the commencement of such an action, but would not allow its further prosecution. Subsection (c) provides that there is no stay of the commencement of a full United States bankruptcy case. This essentially provides an escape hatch where the court, including the foreign representative, can file into a full case. The full case, however, will remain subject to subchapters IV and V on cooperation and coordination of proceedings and to section 305 providing for stay or dismissal. Section 108 of the Bankruptcy Code provides the tolling protection intended by Model Law article 21(2), so no exceptions are necessary for claims that might be extinguished under United States law.

Sec. 1521. Relief that may be granted upon recognition of a foreign proceeding

This section follows article 21 of the Model Law. Section 1521(b) makes changes to conform to the United States law. The exceptions in subsection (a)(7) relate to avoiding powers. The foreign representative’s status as to such powers is governed by section 1525. The avoiding power in section 549 and the exceptions to that power are covered by section 1520(a)(2). The word “adequately” in the Model Law article 26, subsections (a), (d), and (f) has been changed to “sufficiently” in sections 1521(b) and 1522(a) to avoid confusion with a very specialized legal term in United States bankruptcy law.

Sec. 1522. Protection of creditors and other interested persons.

This section follows article 22 of the Model Law with changes for United States usage and references to relevant Bankruptcy Code sections. It gives the bankruptcy court broad latitude to mold relief to meet specific circumstances, allowing appropriate responses if it is shown that the foreign proceeding is seriously and unjustifiably injuring United States creditors. For a response to a showing that the conditions necessary to recognition did not actually exist or have ceased to exist, see section 1517. Concerning the change of “adequately” in the Model Law to “appropriately” in this section, see section 1521. Subsection (d) is new and simply makes clear that an examiner appointed in a case under chapter 15 shall be subject to certain duties and bonding requirements based on those imposed on trustees and examiners under other chapters of this title.

Sec. 1523. Actions to avoid acts detrimental to creditors

This section follows article 23 of the Model Law, with changes to fit its framework under this title.56 It confers standing on a recognized foreign representative to assert an avoidance action but only in a pending case under United States law. The Model Law is not clear about whether it would grant standing in a recognized foreign proceeding if no full case were pending. This section recognizes the concerns raised by the United States delegation during the UNCITRAL debates that a simple grant of standing to bring avoidance actions neglects the necessity of avoidable transfers of law and forum issues. This limited grant of standing in section 1523 does not create or establish any legal right of avoidance nor does it create or imply any legal rules with respect to the choice of applicable law as to the avoidance of any transfer of obligation.57 The courts will determine the nature and extent of such action and what national law may be applicable to such action.

Sec. 1524. Intervention by a foreign representative

The wording is the same as the Model Law, except for a few clarifying words.58 This section gives the foreign representative whose foreign proceeding has been recognized the right to intervene in United States cases, state or federal, where the debtor is a party. Recognition being an act under federal bankruptcy law, it must take effect in state as well as federal courts. This section does not require substituting the foreign representative for the debtor, although that result may be appropriate in some circumstances.

Sec. 1525. Cooperation and direct communication between foreign courts or foreign representatives

The wording of this provision is nearly identical to that of the Model Law.59 The right of courts to communicate with other courts in worldwide insolvency cases is of central importance. This section authorizes courts to do so. This right must be exercised, however, with due regard to the rights of the parties. Guidelines for communication are left to the federal rules of bankruptcy procedure.

Sec. 1526 Cooperation and direct communication between the trustee and foreign courts or foreign representatives

This section closely tracks the Model Law.60 The language in Model Law article 26 concerning the trustee’s function was eliminated as unnecessary because it is always implied under United States law. The section authorizes the trustee, including a debtor in possession, to cooperate with other proceedings. Sections 1526 and 1527 are renumbered to conform to the same subsections of section 1519. This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 185 and 306 nor does it modify the sweep of sections 555 through 560.

Sec. 1527. Forms of cooperation

This section is identical to the Model Law.61 United States bankruptcy courts already engage in most of the forms of cooperation described in the Model Law articles 27 and 28, including the case under another chapter of this title.

Sec. 1528. Commencement of a case under title 11 after recognition of a foreign main proceeding

This section follows the Model Law, with specific of United States law replacing the general clause at the end of the section to cover assets normally included within the jurisdiction of the United States courts in bankruptcy cases, except where assets are controlled by another foreign proceeding.62 In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the jurisdiction of a recognized proceeding. Here that jurisdiction is limited where those assets are controlled by another recognized proceeding, if it is a main proceeding.

The court may use section 305 of this title to dismiss, stay, or limit a case as necessary to promote cooperation and coordination in a cross-border case. In addition, although the jurisdictional limitation applies only to United States bankruptcy cases commenced after recognition of a foreign proceeding, the court has ample authority under the next section and section 305 to exercise its discretion to dismiss, stay, or limit a United States case filed after a petition for recognition of a foreign main proceeding has been filed but before it has been approved, if recognition is ultimately granted.

Sec. 1529. Coordination of a case under title 11 and a foreign proceeding

This section follows the Model Law almost exactly, but subsection (4) adds a reference to section 305 to make it clear the bankruptcy court may continue to use that section, as under present law, to dismiss or suspend a United States case as part of coordination and cooperation with foreign proceedings.63 This provision is consistent with United States policy to act ancillary to a foreign main proceeding whenever possible.

Sec. 1530. Coordination of more than one foreign proceeding

This section follows exactly article 30 of the Model Law.64 It ensures that a foreign main proceeding will be given primary in the United States, consistent with the overall approach of the United States favoring assistance to foreign main proceedings.

Sec. 1531. Presumption of insolvency based on recognition of a foreign main proceeding

This section follows the Model Law exactly, inserting a reference to the standard for an involuntary case under this title.65 An insolvency proceeding has begun in the home country of the debtor, and in the absence of contrary evidence, the foreign representative should not have to make a new showing that the debtor is in the sort of financial distress requiring a collective judicial remedy. The word “proof” in this provision here means “presumption.” The presumption will arise for any purpose outside this section.

Sec. 1532. Rule of payment in concurrent proceeding

This section follows the Model Law exactly. If the debtor is in the sort of financial distress requiring a collective judicial remedy, the word “proof” in this provision here means “presumption.” The presumption will arise for any purpose outside this section.

Section 802(a) amends section 103 of the Bankruptcy Code to clarify the provisions of the Code that apply to chapter 15 and to specify which portions of chapter 15 apply in

55Id.
56Id. at 45–46, Art. 21.
57Id. at 46, Art. 21(2); 47, Art. 2(1).
58See id. at 46–47, 91518, 160.
59See id. at 47.
60Guide at 51, 53.
61See id. at 48–49.
62See id. at 49, ¶166.
63Id. at 49.
64Id. at 50.
65Id. at 51.
66Guides at 51, 53.
67See e.g. In re Maxwell Communication Corp., 83 F.3d 1086 (3d Cir. 1996).
cases under other chapters of title 11. Section 802(b) amends the Bankruptcy Code’s definitions of foreign proceeding and foreign representative in section 101. The new definitions are to those terms, as defined in the Model Law but add to the phrase “under a law relating to insolvency” the words “or debt adjustment.” This additional emphasis to the Model Law and chapter 13 is not limited to proceedings involving only debtors which are technically insolvent, but broadly includes all proceedings in several financial distress, so long as those proceedings also meet the other criteria of section 101(24).

Section 802(c) amends section 157(b)(2) of title 28 to provide that proceedings under chapter 15 will be core proceedings while other amendments to title 28 provide that the United States trustee’s standing extends to cases under chapter 15 and that the United States trustee’s duties include acting in chapter 15 cases. Although the United States will continue to assert worldwide jurisdiction over property of a domestic or foreign debtor in a full bankruptcy case under chapters 7 and 13 of this title, subject to deference to foreign proceedings under chapters 15 and 305, the situation is different in a case commenced under chapter 13. The United States courts acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

Second, section 910 of the Bankruptcy Code to permit recognition of foreign proceedings involving foreign insurance companies and involving foreign banks which do not have a branch or agency in the United States (as defined in 12 U.S.C. 3101). While a foreign bank not subject to United States regulation will be eligible for chapter 15 as a consequence of the amendment to section 109, section 303 prohibits the commencement of a full involuntary case against such a foreign bank unless the bank is a debtor in a foreign proceeding.

While section 301 is repealed and replaced by chapter 15, access to the jurisdiction which developed under section 301 is preserved in the context of new section 1507. On deciding whether to grant the additional assistance contemplated by section 1507, the court must consider the same factors specified in section 301. The exceptions for cases ancillary to foreign proceedings have been amended to provide a hierarchy of choices beginning with principal place of business in the United States. If there is no principal place of business in the United States, but there is litigation against a debtor, then the district in which the litigation is pending would be the appropriate venue. In any other case, venue must be determined with reference to the interests of justice and the convenience of the parties.

TRUSTED CONSUMER OR CONSUMER PROTECTIVE GROUPS

Sec. 901. Treatment of certain agreements by conservators or receivers of insured depositary institutions

Subsections (a) through (f) of section 901 of the Emergency Board Act amend the Federal Deposit Insurance Act’s (FDIA) definitions of qualified financial contract, securities contract, commodity contract, forward contract, repurchase agreement, and swap agreement to make them consistent with the definitions in the Bankruptcy Code and to reflect the enactment of the Commodity Futures Modernization Act of 2000 (CFMA). It is intended that the legislative history and case law surrounding those terms, to the date of this amendment, be incorporated into the legislative history of the FDIA.

Subsection (b) amends the definition of securities contract expressly to encompass margin loans, to clarify the coverage of securities options and to clarify the coverage of repurchase and reverse repurchase transactions. The reference in subsection (b) to a guarantee by or to any securities clearing agency is intended to cover other arrangements which have the same purpose as a broker-dealer under margin regulations. The reference to repurchase and reverse repurchase transactions is intended to eliminate any inquiry under the qualified financial provisions of the FDIA as to whether a repurchase or reverse repurchase transaction is a purchase and sale transaction or a secured financing. Repurchase and reverse repurchase transactions meeting certain criteria are already covered under the definition of repurchase agreement in the FDIA (and a regulation of the Federal Deposit Insurance Corporation (FDIC)). Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, and other kinds of commercial paper) are included under the definition of securities contract.

Subsection (b) also specifies that purchase, sale and repurchase obligations under a participation in a commercial mortgage loan do not constitute securities contracts. While a contract for the purchase, sale or repurchase of a participation may constitute a securities contract, the purchase, sale, or repurchase obligation embedded in a participation agreement does not make that agreement a securities contract.

A number of terms used in the qualified financial contracts provisions, but not defined therein, are intended to have the meanings set forth in the analogous provisions of the Bankruptcy Code or Federal Deposit Insurance Corporation Improvement Act (FDICIA), such as, for example, securities clearing agency. The term person, however, is not intended to be so interpreted. Instead, person is intended to have the meaning set forth in section 1 of title 1 of the United States Code.

Section 901(b) reflects the Senate position as represented in section 901(b) of the Senate amendment to section 15(b) of the Emergency Board Act. This provision did not include the clarification that the definition applies to mortgage loans. The conference report also includes the Senate amendment’s clarification of the reference to guarantees of obligations. Section 901(c) amends the definition of commodity contract in section 11(e)(b)(D)(III) of the Federal Deposit Insurance Act. It reflects the position as represented in section 901(c) of the Senate amendment, which includes the Senate amendment’s clarification of the reference to guarantees of obligations.

Subsection (e) amends the definition of repurchase agreement to codify the Substitute Conference Agreement defining repurchase agreement to include those on qualified foreign government securities. The term qualified foreign government securities defined to include those that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). Subsection (e) reflects developments in the repurchase agreement market which increased the use of government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full faith and credit of OECD governments that have concluded special lending arrangements with the International Monetary Fund associated with the Fund’s General Arrangement

Subsection (e) also amends the definition of repurchase agreement to include those on mortgage-related securities, mortgage guarantee or reimbursement obligations, to include principal and interest-only U.S. government and agency securities as securities that can be the subject of a repurchase agreement. The reference in the definition to United States government and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by a federal reserve bank in the repurchase agreement, the familiar language of section 14(b) of the Federal Reserve Act. This amendment is not intended to relate to the statutes, regulations, or rules governing the purchase of government securities or commodities as securities, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under the qualified financial provisions. In particular, an agreement for the sale and repurchase of a security would continue to be a securities contract as defined in the FDIA as a repurchase agreement as defined in the FDIA. Similarly, an agreement for the sale and repurchase of a commodity, even though not a derivatives contract as defined in the FDIA, would continue to be a forward contract for purposes of the FDIA.

Section (e), like subsection (b) for securities contracts, specifies that repurchase obligations under a participation in a commercial mortgage loan do not make the participation agreement a repurchase agreement. Such repurchase obligations embedded in participations in commercial loans (such as recourse obligations) do not constitute repurchase agreements. The Senate version of the conference agreement as defined in the FDIA, would continue to be a forward contract for purposes of the FDIA.

Section 901(f) of the conference report amends the definition of swap agreement to include an interest rate swap, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap, a spot, same day, tomorrow, tomorrow-next, or forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement, as well as a commodity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit swap, option, credit default swap, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative or related agreement. As weather derivatives are intended, the definition of swap agreement will update the statutory definition and achieve
The definition of “swap agreement” originally was intended to provide sufficient flexibility to allow the parties to a swap agreement to define the nature and use of swaps, including whether the swap agreement was to be treated as an agreement for purposes of the Bankruptcy Code or as a “qualified financial agreement” for purposes of the FDIA. The term “swap agreement” was defined in the conference report as a contract or agreement that is similar to any other agreement or transaction referred to in section 11(e) of the Bankruptcy Code and that has been, presently, or in the future becomes, the subject of a receivables agreement in the swap markets. The House version did not include this clarification. Section 901(f) also eliminates the reference in the House provision to the Securitization Protection Act of 1997. The definition of the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC) as a “swap agreement” is substantially identical to section 901(g) of the House bill and Senate amendment.

Section 901(h) of the conference report clarifies the technical changes to conform the receivables provision of the FDIA. It also clarifies that the FDIA expressly protects rights under swap agreements, arrangements or other credit enhancements related to one or more financial agreements (QFCs). An example of a security arrangement is a right of setoff, and examples of other credit enhancements are letters of credit, Surety guarantee or reimbursement obligations and similar agreements. Section 901(h) is substantively identical to section 910(h) of the House bill and Senate amendment.

Section 901(i) of the conference report clarifies that no provision of Federal or state law relating to the avoidance of preference provisions of the Bankruptcy Code can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution. Similarly, a provision in a receivership or conservatorship, absent actual fraudulent intent on the part of the transferee, is not a preference provision of the National Bank Act. It is substantively identical to section 901(i) of the House bill and Senate amendment.

Section 902 of the conference report provides that no provision of law, including FDICIA, shall be construed to limit the power of the FDIC to transfer or repudiate any QFC in accordance with its powers under the Federal Deposit Insurance Act. There has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or repudiate QFCs of an insolvent or failing insured depository institution. As well as other provisions in the Act, clarify that FDICIA does not limit the transfer powers of the FDIC with respect to QFCs. Section 902 also provides that, after the expiration of the time period prescribed by the FDIC, any party to a QFC before the expiration of the time period may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as conservator or receiver. Section 902(b) is substantively identical to section 903(b) of the House bill and Senate amendment.

Section 903 of the conference report amends the transfer provisions following a transfer of the QFCs of a failed depository institution. It also amends the definition of “qualified financial agreement” as defined in FDICIA or in regulations. This provision is substantively identical to section 903(a) of the House bill and Senate amendment. It will allow the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings.

The new FDIA provision specifies that when the FDIC transfers QFCs that are not subject to or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept or to transfer the QFCs to the organization. This provision gives the FDIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization. This provision is substantively identical to the definition of “clearing organization” within the meaning of FDICIA as amended both by the CPRA and by the FDICIA.

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. financial institution that is not an FDIC-insured financial institution if, following the transfer, the creditor rights associated with the transfer would be enforceable substantially to the same extent as under the FDIA. It is expected that the FDIC would not transfer QFCs to such a financial institution if the transfer would result in a dependance by the FDIC as conservator, or receiver, on the financial institution for the enforceability of the parties’ contractual rights.

Section 903(b) amends the notification requirements following a transfer of the QFCs of a failed depository institution to require the FDIC to notify any party that is not an insured depository institution of the transfer of the QFC by 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer. This amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1990. Section 903(b) is substantively identical to section 903(b) of the House bill and Senate amendment.

Section 905 of the conference report amends the FDIA to clarify whether a party to a QFC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not repudiate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer of the QFC. Section 903(c) is substantively identical to section 903(c) of the House bill and Senate amendment. There has been some uncertainty whether FDICIA permits counterparty to terminate or liquidate a QFC before the expiration of the time period prescribed by the FDIC. This provision clarifies that the FDIC may repudiate or transfer a QFC in a conservatorship or receivership. Subsection (c) provides that a party may not terminate a QFC based solely on the appointment of the FDIC as receiver until 5:00 p.m. (Eastern Time) on the business day following the date of the appointment of the FDIC acting as receiver or following the date of such transfer of the QFC. Section 903(c) is substantively identical to section 903(c) of the House bill and Senate amendment.

Section 905 of the conference report amends the FDIA to transfer the authority to accept or to reject the transfer of QFCs to “financial institutions” as defined in FDICIA or in regulations. This provision is substantively identical to section 905 of the House bill and Senate amendment. It will allow the FDIC to transfer QFCs to a non-depository financial institution, provided the institution is not subject to bankruptcy or insolvency proceedings.

The new FDIA provision specifies that when the FDIC transfers QFCs that are not subject to or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept or to transfer the QFCs to the organization. This provision gives the FDIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization. This provision is substantively identical to the definition of “clearing organization” within the meaning of FDICIA as amended both by the CPRA and by the FDICIA.

The new FDIA provision also permits transfers to an eligible financial institution that is a non-U.S. person, or the branch or agency of a non-U.S. financial institution that is not an FDIC-insured financial institution if, following the transfer, the creditor rights associated with the transfer would be enforceable substantially to the same extent as under the FDIA. It is expected that the FDIC would not transfer QFCs to such a financial institution if the transfer would result in a dependance by the FDIC as conservator, or receiver, on the financial institution for the enforceability of the parties’ contractual rights.
QFC permitting termination of the QFC based solely on a downgraded credit rating of a party will not be enforceable in an FDIC receivership or conservatorship because the provision is based solely on the financial condition of the depository institution in default. However, any payment, delivery, or other performance-based default, or breach of a representation or covenant put in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. This provision is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized by the termination of any QFC by a conservator or receiver, or from taking actions based upon a receivership or other financial condition-triggered default in the absence of a transfer (as contemplated in Section 11(e)(10) of the FDIA). The amendment allows the FDIC to meet its obligation to provide notice to parties to transferred QFCs by taking steps reasonably calculated to provide notice to such parties by the required time. This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Finally, the amendment permits the FDIC to transfer QFCs of a failed depository institution to a bridge bank or a depository institution that the FDIC for a variety of reasons, is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption agreement between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive deposits or to participate in FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Section 904 of the conference report limits the disaffirmance and repudiation authority of the FDIC with respect to QFCs so that such authority is consistent with the FDIC’s transfer authority under FDIA section 11(e)(9). This ensures that no disaffirmance, repudiation or transfer authority of the FDIC may be exercised to “cherry-pick” or otherwise treat independently all the QFCs between a defaulting foreign bank and a person or any affiliate of such person.

The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively or based on the assumption that the netting authority is itself indispensable to the reduction of systemic risk.

Section 901 reflects the Senate position as represented in section 901 of the Senate amendment. The House version of section 901 did not include the savings clause provision.

Section 905, Clarifying amendment relating to master agreements

Section 905 of the conference report specifies that QFCs for foreign securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC for purposes of the FDIA (but not cash) collateral of a debtor (section 1821(e)(8), (9), (10), and (11), which address QFCs).

Section 906(b) and (c) of the conference report are substantively identical to their counterparts in section 906 of the House bill and the Senate amendment. These provisions address two exceptions to the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members: (i) the terms of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution; or (ii) the appointment of a receiver for such institution under the FDIA. If such receiver transfers or repudiates QFCs in accordance with the FDIA and/or the authority of a party to terminate a QFC on the business day following the appointment of a receiver. This change is made to confirm the FDIC’s flexibility to transfer or repudiate the QFCs of an insolvent depository institution in accordance with the terms of the FDIA. This modification also provides important legal certainty regarding the treatment of QFCs under the FDIA, because the current relationship between the FDIA and FDICIA is unclear.

Section 906(d) of the conference report adds a new section 407 to FDICIA. This new section provides that, notwithstanding any other law, QFCs with uninsured national banks or insured Federal branches for which a receiver or conservator was appointed. This provision ensures that parties to QFCs with these institutions will have the same rights and obligations as parties to QFCs with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for such institutions to those contained in 12 U.S.C. §§1821(e)(8), (9), (10), and (11), which address QFCs.

While the amendment would apply the same rules to such institutions that apply to insured institutions, the provision would not change the rules that apply to insured institutions. Nothing in this section would amend the International Banking Act, the Federal Deposit Insurance Act, the National Bank Act, or other statutory provisions with respect to receiverships of insured national banks or Federal branches.

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agreement” and “swap agreement” to conform with the amendments to the FDIA contained in sections 2(e) and 2(f) of the Act.

In connection with the definition of “repurchase agreement” in the amended Bankruptcy Code, “stockbroker,” as defined in Bankruptcy Code section 101(53A), is included to within its scope an “OTC derivatives dealer,” as that term is defined in Rule 3b-12 of the Securities Exchange Act of 1934, as amended, which is the new class of broker-dealer created by the Securities Exchange Act of 1968 to enable over-the-counter derivatives transactions that are securities.

Subsection (a)(1) also amends the definition of “repurchase agreement” to include those on mortgage-related securities, mortgage loans and interests therein, and expressed principal and interest payments on U.S. government and agency securities as securities that can be the subject of a “repurchase agreement.” The reference in the definition to United States government- and agency-issued or fully guaranteed securities is intended to include obligations issued or guaranteed by Fannie Mae and the Federal Home Loan Mortgage Corporation (Freddie Mac) as well as all obligations eligible for purchase by Federal Reserve banks under the similar language of section 14(b) of the Federal Reserve Act.

This amendment is not intended to affect the status of repos involving securities or commodities as securities contracts, commodity contracts, or forward contracts, and their consequent eligibility for similar treatment under other provisions of the Bankruptcy Code. In particular, an agreement for the sale and repurchase of a mortgage loan or mortgage-backed securities (such as collateralized debt obligations) cannot be treated as a “swap agreement” even if not a “repurchase agreement” as defined in the Bankruptcy Code. Similarly, an agreement for the sale and repurchase of a commodity, even though not a “repurchase agreement” as defined in the Bankruptcy Code, would continue to be a forward contract for purposes of the Bankruptcy Code and would be treated in the same manner as forward contracts in any netting arrangements with the International Monetary Fund associated with the Fund’s General Arrangements to Borrow. The term “stockbroker,” as defined in Bankruptcy Code section 101(53A), is intended to include within its scope an “OTC derivatives dealer,” as that term is defined in Rule 3b-12 of the Securities Exchange Act of 1934, as amended, which is the new class of broker-dealer created by the Securities Exchange Act of 1968 to enable over-the-counter derivatives transactions that are securities.

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 definition for “financial institution” includes Federal Reserve Banks and the receivers or conservators of insolvent depository institutions. With respect to securities contracts, the definition of “financial institution” expressly includes investment companies registered under the Investment Company Act of 1940.

Subsection (b) also adds a new definition of “financial participant” to limit the potential impact of insolvencies upon other major markets. This definition also provides that the Bankruptcy Code’s counterparties limitations will allow such market participants to close-out and net agreements with insolvent entities under sections 362(b)(6), 555, and 556 even if the counterparty qualifies as, for example, a commodity broker. Sections 362(b)(6), 555 and 556 preserve the limitations of the right to close-out and net such contracts, in most cases, to entities who qualify under the Bankruptcy Code’s counterparties limitations. However, where the counterparty has transactions with a total gross dollar value of at least $1 billion in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of at least $100 million in notional or actual principal amount outstanding on any day during the previous 15-month period, or has counterparty agreements with counterparties in one or more agreements or transactions on any day during the previous 15-month period, or has an outstanding master netting agreement, the corresponding amendments would permit it to exercise netting and related rights irrespective of its inability otherwise to satisfy those limitations. The amendments also will help prevent systemic impact upon the markets from a single failure, and is derived from threshold tests contained in Regulation EE promulgated by the Federal Reserve Board in implementing the netting provisions of the Federal Deposit Insurance Corporation Improvement Act. It is intended that the threshold would be measured with reference to the 15 months preceding the filing of a petition by or against the debtor.

Financial participant” is also defined to include clearing organizations within the meaning of FDCIA (as amended by the CFMA and Section 906 of the Act). This amendment, together with the inclusion of “financial participants” as eligible counterparties in connection with “commodity contracts,” “forward contracts” and “securities contracts” and the amendments made to section 101 of the Act. Under subsection (b)(2)(A), “financial participants” as counterparties eligible for the protections in respect of “swap agreements” and “repurchase agreements” may be determined by a body into which the CFMA and will allow clearing organizations to benefit from the protections of all of the provisions of the Bankruptcy Code relating to these contracts and agreements. This will further the goal of promoting the clearing of derivatives and other transactions as a way to reduce systemic risk. The definition of “financial participant” (as with the other provisions of the Bankruptcy Code relating to “commodity contracts,” “forward contracts,” “repurchase agreements” and “swap agreements”) is not mutually exclusive, i.e., an entity that qualifies as a “financial participant” could also be a “swap participant,” “repurchase participant,” “forward contract merchant,” “commodity broker,” “stockbroker,” “securities clearing agency” and/or “financial institution.”

Section 907 of the conference report adds to the Bankruptcy Code new definitions for the terms “master netting agreement” and “master netting agreement participant.” The “master netting agreement” is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such agreements may be used in a contract that protects a wide variety of securities contracts, commodity contracts, forward contracts, repurchase agreements and swap agreements or (ii) as an umbrella agreement for separate master agreements between the same parties, each of which is used to document a dis-
in sections 362(b)(6), (b)(7), (b)(17) and (b)(28) of the Bankruptcy Code.

Under the Act, the termination, liquidation or acceleration rights of a master netting agreement’s counterpart are subject to the limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a contract or master netting agreement is documented under a master netting agreement, a party’s termination, liquidation and acceleration rights would be subject to the provisions of the Bankruptcy Code relating to orders authorized under the provisions of SIPA or any statute administered by the SEC. In addition, the netting rights under a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights in connection with QFCs would be enforceable under the FDIA.

New Section 561 of the Bankruptcy Code clarifies that the provisions of the Bankruptcy Code related to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements apply in a proceeding ancillary to a foreign insolvency proceeding under new section 304 of the Bankruptcy Code.

Subsections (i) and (m) of section 907 of the conference report clarify that the exercise of termination and netting rights will not otherwise have any effect on the priority of the secured party’s claim after the exercise of netting, foreclosure and related rights. These provisions are substantively identical to those counterparts in the House bill and the Senate amendment.

Subsection (n) amends section 553 of the Bankruptcy Code to clarify that the acquisition by a bankruptcy trustee, liquidation with swap agreements, repurchase agreements, securities contracts, forward contracts, commodity contracts and master netting agreements cannot be avoided as a preference. This subsection also adds setoff of the kinds described in sections 555, 556, 558, 560, and 561 of the Bankruptcy Code to the types of setoff excepted from section 553(b). This provision generally represents the Senate’s position as presented in Section 907(o) of the Senate amendment.

Section 907(o), as well as other subsections of the Act, adds references to “financial participant” in all the provisions of the Bankruptcy Code concerning forward and commodity contracts and repurchase and swap agreements. This provision generally represents the Senate’s position as represented in Section 907(o) of the Senate amendment.

Sec. 908. Recordkeeping requirements

Section 908 of the conference report amends section 11(e)(6) of the Federal Deposit Insurance Act to explicitly authorize the FDIC, in consultation with appropriate Federal banking agencies, to prescribe regulations on recordkeeping by any insured depository institution with respect to any QFCs. Only if the insured financial institution is in a troubled condition (as such term is defined in the FDIA), Section 908 reflects the Senate’s position in section 907(o) of the Senate amendment, which includes clarifying references to insured depository institution and institutions in troubled condition.

Sec. 909. Amendments from contemporaneous execution requirements

Section 909 of the conference report amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of government, federal, state and local government and agency, and federal Home Loan Bank extensions of credit or one or more QFCs shall not be deemed invalid solely because such agreement was not entered into contemporaneously with the acquisition of the collateral or because of the time lag between the collateralization and the contemporaneous execution of the agreement. The amendments make portions of policy statements issued by the FDIC regarding the application of section 13(e), which codifies the “D’Oench Duhme” doctrine. With respect to QFCs, this codification recognizes that agreements generally deal with collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market provisions of the underlying agreements. The codification of only portions of the existing FDIC policy statements on these and related issues should not give rise to any negative implications with regard to the exercise of these policy statements. Section 909 is substantively identical to section 909 of the House bill and the Senate amendment.

Sec. 910. Damage measure

Section 910 of the conference report adds a new section 562 to the Bankruptcy Code providing that damages under any swap agreement, securities contract, forward contract, commodity contract, repurchase agreement or master netting agreement will be calculated as of the earlier of (i) the date of rejection of such agreement by a trustee or (ii) the date of liquidation, termination or acceleration of such contract or agreement. Section 910 reflects the Senate’s position as represented in section 910 of the Senate amendment.

Section 912 provides an exception to the rules in (i) and (ii) if there are no commercially reasonable determinants of value as of the date of rejection, liquidation, termination or acceleration. The references to “commercially reasonable determinants of value” in section 562 is intended to reflect existing state law standards relating to a creditor’s actions in determining damages. New section 562 provides that if damages are not determinable as of the date of rejection or the date of liquidation, termination or acceleration and the other party challenges the timing of the measurement of damages by the party determining the damages, that party has the burden of proving the absence of any commercially reasonable determinants of value.

New section 562 is not intended to have any impact on the determination under the Bankruptcy Code of the timing of damages for contracts and agreements other than those specified in section 562. Section 562 does not apply to proceedings under the FDIA, and it is not intended that Section 562 have any impact on the interpretation of the measurement of damages by the party determining the timing of damages in respect of QFCs or other contracts.
100(b) makes a conforming amendment to section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986. As a result of this provision, a debtor is permitted to reorganize, if primarily for the benefit of creditors, and to receive a discharge of all or any portion of a debt under chapter 12. The Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan is inadequate to pay the undisputed disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1021(b)(2) to provide for modifying a confirmed chapter 12 plan. Specifically, Section 1006(b) to provide that a confirmed chapter 12 plan may not be modified to require the debtor to pay disposable income for any month prior to the date of the order modifying the confirmation of the plan. Where the modification is based on an increase in the debtor’s disposable income during the period that may not be modified to require payments to unsecured creditors in any particular month in an amount greater than the debtor’s disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) further provides that a modification of a plan shall not require payments that would cause the debtor to lose a retail debtor stay.

Sec. 1005. Elimination of requirement that family fisherman with respect to debts arising out of the debtor’s farming operation for eligibility purposes from 80 percent to 90 percent. Section 1004 represents a compromise. It takes into consideration the adjustment that would be要考虑 on April 1, 2004. There is no counterpart to this provision in the House bill.

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Sec. 1006. Prohibition of retroactive application of the Bankruptcy Code in two respects concerning chapter 12 plans. Section 1006(a) amends Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan is inadequate to pay the undisputed disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan is inadequate to pay the undisputed disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan is inadequate to pay the undisputed disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1225(b) to permit the court to confirm a plan even if the distribution proposed under the plan is inadequate to pay the undisputed disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation.
TITLE XII—TECHNICAL AMENDMENTS

Sec. 1201. Definitions

Section 1201 of the conference report is substantively identical to section 1201 of the House bill and the Senate amendment. This provision amends definitions contained in section 101 of the Bankruptcy Code. Paragraphs (1), (2), (4), and (7) of section 1201 make technical changes to section 101 to convert each to a separate paragraph (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical order. Paragraph (3) of section 1101 makes necessary and conforming amendments to cross references to the newly redesignated definitions.

Paragraph 1201 concerns single asset real estate debtors. A single asset real estate chapter 11 case presents special concerns. As the name implies, the principal asset in this type of case consists of some form of real estate, such as undeveloped land. Typically, the form of ownership of a single asset real estate debtor is a corporation or limited partnership. The largest creditor in a single asset real estate case is typically the secured lender who advanced the funds to the debtor to acquire the real property. Often, an estate on the debtor resorts to filing for bankruptcy relief for the sole purpose of staying an impending foreclosure proceeding or sale commenced by the secured creditor. The plan filed when the debtor lacks sufficient cash flow to service the debt and maintain the property. Taxing authorities may also have liens against the property. Based on the nature of its principal asset, a single asset real estate debtor often has few, if any, unsecured creditors. If unsecured creditors exist, they may have little interest in being creditors in a single asset real estate debtor. Depending on the nature and ownership of any business operating on the debtor’s real property, the debtor may have many, if any, employees. Accordingly, there may be little interest on behalf of unsecured creditors in a single asset real estate case to serve on a creditors’ committee.

In 1994, the Bankruptcy Code was amended to accord special treatment for single asset real estate cases. A single asset real estate debtor may be reorganized under Chapter 11 of the Bankruptcy Code. A single asset real estate estate comprised of a single piece of real property or project, other than residential real property with fewer than four residential units, the property or project must generate substantially all of the debtor’s gross income. A creditor that conducts substantial business on the property beyond the use of its principal asset, a single asset real estate estate, may be excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor must have noncontingent, liquidated secured debts in excess of $4 million. Subparagraph (5)(A) amends the definition of “single asset real estate” to exclude family farmers. Paragraphs (5)(B) amends section 101(51B) of the Bankruptcy Code to eliminate the $4 million debt limitation on single asset real estate. This provision is substantively identical to section 1201 of the conference report.

Sec. 1202. Adjustment of dollar amounts

Section 1202 of the conference report is substantively identical to section 1202 of the House bill and the Senate amendment. This provision makes necessary and conforming amendments to Bankruptcy Code to include a reference to section 522(b)(3).

Sec. 1203. Extension of time

Section 1203 of the conference report makes a technical amendment to correct a reference error described in amendment contained in the United States Code. As specified in the amendment note relating to subsection (c)(2) of section 108 of the Bankruptcy Code, the amendment made by section 1203 of the conference report is substantive identical to section 1203 of the Senate bill and the Senate amendment.

Sec. 1204. Technical amendments

Section 1204 of the conference report is identical to section 1204 of the House bill and the Senate amendment. This provision makes technical amendments to Bankruptcy Code sections 109(b)(2) (to strike an statutory cross reference), 541(b)(2) (to add “or” to the end of this provision), and 522(b)(1) (to replace “products” for “products”)

Sec. 1205. Extension of time

Section 1205 of the conference report extends section 110(4) of the Bankruptcy Code to change the reference to attorneys’ fees contained in the United States Code. This provision is substantively identical to section 1205 of the House bill and the Senate amendment.

Sec. 1206. Limitation on compensation of professional persons

Section 332(a) of the Bankruptcy Code provides that a trustee or a creditors’ and equity security holders’ committee may, with court approval, obtain the services of a professional person on any reasonable terms and conditions of employment, including a retainer, on an hourly basis, or on a contingent fee basis. Section 1206 of the conference report amends section 332(a) to include compensation “on a fixed or percentage basis” in addition to the other specified forms of reimbursement. This provision is substantively identical to section 1206 of the House bill and the Senate amendment.

Sec. 1207. Effect of conversion

Section 1207 of the conference report makes a technical correction in section 348(b)(2) of the Bankruptcy Code to clarify that the first reference to property, like the subsequent reference to property, is a reference to property of the estate. This provision is substantively identical to section 1207 of the House bill and the Senate amendment.

Sec. 1208. Allowance of administrative expenses

Section 1208 of the conference report amends section 503(b)(9) of the Bankruptcy Code to limit the types of compensable professional services rendered by an attorney or
accountant that can qualify as administrative expenses in a bankruptcy case. Expenses for attorneys or accountants incurred by individual members of creditors’ or equity security holders’ committees are not recoverable, but expenses incurred for such professional services incurred by such committees themselves would be. This provision is substantive identical to section 1210 of the House bill and the Senate amendment.

Sec. 1209. Exceptions to discharge

Section 1209 of the conference report is substantively identical to section 1210 of the House and Senate amendments to the Bankruptcy Code. This provision amends section 522(a) of the Bankruptcy Code to correct a technical error in the placement of paragraph (15), which was added by section 302(a)(1) of the Bankruptcy Reform Act of 1994. Section 1209 also amends section 522(a)(9), which makes nondischargeable any debt resulting from death or personal injury arising from the debtor’s unlawful operation of a motor vehicle while intoxicated, to add “watercraft, or aircraft” after “motor vehicle.” Neither additional term should be defined or included as a “motor vehicle” in section 522(a)(9) and each is intended to comprise unpowered as well as motor-powered craft. The conference report, by analogy to section 522(a)(9) in the land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated aircraft operators preferential treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug and plane accidents the same rights accorded to automobile accident victims under current law. Finally, this section corrects a grammatical error in section 522(a).

Sec. 1210. Effect of discharge

Section 1210 of the conference report makes technical amendments to correct errors in section 524(a)(3) of the Bankruptcy Code caused by section 257(o)(2) of Public Law 99–554 and section 501(d)(14)(A) of Public Law 103–394. This provision is substantively identical to section 1210 of the House bill and the Senate amendment.

Sec. 1211. Protection against discriminatory treatment

Section 1211 of the conference report is substantively identical to section 1211 of the House and Senate amendments to the Bankruptcy Code. This provision conformed a reference to its antecedent reference in section 525(c) of the Bankruptcy Code. The omission of “student,” before “grant” in the second place it appears in section 525(c) made possible the interpretation that a broader limitation on lender discretion was intended, so that no loan could be made or a preferential lien given to a noninsider that carries the risk of a preferential lien in the case of a prior bankruptcy if the lending institution was in the business of making student loans. Section 1211 is intended to make clear that lenders involved in making government guaranteed or insured student loans are not barred by this Bankruptcy Code provision from denying other types of loans based on an applicant’s bankruptcy history; only student loans and grants, therefore, cannot be denied under section 525(c) because of a prior bankruptcy.

Sec. 1212. Property of the estate

Production payments are royalties tied to the production of a certain volume or value of oil or gas, determined without regard to production costs. They typically would be paid by an oil or gas operator to the owner of the underlying property on which the oil or gas is found. Under section 541(b)(4)(B)(i) of the Bankruptcy Code, the Bankruptcy Reform Act of 1994 made clear that payment made to a creditor by a debtor within 90 days of filing another but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated aircraft operators preferential treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug and plane accidents the same rights accorded to automobile accident victims under current law. Finally, this section corrects a grammatical error in section 522(a).

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of the Internal Revenue Code) may not be transferred to an entity that is not a corporation, but only under the same conditions that would apply if the debtor was not in bankruptcy proceedings made by this section apply to cases pending on the date of enactment or to cases filed after such date. Section 1221 provides that a court may not confirm a plan unless it finds that the provision would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor postpetition. In this provision the court may be construed to require the court to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any transfer of property. This provision is substantively identical to section 1222 of the House bill and section 1221 of the Senate amendment.

Sec. 1222. Protection of valid purchase money security interests

Section 1222 of the conference report extends the applicable perfection period for a security interest in property of the debtor in section 547(c)(3)(B) of the Bankruptcy Code from 20 to 30 days. This provision is substantively identical to section 1222 of the House bill and section 1221 of the Senate amendment.

Sec. 1223. Bankruptcy judgeships

The substantial increase in bankruptcy case filings clearly creates a need for additional bankruptcy judgeships. In the 105th Congress, a recommendation was made by pointing to section 1223 of the conference report was passed by H.R. 1596, which would have created additional permanent and temporary bankruptcy judgeships and extended an existing temporary position. Section 1223 generally incorporates H.R. 1596 as it passed the House with provisions extending four existing temporary judgeships. Moreover, it includes an additional provision for additional bankruptcy judgeships for the districts of South Carolina, Nevada, and Delaware. In addition, section 1223 of the conference report provides that the extension periods for the temporary judgeships in the Northern District of Alabama, the Western District of Pennsylvania, the Northern District of Alabama, and the Central District of New Mexico are extended by 90 days. Section 1223(b)(7) of the conference report allows the temporary judgeships to be vacated or vacated as may be useful to the courts in implementing this Act, including the needs-based reforms under section 707(b) (as amended by this Act) and amendments pertaining to reaffirmation agreements. This provision is substantially identical to section 1227 of the House bill and section 1226 of the Senate amendment.

Sec. 1224. Compensating trustees

Section 1224 of the conference report amends section 326 of the Bankruptcy Code to provide that if a chapter 7 trustee has been allowed compensation as a result of the conversion or dismissal of the debtor’s prior case pursuant to section 503(b)(7) and some portion of that compensation remains unpaid, the amount of any such unpaid compensation shall be added to the debtor’s estate in the subsequent chapter 13 case. This payment must be prorated over the term of the plan and paid on a monthly basis. The amount of the monthly payment shall not exceed $250 or the amount payable to unsecured nonpriority creditors as provided by the plan, multiplied by five percent and the result divided by the number of months of the plan. This provision is substantively identical to section 1225 of the House bill and section 1224 of the Senate amendment.

[Section 1225 of the conference report amends section 362 of the United States Code]

Section 1225 of the conference report amends section 362(b) of the Bankruptcy Code to except from the automatic stay the creation of a statutory lien on an ad valorem property tax or for a special tax or special assessment on real property (whether or not ad valorem) that is imposed by a governmental unit, if such tax or assessment becomes due after the filing of the petition. This provision is substantively identical to section 1225 of the House bill and section 1225 of the Senate amendment.

Sec. 1226. Judicial education

Section 1226 of the conference report requires the Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, to develop materials and conduct training as may be useful to the courts in implementing this Act. This provision is substantially identical to section 1225 of the House bill and section 1224 of the Senate amendment.

Sec. 1227. Reclamation

Section 1227 of the conference report amends section 547(c)(3)(B) of the Bankruptcy Code to provide that the rights of a trustee under sections 541(a), 545, 547, and 549 are subject to the rights of a seller of goods to reclaim goods sold in the ordinary course of business to the debtor if: (1) the debtor received these goods while insolvent not later than 45 days prior to the commencement of the case, and (2) the demand for reclamation of the goods is made not later than 45 days after receipt of such goods by the debtor or not later than 20 days after the commencement of a case, whichever period expires after the commencement of the case. If the seller fails to provide notice in the manner provided in this provision, the seller may still assert the rights set forth in section 503(b)(7) of the Bankruptcy Code. Section 1227(b) amends Bankruptcy Code section 502(b) to provide that the value of any goods sold in the ordinary course of business to the debtor in the ordinary course of the debtor’s business is an allowed administrative expense.

Section 1227 of the conference report reflects section 1227 of the Senate amendment, which clarifies when certain specified time frames begin. Section 1228 of the House bill did not include this clarification.

Sec. 1228. Providing requested tax documents to the court

Section 1228 of the conference report is substantively identical to section 1229 of the House bill and section 1228 of the Senate amendment. This provision provides that the court may not grant a discharge to an individual in a case under chapter 7 unless requested tax documents have been provided to the court. Section 1228(b)(1) provides that the court may not confirm a chapter 11 or 13 plan unless requested tax documents have been filed with the court. Section 1228(c) directs the court to destroy documents submitted in support of a bankruptcy claim not sooner than three years after the date of the conclusion of a bankruptcy case filed by an individual debtor under chapter 7, 11, or 13. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

Sec. 1292. Encouraging creditworthiness

Section 1292 of the conference report is substantively identical to section 1239 of the House bill and section 1292 of the Senate amendment. This provision clarifies the sense of the Congress that lenders may sometimes offer credit to consumers indiscriminately and that resulting consumer debt may be leading one to consumer insolvency. Section 1292(b) directs the Board of Governors of the Federal Reserve to study certain consumer credit industry solicitation and credit granting practices as well as the effect of such practices on consumer debt and insolvency. The specification of the conference report involves the solicitation and extension of credit on an indiscriminate basis that encourages consumers to accumulate additional debt and where the lender fails to expressly determine the consumer’s capability of repaying the debt. Section 1292(c) requires the study described in subsection (b) to be prepared within 12 months from the date of the Act’s enactment. This provision authorizes the Board to issue regulations requiring additional disclosures to consumers and to require it to take further actions consistent with its statutory authority, which are necessary to ensure responsible industry practices and to prevent resulting consumer debt and insolvency.

Sec. 1230. Property no longer subject to redemption

Section 1230 of the conference report is substantively identical to section 1231 of the House bill and section 1230 of the Senate amendment. This provision amends section 541(b) of the Bankruptcy Code to provide that, under certain circumstances, an interest in property (other than securities, or written or printed evidences of indebtedness or title) that the debtor pledged or sold as collateral for an advance made by a person licensed under law to make such loan or advance is not property of the estate.

Section 1231. Trustees

Section 1231 of the conference report is substantially identical to section 1232 of the House bill and section 1231 of the Senate amendment. The provision establishes a series of procedural protections for chapter 7 automatic stay trustees and final agency decisions relating to trustee appointments and future case assignments. Section 1231 adds section 101(c) of title 28 of the United States Code to allow a chapter 7 or chapter 13 trustee to obtain judicial review of such decisions by commencing an action in the United States district court after the trustee exhausts all available administrative remedies. Unless the trustee elects an administrative hearing on the record, the trustee is deemed to have exhausted all administrative remedies under this provision if the agency fails to make a final agency decision within 90 days after the trustee requests an administrative review. This provision requires the Attorney General to promulgate procedures to implement this provision. It further provides that the agency’s decision may be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.

Section 1231(b) amends section 586(e) of title 28 of the United States Code to permit a chapter 7 trustee to obtain judicial review of certain final agency actions relating to claims and objections under section 586(e). The trustee may commence an action in the United States district court where the trustee resides. The agency’s decision may be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.
the agency. It directs the Attorney General to prescribe procedures to implement this provision.

Sec. 1232. Bankruptcy forms

Section 1232 of the conference report is substantially identical to section 1232(b) of the House bill and section 1232 of the Senate amendment. This provision amends section 307 of title 28 of the United States Code to require the bankruptcy courts to prescribe forms for use by the parties to a bankruptcy case. The forms prescribed under this provision will be binding on all parties to the appeal. Any appeal of such judgment, decision, order, or decree of a bankruptcy court, district court, bankruptcy appellate panel, or the parties jointly certify: (1) the appeal concerns a substantial question of law, requiring resolution of conflicting decisions, or a matter of public importance; and (2) an immediate appeal may materially advance the progress of the case. A party may also request that an appeal under this provision does not stay proceedings in the court from which the order or decree originated, unless the originating court or the court of appeals orders such a stay.

Sec. 1233. Direct appeals of bankruptcy matters to courts of appeals

Under current law, appeals from decisions rendered by the bankruptcy court are either heard by the district court or a bankruptcy appellate panel. In addition to the time and cost factors attendant to the present appellate system, decisions rendered by a district court as well as a bankruptcy appellate panel are generally not binding and lack stare decisis value.

To address these problems, section 1233 of the conference report amends section 158(d) of title 28 to establish a procedure to facilitate direct appeals of final orders and decrees of the bankruptcy courts to the circuit courts of appeals by means of a two-step certification process. The first step is a certification by the bankruptcy court, district court, or bankruptcy appellate panel (acting on its own motion or on the request of a party, or the appellants and appellees acting jointly). Such certification must be issued by the lower court if: (1) the bankruptcy court, district court, or bankruptcy appellate panel determines that one or more specified standards are met; or (2) a majority in number of the appellants and a majority in number of the appellees request certification and represent that one or more of the standards are met. The second step is authorization by the circuit court of appeals. Jurisdiction for the direct appeal would exist in the circuit court of appeals only if the court of appeals authorizes the direct appeal.

This procedure is intended to be used to settle unresolved questions of law where there is a need to resolve conflicting decisions on a question of law, or where an immediate appeal may materially advance the progress of the case or proceeding. The courts of appeals are encouraged to authorize direct appeals in these circumstances. While fact-intensive issues may occasionally offer grounds for certification even when binding precedent already exists on the general legal issue in question, it is anticipated that this procedure will rarely be used in that circumstance or in an attempt to bring to the circuit courts of appeals matters that can appropriately be resolved initially by district court judges or bankruptcy appellate panels.

Section 1234 deals a compromise between the House and Senate conferences. The House provision amends section 158(d) of title 28 of the United States Code to deem a judgment, decision, order, or decree of the district court entered 31 days after an appeal of such judgment, decision, order, or decree (or entered with the consent of a party or by the court sua sponte; or (2) all parties to the appeal file written consent that the district court may retain such appeal until it enters a decision. Section 1233 of the Senate amendment, on the other hand, allows a court of appeals to hear an appeal of a bankruptcy court, district court, or bankruptcy appellate panel, or the parties jointly certify: (1) the appeal concerns a substantial question of law, requiring resolution of conflicting decisions, or a matter of public importance; and (2) an immediate appeal may materially advance the progress of the case. A party may also request that an appeal under this provision does not stay proceedings in the court from which the order or decree originated, unless the originating court or the court of appeals orders such a stay.

Sec. 1234. Involuntary cases

Section 1234 of the conference report amends the Bankruptcy Code’s criteria for authorizing an involuntary bankruptcy case. Current law renders a creditor ineligible to file an involuntary petition if the creditor’s claim is subject to a bona fide dispute. This provision amends section 303(b)(1) to specify that a creditor would be ineligible to file an involuntary petition if the creditor’s claim is subject to a bona fide dispute as to the existence of the claim. This provides that the claims needed to meet the monetary threshold must be undisputed. The provision makes a conforming revision to section 1301(b)(2)(B) of the Truth in Lending Act to reflect the date of enactment of this Act and applies to cases commenced after such date. This provision represents the Senate’s position as reflected in section 1234 of the Senate amendment. There is no counterpart to section 1234 of the conference report in the House bill.

Sec. 1235. Federal election law fines and penalties as nondischargeable debt

Section 1235 of the conference report amends section 523(a) of the Bankruptcy Code to make debts incurred to pay fines or penalties imposed under Federal election law nondischargeable. This provision represents the Senate’s position as reflected in section 1235 of the Senate amendment. There is no counterpart to this provision in the House bill.

"TITLE XIII—CONSUMER CREDIT DISCLOSURE

Sec. 1301. Enhanced disclosures under an open end credit plan

Section 1301 of the conference report is substantially identical to section 1301 of the House bill and Senate amendment. Subsection (a) amends section 127(b) of the Truth in Lending Act to require the inclusion of certain specified disclosures in billing statements with respect to various open end credit plans. In general, these statements must contain an example of the amount of interest that would be paid and the amount of interest that would be paid if only the required minimum monthly payment was made. This provision amends section 1301 of the Senate amendment. In addition, the Board of Governors of the Federal Reserve System is required to promulgate regulations implementing section 1301 of the Senate amendment.

Sec. 1302. Enhanced disclosure for credit extensions secured by a dwelling

Section 1302 of the conference report is identical to section 1302 of the House bill and the Senate amendment. Subsection (a) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million. Section 1302(a)(1) amends section 127A(a)(13) of the Truth in Lending Act to require a statement in any case in which the extension of credit exceeds $250 million.
through the Internet (as opposed to dissemination by radio or television) to include a specified statement. The statement must disclose that the interest on the portion of the credit extension that exceeds the dwelling’s fair market value is not tax deductible for Federal income tax purposes and that the consumer should consult a tax advisor for further information regarding the deductibility of interest and charges.

Section 1302(b)(2) requires certain amendments to the Truth in Lending Act to define various relevant terms. The second and third provisions described above do not apply to any listing of a temporary rate period.

Section 1302(c)(1) requires the Federal Reserve Board to promulgate regulations implementing the amendments effected by this provision. Section 1302(c)(2) provides that these regulations shall not take effect until the later of 12 months after the Act’s enactment date or 12 months after the date of publication of such final regulations by the Board.

Section 1303, Disclosures related to ‘introductory rates’

Section 1303 of the conference report is substantively identical to section 1303 of the House bill and the Senate amendment. Subsection (a) of section 127(c) of the Truth in Lending Act by adding a provision to add further requirements for applications, solicitations, and related materials that are subject to section 1304 of the conference report. Section 1303(c)(2) provides that such regulations must clearly and conspicuously include the disclosures required under section 127(c)(1)(A) and (B).

Sec. 1304, Internet-based credit card solicitations

Section 1304 of the conference report is substantively identical to section 1304 of the House bill and the Senate amendment. Subsection (a) of section 127(c) of the Truth in Lending Act to require any solicitation to open a credit account for an open end consumer credit plan through the Internet or otherwise electronically that is not made available in writing.

Sec. 1305, Disclosures related to late payment deadlines and penalties

Section 1305 of the conference report is substantively identical to section 1305 of the House bill and the Senate amendment. Subsection (a) of section 127(c) of the Truth in Lending Act to provide that if a late payment fee is imposed due to the obligor’s failure to make payment on or before a required payment due date, the billing statement must specify the date on which that payment is due (or if different the earliest date on which a late payment fee may be charged) and the amount of the late payment fee to be imposed if payment is made after such date.

Sec. 1306, Prohibition on certain actions for failure to incur finance charges

Section 1306 of the conference report is substantively identical to section 1306 of the House bill and the Senate amendment. Subsection (a) amends section 127 of the Truth in Lending Act to add a provision prohibiting a creditor of an open end consumer credit plan from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. The provision does not become effective until the later of 12 months after the Act’s enactment date or 12 months after the date of publication of such final regulations.

Sec. 1307, Dual use debit card

Section 1307 of the conference report is substantively identical to section 1307 of the House bill and the Senate amendment. Subsection (a) provides that the Federal Reserve Board may conduct a study and submit a report to Congress containing its analysis of consumer protections under existing law to limit the unauthorized use of a debit card or similar access device. The report must include recommendations for legislative initiatives, if any, based on its findings.

Section 1307(b) provides that the Federal Reserve Board, in preparing its report, may include analysis of section 909 of the Electronic Fund Transfer Act to the extent this provision is in effect at the time of the report and the implementing regulations. In addition, the analysis may pertain to whether any voluntary industry rules have enhanced or may enhance the level of protections afforded consumers with such unauthorized use liability and whether amendments to the Electronic Fund Transfer Act or implementing regulations are necessary to further address adequate protection for consumers concerning unauthorized use liability.

Sec. 1308, Study of bankruptcy impact of credit extended to dependent students or spouses

Section 1308 of the conference report is substantively identical to section 1308 of the House bill and the Senate amendment. This provision directs the Board of Governors of the Federal Reserve System to study the effect of the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions.

Sec. 1309, Clarification of clear and conspicuous

Section 1309 of the conference report is substantively identical to section 1309 of the House bill and the Senate amendment. Subsection (a) provides that the Federal Reserve Board, and the Federal Trade Commission, the National Credit Union Administration and any other banking agencies, the National Credit Union Administration and any other banking agencies (as it is used in section 127(c)(3) of the Truth in Lending Act) to promulgate regulations implementing this provision. It also provides that the amendments effectuated by section 1309 do not take effect until 12 months after the Act’s enactment date or 12 months after the date of publication of such regulations.

Sec. 1309. Clarification of clear and conspicuous

Section 1309 of the conference report is substantively identical to section 1309 of the House bill and the Senate amendment. This provision directs the Board of Governors of the Federal Reserve System to study the effect of the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions.

Sec. 1309, Prohibition on certain actions for failure to incur finance charges

Section 1309 of the conference report is substantively identical to section 1309 of the House bill and the Senate amendment. Subsection (a) amends section 127 of the Truth in Lending Act to add a provision prohibiting a creditor of an open end consumer credit plan from terminating an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. The provision does not become effective until the later of 12 months after the Act’s enactment date or 12 months after the date of publication of such final regulations.

Sec. 1309. Clarification of clear and conspicuous

Section 1309 of the conference report is substantively identical to section 1309 of the House bill and the Senate amendment. Subsection (a) amends the Truth in Lending Act to define various relevant terms. The provision does not become effective until the later of 12 months after the Act’s enactment date or 12 months after the date of publication of such final regulations.

Sec. 1309. Clarification of clear and conspicuous

Section 1309 of the conference report is substantively identical to section 1309 of the House bill and the Senate amendment. This provision directs the Board of Governors of the Federal Reserve System to study the effect of the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions.
Section 1309(c) requires the Federal Reserve Board, in promulgating regulations under this provision, to ensure that the clear and conspicuous standard required for disclosures made under the Truth in Lending Act provisions set forth in section 1309(a) can be implemented in a manner that results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1401. Effective date; application of amendments

Section 1401 of the conference report is identical to section 1401 of the House bill and section 1501 of the Senate amendment. Subsection (a) states that the Act shall take effect 180 days after the date of enactment, unless otherwise specified in this Act. Section 1401(b) provides that the amendments made by this Act shall not apply to cases commenced under the Bankruptcy Code before the Act’s effective date, unless otherwise specified in this Act. The provision specifies that the amendments made by sections 308 and 322 shall apply to cases commenced on or after the date of enactment of this Act.

From the Committee on the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. James Sensenbrenner, Jr., J. Ryce, George W. Gerka, Lamar Smith, Steve Chabot, Bob Barr, Rick Boucher.

From the Committee on Financial Services, for consideration of sections 901-906, 907A-909, 911, and 1301-1307 of the Senate bill, and sections 901-906, 907A-909, 911, 913-4, and title XIII of the Senate amendment, and modifications committed to conference:

Michael G. Oxley, Spencer Bachus.

From the Committee on Energy and Commerce, for consideration of title XIV of the Senate amendment, and modifications committed to conference:

Billy Tauzin, Joe Barton.

From the Committee on Education and the Workforce, for consideration of section 1403 of the Senate amendment, and modifications committed to conference:

John Boehner, Michael N. Castle.

MANAGERS

Managers on the Part of the House:

Patrick Leahy, Joe Biden, Charles Schumer, Orrin Hatch, Chuck Grassley, Jon Kyl, Mike DeWine, Jeff Sessions, Mitch McConnell.

Managers on the Part of the Senate:

RECESS

The SPEAKER pro tempore. Pursuant to clause 12 of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 8 o’clock and 1 minute a.m.), the House stood in recess subject to the call of the Chair.

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore at 8 o’clock and 21 minutes a.m.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. Sessions, from the Committee on Rules, submitted a privileged report (Rept. No. 107-619) on the resolution (H. Res. 506) waiving points of order against the conference report to accompany the bill (H.R. 333) to amend Title 11, United States Code, and for other purposes, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION WAIVING REQUIREMENT OF CLAUSE 6(a) OF RULE XIII WITH RESPECT TO SAME DAY CONSIDERATION OF CERTAIN RESOLUTIONS

Mr. Sessions, from the Committee on Rules, submitted a privileged report (Rept. No. 107-619) on the resolution (H. Res. 507) waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES ON WEDNESDAY, SEPTEMBER 4, 2002

Mr. Sessions, from the Committee on Rules, submitted a privileged report (Rept. No. 107-620) on the resolution (H. Res. 508) providing for consideration of motions to suspend the rules on Wednesday, September 4, 2002, which was referred to the House Calendar and ordered to be printed.

GENERAL LEAVE

Mr. Horn. 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 matter for the celebration of the life of Dr. James David Ford, our Chaplain emeritus.

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

There was no objection.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker’s table and referred as follows:

8230. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Aspergillus flavus AF36; Amendment, Temporary Exemption From the Requirement of a Tolerance [OPP-2002-0979; FRL-789-1] received July 19, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8231. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency’s final rule — Atrazine, Bonide, Diphenamid, Imazalil, 6-Methyl-1, 3-Dithioli 4,5-n-Octamyl-2-one, Phosphamidon S-Propyl dipropylthiocarbamate, and Trimethacarb; Tolerance Revocations [OPP-
CONGRESSIONAL RECORD — July 25, 2002

Air Pollution Control District (CA 264-0350a; FRL-7212-8) received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

2324. A letter from the Acting Director, Defense Threat Reduction Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) for defense on Government Shared Transmittal No. 02-35, pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

2325. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense on Government Transmittal No. 02-35, pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

2326. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) to Iraq for defense on Government Transmittal No. 02-35, pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

2327. A letter from the Assistant Secretary of Defense, Department of Defense, transmitting notification that M. L. “Buzz” Hefti, who is now serving as Principal Deputy Assistant Secretary of Defense for Legislative Affairs will be leaving on July 1, 2002; to the Committee on Armed Services.

2328. A letter from the General Counsel, Department of the Treasury, transmitting the Department's draft bill entitled, “To authorize the United States participation in and appropriations for the United States contribution to the ninth replenishment of the resources of the International Development Association; to the Committee on Financial Services.

2329. A letter from the General Counsel, Department of the Treasury, transmitting the Department's draft bill entitled, “To authorize the United States participation in and appropriations for the United States contribution to the thirteenth replenishment of the resources of the International Development Association; to the Committee on Financial Services.

2330. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operating Regulation: Three Mile Creek, (Alabama) (CGD08-02-014) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2331. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operating Regulation: Three Mile Creek, (South Carolina) (CGD08-02-060)(RIN: 2115-ADV7) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2332. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operating Regulation: Three Mile Creek, (Georgia) (CGD08-02-061) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2333. A letter from the Assistant Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Ethyl chloride: Tolerance Revisions to the California Air Resources Board's Unified Air Pollution Control District and South Coast Air Quality Management District (CA 247-6494a; FRL-7235-7) received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2334. A letter from the Acting Director, Defense Threat Reduction Agency, transmitting notification concerning the Department of the Air Force's Proposed Letter(s) of Offer and Acceptance (LOA) for defense on Government Transmittal No. 02-35, pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

2335. A letter from the Acting Director, Defense Threat Reduction Agency, transmitting notification concerning the Department of the Air Force's Proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense on Government Transmittal No. 02-35, pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

2336. A letter from the Acting Director, Defense Threat Reduction Agency, transmitting notification concerning the Department of the Army's Proposed Letter(s) of Offer and Acceptance (LOA) to Libya for defense on Government Transmittal No. 02-35, pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.


2338. A letter from the Administrator, Office of Management and Budget, transmitting notification that the President has designated as the Final Rule, "Square 456 Payment in Lieu of Taxes Extension Temporary Amendment Act of 2002," that was received on July 15, 2002, under 5 U.S.C. 801(a)(1)(A); to the Committee on Government Reform.

2339. A letter from the Secretary, Department of Defense, transmitting a copy of D.C. ACT 14-430, “Healthcare Expenditure Adjustment Act of 2002,” that was received on July 25, 2002, pursuant to D.C. Code section 1–233(c)(1); to the Committee on Government Reform.

2340. A letter from the Secretary, U.S. Department of the Treasury, transmitting notification concerning the Department’s final rule — Drawbridge Operating Regulation: Three Mile Creek, (Alabama) (CGD08-02-014) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2341. A letter from the Secretary, U.S. Department of the Treasury, transmitting notification concerning the Department’s final rule — Drawbridge Operating Regulation: Three Mile Creek, (South Carolina) (CGD08-02-060)(RIN: 2115-ADV7) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

2342. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California Air Quality Management District and South Coast Air Quality Management District (CA 247-6494a; FRL-7235-7) received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

2343. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Benomyl; Tolerance Revisions to the California Air Resources Board's Unified Air Pollution Control District and South Coast Air Quality Management District (CA 247-6494a; FRL-7235-7) received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.
of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Eastchester Creek, NY (CGD01-02-076) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5266. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Atlantic Intracoastal Waterway, mile 1074 at Hallandale Beach, Broward County, FL (CGD07-02-076) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5267. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Drawbridge Operation Regulations: Hampton River, NH (CGD01-02-071) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5268. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Great Lakes Pilotage [USCG 2001-8894] (RIN: 2115-AH23) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5269. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Security Zone; Corpus Christi Inner Harbor, Corpus Christi, TX [COTP Corpus Christi-02-001] (RIN: 2115-AA78) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5271. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Navigation and Navigable Waters — Temporary Requirements for Notification of Arrival in U.S. Ports (USCG-2001-10669) (RIN: 2115-AG11) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5272. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Security Zone; Erie, Perry, Ohio (CGD09-01-130) (RIN: 2115-AA78) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5273. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department’s final rule — Security Zone; Corpus Christi Inner Harbor, Corpus Christi, TX [COTP Corpus Christi-02-001] (RIN: 2115-AA78) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

5274. A letter from the Under Secretary, Department of Defense, transmitting notification regarding a report required by Title IX of Public Law 107-117, specifying the projects and accounts to which funds provided under the National Defense Authorization Act for Fiscal Year 2002 authorized to be spent, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services and Appropriations.

5275. A letter from the Chief of Staff, Trade and Development Agency, transmitting notification of prospective funding obligations requiring special notification under Section 520 of Title III of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, Fiscal Year 2002; jointly to the Committees on International Relations and Appropriations.

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 are referred to the proper calendar, as follows:

Mr. HANSEN: Committee on Resources. H.R. 4620. A bill to accelerate the wilderness designation process by establishing a timetable for the completion of wilderness studies on Federal lands, and for other purposes (Rept. 107-613). Referred to the Committee of the Whole House on the State of the Union.

Mr. HANSEN: Committee on Resources. H.R. 1057. A bill to authorize the addition of lands to Pu‘uhonua o Honaunau National Historical Park in the State of Hawaii, and for other purposes (Rept. 107-613). Referred to the Committee of the Whole House on the State of the Union.

Mr. PRYCE of Ohio: Committee on Rules. H.R. 907. A bill establishing an Office on Women’s Health within the Department of Health and Human Services, and for other purposes; with an amendment (Rept. 107-616). Referred to the Committee of the Whole House on the State of the Union.

Mr. REYHNER of Pennsylvania, Mr. HUNTER of Alaska, and Mr. TIERNEY: Committee on Ways and Means.

H.R. 5211. A bill to authorize and direct the Secretary of Agriculture to take actions to promptly address the risk of fire and insect infestation in National Forest System lands; to the Committee on Agriculture, and in addition to be reported to the House Calendar.

Mr. HORN (for himself, Mr. SAWYER, and Mrs. MALONEY of New York): H.R. 5215. A bill to protect the confidentiality of information acquired from the public by statistical agencies for statistical purposes, and to permit the exchange of business data among designated statistical agencies for statistical purposes only; to the Committee on Government Reform.

Mr. CARSON of Indiana (for herself, Mr. MCNULTY, Mr. LUCAS of Kentucky, Mr. MORAN of Virginia, Mr. FROST, Mr. SANDERS, Mr. LYNCH, Mr. PAUL, Mr. HUNTER of Georgia, Mr. JACKSON-LEE of Texas, Mr. CUMMINGS, Mrs. JOHNSTON of Ohio, Mr. WATSON, Mr. DAVIS of Illinois, Mr. POMEROY, Mr. WATTERS of California, Mr. EVANS, Mr. SERRANO, Mr. MCINTYRE, Mr. BOSWELL, Mr. LEE, Mr. DINGELL, and Mr. BACA): H.R. 5216. A bill to establish a national rail passenger transportation system, reauthorize Amtrak, improve security and service on Amtrak, and for other purposes; to the Committee on Transportation and Infrastructure.

Mr. BROWN of Ohio (for himself, Mr. ALLEN, Mr. BERRY, Mr. PALONE, and Mr. SPRUKIT): H.R. 5217. A bill to amend the Federal Food, Drug, and Cosmetic Act to authorize the Secretary of Health and Human Services to grant waivers permitting individuals to import prescription drugs from Canada, to amend such Act with respect to the sale of prescription drugs from the Internet, and for other purposes; to the Committee on Energy and Commerce.

By Mr. ISTOOK: H.R. 5212. A bill to amend the Internal Revenue Code of 1986 to increase the limitation on capital losses an individual may deduct against ordinary income, and to adjust such amount for inflation; to the Committee on Ways and Means.

By Mr. BURTON of Indiana (for himself, Mr. LAFONTETTE, Mr. SHAYS, Mr. DELAHUNT, Mr. LEWIS of Georgia, and Mr. TIERNEY): H.R. 5213. A bill to redesignate the Federal building located at 955 Pennsylvania Avenue Northwest in the District of Columbia as the “Federal Bureau of Investigation Building”; to the Committee on Transportation and Infrastructure.

By Mr. REHBERG (for himself, Mr. PERSHING of Pennsylvania, Mr. YOUNG of Alaska, Mr. HERRICK, Mr. SIMPSON, Mr. OTTER, Mr. CANNON, Mr. JONES of North Carolina, Mr. DOOLITTLE, Mr. DUNCAN, Mr. GIBSON, Mr. RADANOVICH, Mr. TANCREDO, Mr. TAUZIN, Mr. GUTKNECHT, Mr. GOODE, Mrs. EMERSON, Mr. SCOFFER, Mr. SESSIONS, Mrs. CUMMINGS, Mr. SMITH, Mr. HAYWORTH, and Mr. HASTINGS of Washington):
H.R. 5229. A bill to amend the Internal Revenue Code of 1986 to allow a minimum deduction for business use of a home, and for other purposes; to the Committee on Ways and Means.

By Mr. DELAY:  

H.R. 5230. A bill to amend the Internal Revenue Code of 1986 to increase the standard mileage rate for charitable purposes to the standard mileage rate established by the Secretary of the Treasury for business purposes; to the Committee on Ways and Means.

By Ms. RIVERS (for herself and Ms. DINGELL):  

H.R. 5230. A bill to amend the Federal Meat Inspection Act, the Poultry Products Inspection Act, and the Federal Food, Drug, and Cosmetic Act to encourage the use of public health and food safety through enhanced enforcement, and for other purposes; to the Committee on Agriculture, and in addition to the Committees on Energy and 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. SANDERS:  

H.R. 5231. A bill to amend title 10, United States Code, to repeal the required offset of certain military separation benefits by the amount of disability benefits paid by the Department of Veterans Affairs; to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, 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. SCHAPFER:  

H.R. 5232. A bill to provide a cost-sharing requirement for the construction of the Arkansas Valley Conduit in the State of Colorado; to the Committee on Resources.

By Mr. SCHIPP (for himself, Mr. HORN, Ms. ENHOO, Mr. HARMAN, George Miller of California, Mr. Berman, Mr. SANDLIN, Mr. MATSUI, Mrs. TAUSCHER, Mr. THOMPSON of California, Mr. McDermott, Ms. WOOLSEY, Ms. LEE, Mr. SERRA, Mr. CAREY, Mr. ROYALALDARD, Mr. FAIR of California, Mr. SANDERS, and Mr. GREEN of Texas):  

H.R. 5233. A bill to amend title XXI of the Social Security Act to encourage the use of web-based enrollment systems in the State children’s health insurance program (SCHIP); to the Committee on Energy and Commerce.

By Mr. SESSIONS (for himself, Mr. DINGELL, Mr. BROWN of Ohio, and Mr. BUTZER):  

H.R. 5234. A bill to amend title XVIII of the Social Security Act to provide for fair payments under the Medicare hospital outpatient, home health, and hospice payment systems; to the Committee on Energy and Commerce, and in addition to the Committee on Ways and Means, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SIMPSON (for himself, Mr. GORE, and Mr. SENSENIBRINNER):  

H.R. 5235. A bill to amend title 38, United States Code, to compensate former prisoners of war, and for other purposes; to the Committee on Veterans’ Affairs.

By Mr. STUPAK:  

H.R. 5236. A bill to assure that enrollment in any Medicare prescription drug program is voluntary; to the Committee on Energy and Commerce, and in addition to the Committees on Ways and Means, Education and the Workforce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. UDALL of New Mexico:  

H.R. 5237. A bill to declare that the United States holds certain public domain lands in trust for the Pueblos of San Ildefonso and Santa Clara; to the Committee on Resources.

By Mr. UDALL of New Mexico:  

H.R. 5238. A bill to provide for the protection of archaeological sites in the Galisteo Basin in New Mexico, and for other purposes; to the Committee on Resources.

By Mr. UDALL of New Mexico:  

H.R. 5239. A bill to provide for a special meeting of the Congress of the United States on the Northern Rio Grande National Heritage Area in the State of New Mexico, and for other purposes; to the Committee on Resources.

By Mr. PICKERING (for himself, Mr. PITTS, Mrs. CAPITO, Mr. HAYES, Mr. WATTS of Oklahoma, Mr. NORWOOD, Mr. WAMP, Mr. BROWN of South Carolina, Mr. THOMPSON of Texas, and Mr. OLXLEY):  

H.J. Res. 108. A joint resolution proposing an amendment to the Constitution of the United States to guarantee the right to use and recite the Pledge of Allegiance to the Flag and the national motto; to the Committee on the Judiciary.

By Mr. ARMBY (for himself and Mr. GEPHART):  

H. Con. Res. 448. Concurrent resolution providing for a special meeting of the Congress of the United States on the occasion of September 11, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the people of the City of New York, and for other purposes; considered and agreed to.

By Mr. ARMBY (for himself, Mr. GEPHART, Mr. RANGEL, Mr. GILMAN, Mr. FOSSELLA, and Mr. NADLER):  

H. Con. Res. 449. Concurrent resolution providing for representation by Congress at a special meeting in New York New York on Friday, September 6, 2002, considered and agreed to.

By Mr. SKELTON (for himself, Mr. STUMP, Mr. LARSEN of Connecticut, and Mr. HUTTENBRENNER):  

H. Con. Res. 450. Concurrent resolution encouraging the people of the United States to honor Patriot Day, September 11, by writing to the men and women serving in the Armed Forces; to the Committee on Government Reform.

By Mr. KIND (for himself and Mr. OSBORNE):  

H. Con. Res. 451. Concurrent resolution recognizing the importance of teaching United States history in elementary schools, and for other purposes; to the Committee on Education and the Workforce.

By Mr. HASTINGS of Florida:  

H. Res. 505. A resolution expressing the sense of the House of Representatives in support of Federal and State funded in-home care for the elderly; to the Committee on Energy and Commerce.

By Mr. LANTOS:  

H. Res. 506. A resolution expressing the sense of the House of Representatives concerning the continuous repression of freedoms within Iran and of individual human rights abuses, particularly with regard to women; to the Committee on International Relations.

By Mr. NRY (for himself and Mr. GUTKNICK):  

H. Res. 506. A resolution expressing the sense of the House of Representatives concerning the desire for freedom and human rights within Iran; to the Committee on International Relations.

MEMORIALS

Under clause 3 of rule XII 351. The SPEAKER presented a memorial of the General Assembly of the State of Iowa, relative to House Resolution No. 49 memorializing the United States Congress,
the President of the United States and other federal officials to deal swiftly with those who threaten our freedom; jointly to the Committees on the Judiciary, International Relations, and Transportation and Infrastructure.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 134: Mr. Shaw.
H.R. 168: Mr. Buxus.
H.R. 189: Mr. Manzullo.
H.R. 207: Mr. Hastings of Florida, and Mr. Coyne.
H.R. 292: Mr. Sherman.
H.R. 652: Mr. Holden, Mr. Doyle, Ms. Eddie Bernice Johnson of Texas, Mr. Menendez, Mrs. Johnson of Connecticut, and Mr. Isakson.
H.R. 912: Mr. Cannon and Mr. Frost.
H.R. 1090: Ms. Kilpatrick.
H.R. 1099: Mr. Kanjorski, Mr. Towns, and Ms. Kaptur.
H.R. 1202: Mr. Levin.
H.R. 1256: Mr. Larsen of Washington.
H.R. 1322: Mr. Doyle.
H.R. 1331: Mrs. Capito.
H.R. 1433: Mr. Langevin.
H.R. 1517: Mr. Latham.
H.R. 1624: Mr. Sweeney, Ms. Lofgren, Mr. Conyers, Mr. Waxman, Ms. Berkley, Mr. Udall of Colorado, Mr. Shuster, Mr. Turner, and Mr. Boyd.
H.R. 1839: Mr. Tom Davis of Virginia.
H.R. 1953: Mr. Hall of Ohio and Mr. Lammson.
H.R. 2012: Mr. Cooksey.
H.R. 2014: Mr. Hoeffel and Mrs. Myrick.
H.R. 2035: Mr. Hoeffel, Mr. Borski, and Mrs. Napolitano.
H.R. 2117: Ms. Hooly of Oregon.
H.R. 2220: Mr. Hoeffel.
H.R. 2316: Mr. Hoeffel.
H.R. 2476: Mr. Udall of New Mexico.
H.R. 2570: Ms. Kaptur.
H.R. 3183: Mr. Frank.
H.R. 3238: Mr. Davis of Illinois and Mr. Berman.

H.R. 3273: Mr. Camp.
H.R. 3287: Mr. Cole.
H.R. 3464: Ms. Baldwin.
H.R. 3486: Mr. Young of Florida.
H.R. 3552: Mr. Nadler, Ms. Solis, Mr. Lewis, Ms. Berkley, and Mr. Berman.
H.R. 3686: Mr. Lucas of Oklahoma.
H.R. 3718: Mrs. Thurman and Mr. Diaz-Balart.
H.R. 3896: Mr. Souder.
H.R. 3892: Mr. Foley, Mr. Thompson of Mississippi, Mr. Phillips, Mr. Shimkus, Mr. Chahmless, and Mr. Mathison.
H.R. 3974: Mr. Boozman.
H.R. 3836: Mr. Riegel.
H.R. 3864: Mr. Kennedy of Rhode Island, Mr. Ross, Mrs. Clayton, and Mrs. Jones of Ohio.
H.R. 3965: Mr. Goodlatte and Mr. Sullivan.
H.R. 3956: Mr. Udall of Colorado.
H.R. 3974: Mr. Bluminau and Ms. Jackson-Lee of Texas.
H.R. 3992: Mrs. Wilson of New Mexico.
H.R. 4039: Mr. Upton.
H.R. 4099: Mr. Menendez, Mr. Crowley, Mrs. Christensen, and Mr. Owens.
H.R. 4091: Mr. Menendez, Mr. Crowley, Mrs. Christensen, and Mr. Owens.
H.R. 4482: Mr. Costello, Mr. Blagojevich, Mr. Inslee, Mr. Pickering, Mr. Brady of Pennsylvania, and Mr. Moore.
H.R. 4515: Mr. Meehan.
H.R. 4548: Ms. Hart, Mr. Andrews, Ms. Baldwin, Mr. Holt, Mr. Hayes, Ms. Brown of Florida, Ms. Berkley, Mr. McHugh, Mrs. Emerson, Mr. McNulty, and Mr. Frank.
H.R. 4562: Mr. Bluminau.
H.R. 4614: Mr. Clement.
H.R. 4643: Mr. Sanders.
H.R. 4663: Mr. Herzig and Mr. George Miller of California.
H.R. 4669: Mr. Bluminau.
H.R. 4724: Mr. Abercrombie.
H.R. 4738: Mr. Walden of Oregon.
H.R. 4785: Mr. Cooksey and Mr. Clay.
H.R. 4794: Mr. Boswell.
H.R. 4807: Mr. Cannon and Mr. Upton.
H.R. 4811: Mr. Hoeffel.
H.R. 4837: Mr. Green of Texas.
H.R. 4943: Mr. Kehns, Mr. Clyburn, Mr. Costello, Mr. Hostettler, Mr. Osborne, Mr. Clay, Mr. Luther, Mr. Watkins, and Mr. Rush.

H.R. 5013: Mr. Riley.
H.R. 5033: Mrs. Myrick.
H.R. 5047: Mr. Turner, Mr. McGovern, Mr. Larson of Connecticut, and Ms. Kaptur.
H.R. 5056: Mr. Hoyn, Mr. Hoeffel, Mr. Deutch, Mr. Crowley, and Mr. Schiffer.
H.R. 5085: Mr. Simpson, Mr. Phillips, Mr. McHugh, Mr. Baldecchi, Mr. Carson of Oklahoma, and Mr. Calvert.
H.R. 5098: Mr. Towns and Mr. Andrews.
H.R. 5107: Mr. Boyd, Mr. Capuano, Ms. Carson of Indiana, Mrs. Claytan, Mr. Conyers, Mr. Doggett, Mr. Gonzalez, Ms. Harman, Ms. Hooly of Oregon, Mr. Lantos, Mr. Larsen of Washington, Ms. McKinney, Mrs. Meek of Florida, Mr. Moore, Mr. Moran of Virginia, Mr. Pascrell, Mr. Pastor, Mr. Pomeroy, Mr. Rangel, Mr. Sawyer, Mr. Schiff, Mr. Scott, Mr. Snyder, Mr. Tierney, and Mr. Wexler.
H.R. 5155: Mr. Bluminau.
H.R. 5157: Mr. Boozner.
H.R. 5158: Mr. Gilchrist.
H.R. 5164: Ms. Norton, Mr. Underwood, Mr. McGovern, Mr. Israel, and Mr. Towns.
H.R. 5168: Mr. Sullivan and Mr. Green of Wisconsin.
H.R. 5175: Mr. Borski, Mr. Hoeffel, Mr. Weldon of Pennsylvania, Mr. Mukta, Mr. Mascara, Mr. Holden, and Mr. Greenwood.
H.R. 5185: Mr. Hunter.
H.R. 5189: Mr. Schiffer.
H.R. 5196: Mr. Andrews.
H.R. 5193: Mr. Weldon of Florida, Mr. Cantor, and Mr. Peter.
H.Res. 447: Mr. Hoeffel.
H.Con. Res. 409: Mr. Camp.
H.Res. 115: Mr. Sandlin and Mr. Leach.
H.Res. 295: Mr. Clay.
H.Res. 454: Mr. Kucinich.
H.Res. 467: Mr. Johnson of Illinois and Mr. Nadler.
H.Res. 484: Mr. Frank.
H.Res. 487: Ms. Eddie Bernice Johnson of Texas.
EXTENSIONS OF REMARKS

RECOGNITION OF MR. JOE ORSCHEN

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Joe Orscheln, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Joe is a senior at Southern Methodist University and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Joe joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Joe has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Joe has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Joe has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Joe Orscheln for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

TRIBUTE TO DR. JANE GATES

HON. MARION BERRY
OF ARKANSAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a great American, a dear friend and a distinguished citizen of the First Congressional District of Arkansas, Dr. Jane Gates.

During my tenure in office, it has been my privilege to know and work with Dr. Jane Gates. As Chair of the Political Science Department and former Associate Dean of the College of Arts and Sciences at Arkansas State University, Dr. Gates has mentored numerous students as they have prepared for their future endeavors. Countless individuals from across our state and nation, regularly seek the wise counsel of Dr. Gates who has authored many scholarly publications, presented at many academic forums, and participated in numerous professional and community activities.

Despite the overwhelming pace she sets for herself, one priority always remains—her students. Perhaps the most impressive of her legacies are the many former students that now serve our state and this nation as public servants.

In August, Dr. Gates will leave Arkansas State University after a distinguished 27-year career to assume her new responsibilities as Dean of the College of Arts and Social Sciences at Savannah State University.

It has been a profound honor and privilege to know Dr. Gates and to be her friend for many years. I have been the recipient of her wisdom and the witness to her fairness and compassion toward all those she encounters.

The state of Arkansas is a better place because of Dr. Jane Gates, and I am proud to cause of Dr. Jane Gates, and I am proud to

TRIBUTE TO JILL HAZELBAKER

HON. GREG WALDEN
OF OREGON
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. WALDEN of Oregon. Mr. Speaker, I rise today to convey my deepest appreciation to a member of my Washington, D.C. staff for her tireless efforts on behalf of the good people of Oregon’s 2nd Congressional District. Jill Hazelbaker will soon conclude her internship and return to the University of Oregon to finish her dual degree in Political Science and History.

Jill came to my office fresh from a semester abroad in London. She had only a few days to relax at home in Salem, Oregon, before picking up and moving to Washington, D.C. for her summer internship. Many students would balk at such a quick turnaround, but not Jill. Her travels have taken her from Africa to Europe, and she has participated not only in a semester abroad in London, but a summer studying in Beijing, China. She has no qualms about traveling to distant lands and learning about other people and cultures, an attribute that has served her well in the unique political environment of Capitol Hill and helped ease her transition into this international city.

Though Jill has made a habit of traveling the globe, she is an Oregonian through and through. She cares deeply about the people of Oregon and the issues that matter to them, and plans on making her home there. She is committed to her community and volunteers her time reading to elementary school children and registering voters at her university. Jill takes pride in her work and is one of only eight student advertising executives at the Oregon Daily Emerald, a paper serving the UO campus community.

Mr. Speaker, Jill has been a terrific addition to my office. She tackles every project she is given with enthusiasm and dedication. Her background in history has made her a natural at giving tours of the Capitol, and she greets constituents with a warm smile and makes them feel at home. Jill has also attended committee mark-up meetings and made a considerable effort to learn as much as she can about the legislative process.

Mr. Speaker, my office has been lucky to have an intern like Jill. Her strong work ethic and upbeat attitude will truly be missed around the office, but will no doubt serve her well in any field of work that she chooses to pursue. Best of luck in the future Jill, and keep up the good work.

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

INTRODUCING A RESOLUTION TO EXPRESS THE SENSE OF THE HOUSE OF REPRESENTATIVES IN SUPPORT OF FEDERAL AND STATE FUNDED IN-HOME CARE FOR THE ELDERLY

HON. ALCEE L. HASTINGS
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. HASTINGS of Florida. Mr. Speaker, I rise today to express my support of Federal and State funded in-home care for the elderly. This legislation essentially highlights the inadequacies seniors face when electing in-home care by increasing financial assistance for in-home care, establishing fee payment guidelines, implementing better schooling for in-home aides, and assembling a supervisory board of care givers, we can help to ensure that the quality of care elders receive in home is as adequate as hospitalized attention.

Mr. Speaker, this is an important resolution for two crucial reasons. First, it allows the elderly to remain independently viable during the last years of their life. Supporting studies show that seniors who receive in-home care have greater life expectations than seniors who are moved from everything that is familiar to them and placed in nursing homes. Second, this resolution would encourage increase employment opportunities in the nursing and in-home care industries. By implementing government funded in-home care to equal that of nursing home care, more seniors will elect being nursed at home, which in turn increases job opportunities. All of which we can achieve through raising the quality of in-home care.

Mr. Speaker, I urge my colleagues to support this legislation. As members of Congress we have a great opportunity to make a positive impact on this issue, an issue that is of concern to many of our grandparents, parents, and will be of concern to us. I look forward to...
PARTIAL-BIRTH ABORTION BAN
ACT OF 2002

SPEECH OF
HON. PATSY T. MINK
OF HAWAII
IN THE HOUSE OF REPRESENTATIVES
Wednesday, July 24, 2002

Mrs. MINK of Hawaii. Mr. Speaker, I rise today to state my opposition to the unconstitutional H.R. 4965, the Late Term Abortion Act of 2002.

At a time when there are many other issues facing our nation, from the economy to the war on terrorism, the Republican leadership has instead decided to interfere with a woman's right to choose.

Since the last House vote on a bill banning so-called “partial-birth abortion,” the Supreme Court has spoken unequivocally on these bans. The decision in Roe v. Wade struck a careful balance between the right of a woman to choose and the states' interest in protecting potential life after viability. Most recently, in June 2000, the Court handed down Casey v. Carhart, striking down a Nebraska law banning “partial-birth abortions.” The Nebraska law is nearly identical to H.R. 4965. The court gave the following reasons for striking the Nebraska ban.

First, the Nebraska law was unconstitutional—agreed because it did not rely on a medical definition of what is prohibited. H.R. 4965 suffers from this same flaw. The bill does not identify any specific procedure it seeks to ban. Nor does it contain language stating that it applies only post-viability. Nor does it exclude common procedures from its prohibitions. As a result, contrary to rhetoric that focuses on a full-term fetus, the bill applies well before viability, and could ban other safe procedures.

Second, the Nebraska law did not provide an exception to protect women's health. Instead of including health exceptions, the sponsors of H.R. 4965 have provided fifteen pages of “findings” which assert that Congressional findings of fact are superior to judicial findings of fact. In short, these sponsors are essentially admitting that their bill is unconstitutional under Stenberg v. Carhart, and that Congress should simply ignore this Supreme Court ruling.

As I value women's health and a woman's right to choose, I voted against H.R. 4965.

RECOGNIZING MR. FLETCHER COX
HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Fletcher Cox, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Fletcher is a senior communications major at William Jewell College and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Fletcher joined my staff for the 107th Congress as part of the House of Representatives Intern Program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Fletcher has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Fletcher has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Fletcher has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Fletcher Cox for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

FALUN GONG
SPEECH OF
HON. RICHARD A. GEPHARDT
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Wednesday, July 24, 2002

Mr. GEPHARDT. Mr. Speaker, earlier this evening I was unavoidably detained during the vote on House Concurrent Resolution 188, expressing the sense of Congress that the Government of the People's Republic of China should cease its persecution of Falun Gong practitioners. Had I been present for this vote, I would have voted "aye."

As enumerated repeatedly in U.S. Government and independent human rights reports, practitioners of Falun Gong have been subjected to numerous human rights abuses by the Chinese Government. These abuses have extended from intimidation and surveillance to torture and other cruel, inhumane, and degrading treatment against them and other prisoners of conscience.

These abuses must end. This resolution calls on the Chinese Government to remove all Falun Gong practitioners from detention and put an end to the practices of torture and
other cruel, inhumane, and degrading treatment against them. It also calls on the Chinese Government to abide by the International Covenant on Civil and Political Rights and the Universal Declaration of Human Rights by allowing Falun Gong practitioners to pursue their personal beliefs.

Mr. Speaker, we must continue to remind the international community of the Chinese Government’s systematic abuse of the human rights of Falun Gong practitioners and others, and to demand—in every possible forum—that the Chinese Government cease such activities. I therefore strongly support this resolution.

TRIBUTE TO GEORGE FISHER

HON. MARION BERRY
OF ARKANSAS
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BERRY. Mr. Speaker, I rise today to pay tribute to a talented artist, a shrewd political observer and great American, George Fisher.

Since the 1950s, George has been dispensing his incisive form of commentary in the form of political cartoons. He has trained his artistic ‘gun’ on everything from satirizing Arkansas politicians to commenting on international affairs. Nothing seems to escape his notice, and his ability to expose and explain complex social and political issues truly puts him in a league of his own.

George began drawing political cartoons for the West Memphis News soon after returning from Europe where he bravely served his country as an infantry soldier in World War II. He honed his talent and predilection for political cartoons after the West Memphis News was driven out of business by the political machine that he fought, he moved to Little Rock and opened a commercial art service. On the chance that he might find his way into national affairs, nothing seemed to escape his notice, and his ability to expose and explain complex social and political issues truly puts him in a league of his own.

George Fisher

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. James Mackle, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government. James is a senior political science major at Furman University and has distinguished himself as an intern in my Washington Office by serving the great people of the 6th District of Missouri. James joined my staff for the 107th Congress as part of the House of Representatives Intern Program at the United States Capitol in Washington, DC. A program designed to involve students in the legislative process through active participation. Through this program, James has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, James has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. James has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through the variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. James Mackle for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our best wishes for continued success and happiness in all his future endeavors.

IN TRIBUTE TO SPECIAL AGENT JOHN MICHAEL GIBSON AND OFFICER JACOB JOSEPH CHESTNUT

HON. ALBERT RUSSELL WYNN
OF MARYLAND
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WYNN. Mr. Speaker, I join my colleagues in remembering and paying tribute to Special Agent John Michael Gibson and Officer Jacob Joseph Chestnut. Two valiant federal employees who, in a selfless act of heroism, made the ultimate sacrifice in service to their country on July 24, 1998.

Special Agent John Michael Gibson was a religious man, a family man. He always made time for his wife and their three children. He is remembered as a kind, honest, devout, caring and giving human being who was loved and respected by his friends, colleagues, and his community.

As many employees on Capitol Hill, Officer Jacob Joseph Chestnut was a resident of the 4th Congressional District of Maryland. Not only is he missed by the Department, but also the Maryland community suffers without the benefit of his kind and gentle spirit.

A retired Air Force Master Sergeant and a 18 year veteran of the United States Capitol Police, Officer J.J. Chestnut was a model federal employee and a gentle human being. A
Mr. Speaker, it is only fitting that we honor and cherish the memories of these brave men. I hope their families can continue to take comfort in knowing that many throughout the nation, including myself, remain in prayer for them and the U.S. Capitol Police Department.

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Mr. Speaker, it is only fitting that we honor and cherish the memories of these brave men. I hope their families can continue to take comfort in knowing that many throughout the nation, including myself, remain in prayer for them and the U.S. Capitol Police Department.

TRIBUTE TO THE COMMITTEE FOR GREEN FOOTHILLS ON THE OCCASION OF THEIR 40TH ANNIVERSARY

HON. ANNA G. ESHOO
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Ms. ESHOO. Mr. Speaker, I rise today in recognition of the 40th Anniversary of the Committee for Green Foothills, based in Palo Alto, California and dedicated to preserving open space on the San Francisco Peninsula. In 1962, a group of more than 25 concerned citizens gathered in Ruth Spangenberg’s living room for a meeting organized by Lois Crozier-Hogle and they created a brand new grassroots organization committed to the protection of the Peninsula foothills from development. At that first meeting, Gary Gerard suggested the name Committee for Green Foothills and Wallace Stegner was elected the first president of the group. Since that first meeting, the group has remained at the forefront of the establishment and maintenance of policies that protect the environment and open space throughout San Mateo and Santa Clara Counties of California. They’ve done this by encouraging long-range planning and sensible growth by local governments, businesses and developers. The manifestation of these enlightened policies can be seen in the Stanford University 1971 Land Use/Policy Plan, the 1994 Santa Clara County General Plan, and San Jose’s first Urban Growth Boundary in 1995. The Committee has also led the way in ensuring the protection of a number of critical habitats and key open space lands including Edgewood Park, the Palo Alto Baylands, Mirada Surf, Bair Island, Montara State Beach, and Pigeon Point among many others. Today, the goals of its founders carry on through the Committee’s growing membership which not only advocates for the preservation of land and open space, but also educates residents of the San Francisco Peninsula about the land and the critical need for sustainable development. With the support of its membership and its partnerships with many public and private environmental organizations, the Committee has made a profound difference in San Mateo and Santa Clara Counties and we are a better place because of their extraordinary accomplishments.

Because of the forty years of dedicated advocacy and education, the Committee for Green Foothills has brought about the protection and preservation of some of our nation’s most prized lands. These lands not only enhance our quality of life . . . they have attracted people from around the country and the world to see, to hike, and to walk . . . all in awe of what the jewels in the crown of California’s 14th Congressional District are.

Mr. Speaker, I ask the entire House of Representatives to join me in saluting the Committee for Green Foothills on their 40th Anniversary and thanking them for their incomparable contributions to our community and our country.

RECOGNIZING MR. BROCK BANKS

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Mr. Brock Banks, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Brock, the son of Paul and Jane Banks of Weston, Missouri, is a student at Maui High School and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Brock joined my staff for the 107th Congress as part of the House of Representatives intern program at the United States Capitol in Washington, DC, a program designed to involve students in the legislative process through active participation. Through this program, Brock has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Brock has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Brock has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Brock Banks for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.

IN RECOGNITION OF MACHINE EMBROIDERY

HON. BOB RILEY
OF ALABAMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. RILEY. Mr. Speaker, I rise today to give recognition to Machine Embroidery.

We are all familiar with hand embroidery pieces done by our grandmothers or on display in historic houses and antiques shops. But today, there are machines that can embroider on any fabric from the most delicate material used in heirloom sewing to the heaviest material from which luggage is made.

It is in the past few years that home embroidery machines have become more popular. And with modern technology, computers and the internet, there are unlimited designs and a worldwide network of fellow machine embroiderers who share ideas and their designs. After September 11, 2001, there were over 600 memorial designs shared by designers all over the world. These designs were embroidered on many wearable and usable items reflecting our love of our country.

The home embroidery machines have given a boost to our country’s economy through cottage industries that have sprung up, and this is true of other countries as well.

But, most important, thousands of individuals all over the world using embroidery machines are each doing a small part in their own way to make our lives more beautiful with their handiwork.

IN HONOR OF MR. LEWIS EISENBERG

HON. MARGE ROUKEMA
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mrs. ROUKEMA. Mr. Speaker, I rise today in recognition of a good friend of the State of New Jersey, Mr. Lewis Eisenberg. On October 12th, Lew will celebrate his 60th birthday with family and friends in Rumson, New Jersey. And I am honored to take this opportunity to recognize the career, the leadership and the friendship of Lew Eisenberg.

Over the years, I have spent much time with Lew in the same political circles, and even New Jersey circles. Yet both of us share more than just the same group of friends. We share a strong belief in the ideals of our Party—and the people who work to achieve those ideals. Lew has turned this passion into a career of significant public service.

Lew has held many titles, and done much with those titles. Indeed, positions of leadership and power can be overwhelming, yet Lew has demonstrated outstanding guidance and has consistently been recognized and awarded for the contributions he has made to society.

Lew has been in positions of authority at times when very few people would ever want to be in those positions. And he handled them with skill and compassion. I cannot speak justly of Lew’s career without mentioning his tremendous and difficult service as Chairman of the Port Authority of New York and New Jersey from 1995 through December of 2001.
After his term ended, Governor Patoki appointed him to the position of Director of the Lower Manhattan Development Corporation. New York and New Jersey have been lucky to have such a man serve them, especially during their time of need.

Lewis now serves in a senior capacity with our Party. As a nation that has as its foundation a strong two-party system, I have faith that this service will benefit the entire nation. I am eager to observe his success. He continues to truly work for the people, and I am grateful to call this good man a friend.

Mr. Speaker, I ask my colleagues to join me this evening in honoring Mr. Lewis Eisenberg.

HONORING BROWARD COUNTY GOVERNMENT FOR WINNING 11 NACo AWARDS

HON. ALCEE L. HASTINGS
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. Hastings of Florida. Mr. Speaker, I rise today to offer my heartfelt congratulations to my home of Broward County for winning a total of 11 awards in the National Association of Counties’s 2002 Achievement Awards Program. The awards represent the very best in innovative county government programs that improve the implementation and enhancement of efficient service to promote responsible and reliable county government. For Broward County and the state of Florida this is an incredible accomplishment, for it shows that local government can make significant strides to improve its effectiveness.

I am proud to recognize the many hard working county employees for providing individuals the programs and services they need to be active and productive members of our community.

Mr. Speaker, I want to briefly highlight 3 of the 11 award winning programs.

First, let me identify the Environmental Benchmarks Program which was set up to evaluate the state of natural resources in Broward County. The Departments of Planning and Environmental Protection, have created a system of performance measures to gauge the pressures facing natural resources in the county. The program is part of the Broward County Commission’s New Visions goal to develop a comprehensive policy to help protect the local environment.

Another noteworthy NACo award winning program was the Integrated Services for Older Adults with Substance Abuse Issues program. For elderly patients with substance abuse problems, the county provides an array of services including prevention, treatment and outpatient services.

And finally, let me cite the Employee Computer Literacy Access Program, which has helped employees purchase computers for home use through County surplus sales. The County also provides computer training to help employees gain more skills for job enhancement.

Broward County has also created programs that deal with the stimulation of tourism. The county has also provided a Cultural Information Center, so visitors can get quick and easy information about events in the community.

The Broward County Government has been a beacon to the rest of the country that government truly is most effective at the local level. I once again proudly offer my congratulations to Broward County for their 11 NACo awards. They indeed deserve them.

DISAPPEARANCE OF RAUL WALLENBERG

HON. MICHAEL FERGUSON
OF NEW JERSEY
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. Fergusson. Mr. Speaker, I rise today on behalf of Raoul Wallenberg, a Swedish diplomat during World War II. He is attributed with saving the lives of up to 100,000 Hungarian Jews from death camps in 1944 and 1945.

Raoul Wallenberg was born on August 4, 1912. To this day, we do not officially have a date of when he died. In January of 1945, Wallenberg was taken into the custody of then Soviet Russia. The Swedish government has lobbied on a number of occasions for answers regarding his captivity—to little or no avail.

On January 12, 2001, a joint Russian-Swedish panel released a report that did not reach any conclusion regarding Wallenberg's fate.

If Adolph Hitler represents the worst of mankind, then Raoul Wallenberg represents the best. As a constituent of mine, Hyman Kuperstein of Springfield, New Jersey, said: “There was no Wallenberg in France or Romania,” and too many Jewish lives were lost there. Thank God for Raoul Wallenberg.

This August would be Raoul Wallenberg’s 90th birthday. The world has a right to know when and how he died.

TRIBUTE TO ANTHONY AZADEH

HON. GREG WALDEN
OF OREGON
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. Walden of Oregon. Mr. Speaker, I rise today to pay tribute to a member of my Washington, DC staff for his tireless efforts on behalf of the great people of Oregon’s 2nd Congressional District. Anthony Azadeh will conclude his internship this week to pursue a law degree at the Northwestern School of Law at Lewis and Clark College. Anthony has done a great job and will be missed.

Following his graduation from Aloha High School, Anthony chose to further his education by attending Lewis & Clark College, where he stood out both academically and athletically. He achieved Dean’s List honors and a Phi Beta Kappa key while pursuing his bachelor’s degree in Political Science, and was still able to play four years of football for the Pioneers as a running back. Anthony led the team in rushing yards for the 2000 season. Not many students are able to balance their studies with outside activities, but Anthony was able to excel at both.

While still in school, Anthony made a run for Oregon State Representative in the 38th District, an attempt that was surely difficult during his last semester in college. Facing a tough primary, Anthony worked hard soliciting votes by going door-to-door and convincing students on campus to switch their party affiliations to vote for him. Although he was defeated in the primary, Anthony showed great promise as a future candidate.

Anthony has been an asset to my office during his tenure. He brought with him a strong interest in politics and a true desire to serve the people of Oregon. He worked tirelessly at any task he was given, from simple data entry to drafting letters. Anthony also used his time in Washington to learn about many different aspects of government, taking time to attend committee hearings and lectures.

Mr. Speaker, Anthony has the right combination of talent, determination, and idealism to make it far in this world, and I have every confidence that he will continue to do well in law school and in whatever else he decides to pursue. Oregon is lucky to have such an outstanding citizen, and I wish Anthony the best of luck in his future endeavors.

RECOGNIZING MR. JOSH WOOLSEY

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. Graves. Mr. Speaker, I proudly pause to recognize Mr. Josh Woolsey, a very special young man who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Josh is a senior at the University of Central Florida and has distinguished himself as an intern in my Washington office by serving the great people of the 6th District of Missouri. Josh joined my staff for the 107th Congress as part of the House of Representatives Intern Program at the United States Capitol in Washington, D.C., a program designed to involve students in the legislative process through active participation. Through this program, Josh has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During his time as an intern in my office, Josh has successfully demonstrated his abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Josh has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of his knowledge and skills acquired prior to his tenure as an intern and through a variety of new skills he has acquired while serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in commending Mr. Josh Woolsey for his many important contributions to the U.S. House of Representatives during the current session, as well as joining with me to extend to him our very best wishes for continued success and happiness in all his future endeavors.
Mr. PASTOR. Mr. Speaker, I rise today to recognize the work of the Arizona Coalition for New Energy Technologies. This coalition brings together over three dozen business and non-profit organizations from around Arizona to educate opinion leaders and other key stakeholders about the many benefits of renewable energy and energy efficient technologies.

Since its formation in January of this year, the Arizona Coalition for New Energy Technologies has achieved some important accomplishments. It helped four Arizona state legislators launch a bipartisan Renewables and Energy Efficiency Caucus in the state legislature, modeled on the U.S. House Renewable Energy and Energy Efficiency Caucus of which I am a member. The mission of this state caucus, which has grown to 14 members of both parties, is to educate lawmakers about cutting-edge advances in new energy technologies to market in Arizona, the United States and the world. Under the auspices of this caucus, three member companies of the Arizona Coalition for New Energy Technologies presented a well-received informational briefing in February to state legislators and other interested parties at the state capitol in Phoenix.

Arizona is a national leader in promoting clean new energy technologies through state laws and policies, which is appropriate, given our state’s wealth of solar and other renewable resources. I salute the Arizona Coalition for New Energy Technologies and congratulate the Coalition for its leadership in educating key stakeholders on the growing importance of renewable energy technologies to the energy security of our state and nation.

CONGRATULATING SARAH MCKIERNAN

HON. MARK STEVEN KIRK
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. KIRK. Mr. Speaker, on January 29, 2002, President Bush called upon every American to volunteer two years to the service of our country. President Bush also called for the United States to renew our commitment to the Peace Corps by doubling the number of volunteers in five years.

This August, Sara McKiernan from Winnetka, Illinois, will return from her two year Peace Corps term in Mongolia. Sara’s commitment to her country and compassion to the world is an example for us all. While in Mongolia, Sara taught both young children and adults the English language. But, more importantly, Sara’s work was a vehicle in spreading the principles of democracy throughout the world.

As several members of this body know, the job of a Peace Corps volunteer is one of the most challenging in the world. I commend Sara and all the Peace Corps volunteers deployed throughout the world. These past two years have been an even greater challenge being separated from family and loved ones, particularly during these traumatic times. But her work could not be more important. We appreciate Sara’s work and dedication, welcome home.

HON. CHARLES W. “CHIP” PICKERING
OF MISSISSIPPI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. PICKERING. Mr. Speaker, today I am introducing legislation that would create a constitutional amendment to protect the Pledge of Allegiance and the National motto. Recently, a federal court ruled that the Pledge of Allegiance was unconstitutional and cannot be recited in schools.

This is the latest in a rash of stunning decisions that have come from our federal courts. It is an unfortunate assault on America’s tradition of recognizing the role of God in our country’s life and as the foundation of our liberties.

The order and decision by this court has been suspended, but it is a chilling fact that this decision was ever issued in a U.S. Federal court. An overwhelming majority of Americans oppose this decision and we are hopeful that it will be overturned—but there is no guarantee. In fact, there have been reports of those wishing to challenge the use of “In God We Trust,” the National motto, on our currency.

Unfortunately, there has been a trend in our courts that have sought to remove every vestige of God from our country, while child pornography is protected. The time for action has come. Today, I am introducing legislation that would provide for a constitutional amendment to protect the “Pledge of Allegiance” and the national motto “In God We Trust.”

Amending the Constitution is never taken lightly, nor should it be. Yet Congress can no longer sit idly while the courts rewrite our nation’s history and traditions. This amendment is very clean, clear, concise, and as unobtrusive as possible. However, it is very effective and the only way to ensure that the Pledge of Allegiance and the national motto are protected and preserved.

I urge my colleagues to cosponsor this bill and hope that we can begin the process to move it forward.

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause to recognize Ms. Meghan Foster, a very special young woman who has exemplified the finest qualities of citizenship and leadership by taking an active part in national government.

Meghan is a senior psychology major at Texas Christian University and has distinguished herself as an intern in my Washington Office by serving the great people of the 6th District of Missouri. Meghan joined my staff for the 107th Congress as part of the House of Representatives Intern program at the United States Capitol in Washington, D.C. A program designed to involve students in the legislative process through active participation. Through this program, Meghan has had the opportunity to observe firsthand the inner workings of national government and has gained valuable insight into the process by which laws are made.

During her time as an intern in my office, Meghan has successfully demonstrated her abilities in the performance of such duties as conducting research, helping with constituent services, and assuming various other responsibilities to make the office run as smoothly as possible. Meghan has earned recognition as a valuable asset to the entire U.S. House of Representatives and my office through the application of her knowledge and skills acquired prior to her tenure as a member of a variety of new skills she has acquired while serving the people of Missouri and our nation.

Mr. Speaker, I proudly ask you to join me in commending Ms. Meghan Foster for her many important contributions to the U.S. House of Representatives during the current session, as well as joining me in extending to her our very best wishes for continued success and happiness in all her future endeavors.

OPERATION ADOPTED HEROES: THE STRENGTH OF A COMMUNITY

HON. CHARLES B. RANGEL
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. RANGEL. Mr. Speaker, I rise today to pay tribute to Operation Adopted Heroes. This project was started by members of the small community of DuBois, Pennsylvania with the objective of providing relief to the grieving New York firefighters of Engine Company 84 and Ladder Company 34 following the September 11th attack on the World Trade Center. The fire station, located in the Washington Heights section of my congressional district, lost seven current and former members in responding to the attack.

Firefighter Gregg Atlas, Captain Frank Calahan, Firefighter Dana Hannon, Lieutenant Tony Jovic, Firefighter Gerry Nevins, Lieutenant Glenn Perry, and Battalion Chief John Williamson died in the line of duty on September 11th.

Delores “Dee” Matthews, a caring and compassionate neighbor who has served as moderator of the New York Presbyterian Church and lives in the neighborhood of the fire station, wanted to do something to allay the grief of the firefighters. She reached out to her closest friends in her hometown of DuBois, Pennsylvania, Judy Hand and Pat Stewart with the idea of adopting these firefighters. Dozens of community members formed what is now known as Operation Adopted Heroes to organize appreciative events and raise money for the victims’ families. With the help of the neighboring townships of Rockton, Union and Sandy Township represented by my colleague
JOHN PETERSON, Operation Adopted Heroes
collected over $10,000 for the widows and
children of the fallen firefighters as well as do-
nated 14 wooden chairs and knitted quilts for
each bed in the firehouse.

On November 17, 2001, representatives of
all four townships drove to New York City to
present the families of the fallen firemen and
families of the fallen firefighters. This gen-
erosity continued through the holiday season
with presents for the fallen firefighters’ children
and on June 14, 2002, twenty firemen with
their families traveled to DuBois to participate
in the local Community Days weekend ex-
travaganza.

Mr. Speaker, I ask you and my colleagues
to join me in saluting the members of Opera-
tion Adopted Heroes for their civic altruism to
the 161st Street Fire Station and its fallen he-
roes of September 11. I introduce into the
RECORD news articles on the relationships de-
volved though Operation Adopted Heroes.

PARTIAL-BIRTH ABORTION BAN
ACT OF 2002

SPEECH OF
HON. DENNIS MOORE
OF KANSAS
IN THE HOUSE OF REPRESENTATIVES
Wednesday, July 24, 2002

Mr. MOORE. Mr. Speaker, two years ago, I
voted against a so-called “partial birth abor-
tion” ban because I believed it to be unconsti-
tutional. A United States Supreme Court’s 2000 decision in
Stenberg v. Carhart proved me to be cor-
rect. Despite this ruling, the bill before us
today corrects none of the flaws that were
clearly outlined by the Court. Today’s vote is
a purely political exercise.

H.R. 4965 does not include an exception to
protect the health of the woman, despite clear
instructions from the Court, in more than one
decision since 1972, that any law restricting
abortion must include such an exception. This
bill, despite cosmetic changes to the lan-
guage, is still unconstitutional.

I believe in a woman’s right make important
decisions regarding her own body and health. I
also believe that the state can and should reg-
ulate abortion after the point of fetal viability.
These two principles were codified in the 1973
Roe v. Wade Supreme Court decision.

Mr. Speaker, if Congress truly wishes to ban
abortion after the point of fetal viability, we
should have passed H.R. 2702, the Late
Term Abortion Restriction Act. This legislation,
which I have cosponsored, would prohibit all
late-term abortions, regardless of procedure,
with exceptions only to protect the life of the
mother and to avert serious adverse health
consequences.

The House was not allowed to vote on this
bill today, which is a great shame, since it
goes to the heart of this issue rather than
using it as a campaign message. H.R. 2702
addresses what the American people truly
want to stop: the termination of a viable fetus
during late stages of a pregnancy.

Today, I will vote against H.R. 4965. I urge
my colleagues who truly wish to ban post-va-
bia tion abortions to consider H.R. 2702 as a real
solution to this personal and political issue.

REPUBLIC OF SINGAPORE’S
THIRTY-SEVENTH NATIONAL DAY

HON. JOHN B. LARSON
OF CONNECTICUT
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. LARSON of Connecticut. Mr. Speaker, I
today rise to congratulate the Republic of
Singapore on its Thirty-seventh National Day,
which will occur on August 9, 2002.

As many Americans know, Singapore’s Na-
tional Day commemorates the date when
Singapore became a separate, independent
nation in 1965. In its short history as an inde-
pendent nation, Singapore has achieved phe-
omenal economic growth. Bilateral trade be-
tween Singapore and the U.S. amounted to
more than $42 billion in 2000, making Singa-
apore the United States’ tenth largest trading
partner. Singapore is home to more than
1,400 U.S. corporations and 50% of all Singa-
apore exports to the United States originate
from U.S. companies. In 2000, the cumula-
tive stock of U.S. Direct Investment in Singa-
apore stood at more than $23.2 billion.

Since its founding as a free port in 1819 by
a British East India Company official named
Sir Thomas Stamford Raffles, Singapore’s free
trade status has been a major factor in its suc-
cess. It has been a firm backer of U.S. intern-
tional trade policy and, since December
2000, Singapore and the United States have
been negotiating a U.S.-Singapore Free Trade
Agreement (USSFTA). Nine rounds of negotia-
tions have been concluded. The USSFTA will
be the first free trade agreement (FTA) that
the United States will sign with an Asian coun-
try. Not only will it cement the excellent state
of economic relations between our two coun-
tries, the USSFTA will also send a strong sig-
nal of the strong strategic and defense rela-
tions that already exist. When concluded, the
FTA will act as an anchor for continued U.S.
economic presence in the Asia Pacific region.

In addition to the vitally important trade rela-
tionship between the U.S. and Singapore, both
nations have increasingly close security ties.
Since 1992, U.S. military aircraft and naval
vessels have, under the auspices of a 1990
Memorandum of Understanding, been given
access to Singapore military facilities. Each
year, Singapore plays hosts to numerous rou-
tine port calls by U.S. naval vessels and land-
ings by U.S. military aircraft. Since 2001,
Singapore’s Changi Naval Base has been
host to U.S. aircraft carriers, for maintenance
and re-supply. The Singapore Navy made provi-
sions to allow the berthing of U.S. aircraft
carriers at their own expense, and to U.S. speci-
fications. Over 100 naval vessels use the fa-
cilities each year. Singapore has been unflag-
in its support for the U.S. presence in the
region—even at times when it has been un-
popular to do so. With its strategic location in
the Strait of Malacca and the South China
Sea, it is hard to understand the significance
of this security relationship with a nation in the
center of these critically important shipping
lanes.

Even in the war on terrorism, Singapore has
been steadfast. In December 2001, Singapore
arrested 13 terrorists who were targeting vari-
ous U.S. military and commercial assets. The
government of Singapore has also been unwavering in its moral, logistical and fi-
ancial support for the global war on terrorism.

On a more personal note, I have had the
chance to meet with the current Ambassador
from Singapore, Ms. Chan Heng Chee. She
has ably represented Singapore in Wash-
ington since 1996, years in which our trade
and security ties with Singapore have grown
extensively. The highlights of her service will
be the signing of the FTA, which will hopefully
be completed soon. I look forward to working
with her on this and other issues between our
two countries.

Mr. Speaker, given the importance of our re-
lationship with Singapore, I rise today to con-
gratulate the Republic of Singapore on its
Thirty-seventh National Day and to urge my
colleagues in joining me in my salute to one
of our important allies and trading partners.

RECOGNITION OF MR. NILES
JAGER

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly pause
to recognize Mr. Niles Jager, a very special
young man who has exemplified the finest
qualities of citizenship and leadership by tak-
ing an active part in national government.

Mr. Jager is a senior economics major at
Depauw University and has distinguished him-
self as an intern in my Washington office by
serving the great people of the 6th District of
Missouri. Niles joined my staff for the 107th
Congress as part of the House of Representa-
tives intern program at the United States Cap-
itol in Washington, D.C., a program designed
to involve students in the legislative process
through active participation. Through this pro-
gram, Niles has had the opportunity to ob-
serve firsthand the inner workings of national
government and has gained valuable insight
into the process by which laws are made.

During his time as an intern in my office,
Niles has successfully demonstrated his abili-
ties in the performance of such duties as con-
ducting research, helping staff with constituent
services, and assuming various other respon-
sibilities to make the office run as smoothly as
possible. Niles has earned recognition as a
valuable asset to the entire U.S. House of
Representatives and my office through the
application of his knowledge and skills acquired
prior to his tenure as an intern and through a
variety of new skills he has acquired while
serving the people of Missouri and our Nation.

Mr. Speaker, I proudly ask you to join me in
commending Mr. Niles Jager for his many im-
portant contributions to the U.S. House of
Representatives during the current session, as
well as joining with me to extend to him our
very best wishes for continued success and
happiness in all his future endeavors.

CONGRATULATING RICHARD CHING
ON BEING NAMED JA ELEMENTARY
SCHOOL VOLUNTEER OF THE YEAR

HON. NEIL ABERCROMBIE
OF HAWAII
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. ABERCROMBIE. Mr. Speaker, I rise
today to speak about a distinguished member
of my district who is being honored by an organization which has had an immeasurable impact on America. Richard Ching of Hawaii Apraisal Services is Junior Achievement’s National Elementary School Volunteer of the Year. He has volunteered for nine years and taught 40 JA classes in that time impacting more than 1,000 students on the island of Oahu. Mr. Ching always goes above and beyond his classroom duties, ensuring that his students have a fundamental understanding of business, economics and the free enterprise system.

The history of Junior Achievement is a true testament to the indelible human spirit and American ingenuity. Junior Achievement was founded in 1919 as a collection of small, after-school business clubs for students in Springfield, Massachusetts. As the rural-to-city exodus of the populace accelerated in the early 1900s, so too did the demand for workforce preparation and entrepreneurship. Junior Achievement students were taught how to think and plan for a business, acquire supplies and talent, build their own products, and sell. With the financial support of companies and individuals, Junior Achievement recruited numerous sponsoring agencies such as the New England Rotarians, Boy Scouts, Girl Scouts, Boys & Girls Clubs the YMCA, local churches, playground associations and schools to provide meeting places for its growing ranks of interested students.

In a few short years JA students were competing in regional exhibitions and trade fairs and rubbing elbows with top business leaders. In 1926, President Calvin Coolidge held a reception on the White House lawn to kick off a national fundraising drive for Junior Achievement’s expansion. By the late 1920s, there were nearly 800 JA Clubs with some 9,000 Achievers in 13 cities in Massachusetts, New York, Rhode Island, and Connecticut.

During World War II, enterprising students in JA business clubs used their ingenuity to find new and different products for the war effort. In Chicago, JA students won a contract to manufacture 10,000 pants hangers for the U.S. Navy. In Pittsburgh, JA students developed and made a specially lined box to carry off incendiary devices, which was approved by the Civil Defense and sold locally. Elsewhere, JA students made baby incubators and used acetylene torches in abandoned locomotive yards to obtain badly needed scrap iron.

In the 1940s, leading executives of the day such as S. Bayard Colgate, James Cash Penney, Joseph Sprang of Gillette and others helped the organization grow rapidly. Stories of Junior Achievement’s accomplishments and of its students soon appeared in national magazines such as TIME, Young America, Colliers, LIFE, the Ladies Home Journal and Liberty.

In the 1950s, Junior Achievement began working more closely with schools and saw its growth accelerate. In 1955, President Eisenhower declared the week of January 3 to February 5 as “National Junior Achievement Week.” At this point, Junior Achievement was operating in 139 cities and in most of the 50 states. During its first 45 years of existence, Junior Achievement enjoyed an average annual growth rate of 12 percent.

To further connect students to influential figures in business, economics, and history, Junior Achievement started the Junior Achievement National Business Hall of Fame in 1975 to recognize outstanding leaders. Each year, a number of business leaders are recognized for their contribution to the business industry and for their dedication to the Junior Achievement experience. Today, there are 200 laureates from a variety of backgrounds.

By 1982, Junior Achievement’s formal curriculum offering had expanded to Applied Economics, Project Business, and Business Basics. In 1988, more than one million students per year were estimated to be involved in Junior Achievement programs. In the early 1990s, a sequential curriculum for grades K-6 was launched, catalyzing the organization into the classrooms of another one million elementary school students.

Today, through the efforts of more than 100,000 volunteers in the classrooms of America, Junior Achievement reaches more than four million students in grades K-12 per year. JA International takes the free enterprise message of hope and opportunity even further to nearly two million students in 113 countries. Junior Achievement has been an influential part of many of today’s successful entrepreneurs and business leaders. Junior Achievement’s success is truly the story of America—the fact that one idea can influence and benefit millions and even nations.

Mr. Speaker, I wish to extend my heartfelt congratulations to Richard Ching of Honolulu for his outstanding service to Junior Achievement and the students of Hawaii. I am proud to have him as a constituent and congratulate him on his accomplishment.

TRIBUTE TO BARRY BERKOFF

HON. ROBERT A. BORSKI
OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BORSKI. Mr. Speaker, I rise to pay tribute to my friend Barry Berkoff, a senior policy advisor for Thelen Reid and Priest. Through many years of both public and private service, Barry has been an invaluable asset to Congress and the country. He is a true role model for those who wish to dedicate their lives to improving government, society and our nation’s public policy.

Barry started his career as a young legislative assistant for Senator Frank Church in 1968. He spent twelve years in public service, rising to become the Senator’s senior legislative and government affairs assistant. Barry has always been very proud of his service in government, and Congress was fortunate to have the benefit of his skills and dedication.

I first got to know Barry in my early years in Congress, when I joined with several members of my delegation in the fight to preserve the Philadelphia Naval Shipyard and the Philadelphia Naval Station. Barry was part of the team representing the City of Philadelphia during the basic closure process. Since the closure of the yard, Barry has championed the difficult task of converting the yard to civilian, commercial use. Now known as the Philadelphia Business Center, the yard is a vibrant commercial complex that is attracting new jobs and industries.

Barry has also worked on a number of economic development projects that have improved the standard of living of my constituents in Philadelphia. He has helped small businesses in Philadelphia that have sought to convert their defense technologies to commercial applications. He has also provided invaluable advice on government contracting and appropriations to Philadelphia-area companies.

Mr. Speaker, I know of few other individuals in this city who possess Barry’s knowledge of the legislative process and history. I regret to inform my colleagues who know Barry that he is currently very ill. I join the House today in paying special tribute to this remarkable individual. He is in our thoughts and prayers.

HONORING THE LIFE OF TIMOTHY WHITE

HON. JOHN CONYERS, JR.
OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CONYERS. Mr. Speaker, we rise to honor Timothy White, a man of integrity, passion, and music. Tim, the late editor of Billboard Magazine, died on June 27, 2002, at the age of 50.

Many of you may not have known Tim White, but his influence was felt not just in the music industry, but here in Washington. While Tim’s passion for music and artists made him a champion and a challenger of the music industry, he played an important role in the fight for reform here. From his office in New York, he increased Billboard’s coverage of Capitol Hill and shared with Bill Holland, the Washington correspondent, the prestigious ASCAP-Deems Taylor Award for investigative stories on musical copyright and the ownership of sound recordings.

Tim also was a writer, and a superb one. He wrote about what he loved most, music. He saw in our culture an emptiness, with little to replace it. Entertainment, he wrote, “is heartening because it celebrates the human scale . . . there is extra-industry fascination with the record charts because they are the one mirror in which we can still glimpse our collective will, lending an air of control and logic to a landscape that sometimes appears on the brink of chaos. At its high end, rock’n’roll can periodically fill in the hollows of this faultless era—especially when the music espouses values that carry a ring of emotional candor.” Being a writer, Tim was an outspoken defender of free speech and spurred others to new levels of creativity, both in word and in song.

Tim didn’t just write about music, though; he lived it. His life is an example of how one man can and did make a difference. He had a passion for what’s right and was not afraid to pursue that goal, whether it was to force a change in the music business or through the hearing rooms in Congress. He also never missed an opportunity to champion a forgotten or still undiscovered artist.

As Don Henley, a close friend of Tim, said, “What comes mostly to mind when I think of him is integrity. In an age when looking the other way and moral compromise have become our common cultural traits, Timothy
White would have no part of it. He was not for sale. It is Tim’s emotional candor that will be missed and we mourn his loss. As we honor Tim’s memory, we should aspire to hold to the same ideals that Tim exhibited throughout his life: integrity, commitment and compassion.

IN MEMORY OF CHARLES “RUDY” LONGO

HON. ELTON GALLEGLY
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GALLEGLY. Mr. Speaker, I rise to pay tribute to a good friend, Charles “Rudy” Longo, who died Sunday after a lifetime of devotion to his family, friends, the Navy and his community.

Rudy retired from the United States Navy in 1975 after a 31-year career, including eight years in my district at the Pacific Missile Test Center in Point Mugu. Thereafter, he made his home in Ventura.

He enlisted in 1944, was commissioned an ensign in 1946 and retired as a captain. To say Rudy was a photo specialist would be to gloss over his wide range of talents and accomplishments. He served as administrative officer for the Sixth Inter-American Naval Conference, director of the command staff and comptroller for the Naval Missile Center and public relations director of the Pacific Missile Test Center.

Aside from photography, he loved golf, table tennis, billiards, magic and cooking. Rudy was a longtime member of the Ventura Rotary Club, serving as its president and official photographer. He was also a member of the Retired Officers Association, the American Legion Post No. 339, and a member and usher at Ventura Missionary Church.

Rudy met his wife of 50 years, Pati, while stationed at the Naval Photography School in Pensacola, Florida, where she also was stationed with the Navy. Together they raised three sons, who are now married and who have blessed them with four grandchildren.

Mr. Speaker, Rudy believed in the American ideals of family and community and dedicated his life to promoting those ideals. I know my colleagues will join me in celebrating Rudy’s life and in sending our condolences to Pati and their family.

RECOGNITION OF MS. EMILY GORE

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I proudly ask you to join me in commending Ms. Emily Gore for her many important contributions to the U.S. House of Representatives during the current session, as well as wishing her and her family the very best wishes for continued success and happiness in all her future endeavors.

HONORING THE SERVICE OF TONY HALL

HON. WES WATKINS
OF OKLAHOMA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. WATKINS of Oklahoma. Mr. Speaker, I rise this evening to pay tribute to TONY HALL—a good and selfless man who has devoted his career to helping the world’s poor and forgotten people. I also want to wish Guadalupe Hall TONY as he leaves us to take up his new post as U.S. Ambassador to the United Nations food and agricultural agencies in Rome.

It has been my privilege to know TONY for almost 25 years. We both came to Congress in the late 1970s. Since that time, TONY has worked tirelessly on behalf of his constituents in Dayton—helping to bring good jobs to the community, working to provide health insurance to the poor, and strengthening scientific research at Wright-Patterson Air Force Base. In these and many other ways, TONY HALL has been a forceful and successful champion for the people of Dayton.

But that is not why the history books will remember TONY HALL. His service has been about much more than the normal duties of an active and successful Member of Congress. TONY has been one of the most visible and tireless spokesmen for the poor, the disadvantaged, the hungry—not just here at home, but all around the world. He has lived the social gospel. He has helped his brothers and sisters in need. He has not sought personal gain or recognition for his actions. He has striven to make us all aware of the almost unimaginable poverty that lingers in the Third World. He has sought to use our astounding abundance to relieve the suffering of others. This is why TONY HALL will be remembered. This is what I will remember most of all about my friend. Mr. Speaker, I urge all of us to emulate the honors and accomplishments that TONY has compiled.

Three nominations for the Nobel Peace Prize, a co-founder of the House Select Committee on Hunger, service in the Peace Corps—the list is long and impressive.

But to me, Mr. Speaker, the most impressive testimonials to TONY HALL are his family, his love and respect for this institution, his respect for his colleagues, his passion for advancing the ideas he believes in, his love for his country, and his commitment to his fellow man.

I want to thank TONY HALL for the pleasure of his company and his friendship during our service together, I know that he will do much to make us proud in his new position as an ambassador to the United Nations. I am already proud of him.

HONORING MAJOR GENERAL JACKIE D. WOOD ON THE OCCASION OF HIS RETIREMENT AS TENNESSEE’S ADJUTANT GENERAL

HON. BOB CLEMENT
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. CLEMENT. Mr. Speaker, I rise today to honor Tennessee’s top National Guard official, Major General Jackie D. Wood, on the occasion of his retirement from the adjutant general post, after seven years of outstanding leadership to our state and years of brave service to our nation’s military.

Major General Wood became the state’s 73rd adjutant general in 1995, taking on the responsibility of supervising the Military Department including the Army National Guard, the Air National Guard, the Tennessee Emergency Management Agency, and the Tennessee State Guard.

General Wood began his work in the United States Army in 1961 when he enlisted for the first time. He later served one tour of duty as a Sergeant (E-5) in Vietnam. After completing his active duty tour and a short tour of duty in the United States Army Reserve, he enlisted in the Tennessee Army National Guard in 1965, rising through the ranks before being named its top officer in 1995. He maintained his strong role in the military reserves while working in the private sector, retiring from South Central Bell with 31 years of service.

He completed Officer Candidate School at Tennessee Military Academy. General Wood served in a variety of staff and leadership assignments in the Tennessee Army National Guard including Executive Officer, 473rd Support Battalion; Commander, 4/117th Infantry, and was serving as Deputy Director, Plans, Operations and Training, State Area Command before his appointment as Adjutant General.

He was further educated at Cumberland University in Lebanon, Tennessee, earning a Bachelor of Arts Degree in Social Science in 1986, and completing Air University in 1992.

His military assignments include: Aug 66–Mar 70, Platoon Leader, Company A, 4th Battalion, 117th Infantry, Apr 70–Jan 92, Liaison Officer, Headquarters and Headquarters (—), Mar 71–Apr 72, 117th Infantry, 3rd Bde, 30th Armored Div; Feb 72–Oct 73, Executive Officer, Det 1, Co A, 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Nov 73–Aug 75, Aide-de-Camp, Headquarters and Headquarters (—), 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Mar 75–Apr 76, Liaison Officer, Headquarters and Headquarters (—), 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Feb 76–Oct 78, Executive Officer, Det 1, Co A, 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Nov 78–Aug 79, Aide-de-Camp, Headquarters and Headquarters (—), 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Oct 79–Mar 81, Executive Officer, Headquarters and Headquarters (—), 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Oct 81–Mar 82, Commanding Officer, 4th Bn, 117th Infantry, 3rd Bde, 30th Armored Div; Jul 82 Jan 86, Executive Officer, 3rd Battalion, 4th Armored Bde; Jan 86–Apr 87, Commanding Officer, 17th Infantry Brigade; Apr 87–Aug 89, Assistant Adjutant General, 3rd Bde, 30th Armored Div; Aug 89–Jun 92, Executive Officer, Headquarters and Headquarters (—), 73rd Separate Airborne Engineer Battalion; Jun 92–Aug 92, Executive Officer, 3rd Battalion, 17th Infantry Brigade; Aug 92–Jun 95, Adjutant General, Tennessee Army National Guard; Jul 95–Mar 99, Adjutant General, Tennessee Army National Guard.

In these and many other ways, TONY HALL has been one of the most visible and active and successful Member of Congress.
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82. Brigade Maintenance Officer, Headquarters and Headquarters Detachment, 473rd Support Battalion, 30th Separate Armored Brigade; Mar 82–Jan 84, Executive Officer, HHD, 473rd Support Bn, 30th Separate Armored Bde; Feb 84–Feb 85, Automatic Data Processing Systems Officer, HHD, 473rd Support Bn, 30th Sep Armored Bde; Mar 85–Apr 85, Transportation Staff Officer, HQ, State Area Command, Tennessee Army National Guard; May 85–Oct 86, Supply Staff Officer, Headquarters, State Area Command, Tennessee Army National Guard; Oct 86–Mar 90, Battalion Commander, 4th Battalion, 117th Infantry, 30th Separate Armored Brigade; Mar 90–Jul 93, Intelligence Officer, Headquarters, State Area Command, Tennessee Army National Guard; Aug 93–Apr 95, Deputy Director, Plans, Operations and Training Division, Headquarters, State Area Command, Tennessee Army National Guard; 26 Apr 95–Present, The Adjutant General, Tennessee National Guard.

Major General Wood has been honored numerous times by his peers and by the United States Government for outstanding service. These awards and decorations include: the Meritorious Service Medal; the Army Commendation Medal; the Army Reserve Component Achievement Medal with 1 Silver Oak Leaf Cluster; the National Defense Service Medal with 1 Silver Star; the Armed Forces Expeditionary Medal; the Armed Forces Reserve Medal with gold hour glass devices; the Army Service Ribbon; and the Republic of Vietnam Campaign Ribbon with “60” device.

May General Wood continue to prosper in all of his future endeavors and may he be richly blessed for his courage, dedication, patriotism, and service to Tennessee and to the United States of America.

PERSONAL EXPLANATION
HO N. CURT WELDON
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. WELDON of Pennsylvania. Mr. Speaker, on rolcall Nos. 342, 343 and 344, I was inadvertently detained. I would have voted “nay” on No. 342, and “yea” on Nos. 343 and 344.

FRED WORTH
HO N. JO HN A. BOEHNER
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. BOEHNER. Mr. Speaker, I rise today to recognize my constituent and friend, Fred Worth of Troy, Ohio, on the occasion of his 50th birthday on July 26, 2002.

Fred began his life of public service as a high school government and history teacher, and baseball coach. His enthusiasm for these subjects along with his dedication to his students have combined to make Fred Worth’s 26 years as a public school teacher a success.

Fred’s teaching methods have never been confined to the classroom. Fred and his students organize fundraising drives to provide Thanksgiving meals to families that are less fortunate, and to purchase Christmas gifts for the children of these families. When the Ohio River flooded in 1997, Fred and his students traveled down to Hamilton County and assisted the local residents in the clean up of their flooded homes and businesses. Every election year, Fred makes sure that all of his students are registered to vote, and also have the opportunity to volunteer for the campaigns of local candidates. And, twice a year, Fred arranges a trip to Washington, D.C., so that his students can meet their Congressmen and see firsthand how their Federal Government works. His commitment to providing his students with the opportunity and knowledge necessary for success has endeared him to two generations of young men and women who call Miami East High School their alma mater.

Also, Fred leads his students by example, and has been an active participant in all levels of government in Miami County. Every Republican candidate who has run in Miami County in the last 20 years has benefited from Fred’s hard work. Whether distributing campaign literature, putting up yard signs, or serving as Chairman of the County Board of Elections, Fred has always dedicated his time and resources to local candidates and the Miami County G.O.P. owes him a great debt of gratitude. Mr. Speaker, I am pleased to recognize Fred Worth’s career of public service, and to wish him a happy 50th birthday.

NURSE REINVESTMENT ACT

SPEECH OF
H O N. MICHAEL BILIRAKIS
O F FLORIDA
I N THE HOUSE OF REPRESENTATIVES
Monday, July 22, 2002

Mr. BILIRAKIS. Mr. Speaker, as the sponsor or H.R. 3487, I would like to revise and extend my remarks in support of passage of H.R. 3487, and I would like to note that this intent language is supported by all the members involved in the development of the final bill which passed the House and Senate on July 22, 2002. These members include myself, Senator BARBARA A. MIKULSKI, Congresswoman LOIS CAPPS, Senator TIM HUTCHISON, Congressman W.J. “BILLY” TAUSIN, Senator JOHN F. KERRY, Congressman JOE D. DINGELL, Senator JAMES M. JEFFORDS, Congressman RICHARD BURR, Senator JUDD GREGG, Congressman SHERRID BROWN, Senator BILL FRIST, M.D., Congressman ED WHITEFIELD, Senator EDWARD M. KENNEDY, Congressman ELIOT ENGEL, Senator SUSAN COLLINS, Congressman ROBERT L. EHRlich, Senator HILARY RODHAM CLINTON, and Congressman HENRY WAXMAN.

1. FUNDING METHODOLOGY

During the last reauthorization of Title VIII in 1998, Congress required the Secretary of Health and Human Services to determine a funding methodology to be used for fiscal year 2003 and thereafter to determine the appropriate amounts to be allocated to three important programs within the Nursing Workforce Development activities—advanced nursing education, workforce diversity, and nurse education. Under this methodology, Congress outlined a series of factors that should be considered and required a report describing the new methodology as well as the effects of the new methodology on the current allocations between those three important programs.

Given that the new funding methodology was to take effect in fiscal year 2003, Congress requested that the contract for the funding methodology be completed by January 1, 2002, and that the report to Congress regarding that methodology arrive no later than 30 days after the completion of the development of the methodology. Although Congress has received the report from the University of Miami, the University has been working on this contract, and they have described the appropriate funding methodology on their website. This methodology states that advanced nursing education should receive 31.5% of the funds (a 46% decrease from fiscal year 2001 allocations), workforce diversity should receive 31.5% of the funds (a 25% increase over fiscal year 2001 allocations), and nurse education and practice should receive 37% of the funds (a 20% increase over fiscal year 2001 allocations).

Because Congress expected the funding methodology to be completed by the beginning of fiscal year 2003, current law does not state how the funds should be allocated if no funding methodology was available. Therefore, the discretion is left to the Secretary. Due to that discretion, it is the Congress’ intent that the Secretary allocate funds in a manner that would most appropriately address any current or impending nursing shortage while minimizing disruption and report such allocations to the appropriate committees of Congress, along with a justification for those allocations. Further, given that Congress has requested a new funding methodology for fiscal year 2003, the Secretary is now requested to provide an update on the development of that methodology and the expected timeline for implementation.

The legislation authorizes the appropriations of such sums as may be necessary to accomplish the objectives of the legislation. It is the Congress’ belief that the current nursing shortage is a significant national problem that has a major negative impact on the delivery of quality health care in the United States. It is the Congress’ belief that funds should be appropriated for the initiatives authorized by this legislation at a level that is commensurate with the significance of this problem.

Throughout the bill, the legislation authorizes the appropriations of such sums as may be necessary in order to accomplish the objectives of the legislation to allow flexibility in providing funding to respond to the ongoing needs of the programs authorized by the legislation. Although the legislation does not authorize the allocation of specific dollar amounts, it is the Congress’ belief that the investment of significant new resources, beyond those already provided under Title VIII of the Public Health Service Act, will be required in order to alleviate the current nursing shortage.

III. LOAN REPAYMENT AND SCHOLARSHIPS

The Congress intends that nurses fulfilling their service requirement under the Loan Repayment Program or the Scholarship Program under Section 846 be able to fulfill their service requirement in a nurse-managed health center with a critical shortage of nurses.

The Congress further intends that, in determining the placement of nurses under section
103 of the bill, the Health Resources and Services Administration is not expected to follow the placement requirements outlined under the National Health Service Corps.

IV. BASIC NURSE EDUCATION

A. INTENT OF LEGISLATION

The legislation adds a number of new programs to section 831, and it is Congress' intent to ensure that these programs are actually funded and implemented. Therefore, Congress expects that the Secretary will seek to fund worthy applications received under the Section 831 authorities that have been added, while assuring that existing priorities indicated under section 831(c)(2) continue.

Congress anticipates that the use of funds under 831(c)(2) will directly affect nurses in their workplaces and will be monitored for demonstrable improvement in the areas of nurse retention and patient care.

B. BACKGROUND

In authorizing section 831(c)(2), Congress did so with the evidence of the efficacy of magnet hospitals in mind. The concept of magnet hospitals dates back to the country’s last nursing shortage in the 1980’s. At the time, nursing professional organizations and other experts noticed that despite the nationwide nurse shortage, certain hospitals were able to successfully attract and retain professional nurses, behaving as nursing “magnets.” A study of these hospitals showed that they shared a number of characteristics, each of which contributed to making these “magnet hospitals” attractive workplaces for nurses. Many of these attributes have been mentioned in section 831(c)(2). Currently hospitals can receive a magnet designation from the American Nurse Credentialing Center, and extensive research on magnet-designated facilities shows that nurses in these hospitals show an average length of employment twice that of nurses in non-magnet hospitals, and magnet hospital nurses consistently report greater job satisfaction. Research has demonstrated that magnet hospitals also show lower mortality rates, shorter lengths of stay, and higher patient satisfaction.

V. NURSE FACULTY DEVELOPMENT

The purpose of the nurse faculty loan program is to encourage individuals to pursue a master’s or doctoral degree to teach at a school of nursing in exchange for cancellation of educational loans to these individuals.

ARLINGTON NATIONAL CEMETERY BURIAL ELIGIBILITY ACT

SPEECH OF

HON. BOB STUMP
OF ARIZONA
IN THE HOUSE OF REPRESENTATIVES

Monday, July 22, 2002

Mr. STUMP. Mr. Speaker, I have reintroduced the Arlington National Cemetery Burial Eligibility Act to ensure that Arlington remains a cemetery dedicated to honoring our true military heroes. As you are aware, I introduced similar legislation in both the 105th and 106th Congresses, and both bills had overwhelming support in the House. H.R. 4940 codifies almost all of the current regulations governing eligibility for burial in the cemetery and placement in the columbarium with the following exceptions:

First, reservists who retire before age 60, the age at which they become eligible for retired pay, would be eligible for in-ground burial. A 20-year career in the military reserves should be recognized by eligibility for this burial honor.

Second, reservists who die in the performance of duty while on active duty or inactive duty training would now be eligible for burial at Arlington. In today’s military, we depend heavily on reservists, and unfortunately we have lost too many in the last few years to mission-related accidents.

As in the previous legislation I mentioned earlier, the bill eliminates automatic eligibility for Members of Congress and other Federal officials who do not meet all the military criteria required of other veterans. However, this bill does provide the President the authority to grant a burial waiver to an individual, who otherwise does not meet the eligibility criteria, whose acts, services, or contributions to the Armed Forces are so extraordinary as to justify burial at Arlington National Cemetery.

Mr. Speaker, it is my intention that H.R. 4940, which is widely supported by the military and veterans service organizations, will enable Arlington National Cemetery to remain the premier military cemetery of our country. I look forward to working with the other body to ensure that H.R. 4940 becomes law this year.

TRIBUTE TO ARNOLD R. DICKSON, REGIONAL PUBLIC AFFAIRS MANAGER, THE GAS COMPANY-SEMPRA ENERGY COMPANY

HON. KEN CALVERT
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CALVERT. Mr. Speaker, I rise today to honor and pay tribute to an individual whose dedication to his country and community is exceptional. The Inland Empire has been fortunate to have dynamic and dedicated business and community leaders who willingly and selflessly give time and talent to making their communities a better place to live and work. Mr. Arnold R. Dickson is one of these individuals.

Arnold R. Dickson was born in Auburn, California, and moved to Riverside, located in my congressional district, in 1958. He graduated from Ramona High School in 1962 and joined the U.S. Air Force in 1965 in which he honorably served for four years. Upon his return from the military, he attended Riverside Community College where he earned his AA Certificates in the Supervision and Middle Management Program. He obtained his Bachelor’s of Science from the University of Maryland and recently completed the Executive Management Program at the University of California, Riverside.

Arnold’s exemplary career with The Gas Company began in 1970 as a serviceman in The Gas Company’s old Eastern Division, which served the Inland Empire and Riverside County. Arnold was promoted into management in 1978 and held positions in critical areas of the company such as Pipeline Operations, Customer Service, Public Affairs and Staff Management. On July 1, 1994 Arnold was selected to be the Regional Public Affairs Manager for The Gas Company’s Inland Empire Region.

Arnold has also been actively involved in the community as the Vice-Chairman of the Inland Empire Economic Partnership, a board member for the Riverside County Regional Medical Center Foundation, a board member for the Loma Linda University Children’s Hospital Foundation and numerous other organizations that benefit the overall well-being of the businesses and residents of the Inland Empire.

Arnold has been married to his wife Priscilla for 34 years and has three wonderful children, the youngest of which resides with them in Redlands.

Arnold’s tireless work as a community leader has contributed unmeasureably to the betterment of the County of Riverside. His involvement in community organizations in the Inland Empire make me proud to call him a fellow community member, American and friend. I am grateful for his efforts and service and salute him as he departs. I look forward to continuing to work with him for the good of our community in the future.

PAYING TRIBUTE TO MARK OGLESBY

HON. MIKE ROGERS
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. ROGERS of Michigan. Mr. Speaker, I rise today to congratulate Mark Oglesby on earning a James Madison Memorial Fellowship.

Mark Oglesby is an American History teacher at Howell High School in Howell, Michigan, and is receiving this fellowship to continue in graduate studies with a concentration on the history and principles of the United States Constitution. This award is intended to recognize promising and distinguished teachers, to strengthen their knowledge of the American constitutional government, and expose the nation’s secondary school students to accurate knowledge of our constitutional heritage.

I am confident that Mark Oglesby’s hard work and dedication to educating America’s young people will continue well into the future. Mr. Speaker, I ask my colleagues to join me in congratulating Mark Oglesby on earning the James Madison Memorial Fellowship, and wish him success in his future endeavors.

MEDICARE OUTPATIENT DEPARTMENT FAIR PAYMENT ACT OF 2002

HON. JOHN D. DINGELL
OF MICHIGAN
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. DINGELL. Mr. Speaker, I am pleased to join with my colleagues Mr. SESSIONS, Mr. BROWN, and Mr. BURR to introduce this important legislation, the Medicare Outpatient Department Fair Payment Act of 2002. This legislation was introduced in the Senate earlier this year by Senators Bingaman and Snowe.

Medicare provides health insurance coverage to more than 40 million seniors and individuals with disabilities; it has provided high-quality care to these individuals for more than 35 years. But, in order to ensure that beneficiaries continue to have access to high quality health care, we must ensure that providers
are being adequately reimbursed. We have only to look to the Medicaid program, which has a long standing history of inadequate payment rates, to see how dramatically payment rates can affect beneficiaries access to care. You can’t expect to get the quality of a Cadillac if you only have enough money to cover the cost of a Yugo.

This legislation that we are introducing today will make sure that hospital outpatient departments are being adequately reimbursed under Medicare. First, it will ensure adequate payments for care and emergency room visits. Rural and inner city hospitals provide a high volume of these services and are especially vulnerable to low payments. This bill will address that problem. Second, the bill will extend the payment protections for certain hospitals, such as cancer hospitals and extends these protections to eye and ear hospitals as well to ensure adequate rates for these special facilities. Third, the bill would restore the authority of the Secretary of Health and Human Services with respect to outlier payments for outpatient departments and would ensure that the methodology is adequate to provide insurance against losses in high-cost cases. Fourth, the bill gives the Secretary additional authority and direction with respect to increasing certain relative payment rates and preventing reductions from pass-through payments and budget neutrality adjustments.

These four points are only some of the key provisions in the bill. All told, this legislation will increase funding for hospital outpatient departments by $380 to $480 million over the next five years. This funding will certainly be beneficial to Medicare beneficiaries and others who receive care in these facilities.

Hospitals and their related facilities are important to our Michigan communities. They not only provide excellent health care, but serve as an important part of the local economy by providing quality jobs. Payments to many facilities have suffered in recent years as due to the current level. This total includes $176 million for salaries and $43 million for general expenses. This level of funding will support 1,454 officers and 326 civilian positions. The bill also includes an additional $37.5 million for Capitol Police buildings. This bill provides a 5% merit pay raise for Capitol Police, which would be in addition to the 4.1% cost of living adjustment provided to congressional staff.

This bill provides for a tuition payment program for police recruits and officers, as well as a measure to provide extra pay for officers with special duties, such as members of the bomb squad or those who provide protection to Members or visiting dignitaries.

As a former federal law enforcement officer of twenty-six and a half years, I understand first-hand the importance of the duties performed by the Capitol Police. Officers have been spending numerous days and nights, working long hours, to ensure that Members of Congress, their staffs, and the general public are safe and protected. We certainly owe these officers a debt of gratitude. More than ever, I admire and respect our United States Capitol Police and am glad to see that their hard work has not gone unnoticed.

Thank you Mr. Speaker, I yield back the balance of my time.
Larry Smith obtained his bachelor’s degree in Public Management from Pepperdine University and his first assignment in law enforcement was as deputy sheriff in the Blythe Jail and Patrol. His tenure included a variety of command assignments, including narcotics enforcement, informant development, service, and patrol. He served as the County’s Search and Rescue coordinator and commanded the department’s Emergency Services Team (SWAT).

In 1987 Smith was promoted to chief deputy sheriff. Under his superb leadership as chief of the Corrections Division, two modern jails were financed and built. He guided the division through its largest growth in the history of the Department.

Larry was elected as Riverside County’s eleventh sheriff, winning the office in the June 1994 primary and assuming the office of sheriff on December 14, 1994. He was reelected to his second term in December 1998 and he has served as the first sheriff, coroner, public administrator and marshal in the history of Riverside County. As sheriff, he procured 365 acres at March Air Reserve Base for a public safety training center, which provides training for law enforcement, fire and paramedics. This paved the way for future centers throughout the United States by enabling the transfer of surplus land from the U.S. Military to the private sector through the legislative process.

Larry has also been actively involved in the community, serving as a member of the board for the American Heart Association and the United Way of the Inland Empire. He presently serves on the Advisory Committee for the Debbie Chisholm Memorial Foundation, a charitable group dedicated to granting the wishes of terminally ill children. In recognition of his outstanding service, Larry has been a recipient of numerous awards such as special recognition in 1996 from the California Narcotics Officers’ Association; he was named the outstanding law enforcement officer in 1996 from Veterans of Foreign Wars; the 1997 director’s award for partnership from the California Department of Forestry and Fire Protection; and, the 1998 Professional of the Year from the California Peace Officers Association.

Larry’s tireless work as the Riverside County Sheriff has contributed unmeasureably to the safety and betterment of Riverside County. His involvement in community organizations makes me proud to call him a fellow community member. American and friend. I know that all of the residents of Riverside County are grateful for his service and salute him as he departs and I look forward to continuing to work with him for the good of our community in the future.

ROYAL BOLLING SR.

HON. BARNEY FRANK
OF MASSACHUSETTS
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. FRANK. Mr. Speaker, earlier this week I shared with my colleagues an editorial from the Boston Globe about the death of an outstanding former Massachusetts State Legislator, Jack Backman. Today I am saddened by the news that my own constituent and the people of Massachusetts lost a representative of the year from the California Peace Officers Association.

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ROYAL BOLLING SR.
FAREWELL TO CONGRESSMAN
TONY HALL
HON. MARTIN FROST
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002
Mr. FROST. Mr. Speaker, it gives me great pleasure to congratulate Congressman Tony Hall on becoming the United States Ambassador to the United Nations. He has worked actively to improve human rights conditions around the world, and the enactment of a law he authored to fight hunger-related diseases in developing nations. These and other accomplishments include working actively to improve human rights conditions around the world, and the enactment of a law he authored to fight hunger-related diseases in developing nations. These and other accomplishments include

knowing after our interests in the United Nations. I knew that the United States would be well served by Congressman Hall. As Americans should feel privileged that we have such a compassionate and dedicated individual looking after our interests in the United Nations. I know my colleagues will join me in wishing him the best of luck.

TRIBUTE TO DR. AND MRS. HENRY ANDERSEN
HON. BOB SCHAFFER
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002
Mr. SCHAFFER. Mr. Speaker, I rise today to recognize Dr. and Mrs. Henry “Hank” Andersen of Lamar, CO as they celebrate their 60th wedding anniversary. Hank and Marjorie Andersen grew up in the small town of Cozad, Nebraska. They were high school sweethearts who married on July 31, 1942. For their lifetime commitment to each other and their strong example to their family and community, Mr. Speaker, the United States Congress commends Hank and Marjorie and wishes them many more wonderful years together.

After graduating from Stephens College in Columbia, Missouri, with a major in speech, Miss Marjorie Evelyn Ford married Naval Ensign Henry Stanley Andersen. In 1942, the couple moved to New York City, where Hank, a Naval officer who loved to fly, was stationed as a pilot. There, their small family grew to include five children: Sue Ford Andersen, After Hank’s tour of duty ended in 1945, the Andersen’s moved back to Nebraska. In 1947, they welcomed the birth of their second child, Stanley Ford. After graduating from the University of Nebraska Dental School in 1949, Hank moved his family to Lamar, Colorado. There, he opened a successful dental practice, which he maintained for almost 35 years.

As their children grew, Hank and Marjorie became very involved in the life of their community. Marjorie joined two women’s service organizations, Sorosis and P.E.O., while Hank became an active member of the Southwestern Colorado Dental Association. Both Hank and Marjorie have been members of Lamar Family First Pediatrics Church Family. Hank has always been very important to Hank and Marjorie. Throughout their married life, the Andersons made numerous trips back to Cozad, Nebraska to visit their parents, Ralph and Pearl Ford (Pa Ralph and Sweetiepie to their grandchildren) and Henry and Ella Andersen, (affectionately referred to as Pa Henry and Squeezetight). Even after their parents passed away, the Andersons continued to make the trip to visit their aunt and uncle, Floyd and Kate Mundell.

Hank and Marjorie take great pride in their children, and were very excited when Sue married James Ocken in 1966 and when they became the grandparents of Cassandra “Cassie” Ocken and Staci Ocken Helseth. They have also greatly enjoyed their great-grandchildren, Courtney Laura Helseth and CassieOcken and Staci Ocken Helseth. The Andersons are always prepared to show off their most recent family photos. Always avid sports fans, Hank and Marjorie held season tickets to the Air Force Academy football games during the 1950s, and never missed an opportunity to attend Lamar High School football and basketball games. The Andersons have also continually encouraged the young people of their community, faithfully attending the school events of neighborhood children, long after their son and daughter left home.

Dr. Andersen retired in 1983, the couple enjoyed traveling to Kennebunkport, Maine, the home of their favorite president, George Bush, and to the countryside of Wisconsin to see the fall colors.

After 60 years of marriage, Hank and Marjorie Andersen are still a beautiful picture of what it means to be in love. Everyone who knows them can see how much they enjoy being in each other’s company. They take care of one another, laugh together and set a meaningful example of commitment in marriage.

Citizens of Colorado, Hank and Marjorie are a truly remarkable couple. I am proud of their momentous accomplishment, and I ask the House of Representatives to me in extending our warmest congratulations to Dr. and Mrs. Henry Andersen.

HAPPY BIRTHDAY SNOOTY
HON. DAN MILLER
OF FLORIDA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002
Mr. DAN MILLER of Florida. Thank you, Mr. Speaker, today I rise to honor one of my district’s finest and longest residing citizens. On July 21st this constituent turned 54 years of age and has been loyalty serving Manatee County since 1949. Appropriately this guy has become the mascot for the county that bears the name of his hometown. Of course I am referring to the legendary Snooty, the manatee of the South Florida Museum in Bradenton, FL. Snooty is the longest living manatee in captivity and has been the main attraction of the museum for over fifty years.

Snooty was born “Baby Snoots” at the old Miami Aquarium in 1948, and a year later was transferred to Bradenton as part of our annual Florida Heritage Festival. It didn’t take long for Snooty to become one of Bradenton’s most recognizable and popular residents. He soon became a regular part of curriculum for local elementary school students. Although Snooty sometimes spends up to 18 hours of his day eating and sleeping, you could hardly label him lazy, as he has entertained over one million visitors. Snooty has also welcomed many notable guests such as former Vice President Dan Quayle, General Norman Schwarzkopf, and Captain Kangaroo.

Thanks to the grand status of Snooty and support from the community, a beautiful new facility was erected for him in 1993. The Parker Manatee Aquarium holds approximately 60,000 gallons of water and provides Snooty with both deep and shallow regions to replicate his natural habitat. The new complex also includes many educational exhibits to inform the public about this rare sea mammal and its struggle to regenerate its population.

I would like to extend an invitation to my colleagues and their families to visit Snooty and experience why Manatee County is so proud of their mascot. On behalf of everyone of the 13th District of Florida. It is with great pleasure that I wish Mr. Snooty a happy 54th birthday.

PERSONAL EXPLANATION
HON. HENRY E. BROWN, JR.
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002
Mr. BROWN of South Carolina. Mr. Speaker, on Wednesday, July 24th, I was unavoidably detained on my way to vote on House business. Had I been present, I would have voted in the following way:

Aye on Rollcall 335 on passage of H.R. 4547, the Cost of War Against Terrorism Authorization Act of 2002.

A SPECIAL TRIBUTE IN HONOR OF TEN YEARS OF INCORPORATION FOR THE TOWN OF AWENDAW, SOUTH CAROLINA
HON. HENRY E. BROWN, JR.
OF SOUTH CAROLINA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002
Mr. BROWN of South Carolina. Mr. Speaker, small towns are God’s little wonders and today I would like to recognize the small town of Awendaw in my district. Awendaw is known as the “land of the Seewee Indians.” It has a rich history that included a visit from the 1st President of the United States, George Washington while on a southern tour in 1791. During the 16th century, records show four Indian tribes that inhabited the land—the Samp, Sanee, Seewee and the Wando. Agriculture was their trade and life. In 1673, English settlers came to South Carolina at Port Royal in Beaufort. They traveled down the coast until they sighted what is now called Bull’s Bay. They
were captivated by the beauty of the unspoiled beaches, tall trees and dense forest. As the colonists approached the shore, Indians were waiting with bows and arrows. But the crew yelled out an Indian calling “Appada” meaning peace and the Indians withdrew their bows and welcomed them to shore. The Indians shared their food and the English colonists gave them goods such as knives, beads and tobacco. Awenda-baugh was the name of the settlement when the English colonists arrived but the name was later shortened to Awenda.

Awenda is a special place. The arms of nature surrounds it and radiates its beauty. The Cape Romain Wildlife Refuge, the Francis Marion Forest and the Santee Coastal reserve create a natural wall of protection around the area. Hunting and fishing are still a means of getting food just as it was for the Seewee Indians.

The Churches of the Awenda community are a “testimony of their faith.” The Ocean Grove (formerly Pine Grove), Mt. Nebo A.M.E. Ocean Grove United Methodists and First Seewee Missionary Baptist are all historical churches that play a significant role in the lives of the people who live there.

In November 1988, the people of Awenda began its fight to become a town. For four years, people gathered once a month at the Old Porcher Elementary School to plan, organize and share information with the people. There were many hurdles set before the people of Awenda by the Justice Department. In 1989, Hurricane Hugo interrupted the process, but it was resumed in 1990. The Awenda community made two unsuccessful attempts to incorporate. Finally, after the third try, the Secretary of State granted a certificate of Incorporation on May 15, 1992. On August 18, 1992, the town of Awenda elected its first mayor the Rev. William H. Alston. The first town council were Mrs. Jewel Cohen, Mrs. Miriam Green, the Rev. Bryant McNeal and Mr. Lewis Porcher (deceased).

This year the town of Awenda will celebrate ten years of incorporation. The town has grown to that of 1,000 in population. Over the last seven years, the town of Awenda has become famous for its annual Blue Crab Festival. This grand celebration brings thousands of people from neighboring communities to share in the festivities.

Mr. Speaker, to that my colleagues would join me in a salute to one of God’s little wonders, the Town of Awenda, South Carolina. “Thank God for small towns and the people who live in them.”

TRIBUTE TO MISSOURI STATE REPRESENTATIVES DAN HEGEMAN AND CHARLIE SHIELDS

HON. SAM GRAVES
OF MISSOURI
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GRAVES. Mr. Speaker, I rise today to recognize the outstanding work of Missouri State Representatives Dan Hegeman and Charlie Shields, whose legislative achievements were highlighted by the Northwest Missouri Republican Club on July 26, 2002.

As a member of the Missouri State Legislature since 1991, Mr. Hegeman represents Missouri’s 5th District. A dairy farmer by trade, Mr. Hegeman is involved with a number of community organizations including: the Andrew Buchanan Community Council of American Cancer Society; Northwest Missouri Area Health Education Center Board; and, the Savannah, Maysville, and Albany Chambers of Commerce.

Mr. Shields, also a State Representative, is from Missouri’s 28th District. In 1992, Representative Shields was named “Outstanding Freshman Legislature” by House Republicans and in February of 2002 was named Legislator of the Year by the Republican State Lincolns Days in Springfield. As a project coordinator for Heartland Health System in St. Joseph, Missouri, Mr. Shields has done important work in the areas of secondary, as well as, higher education, mental health, advocacy, and community development.

Please join me in honoring Missouri State Representatives Dan Hegeman and Charlie Shields for their tireless work in representing their communities and their outstanding dedication to the great State of Missouri.

PAYING TRIBUTE TO PETE SEIBERT

HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, today I stand before this body of Congress and this nation to honor a western visionary and World War II veteran who recently passed away. Pete Seibert contributed selflessly to our nation in its time of need and I thank him for his unrelenting passion and value. Pete was a remarkable man and his actions during and after World War II are the essence of everything that makes this country great.

Pete Seibert is a veteran of the 10th Mountain Division of the Army, which studied and trained in Colorado. His platoon fought German forces in Italy’s Po Valley, using their exceptional mountaineering skills to enable them to overcome the Germans. Regardless of his bravery, Sergeant Seibert was wounded on Mount Terminale in Italy and utterly destroyed his knee cap and femur. Yet, his injuries led to an honorable discharge at the young age of twenty-two, which enabled him to pursue his dreams.

After World War II, Pete returned to Colorado, the state that provoked his passion for the mountains during his training in the 10th Mountain Division to turn his vision into a reality. He arrived in Aspen in 1946 and despite hampering injuries from war began working as Ski Patrol. His determination to reclaim his expert skiing skills prevailed, and in 1947 he won the downhill, slalom, and combined competitions in the Rocky Mountain Championships. Moreover, he became a member of the 1950 U.S. Alpine Ski team, a great honor. However, he is now more famously known in Colorado as the co-founder of Vail Ski Resort in 1955, he became a familiar image that represents Vail to many. Despite local skepticism from existing ski resorts, Pete traveled around the country to raise revenue to build the mountain, and refused to give up. In 1970 his persistence paid off when Ski Magazine ranked Vail first rate and claimed it to be an amazing resort for all ages. Needless to say, Vail’s business boomed, and its legacy is now world-renowned. In fact, in 2000 Ski Magazine listed him as the 3rd most influential skier of all time and in 2001, Vail named its most recent addition after Mr. Seibert; respectfully calling it “Pete’s Bowl.”

Mr. Speaker, I ask you to join me today in celebrating the life of Pete Seibert who recently lost his battle with cancer. He overcame enemies of freedom, crippling war injuries, and literally ascended to the mountaintop in pursuit of his dreams. Pete had a remarkable spirit that empowered all who knew him. I would like to express my deepest condolences to his friends and family.

FREEDOM OF PRESS

HON. EDOPHUS TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, While citizens in this country take for granted the freedom of the press, there are nations in this hemisphere where journalists are still victimized by their governments for exposing injustices in their societies. In Panama, despite the apparent triumph of democracy following the arrest of Manuel Noriega and the U.S. intervention in that country, investigative journalists such as Miguel Antonio Bernal are treated as criminals because they dare to speak out on otherwise taboo subjects.

The following documents were prepared by Sarah Watson, Laura McGinns and Karen Smith, Research Associates at the Washington-based Council on Hemispheric Affairs (COHA). Watson’s article, entitled Press Freedom in Panama: Going, Going, Gone, was distributed as a memorandum to the press on May 30 and appeared in the June 1 issue of the organization’s highly estimable biweekly publication, the Washington Report on the Hemisphere. It examines the ongoing plight of Miguel Antonio Bernal—a plucky professor-journalist— who was arrested for his investigation of the Panama’s police force for exposing injustices in his country. It reveals the journalist’s personal perspective on the state of free speech in his country. It appeared in the July 11 issue of the Washington Report on the Hemisphere.

These documents should be of great relevance to my colleagues as they demonstrate the severity of the situation in Panama, and the need for continued international scrutiny of cases that threaten the freedom of speech and the right to dissent.

PRESS FREEDOM IN PANAMA: GOING, GOING, GONE

On May 29th, Judge Lorena Hernandez announced her decision on a criminal slander case that made headlines in Panama and throughout Latin America. In a victory for the forces defending freedom of speech and of the press, she acquitted one of Panama’s leading intellectuals and activists, Miguel
Antonio Bernal, of flagrantly trumped-up charges brought against him by former police chief José Luis Sosa. But Bernal is not out of the woods yet—the country’s attorney general has received Moscoso’s denunciation of his intentions to appeal the decision. The Council on Hemispheric Affairs is now embarking on a major campaign to bring the deplorable situation of Panama’s judiciary, as Bernal’s current plight, to the attention of the international community.

One of Panama’s most respected public figures, Bernal is a thorn in the side of every repressive dictatorship from Colonel Torrijos on, all of which have targeted him for harassment with grim regularity. Professor Bernal saw his strong opposition to the previous governments included being exiled from Panama by General Manuel Noriega, causing his flight to the U.S., where he later taught at Davidson College and Lehig University.

Given this background, one might expect that for a civil trial with, at worst, a petty monetary penalty, Bernal could have faced up to two years in prison if convicted, since the charges against him for “slander and contempt” were, under Panamanian law, criminal in nature. He also could have assumed the role of an apologist for Bernal’s perverse persecutors.

ACCUSATIONS OF SLANDER

In a 1986 radio interview, Bernal stated that he held the Panamanian police responsible for the death by decapitation that year of four inmates at the infamous Isla de Coiba prison. Earlier, the police department had illegally seized control of the facility, which had achieved well-deserved notoriety for its inhumane conditions. In response to Bernal’s accusation, Sosa, the then-chief-of-police, sued Bernal specifically for besmirching the institutional “honor” of the Panamanian police.

In contrast to U.S. slander law, which provides for a civil trial with, at worst, a petty monetary penalty, Bernal could have faced up to two years in prison if convicted, since the charges against him for “slander and contempt” were, under Panamanian law, criminal in nature. He also could have been denied the right to work in Panama for an additional two years.

Bernal’s case went to trial on May 14th, and despite his recent exoneration by a Panama City judge, it is likely to take months, or even years, for the appellate proceedings to run its course and any final verdict is handed down. On May 29th, Judge Lorena Herrera announced the acquittal, the Attorney General’s office announced an appeal which they later withdrew a month later.

WHAT DO YOU THINK YOUR CASE PORTENDS FOR THE FUTURE OF JOURNALISTIC FREEDOM IN PANAMA?

Moscoso later instructed her attorney general to demand that journalists must have proof before they allege corruption. The court has not been able to decide whether it levied charges of corruption. “We cannot allow it to be said that we in the government are corrupt,” she said.

CENSORSHIP ABOUND IN CORRUPT PANAMA; BERNAL SAYS IT’S WORSE

Bernal is not the only Panamanian journalist facing such charges. Some of the others include a cartoonist, Julio Enrique Brizuela; a retired judge; and with Bernal, every fortnight after the former vice president of the country (who also had been president of the Christian Democratic Party), Ricardo Pereyra, for “insulting behavior.” Journalists Rainer Tufon and Juan Diaz were sentenced to either 18 months in prison or a 400 euro fine, as well as being banned from working in Panama for 6 months, for reporting on a judge’s investigation of doctors alleged to possess forged licenses. One of those under investigation, whose license later provided to be genuine, sued—and won—for damages to his reputation.

According to the Inter-American Commission on Human Rights, more than 90—one out of every three—Panamanian journalists have cases pending against them for libel or slander. Furthermore, in 70 percent of such cases, the suit was brought by a public official. The Panamanian government, however, claims that only 28 journalists currently have cases to be heard on the docket.

A hill of grass last year was the corruption-plagued county by interior minister Winston Spadafora is ostensibly designed to regulate Panama’s journalistic practices, but critics maintain it will only expedite press manipulation by the authorities. Among its provisions, carefully knitted to net all of the government’s perceived foes, is the requirement that all active journalists in the country must possess a license as well as a journalism diploma; foreign journalists who wish to work in Panama will only be able to do so if no national is available to do the job, and even if they obtain permission to work, such outsiders will be limited to a one-year tenure. Critics insist that these rules constitute a free trade and the right to practice a journalism career unencumbered by bureaucracy.

The OAS Human Rights Commission, CIDH found in 1985 that “licensees” as those listed above violate the Inter-American Convention on Human Rights. International pressure was placed on Moscoso to lighten such restrictions when she came into office, but she now appears to be trying to reintroduce some of the most draconian controls that the country has witnessed while the world’s attention is currently directed elsewhere.

The international media community, as well as Panama’s embattled press, has risen to Bernal’s defense. Moscoso has included as an example of government repression in the annual report of the watchdog group, “Reporters without Borders,” and he has been defended in editorials by some of Panama’s best-known human-rights advocates. Also, in 2001, Bernal received international recognition for his work when he received one of Panama’s most prestigious awards, the “Academic Laurels,” with a rank of Commander. His supporters are not hesitant to observe that apparently only Bernal’s own government fears his pen and his tongue.

INTERVIEW WITH MIGUEL ANTONIO BERNAL

Conducted by Laura and Karen Smith of the Council on Hemispheric Affairs

WHAT IS YOUR OPINION ON DECREE 189, WHICH REQUIRES PANAMANIAN NEWSCASTERS TO HAVE A LICENSE?

Panama is still under the very authoritarian and anti-democratic conceptions that were established by the Noriega military dictatorship. This decree was announced by the government and is part of the different regulations they have established against freedom of speech. On June 18, the National Assembly approved a law that allows only those with a degree in journalism from the University of Panama, or a university recognized by the University of Panama, to be journalists in my country. I have a political science Ph.D. and a law degree, but I cannot practice as a journalist in my country because I don’t have a journalist degree. I have been on the radio without the license, but they have not fined me yet.

HOW DO YOU FEEL ABOUT PRESIDENT MOSCOSO’S NEW REQUIREMENT THAT JOURNALISTS MUST HAVE PROOF BEFORE THEY ACTUALLY PRAISE GOVERNMENT CORRUPTION?

If you denounced some corruption or government activity they will say that you do not have evidence, even if it is a public act. For example, they recently exonerated a foreign company from paying more than one billion U.S. dollars in taxes; when this was denounced they merely said, “We cannot allow it to be said that we in the government are corrupt.” This is a very anti-democratic conception to prevent people from criticizing the government.

HAS FREEDOM OF THE PRESS BECOME AN ISSUE IN THE PANAMANIAN POLITICAL PROCESS?

Freedom of speech is one of the things that we struggle to obtain during the military years. After the overflow of the military, no one political party really championed freedom of speech. Since then, many things have happened to journalists, yet the political parties remain silent. In my opinion they are not real democratic political parties because no one in the former or present government has made a clear and unambiguous statement advocating the protection of freedom of speech.

WHAT NEEDS TO HAPPEN IN PANAMA AND THE WORLD TO ALLEViate THE SITUATION?

Panama’s political process only reacts to external pressures. The authorities do not tolerate any waves of domestic criticism. The judiciary, legislative and executive branches of government are all hostile to the concept for free speech.

YOU RECENTLY CAME UNDER FIRE FOR ACCUSING THE POLICE OF DECAPITATING FOUR PRISONERS, BUT YOU WERE ACCUSED. DID THIS SURPRISE YOU?

Yes. I think I was acquitted because of the overwhelming international support my case has attracted. Immediately after the judge announced the acquittal, the Attorney General’s office announced an appeal which they are already preparing.

WHAT DO YOU THINK YOUR CASE PORTENDS FOR THE FUTURE OF JOURNALISTIC FREEDOM IN PANAMA?

I do not think it looks optimistic for my country. There are some rightist people who want to use Panama as an experiment to see if they can do the same things in other places. It is important to support free speech and the media not only for the sake of its own sake, but for the sake of other countries whose leaders might be tempted to do the same things.
Mr. BENTSEN. Mr. Speaker, I rise in strong opposition to the rule on H.R. 4965, the so-called ‘Partial-Birth Abortion Ban Act of 2002’—a measure that is probably unconstitutional, an end-run on established laws protecting a woman’s right to choose, and will do little to end late term abortions.

Mr. Speaker, the House has addressed this matter four separate times in the last seven years, only to return back to square one. What makes this latest attempt even more puzzling is that the Supreme Court, in the Carhart v. Stenberg case in 2000, held that Nebraska’s own late term abortion ban was unconstitutional. The Supreme Court explained that such bans unconstitutionally burden a woman’s protected right to choose her own health-related decisions, and lack the necessary exception to protect a woman’s health.

Even with these standards in place, today’s measure proceeds defiantly into certain legal peril, as it refuses to make the health-related exception. The measure’s proponents instead argue that it is sufficient to include congressional findings in the bill stating that no such health exception is necessary. Such so-called “findings,” however, no matter how extensive they may be, cannot magically turn an unconstitutional piece of legislation into one that passes legal muster, as any first-year law student can tell you. Indeed, a number of prominent medical groups, including the American College of Obstetricians and Gynecologists, with more than 40,000 members representing approximately 90 percent of all board-certified obstetricians and gynecologists in the U.S., has consistently opposed efforts to ban such practices. The Congress must understand that such medical and health decisions are best left to women and their doctors, not to legislators intent on promulgating their divisive and narrow agenda.

Despite all these difficulties, the leadership, as anticipated, has refused to allow for amendments, cutting off debate on what is an extraordinarily important issue. If the leadership were truly interested in examining all viable alternatives, they would have allowed for amendments, including H.R. 2702, the Hoyer-Greenwood “Late Term Abortion Restriction Act,” of which I am a cosponsor. This amendment would present a sound alternative to H.R. 4965, as it bans all late-term abortions, makes the necessary health-related exception, and is consistent with the Supreme Court’s dictates. Because I believe that abortion should be safe, legal, and rare, I would have supported this amendment had it been allowed in this debate.

Mr. Speaker, this measure ignores potential adverse consequences in pregnancies, and thus effectively bans any semblance of compromise or informed discussion on this issue. This measure tells American women that it is more important for the leadership to score political points than it is to show concern for their health. As the measure is unwise, unyielding, and for all practical purposes unconstitutional, I must vote against both the rule for H.R. 4965 and the underlying legislation.

IN RECOGNITION OF CHIEF COMMANDER ARTHUR FARR AND THE CITY OF MANITOWOC

HON. MARK GREEN
OF WISCONSIN
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. GREEN of Wisconsin. Mr. Speaker, today before this House I recognize and honor Past Chief Commander Arthur Farr of the United States Power Squadrons, as well as the city of Manitowoc, a Wisconsin community that has fought to preserve the causes of freedom and democracy through its superior ship building enterprise.

When the drums of war sound, and our Nation is obliged to heed the calls of the oppressed and threatened, the citizens of the United States dutifully step up—as exemplified by the people of Manitowoc and Past Chief Commander Farr.

Commander Farr served as a naval sub-marine officer aboard the distinguished USS Guitarro throughout World War II. During his service, Commander Farr helped see the Guitarro safely through five treacherous war patrols in the Pacific, a tenure that yielded four battle stars and the Navy Unit Commendation. The achievements of Commander Farr and the Guitarro are truly deserving of our highest recognition and most earnest thanks.

To equip our forces with the vessels essential for victory during World War II, the citizens of Manitowoc and its neighboring communities rallied to fill posts in the shipyard, often at incredible sacrifice. Farmers milked their cows by day and worked submarines by night. It was the tireless efforts of these citizens that fueled the production of superior vessels, like the Guitarro, and ensured naval success and eventual victory for the allies.

The dedication and often unrecognized contributions of Americans like Past Chief Commander Farr and the citizens of Manitowoc are a true testament to the strength and excellence of this great Nation.

PAYING TRIBUTE TO JONI FAIR
HON. SCOTT McINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I stand before you to salute an incredible individual of the Colorado Health Community who is one of the six recipients of the 2002 YWCA Anna Tau Sigma Tribute to Women Award. Joni has committed herself to the study and evaluation of hospices around the world to increase the ability of others to care for the terminally ill. She has an unrelenting passion for her work, which has been illustrated countless times through her dedication to improve hospice conditions. It is my pleasure to honor her today before this body of Congress and this nation.

Joni Fair is the President and Chief Executive Officer of the Sangre de Cristo Hospice in Colorado, and has traveled across the world to educate care takers about the terminally ill; her latest trip to Japan led to the establishment of the first hospice ever in Japan. Joni refuses to allow financial status to defer a patient from staying in a hospice and leaves her doors open to all who qualify for hospice care. For her passion, devotion and spirit, Joni has earned the El Pomar Foundation Award for Excellence, Colorado Hospice Program of the Year Award, National Hospice Award of Excellence, and the President’s Award. Her diligence and integrity are an example to be emulated in the medical community worldwide.

Mr. Speaker, I ask you to join me in thanking Joni for her contributions and dedication to the comfort of her patients. I ask that this body recognize her efforts to make patient hospice life less distressful. She is a beacon of care in her community whose passion will shine beyond her legacy, Joni, Congratulations on your latest achievements and good luck in your future endeavors.

INDIA: NOT ACTING DEMOCRATIC
HON. EDOLPHUS TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, apparently the efforts of some of us in this House to set the record straight about India’s repression of its minorities in making an impression. Recently, Indian Ambassador Lalit Mansingh felt compelled to lash out at me and a couple of my colleagues for our statements in this House about the violations of human rights in India. I am tempted to say that I am honored that Mr. Mansingh noticed, but his response is full of misleading and hurtful statements. Everything that we have stated about India is based on the documented record, as Mr. Mansingh well knows.

Let me review the recent information about Indian activities. Recently, India has been cited as a violator of religious freedom by the U.S. Government. While no action has followed this designation so far, it clearly exposes the true nature of Indian democracy.

How can India be called democratic when last year a Cabinet member said that everyone who lives in India must either be a Hindu or be subservient to Hindus? The pro-Fascist RSS, the parent organization of the ruling BJP, published a booklet on how to implicate religious minorities in fake criminal cases. Prime Minister Vajpayee implicitly endorsed these extremist views when he told a audience in New York, “I will always be a Swarajswak.”

The recent massacres in Gujarat are another example of how India treats its minorities. Recently, the New York Times reported that the police stood aside while Hindu militias murdered Muslims, which, as I pointed out previously, is similar to the modus operandi they used in the 1984 massacre of Sikhs. The Hindu newspaper quotes a Gujarati police officer as saying that the police were ordered not to intervene to stop the violence, which is also reminiscent of the Delhi massacres. According to Human Rights Watch, the entire incident was pre-planned with government involvement. Does Ambassador Mansingh dispute the credibility of these sources?

Mr. Mansingh attacks my colleague, the gentlewoman from Georgia, for saying that in India a Hindu life is worth twice as much as a Muslim life. Yet News India-Times, a New York Times, a Hindu life is worth twice as much as a Muslim life. Yet News India-Times, a...
York-based Indian-American newspaper, reported that the government is paying 200,000 rupees to the families of Hindu victims of the Gujarat violence and just 100,000 rupees—half as much—to the families of Muslim victims.

In addition, Mr. Mansingh flatly rejected holding the referendum on the independence of Kashmir that India promised the United Nations it would hold in 1948 and also rejected a free and fair plebiscite on independence in Punjab, Kashmir, and Nagaland as seeking their independence. If India is the democracy it claims to be, then why are there 17 freedom movements within its borders? If there is no support for independence in Punjab, Kashmir, and Nagaland, as India claims, then why not just hold a free and fair vote and prove it? If that claim is true, then it should be massively rejected, shouldn’t it?

What is India afraid of?

Instead, India has killed over 250,000 Sikhs since 1984, according to The Politics of Genocide by Inderjit Singh Jaijee, who gathered these figures from figures put out by the Punjab State Magistracy, which represents the judiciary of Punjab. It has also killed over 75,000 Kashmiri Muslims, more than 200,000 Christians in Nagaland and tens of thousands of other minorities. According to the Movement Against State Repression, 52,268 Sikh political prisoners are still being detained in Indian jails.

Mr. Speaker, America is founded on the idea of freedom. We believe in freedom for ourselves and all the people of the world. We should work to bring real freedom to all the peoples of South Asia. To do that, we should stop American aid to India until it respects basic human rights and we should continue to call for a free and fair vote on independence for the people of Kashmir, of Punjab, of Nagaland, and the other peoples seeking their freedom.

Mr. Speaker, Gurmit Singh Aulakh, the President of the Council of Khalistan, wrote an article to the Washington Times refuting the false statements of Mr. Mansingh. I would like to place it in the RECORD at this time because it gives the RECORD straight about what is really going on in India.

[From the Washington Times, May 19, 2002]

INDIA DOESN’T ACT LIKE A DEMOCRACY

In his May 14 Embassy Row column, James Morrison reports that Indian Ambassador Lalit Mansingh is accusing Rops, Dan Burton, Edolphus Towns and Cynthia A. McKinney of spreading “false, hurtful” information about India. This is ludicrous. Mr. Morrison has been sent the proof of the statements that he mentions, yet he made no apparent effort to get the other side. He should stop repeating Mr. Mansingh’s disinformation.

We understand that tyrants are hurt when their crimes are exposed. Yet they do not show any concern for the rights of minorities. Last year, a member of the Indian Cabinet said everyone who lives in India must either be Hindu or be subservient to Hindus. The Rashtriya Swayamsevak Sangh (RSS), which was formed in 1925 in support of the fascist and militant organization that ruled Bharatiya Janata Party, published a booklet on how to implicate Christians and other minorities in fake criminal cases. Yet according to News India-Times, the Indian government admitted to holding 52,268 Sikh political prisoners under the very repressive so-called Terrorism and Disruptive Activities Act (TADA), which expired in 1995. Amnesty International reported that tens of thousands of other minorities are also being held as political prisoners. Mr. Mansingh undoubtedly is aware of these facts.

Mr. Mansingh is not telling the truth about the massacres in Gujarat. A recent report from Human Rights Watch showed that the massacres were planned in advance. The New York Times reported that the police stood aside while militant Hindu nationalists attacked and murdered Muslims in Gujarat, an act reminiscent of the Delhi massacres of Sikhs in 1984, in which Sikh police were confined to their barracks while the state-run radio and television called for more Sikh blood. According to published reports in India, a police officer in Gujarat said the police were ordered to stand aside.

Mr. Mansingh disputes Miss McKinney’s statement that in India, a Hindu life is worth twice as much as a Muslim life. He claims Hindu and Muslim families who were victimized by the Gujarat massacre are receiving equal compensation from the government. Yet, according to News India-Times, the Indian government is paying out 200,000 rupees each to the families of Hindus who were killed but just 100,000 rupees to the family of each Muslim killed. Mr. Mansingh knows this, yet he uses his high-powered lobbying firms to spin disinformation at gullible reporters such as Mr. Morrison.

Despite India’s claim to be democratic, Mr. Mansingh rejected the referendum on the status of Kashmir that India promised in 1948, which is still held. Despite India’s boast that it is democratic and its claim that there is no support for independence in Punjab, Kashmir, he also rejects a free and fair vote on the issue there. He does not even mention the 15 other nations, such as Christian Naga-land, which are seeking their freedom from India. How can a democratic country reject settling issues by a free and fair vote?

Also, Mr. Mansingh does not even address the fact that the U.S. State Department recently put India on its list of countries that violate religious freedom.

India is not a democracy; it is a Hindu fundamentalist theocracy. The United States should work for the release of all political prisoners and halt its aid to this repressive, tyrannical state until people enjoy their God-given human rights. We also should support freedom for all the nations of South Asia through a free and fair vote. That is the only way to bring democracy, peace, freedom and stability to the region.

GURMİT SİNGH AULAKH, PRESIDENT, COUNCIL OF KHALISTAN, WASHINGTON.

TRIBUTE TO DUANE SCOTT SPENCER

HON. ROBERT L. EHRLICH, JR.
OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. EHRLICH. Mr. Speaker, I rise to bring to the attention of this body the passing of Mr. Duane Scott Spencer. Mr. Spencer is an unsung American hero.

Duane Spencer’s life was cut short on July 9, 2002, at the age of 36, when he died in an automobile accident while driving home from volunteering at a homeless veterans’ shelter, “The Home of the Brave.” Mr. Spencer dedicated his life to the empowerment and progress of others through his commitment to the Paralyzed Veterans of America (PVA) and educational efforts on behalf of people with disabilities.

Born on July 12, 1965, in Havre de Grace, Maryland, Duane Spencer was the son of Earl “Dean” Spencer and Elsie “Bobbie” Stephens Spencer. Upon his high school graduation, Mr. Spencer served his country as a member of the 82nd Airborne Division U.S. Paratroopers in Fort Bragg, North Carolina until an accident that left him paralyzed.

Duane overcame this hardship, becoming a tireless disability advocate, teacher, and role model.

Duane Spencer did not know the meaning of the word “handicapped.” As sports director for the Delaware/Maryland PVA he organized and participated in wheelchair basketball and softball, received countless gold and silver medals in the PVA games, and enjoyed trap shooting and fishing. Duane served on the Delaware/Maryland PVA board of directors for several years and later became the Volunteer Liaison Officer for the PVA National Office here in Washington, D.C. In this role, he was a frequent visitor to Capitol Hill, advocating for veterans, paralyzed veterans, and the disabled.

Duane will be missed. In addition to his parents, he is survived by his wife of 13 years, Nancy J. Spencer, his step-daughter, Adena J. Hash, two grandchildren, Ryan A. and Trent B. Johnson, and sisters Robin and Sherrie Spencer.

The state of Maryland and our great Nation are proud to recognize individuals, such as Mr. Spencer, who overcome and rise above hardship, challenge the concept of personal limitations, and demonstrate true courage. Duane Spencer broke barriers in his life while volunteering to help others. In death, as in life, Duane is an American hero.

ESSENTIAL MEDICINES FOR MEDICARE ACT OF 2002

HON. BENJAMIN L. CARDIN
OF MARYLAND

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CARDIN. Mr. Speaker, it has been three years since Congress began in earnest to address the issue of prescription drug coverage in the Medicare program. The problems we have faced in creating a drug benefit demonstrate that the solution will be both complex and expensive. America’s seniors will be...
closely watching the House of Representatives between now and the end of this Congress. They will be looking for bipartisanship, for cooperation, for a good faith effort to provide them with the lifesaving medicines they need. The lack of prescription drug coverage is one of the most pressing problems facing America’s senior citizens. Because Medicare does not include a drug benefit, its promise—access to comprehensive medical care for the elderly and disabled—is unfulfilled. I rise today to introduce the Essential Medicines for Medicare Act, legislation that will mandate Medicare+Choice plans to cover prescription drugs for seniors and create a source of hardship for many beneficiaries.

When Congress created Medicare in 1965, prescription drugs were not a standard feature of most private insurance policies. But health care in the United States has evolved considerably in the past 37 years. Now most private insurance plans cover drugs because they are an essential component of modern health care. They are viewed as integral in the treatment and prevention of diseases. But Medicare, for all its achievements, has not kept pace with America’s health care system. It is time for Medicare to modernize.

Because Medicare does not pay for prescription drugs, its beneficiaries, 80 percent of whom use a prescription drug each and every day, must either rely on Medicaid if they qualify, purchase private supplemental coverage, join a Medicare HMO that offers drug benefits, or pay for them from their fixed incomes. These costs can be extraordinarily burdensome for the elderly, who already have the highest out-of-pocket costs of any age group and who take, on average, eighteen prescriptions each year.

There is no question that Congress should enact a comprehensive Medicare prescription drug benefit without further delay. I support a benefit package that covers all necessary drugs for seniors as a part of basic Medicare. However, I am concerned that the 107th Congress appears to be headed down a previously traveled road.

Two years ago, this House debated legislation that would require seniors to contract with private companies for prescription drug coverage. It passed narrowly along party lines. As predicted, the Senate never considered that legislation, and no drug bill was signed into law. At the time, most senators deemed the House Republican plan unworkable; another program based on the premise—relying on the participation of private insurance plans—had failed to provide for Medicare beneficiaries. Since the June 2000 vote, that concept, the Medicare+Choice program, has abandoned a million more seniors. Other once reliable sources of coverage have dissolved. Nearly 80 percent of Medicare beneficiaries with incomes below the federal poverty level were not enrolled in Medicaid as recently as 1997. And even Medicaid enrollees with drug benefits must forgo some of their medications. With the recent economic downturns, more and more state Medicaid programs are reducing their benefits. The high cost of these Medigap policies puts them out of reach for most low-to-moderate income Medicare enrollees. Finally, employer-sponsored drug plans have not covered prescription drug coverage. Although between 60 and 70 percent of large employers offered retiree health benefits in the 1980s, fewer than 40 percent do so today. Of these, nearly one-third offer no drug benefits.

Finally, a drug benefit across the country can attest to the benefits offered by Medicare+Choice plans are neither guaranteed nor permanent. Because they are not part of the basic Medicare benefit package, which by law must be included in all Medicare+Choice plans, drug benefits are considered “extra” and as such can change from year to year. This means that even in those counties where plans remain in the Medicare market, there is no certainty that they will continue to offer drug benefits or that they will not severely reduce the benefits.

These statistics combine to make us painfully aware of the gaping hole in Medicare’s safety net. This Congress can move this session to provide a benefit before more elderly and disabled citizens fall through. My bill, the Essential Medicines for Medicare Act, recognizes the importance of preventive care and provides coverage for drugs that have been determined to show progress in treating chronic diseases. Why chronic diseases? Because the average drug expenditures for elderly persons with just one chronic disease are more than twice as high than for those without any. And because we know from years of advanced medical research that treating these conditions will reduce costly hospitalizations and expensive follow-up care. Furthermore, this bill addresses those beneficiaries who have the greatest need for assistance with purchasing their medications: a review of the Medicare+Choice program reveals that seniors who join HMOs are younger and healthier than those in fee-for-service Medicare. This tells us that it is the older, sicker citizens who need prescriptions the most, who have reduced access to drug benefits.

Our bill addresses their needs. It begins with five chronic diseases—diabetes, hypertension, congestive heart disease, major depression, and rheumatoid arthritis—that have high prevalence among seniors and whose treatment will show improvement in beneficiaries’ quality of life and reduce Medicare’s overall expenditures. The Medicare+Choice Act provides for the Institute of Medicine to review the economics of these drugs and make recommendations to the Secretary of Health and Human Services about whether they should be covered. The legislation also requires the Centers for Medicare and Medicaid Services to determine the drugs to be covered. Pharmacy Benefit Managers, PBMs, under contract with the Centers for Medicare and Medicaid Services will negotiate with pharmaceutical manufacturers to purchase these drugs and will administer the benefit.

Many of the five major chronic conditions, but I recognize that there are others that should be covered as well. The legislation provides for a process for the Institute of Medicine to determine the effectiveness of this benefit and the Medicare savings it produces, and to recommend additional diagnoses and medications that should be considered for coverage.

Mr. Speaker, modern medicine has the capability of doing extraordinary things. But no medical breakthrough, no matter how remarkable, can benefit patients if they can’t get access to it. This cost-effective, economically sound approach to prescription drug coverage is a matter of common sense: If Medicare beneficiaries can secure the medications they need, they will be able to manage their conditions, and will be much less likely to require hospitalization and costly inpatient care. For some, this legislation is a first step, a major step, toward making this happen. I urge the House to consider this approach to providing a solid package of prescription drug benefits, an approach that will modernize Medicare for the 21st century for the millions of elderly and disabled Americans who depend on it.

PAYING TRIBUTE TO CHARLES “GEORGE” SIMMS JR.

HON. SCOTT McINNIS
OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Mr. Charles “George” Simms of Pueblo, Colorado and recognize his contributions and service to his community. George recently passed away at the age of 75. He was a longtime teacher and coach at Centennial High School and is remembered today as a hero and role model for many of his students and players.

George was born in Walsenburg, Colorado and attended Centennial High School in Pueblo, where he excelled in basketball and baseball. As a student at Pueblo Junior College, veteran coach Harry Simmons referred to him as “the best second baseman I ever coached.” George continued his education and athletic career at Wyoming and after graduation in 1950; he signed a contract with the St. Louis Cardinals. George’s baseball career was interrupted when he joined the Air Force to fight courageously during the Korean War. During the war, he met his wife, Anne playing service basketball. George brought her back to Pueblo and began his teaching career in 1954.

In 1982, George was inducted into the Greater Pueblo Sports Association Hall of Fame. He taught and coached baseball for twelve years. He and his wife celebrated their 50th anniversary last fall. George is survived by his wife, five children and eight grandchildren.

Mr. Speaker, it is a great privilege that I recognize Charles Simms and his selfless contributions to the City of Pueblo and this nation.
His friends remember him as “George” a man who didn’t know that he was the hero.” It is an honor for me to pay tribute to this veteran before this body of Congress and this nation. I express my condolences towards family and friends during this difficult time, but I would also like to remember the joy he provided to us all, his legacy and contributions will be greatly missed.

HONORING OFFICERS ROBERT ETTER AND STEPHANIE MARKINS

Thursday, July 25, 2002

Mr. GREEN of Wisconsin. Mr. Speaker, I am profoundly dismayed today to share a piece of dreadful news from my district with this House and with our entire nation.

On Monday, in an act of terrifying evil, a man deliberately crashed his truck into a police squad car in the Town of Hobart, Wisconsin. The two police officers in the car, Robert Etter and Stephanie Markins, were killed.

Officer Etter, who was known by some in the community as “Officer Bob,” served in law enforcement for three decades. He retired a few years ago but soon realized how hard it was to leave behind 30 years of serving and protecting his neighbors—so he returned, bringing his immense experience and skills back to the local law enforcement community.

In fact, he was sharing some of that experience with a new officer when their car was hit on July 22. He leaves behind a wife, four daughters, two grandchildren and a community grateful for having had the opportunity to share life with him.

Officer Markins was that new officer learning from Officer Etter. She had served on the grounds of the Manassas Battlefield and other military bases in her quest to protect the hallowed statue of General Stonewall Jackson standing after the legislation was signed into law. The City of Anaheim has recognized this organization and has welcomed it into the community. I would like to personally thank Officer Etter Carño Walk-In Center staff for their hard work and dedication to the community and for creating a positive environment for my district.

HON. LORETTA SANCHEZ OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. SANCHEZ. Mr. Speaker, I rise today to congratulate the Eli Home Carño Walk-In Center in Anaheim which opened its doors on July 13 to families throughout my district.

Many families in my district do not have a place to go to get information, or just ask questions. The Center will help these families, many of whom are dealing with economic crises and other stress creating situations.

The Eli Home is dedicated to providing free, bilingual services to Spanish-speaking families. The center offers parenting classes, weekly forums, case management, counseling, and child-abuse prevention.

The City of Anaheim has recognized this organization and has welcomed it into the community. I would like to personally thank the Eli Home Carño Walk-In Center staff for their hard work and dedication to the community and for creating a positive environment for my district.

HON. FRANK R. WOLF OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WOLF. Mr. Speaker, a legend in the 10th District of Virginia died on Friday, July 19. The headline on Monday, July 22, from The Washington Post may have said it best in describing the life of a stalwart defender of preserving the rural and historic lands in northern Virginia. It was, “Annie Snyder: She Held Her Ground.”

Annie Snyder, a 53-year resident of Prince William County, passed away at age 80. She was one of my constituents from northern Virginia and many believe she single-handedly in the late 1980’s stopped the development of a shopping mall which threatened the Manassas National Battlefield Park. As the Post reported, she “led battles against great odds and powerful foes” in her quest to protect the hallowed grounds of the Manassas Battlefield and other threatened historic lands.

Affectionately known as “Annie,” she led me into what became known as “The Third Battle of Bull Run,” as I introduced legislation to take the land which threatened the battlefield, make it federal land and incorporate it into the park.

But it was her fighting spirit, perhaps from her days of serving in the Marine Corps, that won the day.

She had a motto, “Never, never, never give up.” And she never did, in fighting for the causes in which she believed. The Post said it well: “She maintained a ‘Semper Fi’ attitude toward civic involvement until the end.”

On my office wall is a photo she sent me after the legislation was signed into law. The statue of General Stonewall Jackson standing tall on the Manassas Battlefield ground is in the lower left corner and a bolt of lightning in the center of the picture drawn from the sky into the ground. She wrote on the photo: “When lightning struck Manassas, you were there. Thank you. Annie Snyder.”

Mr. Speaker, on behalf of northern Virginians, we remember the life of and say “thank you” to Annie Snyder for going into battle to preserve the land she held so dear. We also extend our sympathy to her husband of 57 years, Pete, of Gainesville; her six children, six grandchildren and a great-grandchild.

INDIA’S HEGEMONIC AMBITIONS LEAD TO CRISIS IN SOUTH ASIA

HON. EDOLPHUS TOWNS OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, we are all hoping that war can be avoided in South Asia. A war there would take an enormous toll in human lives and in damage to land and the fragile economies of India and Pakistan. The biggest losers, clearly, would be the Islamic people of Kashmir and the Sikhs of Punjab, Khalistan.

Unfortunately, some of the media accounts of this conflict have been very one-sided. You would think after reading a lot of the papers and watching a lot of TV news that India is absolutely blameless in this conflict. That is not true. As the Wall Street Journal pointed out on June 4, it is India’s hegemonic ambitions, as much as anything, that have brought this crisis to a head.

Mr. Speaker, at the time that India was partitioned, the Hindu maharajah of Kashmir, despite a majority Muslim population, acceded to India. That accession has always been disputed and India promised the United Nations in 1948 that it would settle the issue with a free and fair plebiscite on Kashmir’s status. As we all know, the plebiscite as never been held. Instead, India has tried to reinforce its rule there with over 700,000 troops. According to columnist Tony Blankley in the January 2 Washington Times, meanwhile, India supports cross-border terrorism in the Pakistani province of Sindh. Indian officials have said that everyone who lives in India must either be Hindu or subervient to Hindus, and they have called for the incorporation of Pakistan into “Akand Bharat”—Greater India.

In January, Home Minister L.K. Advani admitted that once Kashmir is free from Indian rule, it will bring about the breakup of India. India is a multinational state and history shows that such states always unravel eventually. We all hope that it won’t take a war to do it.

No one wants another Vietnam in South Asia, but there are 17 freedom movements within India. Unless India takes steps to resolve these issues peacefully and democratically, a violent solution becomes much more likely. As the former Majority Leader of the other chamber, Senator George Mitchell, said, “The essence of democracy is self-determination.” It is true in the Middle East and it is true in South Asia.

The Sikh Nation in Punjab, Khalistan also seeks its freedom by peaceful, democratic, nonviolent means, as do predominantly Christian Nagaland, to name just a couple of examples. The Sikhs declared the independence of Khalistan on October 7, 1987. They ruled Punjab prior to the British conquest of
the subcontinent and no Sikh representative has signed the Indian constitution.

India claims that these freedom movements have little or no support. Well, if that is true, and if India is "the world’s largest democracy," as it claims, then why would it not hold a plebiscite in Kashmir, of Nagaland, of Khasiiland? Wouldn't that be the democratic way to resolve these issues without a violent solution?

Until that day comes, Mr. Speaker, we should support self-determination. We should declare our support for a plebiscite in Kashmir, in Kashmir, in Nagaland, and wherever they are seeking freedom. We should stop aid to India until all people in the subcontinent live in freedom and peace. These measures will help bring the glow of freedom to everyone in that troubled, dangerous region.

Mr. Speaker, I would like to place the Wall Street Journal article into the Record at this time.

[From the Wall Street Journal, June 4, 2002]

INDIA'S KASHMIR AMBITIONS

Western worry over Kashmir has focused on Pakistan's refusal to control terrorist-insleping-over-the-border-with-India, and rightly so. But that shouldn't allow U.S. policy to overlook India's equal obligation to prevent a full-scale war from breaking out in Southwest Asia.

That obligation has come into focus with today's Asian security conference in Kazakhstan. India's Prime Minister Atal Bihari Vajpayee and President Pervez Musharraf of Pakistan will both be on hand, and everyone has been urging a bilateral meeting on the sidelines. But so far, Mr. Vajpayee has ruled out any dialogue until Pakistan presents evidence that it is acting against the Kashmiri terrorist groups crossing the U.N. line of control to attack Indian targets.

This is shortsighted, not least for India, because it allows Mr. Musharraf to take the moral high ground by offering to talk "anywhere and at any level." On Saturday the Pakistani leader also went on CNN to offer an implied assurance that he wouldn't resort to new weapons as something no sane individual would do. This went some way toward matching India's no-first-use policy and could be considered a confidence-building move. But it also means India has to clean up its own act. It is the U.S. and (we would argue) Indian interests that the process continue and succeed. He deserves time to show he is not another Yasser Arafat, who has a 30-year record of duplicity.

As it works to defuse the Kashmir crisis, the U.S. has to press Mr. Musharraf to stop as many terror incursions into India as possible. But it also must work to dissuade Indian leadership from exhorting Pakistan to humiliate Pakistan, a vital U.S. ally. The U.S. has a long-term interest in good relations with India, a sister democracy and Asian counterweight to China. But self-restraint over Kashmir is a test of how much India really wants that kind of U.S. relationship.

PAYING TRIBUTE TO LORI A. NIMMERFROH
HON. SCOTT MCINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. MCINNIS. Mr. Speaker, I stand before this body of Congress today to honor a dedicated nurse and mother of two from Denver, Colorado. Lori A. Nimmerfroh was an exceptional woman who exhibited unrelenting passion and spirit throughout her life. She passed away only in March, far too early, at the age of 38. She will be remembered as a remarkable woman whose memory will be celebrated forever by her family, friends, and patients.

Lori Nimmerfroh graduated from Grand Junction High School and continued her higher education at Pacific Lutheran University in Tacoma, Washington. She later received her nursing degree from the University of Northern Colorado and began working for Mercy Medical Center in Denver. In 1997, she attained the position of clinical nurse coordinator for Rose Medical Center, and was promoted to nurse manager of the medical intensive care units in the surgical ward in 1999. Her colleagues honored her in 2000 when she was awarded the Rose Leader of the Year Award and was nominated for the Nightingale Award in 2002. Lori also had as enormous impact on her family, her parents Diane and Dick...
Reiner, brother and sister Steve and Jodi, her husband Paul, and two sons Nick and Hunter.

Mr. Speaker, I am here today to join the loved ones of Lori A. Nimmerfloh in the mourning of her loss. She positively contributed to the betterment of her community, state, and nation. I would like to extend my deepest condolences to her friends and family, and offer the recognition of this Body of Congress to the many impacts, both small and large that Lori made. While we will all miss her tremendously, all who knew her will be indelibly better off because she played a role in their lives.

INTRODUCTION OF THE CAPTIVE WILDLIFE SAFETY ACT

HON. GEORGE MILLER
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GEORGE MILLER of California. Mr. Speaker, I rise today to introduce legislation that represents a firm commitment to protect the safety of the American public and to protect the welfare of wild animals that are increasing in numbers as pets. This legislation identifies and provides a solution to a growing national problem that must be addressed.

The bill, the Captive Wildlife Safety Act, would amend the Lacey Act and bar the interstate and foreign commerce of dangerous exotics, including lions, tigers, leopards, cheetahs, cougars, and bears, for use as pets. The legislation would not ban all private ownership of these prohibited species; rather, it would outlaw the commerce of these animals for use as pets.

The legislation specifically exempts zoos, circuses, and others that are currently regulated by the U.S. Department of Agriculture under the provisions of the Animal Welfare Act. Instead, the bill is specifically aimed at the unregulated and untrained individuals who are maintaining these wild animals as exotic pets.

According to best estimates, there are more than 5,000 tigers in captivity in the United States. There are perhaps more tigers in captivity than there are tigers in their native habitats throughout the range in Asia. While some tigers are held in zoological institutions, most of the animals are pets, kept in cages behind someone’s home in a state that does not recognize wild animals as pets.

Problems arise because most owners are ignorant of a wild animal’s needs, and local veterinarians, sanctuaries, animal shelters, and local governments are ill equipped to meet the challenge of providing proper care. Wild animals, especially such large and uniquely powerful animals as lions and tigers, should be kept in captivity by professional zoological facilities. Only curators of these facilities have the knowledge and know-how to meet the animals behavioral, physical, and nutritional needs.

People living near these animals are also in real danger. There is a laundry list of incidents of dangerous exotics seriously injuring and killing people. In Lopezahite, Chula, in February, a 12-year old girl was bitten in the head by a 750-pound pet Siberian-Bengal tiger mix. In Lexington, Texas, in October last year, a three-year-old boy was killed by his stepfather’s pet tiger. Earlier that year in August, a pet lion bit a woman trying to feed peaches to some captive bears.

The Captive Wildlife Safety Act represents an emerging consensus on the need for comprehensive federal legislation to regulate what animals can be kept as pets. A wide range of groups and institutions, for example, oppose the private ownership of carnivores. The U.S. Department of Agriculture states, “Large wild and exotic cats such as lions, tigers, cougars and leopards are dangerous animals.” Because of these animals’ potential to kill or severely injure both people and other animals, an untrained person should not keep them as pets. Doing so poses serious risks to family, friends, neighbors, and the general public. Even an animal that can be friendly and love can be very dangerous. The American Veterinary Medical Association also “supports keeping of wild carnivore species of animals as pets and believes that all commercial traffic of these animals for such purpose should be prohibited.” This bill is just one part of the solution to help protect people and exotic animals. States will continue to play a major role. I hope to see the grassroots effort directed at the state and local government, to increase the number of states and counties that ban private ownership of dangerous exotic animals. Already, 12 states ban private possession of large exotic animals, while 7 states have partial bans.

The Captive Wildlife Safety Act is supported by the Association of Zoos and Aquariums, The Humane Society of the United States, The Fund for Animals, and the American Humane Association. The Humane Society of the United States, supported the actress Tippi Hedron for raising awareness of this issue on Capitol Hill. Tippi operates an animal sanctuary, and often has the sad and expensive task of rescuing these animals after their owners realize the lion or tiger is a safety risk and cannot be properly cared for. I ask my colleagues to cosponsor this legislation, and I hope that the Resources Committee, on which I serve, will take up the legislation in an expeditious manner.

ALIEN CHILD ORGAN TRANSPLANT ACT OF 2002

HON. LUIS V. GUTIERREZ
OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. GUTIERREZ. Mr. Speaker, I rise today to announce the introduction of the “Alien Child Organ Transplant Act of 2002”, a bill that would provide coverage under the medicaid program for organ transplant procedures. Under my bill, children under 18 years of age who are currently residing in this country and develop a medical condition that requires an organ transplant would be able to receive Medicaid coverage for the procedure.

Many of my colleagues may not be aware of this, but current law does not allow legal permanent residents to receive Medicare coverage for a live-saving measure such as an organ transplant. And I am referring to legal permanent residents, that is, immigrants who are legally in this country.

Melanie Veliz is such an immigrant. Melanie has cystic fibrosis and the disease has left her with only marginal lung function. She is very ill and her lung capacity is about one-third of what it should be. In her delicate state, she is susceptible to bronchitis and infections. This means she can’t go to school or be with her friends. She can rarely do the things that every child deserves. No matter where he or she was born. Melanie, is an 11-year old student at Smith School in Aurora, Illinois. She lives with her parents, Christian and Johanna, and her younger brother. Melanie, who was born in Chile, traveled here with her family on visas, as required by the law. Unlike most immigrants who come to America seeking a better life, the Veliz family could not simply seeking a better life, but life. Life for Melanie.

The Veliz family came here looking for life-saving procedures that were not available in Chile. Unfortunately, although her entry into the country was completely within the law—the laws of this nation have kept Melanie from becoming healthy. I am referring to the current punitive laws and harsh rules which prohibit people, including children, from accessing key public services, including Medicaid, due simply to their immigration status.

Melanie’s health can be improved and her life could be saved through a double lung transplant. The procedure is risky but can be done. Her dream of a better life is not being blocked by medical technology. No. Melanie’s immediate dream was denied because she is not able to participate in the Medicaid program.

However, thanks to the initial enterprising spirit of Melanie’s teacher, Maria Lopez, her supporters were able to obtain significant documentation to secure the operation. The goal at the time was $309,000. This was before the hospital decided that the original estimates were inaccurate and that at least $450,000 would be needed to ensure that Melanie would receive the necessary aftercare. But the human spirit never gives up. And nobody gave up in the quest to secure the needed funds. Fundraising efforts were so successful, thanks in no small measure to the direct involvement of the Cacique Foundation, that Melanie and her supporters have now secured more than the $450,000 needed for the operation.

As a Member of Congress, I pledge to continue my fight in defense of the rights of immigrants specially those who, like Melanie, are very young and most vulnerable. I will continue to compel my colleagues to recognize that the harsh penalties they impose on people because of their immigrant status can—and must—be overturned.

Not simply for the health of those kids who are affected by these laws, but for the health of our nation, so that we can truly live up to the standard of decency that we so often attempt to attribute to America.

Melanie has been fortunate enough to benefit from generous donors, but she has been a victim of the not-so-generous laws. She has
lost precious months having to raise this money and her health has deteriorated. But even with all the uncertainties of the delicate transplant operation that awaits her, Melanie is one of the lucky ones. She can now pay for her operation. Other immigrant children are not this lucky. Among those who are not fortunate enough to have a teacher like Ms. Lopez, a community like our Latino community and the support of a nation-wide network, may never have a chance to live.

The goal of this bill is quite simple: to save children’s lives. My bill seeks to give all children a chance, regardless of their country of origin. A fighting chance to live. Please join me in support of the ‘Alien Child Organ Transplant Act of 2002.’

SIKHS OBSERVE ANNIVERSARY OF GOLDEN TEMPLE ATTACK

HON. EDOLPHUS TOWNS
OF NEW YORK
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. TOWNS. Mr. Speaker, I would like to take this opportunity to note a historic occasion that is being observed this week. In addition to our observance of D-Day, the day that Allied troops landed in Europe to begin the attack on Nazi Germany, this week marks the anniversary of India’s military attack on the Golden Temple in Amritsar and the brutal massacre of 20,000 Sikhs in June 1984. Recently, Sikhs from the East Coast gathered to commemorate this event in front of the Indian Embassy here in Washington. Similar events have been held or will be held in New York, London, and many other cities.

The Golden Temple attack was an attack on the seat of the Sikh religion. It forever put the lie to India’s claim that it is secular and democratic. How can a democratic state launch a military attack on religious pilgrims gathered at the most sacred site of their religion? The Indian troops shot bullet holes through the Sikh holy scriptures, the Guru Granth Sahib, and took young as young as eight years old out in the courtyard and shot them in cold blood. This set off a wave of repression against Sikhs that continues to this day.

Mr. Speaker, I would like to put the flyers from that event into the RECORD now. It contains a lot of important information about the Golden Temple attack that shows the tyranny just under the facade of Indian democracy.

INDIAN GOVERNMENT GENOCIDE AGAINST THE SIKH NATION CONTINUES TO THIS DAY

From June 3 to 6, 1984 the Indian Government launched a military attack on the Golden Temple in Amritsar, the holiest of Sikh shrines and seat of the Sikh religion. This is the equivalent of attacking the Vatican or Mecca. 38 other Gurudwaras throughout Punjab and Kashmir were simultaneously attacked. More than 20,000 Sikhs were killed in these attacks.

Desecrating the temple included shooting bullets into the Guru Granth Sahib, the Sikh holy scripture, and destroying original Hukam Namaz written by hand by the ten Sikh Gurus. Young as eight years old were taken outside and asked if they supported Khalistan, the independent Sikh homeland. When they responded ‘Bolo So Nihal Sansaar’ or ‘God is our life’ they were shot to death in cold blood by the brutal Indian troops.

The Golden Temple attack launched an ongoing campaign of genocide against Sikhs by the Indian government that continues to this day. Punjab, Khalistan, the Sikh homeland, has been turned into a killing field.

The Golden Temple attack made it clear that there is no place for Sikhs in India.

The Movement Against State Repression issued a statement that India is holding at least 52,688 Sikh political prisoners, by their own admission, in illegal detention without charge or trial. Some of them have been held inhumanly by the police. In many cases, the police would file TADA cases against the same individual in different states “to make it impossible for them to muster evidence in their favor.” It was also common practice for the police to re-arrest TADA prisoners who had been released, often without filing new charges.

In November 1994, the report states, “42 employees of the Phoolkhit district jail and PAC were found guilty of clubbing to death six Sikh prisoners and seriously wounding 22 others. They were sentenced to life in TADA prisons. Uttar Pradesh later admitted the presence of around 5000 Sikh TADA prisoners.” Over 50,000 Sikhs have been made to disappear since 1984.

Sikhs in Punjab, Khalistan formally declared independence on October 7, 1987, to be acknowledged by the permission of Shantmai Morcha, or peaceful resistance. Sikhs ruled Punjab from 1765 to 1949 and were to receive sovereignty at the time that the British quit India. While India seeks hegemony in South Asia, the atrocities continue.

India has openly tested nuclear weapons and deployed them in Punjab, weapons that can be used in case of nuclear war with Pakistan. These warheads put the lives of Sikhs at risk for Hindu Nationalist hegemony over South Asia. The Indian government is run by the BJP, the militant Hindu Nationalist party in India, and is unfriendly to the United States. In May 1999, the Indian Express reported that Indian Defense Minister George Fernandes led a meeting with representatives from Cuba, Russia, China, Libya, Iraq, and other countries to build a security alliance against India.

In March 42 Members of the U.S. Congress from both parties wrote to President Bush asking him to help free tens of thousands of political prisoners in India.

India voted with Cuba, China, and other repressive states to kill a U.S. resolution against human-rights violations in China. India is a terrorist state. According to published reports in India, the government planned the massacre in Gujarat (which killed over 5,000 people) in advance and they ordered the police and the army not to interfere to stop the massacre. Last year, a group of Indian soldiers was caught red-handed trying to set fire to a Gurudwara and some Sikh homes in the village of Chithisinghpora in Kashmir by the Indian government. How can a democratic state launch a military attack on the Golden Temple in Amritsar, Sikhism’s holiest shrine, while delivering a petition to the British Home Minister asking Britain to intervene for human rights in Punjab.

In March 2000, 35 Sikhs were massacred in Chithisinghpora in Kashmir by the Indian government.

Since Christmas 1998, India has carried out a campaign of repression against Christians in which churches have been burned, priests have been murdered, bodies have been raped, and schools and prayer halls have been attacked. On January 17, 2001, Christian leaders in India thanked Sikhs for saving them from Indian government persecution. Members of the Bajrang Dal, part of the pro-Fascist Rashtriya Swayamsewak Sangh (RSS), the parent organization of the ruling BJP, burned missionary Graham Staines and his two young sons, ages 8 and 10, to death while they slept in their jeep. The RSS published a booklet last year on how to implicate Christian leaders and other minorities in false criminal cases.

PAYING TRIBUTE TO PAULINE GARCIA

HON. SCOTT MCINNIS
OF COLORADO
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I stand before you today with both sorrow and pride in the recognition of the extraordinary contributions of compassionate women. Pauline Garcia was a hard working woman who contributed selflessly to the moral and ethical improvement of Pueblo, Colorado. She was a beacon of inspiration for many in her workplace and spiritual community. In recognition of Pauline Garcia’s efforts, it gives me great pleasure to honor the life and memory of one of the six recipients of the 2002 YWCA Anna Taussig Tribute To Women Award, rewarded to professional women who show outstanding levels of accomplishment and service to the community.

Pauline Garcia was a dedicated mother of eight, all of whom she inspired to recognize their goals and strive to achieve their dreams. After her children were grown, she received a degree in Early Childhood Education and worked for countless day care centers like Pueblo Head Start and The East Side ChildCare Center. She spent much of her free time volunteering for El Mesias Methodist Church as well as Bethel Methodist Church. Her work at El Mesias was so impressive that she was asked to come on board as Office Manager and helped coordinate daily operations for the Church.

Mr. Speaker, it gives me great pleasure to highlight the honesty, integrity, and value of
Pauline C. Garcia. Pauline illustrated the spirit of kindness to her community, and prepared young children to be the future leaders of their communities. Her compassion will live on in the hearts of those lives she touched and I extend my deepest sympathy and I have no doubt that her memory will continue to be a source of inspiration and comfort for her family.

12TH ANNIVERSARY OF THE AMERICANS WITH DISABILITIES

HON. LOUISE MCINTOSH SLAUGHTER
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. SLAUGHTER. Mr. Speaker, I rise today to commemorate the 12th anniversary of the Americans with Disabilities Act (ADA).

Twelve years ago, people from across the country gathered to celebrate the signing of the Americans with Disabilities Act of 1990, one of the Nation’s landmark civil rights laws since the Civil Rights Act of 1964. The ADA opened up the true promise of America to people with disabilities who, for decades have been held back—not by a wheelchair and a flight of the uncountable stairs—but by simple public ignorance.

Because of the Americans with Disabilities Act, people with disabilities are gaining equal access to public sector services. The public sector has rallied to the ADA’s goals and states and local governments have developed some of the most innovative and meaningful responses to the ADA.

As a result of this important civil rights law, employers now provide a range of adjustment measures to ensure that employees with disabilities can keep their place in the job market, resulting in unprecedented economic opportunities for our disabled population.

ADA has torn down barriers that prevented people with disabilities from getting access to education, the job market, and simply living their everyday lives.

As I reflect on our accomplishments here in Congress since I started to serve my constituents as a member in 1986, this is one of the pieces of legislation, I am most proud of. The Americans with Disabilities Act is a historic example of Congress being true to our centuries-old heritage of freedom and equal opportunity. This landmark legislation took more than 2 years to pass because even in the halls of Congress, there were hurdles of ignorance to overcome. The ADA itself was born of one man’s determination to break down the barriers which had diverted his career plans and caused him to reevaluate his dreams throughout his life. My former colleague in the House of Representatives and original author of the Americans with Disabilities Act, Tony Coelho, didn’t grow up wanting to be a Member of Congress. But he did grow up with epilepsy. As a youth Tony wanted to be a clergyman, but he was kept back because of public ignorance about his disability.

They say that God works in strange and mysterious ways. Tony Coelho’s first dreams were shattered by discrimination, but this was, in fact, a blessing for the entire nation. Tony would go on to write the most comprehensive anti-discrimination bill for persons with disabilities in United States history. What more proof do we need that someone with a disability can be one of the most able people our nation has ever seen?

When Congress passed and the President signed the Americans with Disabilities Act, we implemented what is, in effect, a 20th century Emancipation Proclamation for estimated 43 million Americans who have some type of physical or mental disability. For the first time in history, these individuals were guaranteed their rights to explore the full range of their talents, ability, and creativity.

By outlawing discrimination against disabled persons in employment, transportation, public accommodations and telecommunications, the ADA guarantees to persons with disabilities the same rights which most of us in this chamber take for granted—the right to go to their neighborhood grocery store, attend a movie, eat in the local diner, hold a job, ride a city bus, or simply talk on the telephone.

Pre-existing laws and federal regulations under the Rehabilitation Act of 1973 have been effective, but only so far as the policies of the government, its contractors, and recipients of federal funds have been concerned. These laws left all other areas of American life untouched.

Many young Americans who have benefited from the equal educational opportunity guaranteed under the 1973 law and the Education of the Handicapped Act, have found themselves on graduation day facing a closed door to the mainstream of American life. For years, generations of disabled Americans have been turned away at movie theatres, refused tables at restaurants, left stranded in wheelchairs at bus stops and denied meaningful employment opportunities.

As a cosponsor of the landmark ADA bill and as a legislator who has worked closely with the disabled since the mid-1970s, I am proud of the fact that the ADA broke down barriers and helped to correct these demeaning disadvantages.

I am also proud of my community’s early acceptance of individuals with disabilities, especially the deaf. Rochester is home to the National Technical Institute for the Deaf and the first city in the city to broadcast News for the Deaf each weekday.

The Declaration of Independence gave voice to the fundamental principles upon which this nation would grow to greatness—life, liberty, and the pursuit of happiness. Twelve years ago the Americans with Disabilities Act reaffirmed these sacred principles for millions and millions of United States citizens who have had to suffer unjustified segregation and exclusion.

Among other things, this legislation amends the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 to authorize the construction of 20 additional specified projects in Texas and increases the authorization of appropriations for carrying out those projects.

As you know Mr. Speaker, the Rio Grande and the areas along both sides of the border have been severely impacted by drought conditions during the last decade. In fact, given the recent problems with the Mexican water debt, we are hearing more about the string conditions of farmers in the area than in years past. There are more than seven million people residing in the Lower Valley of the Rio Grande river with approximately one million of those living in the United States. The area is one of the fastest growing areas of our country with projected populations more than doubling by the year 2050.

This area encompasses 29 water districts located in the United States below the International Falcon-Amistad Reservoir System, which supplies nearly 95 percent of the water needs of this area. Mr. Speaker, we need to make significant improvements to irrigation and delivery systems. We need to develop aggressive strategies to conserve water and we need to improve the overall management of the most precious resource in the area—water.

On December 28, 2000, the President signed into law the Lower Rio Grande Valley Water Resources Conservation and Improvement Act of 2000 (Public Law 106-576). The legislation authorized the Bureau of Reclamation (BOR) to develop a program to investigate and identify opportunities to improve the water supply for selected counties along the Texas-Mexico border. The bill on the floor today amends this law by adding 14 new water conservation projects; modifying the criteria for water supply studies; and increasing the authorization for carrying out the studies. In addition, this bill increases the authorization for construction of facilities from $10 million to $47 million.

Mr. Speaker, we need to do everything in our power to facilitate good water management and conservation strategies along the U.S.—Mexico border. I applaud the efforts of my colleagues for introducing this important legislation and I ask my colleagues to support its passage.

MUWEKMA OHLONE INDIAN TRIBE

HON. ZOE LOFGREN
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. LOFGREN. Mr. Speaker, The Muwekma Ohlone Indian Tribe is a sovereign Indian Nation located within several counties in the San Francisco Bay Area since time immemorial.

In 1996, the Tribe was formally identified by the Special Indian Census conducted by Indian Agent C.E. Kelsey, as a result of the Congressional Appropriation Act mandate to identify and to purchase land for the landless and homeless California Indian tribes.

At this time the Department of Interior and the Bureau of Indian Affairs Federally acknowledged the Verona Band as coming under the jurisdiction of the Reno and Sacramento Agencies between 1906 and 1927.
The Congress of the United States also recognized the Verona Band pursuant to Chapter 14 of Title 25 of the United States Code, which was affirmed by the United States Court of Claims in the Case of Indians of California v. United States (1942) 98 Ct. Cl. 583.

The Court of Claims case judgment instructed the identification of the Indians of California with the creation of Indian rolls. The direct ancestors of the present-day Muwekma Ohlone Tribe participated in and enrolled under the 1928 California Indian Jurisdictional Act and the ensuing Claims Settlement of 1944 provided the legal basis for the Indian Tribes' recognition by the United States.

This process has dragged on long enough. I hope that the Bureau of Indian Affairs and the Department of Interior will do the right thing and act positively to grant the Muwekma Ohlone Tribe recognition as a Federally Recognized Indian Tribe. The Muwekma Ohlone Tribe has waited long enough; let them get on with their lives as they seek to improve the lives of the members of this proud tribe. To do anything else is to deny this Tribe Justice. They have waited patiently and should not have to wait any longer.

PAYING TRIBUTE TO LUCILLE GUTIERREZ

HON. SCOTT McNINIS
OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McNINIS. Mr. Speaker, I would like to take this opportunity to pay tribute to Lucille Gutierrez of Alamosa, Colorado, for her guidance and counseling of the youth of her community. It is a great pleasure to praise such an individual whose talents and gifts have enriched countless individuals. I applaud your efforts and congratulate you on a job very well done.

Lucille began her career as a teacher’s aide in February of 1996. She excelled as a teacher and later became the educational site coordinator for the “Head Start” program, a program that offers early educational opportunities to preschoolers. Her volunteer work soon transformed into a full time position demanding long hours. Lucille’s career began with 45 eager students, and she instilled in them crucial life skills and values.

This year, Lucille retires as a leader for our community. Many students who will carry on the legacy of Lucille. Many students who will carry on the legacy of Lucille. Many students who will carry on the legacy of Lucille.

FOOD CRISIS IN SOUTHERN AFRICA

HON. BOBBY L. RUSH
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. RUSH. Mr. Speaker, thank you for allowing me to speak on this very important global issue. My thanks, too, to the gentlelady from California, Representative WATERS, for bringing this critical issue to the Floor.

There are almost 13 million people in the southern part of Africa who are in danger of dying from starvation: a great number of these people are women and children. The severity of the food shortages in the region is due in large part by the severe drought affecting the area for the past decade.

Worldwide humanitarian aid directed to the country has helped to increase the life expectancy of Africa’s citizens by nearly 20 years since 1960. Each year, humanitarian aid programs help save the lives of an estimated seven million African children, delivering essential food and medicine to disaster victims and assisting regional refugees fleeing their native countries because of political or economic unrest.

However, Mr. Chairman, to my chagrin, and to what should be an embarrassment to this country, less than half of 1 percent of all of the United States’ foreign aid funding is directed to food relief and hunger abatement in nations around the world.

The United States now ranks fourth—behind Japan, behind France, and behind Germany—among the countries which give the most foreign aid, but the United States is a leader, and this Nation. Her efforts and accomplishments are well respected and will be remembered by each individual she encountered. Thank you again, Lucille, for your contributions to future generations, and good luck in all your future endeavors.

Thank you again, Lucille, for your contributions to future generations, and good luck in all your future endeavors.

John E. Moss Foundation

HON. ROBERT T. MATSUI
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. MATSUI. Mr. Speaker, the John E. Moss Foundation recently awarded its annual Public Service Award to our colleague, the Honorable DAVID OBEY who has always fought hard for legislation benefiting the small investor, the working man, and the consumer.
the award ceremony on July 9th, Paul Hamill's keynote remarks on current threats to the First Amendment guarantees of free speech and the press. After the ceremony, Dr. George Rabb's milestone achievements were honored.

**HONORING DR. GEORGE RABB ON HIS RETIREMENT**

**HON. WILLIAM O. LIPINSKI**

*OF ILLINOIS*

**IN THE HOUSE OF REPRESENTATIVES**

**Thursday, July 25, 2002**

Mr. LIPINSKI. Mr. Speaker, I rise today in recognition of a remarkable man, the longtime director of Brookfield Zoo, Dr. George B. Rabb. Dr. Rabb joined Brookfield Zoo in 1956 as curator of research, and in 1976 he became the Director of the Zoo and President of the Chicago Zoological Society. Soon Dr. Rabb will pass the title he has held with distinction for 26 years on to a successor.

In the 11 years that Dr. Rabb has been in this role, the Zoo has achieved many remarkable milestones, and its leadership has earned many awards and honors. I am proud to recognize the importance of Dr. Rabb's contributions to the field of conservation and the many achievements he has brought to the Zoo.

It is fitting that this occasion should be marked with a ceremony that honors the contributions of an individual who has dedicated his life to the protection and preservation of the natural world.

**Extensions of Remarks**

**Thursday, July 25, 2002**

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species conservation network in the world and is one of six commissions of IUCN, the World Conservation Union. In recognition of his continuing role as mentor for young scientists and other colleagues, IUCN established a graduate student internship program named in his honor. Dr. Rabb’s passion as Vice-Chair of the Chicago Council on Biodiversity, President of Chicago Wilderness Magazine Board, and Board Chair of the Illinois State Museum.

Among the many awards given to Dr. Rabb are the Peter Scott Award from the Species Survival Commission, the R. Martin Perkins Award from the American Zoo and Aquarium Association, the Silver Medal of the Royal Zoological Society of London, the Conservation Medal from the Zoological Society of San Diego, and the Distinguished Achievement Award from the Society for Conservation Biology.

My wife and I have spent many a weekend at the Zoo with our grandchildren, and I can tell you that I am proud to have Brookfield Zoo located in my district and to have had the honor of working with George Rabb over the years. He left many colleagues to join me in sending best wishes to the good doctor as he ventures forward on his exciting new journey.

INTRODUCTION OF THE P2P PIRACY PREVENTION ACT

HON. HOWARD L. BERMAN
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. BERMAN. Mr. Speaker, I rise today to introduce the P2P Piracy Prevention Act—legislation that will help stop peer-to-peer piracy. The growth of peer-to-peer (P2P) networks has been staggering, even by Internet standards. From non-existence a few years ago, today nearly a dozen P2P networks have been deployed, a half-dozen have gained widespread acceptance, and one P2P network alone is responsible for 1.8 billion downloads each month. The steady growth in broadband access, which exponentially increases the speed, breadth, and usage of these P2P networks, indicates that P2P penetration and related downloading will continue to increase at a breakneck pace.

Unfortunately, the primary current application of P2P networks is unbridled copyright piracy. P2P downloads today consist largely of copyrighted music, and as download speeds improve, there has been a marked increase in P2P downloads of copyrighted software, games, photographs, karaoke tapes, and movies. Books, graphic designs, newspaper articles, needlepoint designs, and architectural drawings cannot be far behind. The owners and creators of these copyrighted works have not authorized their distribution through these P2P networks, and P2P distribution of this scale does not fit into any conception of fair use. Thus, there is no question that the vast majority of P2P downloads constitute copyright infringements for which the works’ creators and owners receive no compensation.

The massive scale of P2P piracy and its growing breadth represents a direct threat to the livelihoods of U.S. copyright creators, in growing breadth represents a direct threat to copyright owners using self-help measures to stop copyright infringements for which the works constitute copyright piracy. Thus, there is no question that the vast scale does not fit into any conception of fair use. DRM solutions will never be foolproof, and as each new generation of DRM solutions is cracked, the newly-unprotected copyrighted works will leak onto P2P networks. Similarly, copyrighted works cannot always be protected by DRM solutions, as they may be stolen prior to protection or when performed in the clear— for instance, when a movie is copied from the projection booth.

Shutting down all P2P systems is not a viable or desirable option for dealing with the massive copyright infringement they facilitate. While the 9th Circuit could shut Napster down because it utilized a central directory and centralized servers, the new P2P networks have increasingly engineered around that decision by incorporating varying levels of decentralization. It may be that truly decentralized P2P systems cannot be shut down, either by a court or technologically, unless the client P2P software is removed from each and every file trader’s computer.

As important, P2P represents an efficient method of information transfer and supports a variety of legitimate business models. Removal of all P2P networks would stifle innovation. P2P networks must be cleaned up, not closed out.

Copyright infringement lawsuits against infringing P2P users have a role to play, but are not viable or socially desirable options for addressing all P2P piracy. The costs of an all out litigation approach would be staggering for all parties. Copyright owners would incur overwhelming litigation expenses, other-wise-innocent P2P users would undoubtedly experience privacy violations, internet service providers and other intermediaries would experience high compliance costs, and an already overcrowded federal court system would face further strain. Further, the astounding speed with which copyrighted works are spread over P2P networks, and thus their immediate ubiquity on millions of computers, makes it totally ineffective litigation against individual P2P users. Certainly, a suit against an individual P2P user will almost never result in recovery of sufficient damages to compensate for the damage caused.

In short, the costs of a litigation approach are likely to far outweigh the potential benefits. While litigation against the more egregious P2P pirates surely has a role, litigation alone should not be relied on to clean up P2P piracy.

One approach that has not been adequately explored is to allow technological solutions to address technological problems. Technological innovation, as represented by the creation of P2P networks and their subsequent decennial, has been feared to facilitate massive P2P piracy. It is worth exploring, therefore, whether other technological innovations could be harnessed to combat this massive P2P piracy problem. Copyright owners could, at least conceptually, employ a variety of technological tools to prevent the unintentional distribution of copyrighted works over a P2P network. Using interdiction, decays, redirection, file-blocking, spoofs, or other technological tools, technology can help prevent P2P piracy.

There is nothing revolutionary about property owners using self-help—technological or otherwise—to secure or repose their property. Satellite companies periodically use electronic countermeasures to stop the theft of their signals and programming. Car dealers repossess cars when the payments go unpaid. Software companies employ a variety of technologies to make software non-functional if license terms are violated.

However, in the context of P2P networks, technological self-help measures may not be legal due to a variety of state and federal statutes, including the Computer Fraud and Abuse Act of 1986. In other words, while P2P technology is free to innovate new, more efficient methods of P2P distribution that further exacerbate the piracy problem, copyright owners are not equally free to craft technological responses to P2P piracy.

Through the legislation I introduce today, Congress can free copyright creators and owners to develop technological tools to protect themselves against P2P piracy. The property owners legislation creates a safe harbor from liability so that copyright owners may use technological means to prevent the unauthorized distribution of that owner’s copyrighted works via a P2P network. This legislation is narrowly crafted, with strict bounds on acceptable behavior by the copyright owner. For instance, the legislation would not allow a copyright owner to plant a virus on a P2P user’s computer, or otherwise remove, corrupt, or alter any files or data on the P2P user’s computer.

The legislation provides a variety of remedies if the self-help measures taken by a copyright owner exceed the limits of the safe harbor. If such actions would have been illegal in the absence of the safe harbor, the copyright owner remains subject to the full range of liability that existed under prior law. If a copyright owner has engaged in abusive interdiction activities, an affected P2P user can file
suit for economic costs and attorney’s fees under a new cause of action. Finally, the U.S. Attorney General can seek an injunction prohibiting a copyright owner from utilizing the safe harbor if there is a pattern of abusive interdiction activities.

This legislation does not impact in any way a person’s right to exercise a fair use of a copyrighted work, or who is otherwise using, storing, and copying copyrighted works in a lawful fashion. Because its scope is limited to unauthorized distribution, display, performance or reproduction of copyrighted works on publicly accessible P2P systems, the legislation only authorizes self-help measures taken to deal with clear copyright infringements. Thus, the legislation does not authorize any interdiction actions to stop fair or authorized uses of copyrighted works on decentralized, peer-to-peer systems, or any interdiction of public domain works. Further, the legislation doesn’t even authorize self-help measures taken to address copyright infringements outside of the decentralized, P2P environment.

This proposed legislation has a neutral, if not positive net effect on privacy rights. First, a P2P user does not have an expectation of privacy in computer files that she makes publicly accessible through a P2P file-sharing network—just as a person who places an advertisement in a newspaper cannot expect to keep that information confidential. It is important to emphasize that a P2P user must first actively decide to make a copyrighted work available to the world, or to send a worldwide request for a file, before any P2P interdiction would be countenanced by the legislation. Most importantly, unlike in a copyright infringement lawsuit, interdiction technologies do not require the copyright owner to know who is infringing the copyright. Interdiction technologies only require that the copyright owner know where the file is located or between which computers a transmission is occurring.

No legislation can eradicate the problem of peer-to-peer piracy. However, enabling copyright creators to take action to prevent an infringing file from being shared via P2P is an important first step toward a solution. Through this legislation, Congress can help the marketplace and make the problems associated with P2P file trading without interfering with the system itself.

PAYING TRIBUTE TO RACHEL HENNING

HON. SCOTT McINNIS
OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. McINNIS. Mr. Speaker, I would like to take this opportunity to pay tribute to an individual whose pioneering efforts in the business market have led to numerous innovations. Rachel Henning is a trailblazer in technology that contributed to bolster the Denver economy. It is with much admiration that I pay tribute to and exemplary citizen of the State of Colorado.

Rachel Henning is the founder and creator of Catalyst Search. Her cost effective staffing solutions are the key to surviving in today’s business market. Her initial idea to create a successful recruiting and consulting firm has become a reality and expanded to Denver, Colorado and the surrounding area. Anchored in Colorado, Catalyst Search acts as a pioneer of this 21st century providing clients the convenience and expertise necessary to compete.

Rachel’s hard work and determination, has built a great company worthy of admiration. Leading an active member of the Internet, Colorado, and Women’s Chamber of Commerce, Rachel provides each organization with leadership and stability. She has contributed much time and effort to the civic and business communities in which she spends her time.

Mr. Speaker, it is an honor and a pleasure to applaud the diligent efforts of Rachel Henning and I am honored to congratulate her before this body of Congress and this Nation. I believe her aspirations will grow into a very prosperous career as a business leader, and her diligence and commitment deserve our pride and I am honored to pay tribute to her today. Good luck to you, Rachel, in all your future endeavors.

COMMENORATE A UNIQUE AND MAGNIFICENT GROUP OF AVIATORS

HON. RON PAUL
OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PAUL. Mr. Speaker, today I am pleased to commemorate a unique and magnificent group of old aviators who have received very little publicity in the civilian sector. They will celebrate their 90th and 60th anniversaries in conjunction with the Commemorative Air Force (CAF) “Wings Over Houston” Air Show from October 23–26, 2002. In Houston, Texas.

The first Enlisted Pilot, Chester L. Burge, earned his wings in the old Signal Corps in 1912. Prior to World War 11, 282 enlisted pilots served in the Signal Corps, then in the Army Air Service and later in the Army Air Corps as rated pilots. Many flew the Air Mail during the early 1930s of the Roosevelt Administration.

With the approach of WWII, aircraft manufacturers were producing aircraft faster than the Air Corps could fill with pilots. To qualify for Flight Training, a cadet was required to have two years of college. To fill this shortage of pilots, Congress enacted legislation in 1941 authorizing enlisted men to participate in aerial flight.

To qualify for Pilot Training, the enlisted men had to meet several stringent requirements. They had to be enlisted in the regular Army, not drafted, college graduates, hold a high school diploma, pass a rigid physical exam, and sign a contract with the Army avowing that upon completion of Flight Training, they would continue serving in the Army Air Corps as Staff Sergeant Pilots for three years, as Technical Sergeant Pilots for three years, as Master Sergeants for three years, and end the contract as Warrant Officer Pilots.

The Enlisted Pilots (aviation students) attended the same ground schools, same flying schools, had the same flight instructors, same training airplanes, and successfully completed the same courses as the Regular Cadets. Almost 2,500 enlisted men graduated as Enlisted Pilots from Ellington, Kelly, Luke, Mather, Columbus, Dothan, Lubbock, Moody, Roswell, Spencer, Turner, Victorville, Williams, Craig and Stockton Air Bases in Classes 42–C through 42–J, the last class of Enlisted Pilots.

Upon graduation, and ordered to participate in Aerial Flight by General “Hap” Arnold, Chief of the Army Air Corps, they then flew Douglas A-20s, Curtiss P-40s, and P-47s, Lockheed P-38s, North American P-56s, Douglas C-47s, C-48s, C-49s, C-53s. They flew many of these aircraft in combat as Staff Sergeant Pilots. Later, as officers, they flew all of the aircraft in the Air Force inventory during and after WW II.

The Flight Training of Aviation Students Program was discontinued in November 1942, with enlisted men graduating as Flight Officers in following classes.

Charles “Chuck” Yeager, the first pilot to exceed the speed of sound, completed his flight training as an enlisted man but graduated as a Flight Officer in December 1942. Bob Hoover, the world renowned military and civilian acrobatic pilot was an Enlisted Pilot. Walter H. Beech served as an Enlisted Pilot in 1919 and later founded the Beech Aircraft Company in Wichita, Kansas.

The Air Force honors the third Enlisted Pilot, William C. Ocker, for pioneering instrument flying by naming the Instrument Flight Center at Randolph AFB in his memory.

Capt. Claire Chennault organized a flight demonstration team at Maxwell Air Field in 1932, called the “Men on the Flying Trapeze” (the forerunner of the Thunderbirds), which at one time included two Enlisted Pilots, Sergeant William C. McDonald and Sergeant John H. Williamson. Staff Sergeant Ray Clinton flew solo stunt and backup for the team.

The Enlisted Pilots’ accomplishments are many and their legend is a long one of dedication and patriotism. Seventeen became Fighter Pilot Aces and thirteen became General Officers. They pioneered many air routes throughout the world. After release from active duty, they became airline pilots, airline union heads, corporate executives, bank presidents, teachers, doctors, manufacturers of racing cars, corporate aviation department heads, and much, much more.

Of the almost 3,000 American Enlisted Pilots from 1912 through 1942, approximately 600 remain. They are a terminal organization—most of them are in their early eighties. According to retired USAF General Edwin F. Wenglar, chairman of the Grand Muster Reunion, 75 to 100 of these grand Airmen will be able to attend their reunion, which could very well be the last gathering of the finest and most magnificent aviators in the annals of aviation history.

RECOGNIZING ARMOND MORRIS AS THE LANCASTER SUNBELL EXPO SOUTHEASTERN FARMER OF THE YEAR FOR GEORGIA

HON. SAXBY CHAMBLISS
OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. CHAMBLISS. Mr. Speaker, I would like to recognize and congratulate Armond Morris, of Ocilla, for his recent selection as Georgia’s Lancaster Sunbelt Expo Southeastern Farmer of the Year. Armond has farmed in South Georgia for forty years. He has repeatedly demonstrated his commitment to the livestock business through his dedication and leadership.

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Mr. Speaker, today I am pleased to recognize and congratulate Armond Morris as the Lancaster Sunbelt Expo Southeastern Farmer of the Year. Armond has farmed in South Georgia for forty years. He has repeatedly demonstrated his commitment to the livestock business through his dedication and leadership.
Mr. HORN. Mr. Speaker, I am pleased to introduce on behalf of myself, Mr. SAWYER and Mrs. MALONEY, the proposed “Confidential Information Protection and Statistical Efficiency Act of 2002.”

This bill would implement a pledge made by the President in his Management Agenda to improve Federal statistical programs. The bill, which the Administration drafted and supports, builds upon legislation that I introduced in the 106th Congress. That bill, H.R. 2885, the “Statistical Efficiency Act of 1999,” received strong bipartisan support and was approved by the full House. Similar to that bill, H.R. 5215, it has two primary objectives. One is to enable the Federal Government’s three principal statistical agencies—the Bureau of the Census, the Bureau of Labor Statistics, and the Bureau of Economic Analysis—to share the business data they collect. This shared information would substantially enhance the accuracy of economic statistics by resolving serious data inconsistencies that now exist. It would significantly reduce the reporting burdens on the businesses that supply those data.

The second and equally important objective of this bill is to ensure that the confidential data that citizens and businesses provide to Federal agencies for statistical purposes are subject to uniform and rigorous protections against unauthorized use. Accurate statistical data are essential to informed public and private decision-making in a host of important areas. This data make vital contributions to Federal, state, and local governments, and its use influences many facets, such as the impact of technology on productivity growth. The Nation’s core economic indicators—the Gross Domestic Product and other key statistical aggregates—form the cornerstone of Federal budgetary and monetary policy.

Yet, growing data anomalies and inconsistencies raise questions about the accuracy of our economic statistics. For example, the Gross Domestic Product has recently experienced a historically high measurement error by about $200 billion. Such serious data inconsistencies affect the Census Bureau and the Bureau of Labor Statistics, and call into question the accuracy with which these agencies track industry output, employment and productivity trends. For example, during the last economic census in 1997, the Bureau of Labor Statistics reported payroll data in the information technology sector that were 13 percent higher than the data reported by the Census Bureau. There was a 14 percent disparity in the payroll data reported by these two agencies for the motor freight, transportation and warehousing industries.

This bill would remove the statutory barriers that now prevent the Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis from sharing and combining statistical data. According to the Administration, this would largely eliminate the anomalies that now exist in Federal statistics and thereby greatly enhance their quality.

The bill would also eliminate much of the duplicative data collection that now occurs. Multiple agencies have a critical need for the same information but are prohibited from sharing it. Allowing these agencies to share this information will ease reporting burdens on businesses.

Let me emphasize several important features of the data-sharing provisions of the bill. First, the data-sharing provisions apply only to the three agencies I have mentioned—the Census Bureau, the Bureau of Labor Statistics and the Bureau of Economic Analysis. The data-sharing provisions would not extend to other Federal agencies. Second, the bill’s provisions apply only to the sharing of business data. They do not extend to household and demographic data that individual citizens provide to the Federal Government.

Third, the enhanced data-sharing can be used for statistical purposes only. Fourth, the data-sharing will be closely controlled under written agreements that specify: which data is to be shared; the statistical purposes for which the data can be used; the individuals who are authorized to receive the data; and appropriate security safeguards.

As I mentioned earlier, the other part of the bill would enhance the protection of data that businesses and citizens provide to the Federal Government on a confidential basis. In contrast to the bill’s narrow data-sharing authorities, its confidentiality protections are broad. These would apply to all Federal agencies that collect data for statistical purposes from businesses or individuals under a pledge of confidentiality.

The bill provides a clear and consistent standard for the use of confidential statistical information. Specifically, it prohibits the Federal Government from using such information for any non-statistical purpose. The bill defines a prohibited non-statistical purpose as including the use of data in individually identifiable form for any administrative, regulatory, law enforcement, adjudicative or other purpose that affects the rights, privileges or benefits of the person or organization supplying the information.

The bill would also prohibit the disclosure of such information under the Freedom of Information Act. This bill would provide appropriate safeguards to ensure that data supplied under a pledge of confidentiality are used only for statistical purposes. It imposes criminal penalties on Federal employees or agents who willfully disclose information in violation of the bill’s requirements.

The bill, thus, provides one uniform set of confidentiality protections to supplant the ad hoc statutory protections that now exist. It also establishes statutory protections in some areas where no such protections currently exist.

The bill’s enhanced confidentiality protections will improve the quality of Federal statistics by encouraging greater cooperation on the part of respondents. Even more important, these protections ensure that the Federal Government does not abuse the trust of those who provide data to it under a pledge of confidentiality.

Mr. Speaker, the Confidential Information Protection and Statistical Efficiency Act of 2002 makes important, common sense and crucial improvements in the Nation’s statistical programs. It is a bipartisan, good Government measure that has the Administration’s strong support. I urge my colleagues to join with us to achieve prompt enactment of the bill.

In Tribute to Thomas J. Reardon

HON. ROGER F. WICKER
OF MISSISSIPPI

IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. WICKER. Mr. Speaker, I rise today to pay tribute to a dedicated public servant and a leader in the field of higher education in the state of Mississippi. On August 15, 2002, University of Mississippi Dean of Students Dr. Thomas J. (Sparky) Reardon will celebrate 25 years of faithful service to the state of Mississippi and to his alma mater in our Nation’s statistical programs. It is a bipartisan, good Government measure that has the Administration’s strong support. I urge my colleagues to join with us to achieve prompt enactment of the bill.

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Mr. COLLINS. Mr. Speaker, I rise today. Joined by my colleague the Majority Whip of the House, to introduce the Home Office Simplification Act. This legislation will provide much-needed simplification for home-based small business owners which will total 11 million this year.

Today's tax code allows an individual who operates a small business in their home to deduct certain expenses associated with running that home-based business. But not surprisingly, this provision of the tax code is incredibly complex. Since the vast majority of home business operators cannot afford an accountant and without tax attorney to decipher all the requirements and avoid potential tax traps, they simply declare for the deductions that they are actually eligible for.

The standard deduction, First, the legislation creates a standard deduction of $2500. Taxpayers who meet eligibility requirements could avoid the administrative and calculation nightmare required by itemizing by simply claiming a standard deduction. The $2500 benefit is the equivalent of the average tax home office benefits claimed by those who filed in recent tax years. This amount would be indexed to annual inflation.

Repeal of depreciation recapture provisions This legislation also addresses one of the key deterrents that prevent small business owners from claiming the tax benefits for a home-based business—depreciation recapture provisions. Under changes to the tax law made in 1997, a home-based business owner, like any other business, can depreciate or “write off” over time, capital asset investments they make in their business. However, if at some point they sell the home, then that depreciation must be “recaptured.” The effect of that requirement is that homeowners do not get the full benefit of the capital gains tax exclusion which exempts $250,000 ($500,000 for married) on the gain on the sale of a primary residence. The recapture provision put in place in 1997, should be repealed.

This legislation is an important step in the right direction—addressing the need to simplify the tax code for a growing sector of small businesses in their home. That is key deterrents that prevent small business from taking full advantage of the tax code.

The Home Office Simplification Act is a beginning effort to make the tax code more user-friendly for those entrepreneurs creating opportunities for themselves and then-families at home.

ANNIVERSARY OF THE AMERICANS WITH DISABILITIES ACT

HON. JERRY F. COSTELLO
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. COSTELLO. Mr. Speaker, I rise today to celebrate the 12th anniversary of the Americans with Disabilities Act (ADA). As a co-sponsor of this monumental legislation in 1990, I know how significant this legislation is to people with disabilities in my district and throughout the United States.

Before the ADA was enacted in 1990, most people with disabilities were shut out of mainstream American life because of the arbitrary, unjust, and outdated societal attitudes and practices. When President Bush signed the ADA, the world’s first comprehensive civil rights law for people with disabilities, into law in front of 3000 people on the White House lawn on July 26, 1990, the event represented an historical benchmark and a milestone in America’s commitment to full and equal opportunity for all of its citizens. The emphatic directive presented in the legislation is that 43 million Americans with disabilities are full-fledged citizens and as such are entitled to legal protections that ensure them equal opportunity and access to the mainstream of American life.

The ADA recognizes that the surest way to America’s continued vitality and strength is through the contributions of all its citizens. The achievements and accomplishments of individuals with disabilities are a milestone for this country as a whole and it is important to support the goals and ideas of the ADA. Mr. Speaker, I know my colleagues join me in honoring the 12th anniversary of the ADA and in strong support for strong protections of the rights of those with disabilities.

CONDEMNIMG ANTI-SEMITISM

HON. BARBARA LEE
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Ms. LEE. Mr. Speaker, I rise today to condemn the terrible acts of anti-Semitism that have taken place in the last year in the United States and abroad. We cannot stand by in silence and fail to speak out against violence and intimidation.

Recently, Congress passed H. Res. 393, a measure I was proud to co-sponsor and support. H. Res. 393 decries the rising tide of anti-Semitism in Europe and cites an alarming list of examples that stretch across the continent. Synagogues have been attacked; Jewish cemeteries have been defaced; Jewish students have been assaulted.

This resolution condemns anti-Semitism in Europe, as we should. We must also condemn it in America.

In my own district, in Oakland, California, federal agents are investigating suspicious fires at Beth Jacob Congregation. These acts of arson scarred a century-old building, but did not dim the spirit of this synagogue. Nor did they diminish the bonds of community; instead these acts of violence inspired gestures of friendship and support. Students at the Zion Lutheran School donated toys to replace playthings lost in the fires. These children have a lot to teach us about the power of friendship.

Sadly, we have much to learn. In addition to the fires at Beth Jacob, there have been other disturbing cases of intimidation and hatred against Jews.

In the Bay Area, on college campuses where traditions of tolerance and freedom of expression run deep, Jewish student centers have been desecrated. In the birthingplace of the Free Speech movement, people have been harassed on the basis of their beliefs.

Diversity is one of our great strengths. Tolerance is one of our finest virtues. Hatred must not cloud these principles. We must strive to plant the seeds of peace and renew our commitment to these basic freedoms.

Burning a house of worship, a synagogue, is an act of terror. It is designed to instill fear and inspire hatred. And, yes, we must condemn such acts in Europe. And in California.

Violence and intimidation are utterly wrong. We must all condemn anti-Semitism, in all its forms.

Sad acts are hate crimes. Just as I supported H. Res. 393, I strongly support other legislation to recognize hate crimes and to express the sense of Congress condemning violence and prejudice.

STATEMENT UPON INTRODUCTION OF THE WEB-BASED ENROLLMENT ACT OF 2002

HON. ADAM B. SCHIFF
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. SCHIFF. Mr. Speaker, I rise today to announce the introduction of a piece of legislation that will provide an e-government solution to the complicated process of signing kids up for health insurance. The SCHIP Web-Based Enrollment Act of 2002 bill provides a simple, targeted method for expanding access to children’s health care by giving states the flexibility they need to implement web-based enrollment programs for SCHIP.

The Balanced Budget Act of 1997 established the State Children’s Health Insurance Program (SCHIP), a program that allows states to cover uninsured children in families with incomes that are above Medicaid eligibility levels. Like Medicaid, SCHIP is a federal-state matching program, but spending has fallen well below allotment levels for a variety of reasons. One of the most striking reasons is that states have had difficulty enrolling enough children to meet the allotment standards. Enrollment in SCHIP has involved lots of red-
taped, and the complexity of the application has discouraged families from signing up.

To address this problem, states are beginning to utilize new technology and the Internet to streamline enrollment in SCHIP and Medicaid. This new technology has enabled states to reduce program enrollment time, improve data accuracy, increase access for applicants, and centralize social service applications in state government. States that have launched or are planning to launch web-based enrollment in SCHIP include: California, Arizona, Florida, Michigan, Georgia, Pennsylvania, Texas, and Washington.

While web-based enrollment is promising, many states are challenged by high start-up costs. This bill would provide states with more flexibility to use their federal SCHIP funds for this kind of activity, and would create a grant program to help states promote web-based enrollment.

The SCHIP Web-Based Enrollment Act of 2002 meets these objectives in the following ways: First, it would allow states to use unused, “retained” (redistributed from the federal government back to the states) SCHIP money for this effort. Under current law, a state may use up to 10 percent of retained 1998 allotments for outreach activities approved by the Secretary. The bill adds an additional provision under that section that allows states to use AYE (Amount Of Retained SCHIP) funds (separate from SCHIP money) for this purpose. Second, the bill establishes a separate grant program, allowing states to apply for additional funds (separate from SCHIP money) for this purpose. The grant program would make $50 million available over 5 years, and grants would be subject to a match rate. The match rate would be tied to their SCHIP match rate, but states would be eligible for up to 20 percent more than their rate, not to exceed 90 percent.

Finally, this legislation provides assistance to states from HHS for development and implementation of the web-based enrollment system by providing information and technical assistance.

There are nine million uninsured children in the United States. In fact, a child is born without health insurance every minute in this country. We must do everything we can to make it easier for families to enroll children in the health insurance programs available to them. I believe that this bill will provide the necessary means to help states expand enrollment in SCHIP. I urge my colleagues to support this important legislation. Thank you.

MONE Y PRAC TICES

HON. RON PAUL
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. PAUL. Mr. Speaker, as the attached article (“A Classic Hayekian Hangover”) by economists Roger Garrison and Gene Callahan makes clear, much of the cause for our current economic uneasiness is to be found in the monetary expansion over most of the past decade. In short, expansion of the money supply produced by the policy of flat currency, leads directly and inexorably to the kind of problems we have seen in the financial markets of late. Moreover, if we do not make the necessary policy changes, we will eventually see similar problems throughout the entire economy.

As the authors point out, our ability to understand the linkage between inflated money supplies and subsequent economic downturns is owing to the great work of the legendary economists of the Austrian school. This Austrian Business Cycle (or “ABC”) theory has long explained the inevitable downside that attends to a busting of the artificial bubble created by inflationary fiat monetary practices.

In the current fact that there has been a near-decade of significant increases in the seasonally adjusted money supply, as measured by M2 (as shown by the chart included with the article), serves as a direct explanation for the over capitalization and excess confidence which we have seen recently leaving financial markets. In short, as this article shows, the Austrian theory alone understands the causes for what has been termed “irrational exuberance” in the financial markets.

Mr. Speaker, I wish to commend the authors of this fine article as well as to call it to the attention of my colleagues in hopes that we will not merely understand its implications but also that we find the courage to change monetary policy so that we will not see a repeat performance of this year’s market volatility.

A CLASSIC HAYEKIAN HANGOVER

(By Roger Garrison and Gene Callahan)

Are investment booms followed by busts like drinking binges are followed by hangovers? Dubbing the idea “The Hangover Theory” (Slate, 12/3/96), Paul Krugman has attempted to denigrate the business-cycle theory introduced early last century by Austrian economist Ludwig von Mises and developed most notably by Nobelist F. A. Hayek. Yet, proponents of the Austrian theory have themselves embraced this apt metaphor. And if investment is the intoxicant, then the interest rate is the minimum drinking age. Set the interest rate too low, and there is bound to be trouble ahead.

The metaphorical drinking age is set by— and periodically changed by—the Federal Reserve. In the current instance, the understanding that the “Fed sets interest rates” has become widely accepted as a simple institutional fact. But unlike an actual drinking age, the interest rate is a market rate. The market rate would be subject to a match rate. The match rate would be tied to their SCHIP match rate, but states would be eligible for up to 20 percent more than their rate, not to exceed 90 percent.

Finally, this legislation provides assistance to states from HHS for development and implementation of the web-based enrollment system by providing information and technical assistance.

There are nine million uninsured children in the United States. In fact, a child is born without health insurance every minute in this country. We must do everything we can to make it easier for families to enroll children in the health insurance programs available to them. I believe that this bill will provide the necessary means to help states expand enrollment in SCHIP. I urge my colleagues to support this important legislation. Thank you.
The House in Committee of the Whole

The House in Committee of the Whole on the State of the Union had under consideration the bill (H.R. 5120) making appropriations for the Treasury Department, the United States Postal Service, the Executive Office of the President, and certain independent agencies for the fiscal year ending September 30, 2003, and for other purposes:

Mr. ROGERS of Michigan. Mr. Chairman, I want to thank my colleagues, and I will ask for their help today in need of Michigan.

In the Civil War, Michigan mustered 90,000 troops to defend the Union. During that tumultuous time in our history, Abraham Lincoln was quoted as saying: "Thank God for Michigan."

We have the second most diverse agricultural economy in the world's fresh water, all of it worth defending. And I am here to tell you today that Michigan right now is under attack. I need every colleague in this House from Maine to California to Florida and in between to step up to the plate and say, "We will stand beside you, those who have stood by America before."

In the year 2000, Canadians sent 4.2 million cubic yards of waste to Michigan, nearly double from the year before. Canada is the second largest land mass country in the world, and yet they are unable to handle their own trash. This situation gets worse.

Toronto is scheduled to close its last landfill at the end of the year. Recently, city workers in Toronto went on strike. I want to point this out to you. This is the scene in Toronto just a few weeks ago: trash blocking roadways. This is a park area filled with trash from Toronto. As you can see, the residents were throwing bags of garbage over the fence, piling up everywhere all across their city.

Here is the bad news. All of that trash that my colleagues see right here is coming to the great State of Michigan and we are absolutely uncertain as to its contents. Let me just quote for my colleagues a woman from Toronto as quoted in the Toronto Star, when city workers settled a strike that allowed garbage to pile up in the streets. She was quoted as saying "I'm relieved that it's on its way. It was polluted, smelly and germy."

160 semi-trucks each day are delivering polluted, smelly and germy Toronto trash to the great State of Michigan. At the end of this year, when Toronto's last remaining landfill closes, that number is expected to exceed 250 trucks every day of this trash in our landfills. Michigan has had a long-term plan to deal with its own garbage. Just with Canadian trash alone, Michigan's landfill capacity has been reduced from 20 years to 10 years, and getting smaller every day.

In one landfill that accepts Canadian trash, PCBs and soiled coffin waste were discovered. The needle program in Toronto is coming to a landfill near you great citizens of Michigan.

This amendment is important today. There is a lot of work we need to do on this issue to stop Canadian trash. However, we ought to have the courage today to stand with our fellow Michiganders to give them at least the hope of protecting their environment in the great State of Michigan.

The purpose of my amendment is to hire six U.S. Customs agents to be stationed 24 hours a day on the Ambassador Bridge and the Blue Water Bridge, three at each bridge for every shift. The sole responsibility of these agents will be to inspect Canadian trash coming into Michigan. The money provided includes dollars for equipment, training, and benefits. That is the only way to know that this trash is to get our hands dirty and inspect it. Let's find out where the PCBs are coming from, where the soiled coffin waste is coming from and where the bottles are coming, since Canada does not have a bottle deposit program like Michigan.

This is the right and decent thing to do, to let us in Michigan defend our borders as we have stood with the rest of this country to defend theirs.

I am going to ask my colleagues again today, please strongly support this amendment. We want to make sure that every trash container coming into Michigan meets existing environmental and health regulations. Today, we have no assurance that is happening. Today, we cannot be certain that there is no leakage from this material, ruining our lakes, our streams and ruining the great land of Michigan.

Instead of spending a little more money going after grandma who owes the IRS $12, we are going to spend just a little bit less from the $4 billion account that we are reducing to protect the health and environment of my home State, the great State of Michigan. I challenge all of my colleagues to please support this issue. Stand loudly with us as we tell the Canadians to please handle their own trash and leave the littering to those who get a ticket.

IN HONOR OF DORIS THOMAS

HON. NANCY PELOSI

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Ms. PELOSI. Mr. Speaker, I rise to pay final tribute to my friend Doris Thomas, who died peacefully on July 8 in San Francisco. Doris was a long-time community organizer and political activist who worked tirelessly to empower local communities through political involvement. Doris was a leader in our City, and I join so many other San Franciscans in mourning her passing.

Born in Laurel, Mississippi, to the Reverend Simon S. Thomas and Rosa Henry, Doris was a tireless champion of the African-American Community and a member of Mayors Frank Jordan and Willie Brown as a political activist who worked tirelessly to empower local communities through political involvement. Doris was a leader in our City, and I join so many other San Franciscans in mourning her passing.

Born in Laurel, Mississippi, to the Reverend Simon S. Thomas and Rosa Henry, Doris was one of five children. After earning a B.A. from Hampton University and a law degree from Howard University in Washington D.C., Doris moved to San Francisco. From 1963 until 1983 she served as District Director for the great Congressman Philip Burton. She was a patient, savvy problem solver who specialized in immigration issues. After Congressman Burton's death she worked for his wife, Congressman Sala Burton. Doris also worked for Mayors Frank Jordan and Willie Brown as a program manager for the Mayor's Office of Community Development.

Doris was a tireless champion of the African-American Community and a member of
the Black Leadership Forum. Her public service transcended any particular organization, however, and she was active in the Chinese-American Democratic Club, the Democratic Women's Political Forum, and other groups. She contributed her political expertise to many campaigns, including those of Philip Burton, Sala Burton, Frank Jordan, Jesse Jackson, and my own.

After retiring from Congressional work in 1987, Doris turned her focus to government and political consulting, specializing in immigration law. In addition to helping countless individuals earn citizenship, she dedicated herself to voter education. Among her influential efforts for political mobilization was her role as founder of the Bayview-Hunters Point Democratic Club.

Doris Thomas was a devoted mother, sister, and friend. To her daughter, Tandi, and her sisters, Naomi Gray and Ruth Long, I extend my deepest sympathies. To all those who loved Doris, thank you for sharing her with us.

DISAPPROVAL OF NORMAL TRADE RELATIONS TREATMENT TO PRODUCTS OF VIETNAM

IN THE HOUSE OF REPRESENTATIVES

TUESDAY, JULY 23, 2002

Ms. JACKSON-LEE of Texas. Mr. Speaker, I rise in support of H.J. Res. 101, Disapproval of Trade Waiver Authority With Respect To Vietnam. This resolution puts the principles of the United States first, and is required of this House in light of both the Jackson-Vanik amendment to the 1974 Trade Act and recent events affecting our diplomatic relationship with this developing nation.

United States' law requires that permanent normal trade relations be granted to non-market economies that the president can certify have free emigration. Absent this showing, the President can waive the provisions of the amendment if doing so will promote emigration in the future.

Last year, Vietnam purchased Boeing aircrafts to initiate the Vietnam-U.S. trade pact. Trade is vital to the development of Vietnam. Vietnam has greatly reduced the incidence of poverty. The World Bank reports that there is a rise in per capita expenditure and also there are widespread reports of improvements in broad well-being. While the progress achieved over the past decade has been impressive by almost any standards, Vietnam still remains a very poor country.

The State Department in its 2001 Country Reports on Human Rights Practices noted that Vietnam has a poor human rights record. This record has worsened. Vietnam continues to commit numerous and serious abuses to its people. Vietnam continues to suppress political and some religious freedoms. Vietnam continues to restrict significantly civil liberties on grounds of national security and societal stability.

Vietnam, a formerly hostile nation, has a large trade surplus with the United States and a questionable human rights record, and they ask for trade waiver authority review. I do not seek to disparage the gains Vietnam has made in re-engaging the world. I do seek to create a consistent balance between our trade priorities and the principles we use to steer this nation. We cannot continue to hold ourselves out as a nation of laws and turn our back on our convictions at every economic opportunity.

Therefore, I rise in support of this resolution because our trade policy must be balanced with a sense of moral leadership. We should not hold our trade relationship over Vietnam, nor should we allow globalization to commit us to policies against our best sense as a nation. Vietnam has done much, but it can do more. Other countries may turn a blind eye to issues such as the rights of workers and the environment, but we are not other nations. I urge my colleagues to vote in favor of H.J. Res. 101, disproving trade waiver authority with respect to Vietnam. It is time to begin thinking about what trade should mean; huge deficits for the U.S. for the sake of a few reforms is not the answer.

IN HONOR OF PASTOR JOHN PARISH

HON. J.C. WATTS, JR.
OF OKLAHOMA

IN THE HOUSE OF REPRESENTATIVES

THURSDAY, JULY 25, 2002

Mr. WATTS of Oklahoma. Mr. Speaker, In my home town of Eufaula, Oklahoma, we are blessed by a wonderful sense of community, where neighbors help neighbors, and no one is a stranger. One important reason for this great blessing is the inspired guidance of our religious leaders.

One of those leaders has been bringing God's word to not only Eufaula but also, through his daily radio program, to folks throughout Oklahoma, for 27 years. Pastor John Parish of the Lighthouse Christian Center has been a beacon of faith and prayer, of hope and love, and of charity and outreach to the less fortunate.

Though John is not a physically large man, he has a large voice and a large presence that is respected, not only in the congregation and the entire community. He is a caring man and he leads a loving and caring church. During last year's ice storm, you didn't have to be a member of his church to receive an outstretched hand of help from Pastor Parish. He went wherever he was needed.

John is supported in his ministry by his remarkable wife Rhea, and the church's youth ministry is led by his son Jonathan and his wife Kelly. Thanks to the contributions of this wonderful family, Eufaula is a better place to live and raise a family.

This Sunday the community and John's congregation are gathering to celebrate his 50th birthday. I would like to congratulate John on this milestone and thank him for his lifetime of dedication and service to our wonderful Savior, to family and to our community.

STATEMENT IN HONOR OF PHYLLIS WATTS

HON. NANCY PELOSI
OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

THURSDAY, JULY 25, 2002

Ms. PELOSI. Mr. Speaker, I rise to pay final tribute to one of San Francisco's most generous patrons of the arts, Phyllis Watts, who died June 5th at age 97. Phyllis's extraordinary generosity and commitment to artistic, educational, and scientific organizations continues to enrich the lives of all of us who live in the San Francisco Bay Area. Through her philanthropy and her personal warmth, she left an indelible mark on our City and the lives of those who loved and admired her.

Phyllis and her husband Paul moved to San Francisco in 1937. With her pioneering spirit and contagious enthusiasm, Phyllis adopted the motto of her philanthropic cause: "In 1958, Mr. and Mrs. Watts established the Paul L. and Phyllis Watts Foundation. When her husband died in 1971, she assumed the presidency of the Foundation. After 1988, Phyllis dissolved the foundation and began making individual contributions to a variety of educational and cultural institutions. Her consummate modesty in giving makes it impossible to know the total amount of her contributions, but it has been estimated at $200 million.

She gave to the Fine Arts Museums of San Francisco, the San Francisco Symphony, the San Francisco Opera and the San Francisco Art Institute. She donated significantly to the San Francisco Museum of Modern Art, first to construct its stunning new home and then to build a world-renowned collection equal to its new building. She funded a new building at the California Academy of Sciences, and gave major grants to the Smith Kettlewell Eye Research Institute, Children's Hospital of San Francisco, UC Irvine, and Bellarmine College Preparatory.

Nearly every major cultural, educational, and scientific organization in San Francisco has benefited from her generosity. For her long service to the community, she received an honorary Doctor of Fine Arts degree from the San Francisco Art Institute and commendations from several San Francisco Mayors. I was proud to nominate her for a National Medal of Arts.

Phyllis's contribution to the arts was not only financial. Her leadership, creativity, and intelligence were immense gifts in their own right. She was never afraid to take risks on new and innovative art, and her vision enabled arts organizations to push forward into new ground. Her sharp eye and captivating personality helped to nurture some of the city's most important cultural institutions.

San Francisco is forever indebted to Phyllis. Her contributions to our cultural resources are immeasurable; her friendship and energy will be sorely missed. It is with great sadness and recognition of their loss that I offer my deepest sympathies to her son Paul, her daughter Carol, her five grandchildren, three great-granddaughters, and eight great-grandchildren. Like the art she left behind, our memories of Phyllis are permanent and beautiful.

TRIBUTE TO HON. TONY HALL

HON. LOUISE McIntOSH SLAUGHTER
OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

THURSDAY, JULY 25, 2002

Ms. SLAUGHTER. Mr. Speaker, I rise in tribute to a dear colleague and friend, the Honorable Tony Hall of Ohio.

We are nearing the time to say goodbye to Tony who has honorably served his constituents of Montgomery County, Ohio for 23
years. We have spent many late nights serving on the Rules Committee together.

Tony has been offered the opportunity to represent the United States as a leading advocate to promote global food security and reduce hunger throughout the world. He will serve as the U.S. ambassador to the United Nations agencies for Food and Agriculture based in Rome. His efforts on behalf of the hungry will be greatly missed in the House of Representatives—his work remains a beacon for other members to follow.

Alleviating hunger and improving conditions for the poorest people, both here at home and abroad, has been his personal passion throughout all the years I have worked with him. His new position will enable him to focus on this mission with the full support and authority of the entire United States government.

Representative Hall embodied all the best traditions of this institution. He is known for a commitment to the best interests of his district and the nation as a whole.

With his work and passion he has shown during his years in Congress, he has made this world a better place, and I am very confident he will continue to do so in this new position.

Among his many legislative accomplishments, Tony wrote the bill enacted in 1992 that created the Dayton Aviation Heritage National Historical Park. He recently wrote legislation to stop importing “conflict diamonds” that are mined in war-torn Africa and which fund Al-Qaeda’s international terrorism, and he also spearheaded international efforts to draw consumers’ attention to the importance of this “bloody” business.

In his new position, Tony Hall will assist international hunger relief. He will help to draw attention to international food, hunger, and agriculture issues before they reach the crisis stage and to promote innovative hunger-related practices by private groups and governments. This position will give him the opportunity to continue to be a leading advocate for ending hunger and promoting food security around the world.

Best Wishes, Tony. And thank you.

CONGRATULATIONS TO CONGRESSMAN TONY HALL

HON. JAMES T. WALSH

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WALSH. Mr. Speaker, I rise today to congratulate my colleague, and friend, Congressman Tony Hall, as he becomes the United States Ambassador to the United Nations food and agriculture agencies in Rome, Italy.

First elected to the House of Representatives in 1978, Tony has served the good people of the 3rd District of Ohio with distinction and honor. He has been a driving force and advocate for issues like ending world hunger, promoting food security, stopping the importation of “conflict diamonds” in Africa, and an infinite number of legislative accomplishments in Congress.

He has embraced his role as Congressman in an honorable fashion, and with his experiences as a public servant, I have no doubt that he will step into his new position with the same grace and fervor that he has demonstrated over the past three decades. Based on his experiences with our own government, there is no better person to lead the fight for human rights.

We will miss his strength and wisdom, but his experiences and passion for the oppressed make him the ideal person to lead the Food and Agriculture arm of the UN. It is hard to see him go, but it would be selfish for us not to let this fine leader use his strengths to help overcome the hunger problems facing our world.

I want to wish Tony all the best as he embarks on this new journey. If his future accomplishments are any reflection of his past contributions, the world will be a better place.

TRIBUTE TO REP. TONY HALL OF OHIO

HON. FRANK R. WOLF

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Thursday, July 25, 2002

Mr. WOLF. Mr. Speaker, we come to the House floor today to pay tribute to our colleague from Ohio, the Honorable Tony P. Hall.

As you know, Mr. Speaker, Tony was nominated by President Bush to be the United States ambassador to the United Nations food and agricultural agencies located in Rome, Italy. He is awaiting final Senate confirmation, which could come at any time. Once confirmed, he will resign as the representative of the 3rd District of Ohio and take his post in Rome where he will be able to continue his passionate work as a leading advocate for ending hunger and promoting food security around the world. Tony will be greatly missed in the House of Representatives, but I know that he is absolutely the right person to serve as the United States representative to the World Food Program, the Food and Agricultural Organization, and International Fund for Agricultural Development, all agencies of the United Nations which assist international hunger-relief efforts.

This is a bittersweet time for me. I have had the privilege and honor to call Tony Hall my colleague for two decades, but more importantly, I have come to call Tony Hall my best friend in Congress. Many people don’t understand how a Democrat from Ohio and a Republican from Virginia, who more often than not are on the opposite sides of votes in the House, can share a friendship.

But it’s been easy to be Tony’s friend because he is one of the most decent, sincere, loving, dedicated people that I know. He finds his strength through his deeply held faith in God. I have come to know him well through our weekly Bible study together, where we have shared personal moments about our families, our lives, and our work in Congress. We’ve had weighty and serious discussions, we’ve laughed together and we’ve shared tears.

As a public servant, Tony embodies Christ’s teachings in Matthew 25: “For I was hungry and you gave Me food; I was thirsty and you gave Me drink; I was an emaciated child, was indelibly etched in his mind.

I believe Tony’s life destiny is to be a servant, though in his college days, if he’d had a little larger frame, he may have had a career in football. An Ohio native, in 1964 he received his A.B. degree from Denison University in Granville, Ohio, and while at Denison, he was a Little All-American tailback and was named the Ohio Conference’s Most Valuable Player in 1963.

But his inner voice and his servant’s heart directed him to what would become a career of service. During 1966 and 1967, he taught English in Thailand as a Peace Corps volunteer. He returned to Dayton to work as a realtor and small businessman for several years, but before long, he was elected to the Ohio House of Representatives where he served from 1969 to 1972, and then to the Ohio Senate, serving from 1973 to 1978. On November 7, 1978, Tony was elected to the House of Representatives from the 3rd District of Ohio and has served with distinction since.

Tony Hall’s worldwide hunger relief quest began in earnest in 1984 when he first visited Ethiopia during that nation’s Great Famine. What he saw then, especially the faces of emaciated children, was indelibly etched in his mind, forever transforming him and instilling a passion that drives him in his quest to help feed the starving peoples of the world.

In 1993 this House, in what has been described in Politics in America as “a wave of frugality,” abolished the Select Committee on
Hunger, as well as three other select committees. Having served as chairman of the Select Committee on Hunger and having worked in 1984 as the principal supporter of the legislation which created the Select Committee on Hunger, TONY HALL fought to keep the committee alive because of its importance as a forum for those concerned about hunger and the very survival of vulnerable populations.

In an effort to use this disappointing event as a means to elevate the problem of hunger, TONY embarked on a 22-day water-only fast. He was also dismayed that congressional leaders had let the House vote on the matter. But through his perseverance, the momentum of this fast led to the creation of two new hunger entities: the Congressional Hunger Caucus and the Congressional Hunger Center, which I was honored to co-chair with TONY here in the nation’s capital. Those forums allowed TONY to continue the fight against hunger, to ensure that issues of both domestic and world hunger remain at the forefront of national debate, and to accomplish what always was the goal of the Select Committee—to push responsible policies and to generate a national sense of urgency to solve hunger once and for all.

His humanitarian work also has focused on efforts to improve human rights conditions around the world—in the Philippines, East Timor, Portugal, China, and the former Soviet Union. In 1983 he founded the Congressional Friends of Human Rights Monitors. He was the principal U.S. nominator of East Timor Bishop Carlos Belo, winner of the 1996 Nobel Peace Prize.

Tony has been nominated three times for the Nobel Peace Prize for his advocacy for hunger relief programs and improving international human rights conditions. He is the author of legislation supporting child survival, basic education, primary health care, micro-enterprise, and development assistance programs in the world’s poorest countries.

But while TONY’s name is known far and wide for his hunger and human rights work, he also has been a stalwart representative for the people of the 3rd District, vigorously defending his district’s interests and a dedicated employer, Wright-Patterson Air Force Base in Dayton.

He was the principal author of legislation enacted in 1992 to establish the Dayton Aviation Heritage National Historical Park. Also in 1992, TONY introduced successful legislation extending the life of the Dayton Area Health Plan which provides health care services to more than 42,000 low-income residents of Montgomery County, costing taxpayers $1 million less than a traditional health care program.

He was a leader in Congress in support of the Air Force Science and Technology program, which is headquartered at Wright-Patterson. He wrote legislation passed in 1993 which laid the foundation for the privatization of the Energy Department’s Miamisburg Mound Plant, a former defense nuclear facility. He has supported legislation to create high-tech jobs in the Dayton area that combine the region’s strengths in aerospace and automobile manufacturing. He is the author of legislation to improve safety for police and emergency workers assisting stopped vehicles on highways.

The people of his district also know well his work on hunger issues because it was there in 1984 that he founded Saturday Meals for Seniors, a weekend hot lunch program for seniors in need in Dayton which has fed over 10,000 meals at group sites and to shut-ins every year since.

In 1985 TONY introduced legislation incorporated in the 1985 Food Security Act to promote gleaning programs, which gather the produce before commercial harvests, to feed hungry people. He also organized annual gleaning projects in Dayton, beginning in 1986 which salvaged 77 tons over a three-year period, and helped organize gleaning projects throughout Ohio.

In 1985 TONY organized STOP HUNGER...FAST!, a broad-based, community-wide effort in Dayton, which raised $330,000 that year for hunger relief efforts in the U.S. and Africa.

There are so many examples of how TONY’s passion and principles and Christian values have made a positive difference in the lives of those suffering from hunger around the world for over two decades. His efforts have included work to convince the community of nations that food must never be used as a weapon against hungry people. TONY’s legacy of fighting hunger spans from Dayton, Ohio, through Washington, D.C., on to the Horn of Africa and around to North Korea.

In 1982, two years before his work to create the House Select Committee on Hunger, to help spur the call and aid that could be used for hunger relief, TONY organized a media event and luncheon serving only food salvaged from trash cans and then worked for passage of legislation which outlined steps to make food available to hungry people that would otherwise be wasted. TONY’s leadership in the effort to achieve a world without hunger.

In 1984 following reports of massive famine and starvation, TONY visited relief camps in Ethiopia and revisited the country again in 1987, after working tirelessly during that time to investigate efforts to head off a repeat of the 1984 famine and encourage early action to prevent loss of life in not only Ethiopia but other drought-stricken nations in sub-Saharan Africa, and urge Ethiopian leaders to allow famine relief to reach all the people of Ethiopia, including regions affected by civil war.

Legislation passed the House in 1985 calling on the U.S. to support measures aimed at immunizing the world’s children against six major childhood diseases. TONY successfully led efforts in Congress to earmark $38 million in FY’s 1986-1990 to fund vitamin A programs in developing nations, in light of significant evidence linking vitamin A to improvements in children’s health.

Tony visited Haiti with the Select Committee on Hunger in 1987 and again with the Congressional Hunger Caucus in 1993 to investigate humanitarian projects. Following the 1993 visit he helped to secure U.S. Agency for International Development support to assist a leading non-governmental organization to begin feeding over a half million more malnourished Haitians.

In 1988 TONY visited Bangladesh during the devastating floods and upon his return, worked for passage of legislation to aid Bangladesh’s recovery from the flood.

In 1989 TONY visited Sierra Leone and convinced Executive Branch officials to change food assistance programs to better serve humanitarian needs. He also organized a media event and luncheon serving only food salvaged from trash cans and then worked for passage of legislation which outlined steps to make food available to hungry people that would otherwise be wasted. TONY contacted leaders in Ethiopia calling for a summit to address the issues of providing humanitarian assistance to conflict situations and the issue of children as victims of war in the Horn of Africa. The summit was held in April 1992. For his humanitarian legislation and his proposal for a Humanitarian Summit in the Horn of Africa, TONY HALL and the Hunger Committee received the 1992 Silver World Food Day Medal from the Food and Agriculture Organization of the United Nations.

He also is the recipient of the United States Committee for UNICEF 1995 Children’s Legislative Advocate Award, U.S. AID Presidential Hunger Award, and 1992 Oxfam America Partners Award. In 1984, he received the Distinguished Service Against Hunger Award from Bread for the World, the highest award given by the organization to recognize efforts to fight world hunger. In 1988, the U.S. Agency for International Development awarded TONY HALL its Presidential End Hunger Award “for continued demonstrated vision, initiative and leadership in the effort to achieve a world without hunger.” He is also a recipient of the NCAW Silver Anniversary Award and received honorary Doctor of Laws degrees from Asbury College and Eastern College and a Doctor of Humane Letters degree from Loyola College.

In 1994, President Clinton nominated TONY HALL for the position of UNICEF Executive Director. In May 1994, TONY led a Presidential Delegation to the Horn of Africa and was the first U.S. legislator to visit Rwanda. He focused efforts with the Congressional Hunger Caucus to convince the administration to formally recognize that genocide was occurring there and take the lead in the United Nations to establish an international tribunal to bring those responsible for the murder of thousands of Rwandans to trial. After visiting what at the time was the largest refugee camp in history on the east side of the former Rwandan capital, he advocated immediate and improved cooperation by all international donors for the relief of Rwandan refugees and convinced administration officials to visit sites of humanitarian disaster in Rwanda leading to the assistance being provided by the UN.

TONY’s concern for those suffering in famine-stricken areas took him to North Korea where he first visited in August 1996, just weeks after North Korea’s “breadbasket” region was hit by a flood that destroyed the country’s harvest by half and left the people there vulnerable to a massive food shortage. He returned to North Korea in April 1997 on a humanitarian mission to focus attention on the 5 million people at risk of death from starvation from an imminent famine. To help spur an international response to help the starving North Korean people, TONY traveled to South Korea and Japan in August 1997 to promote additional humanitarian aid. He spoke to the largest church in South Korea and encouraged prosecutors efforts to the North. He also urged Japanese officials to consider a larger role in aiding people suffering from severe food shortages and suggested that Japan’s surplus rice could leverage price donations to aid people facing starvation in North Korea.

He was also pleased by the continued foreign assistance to those facing conditions for the Korean people and not satisfied that the necessary reforms were in place to avert the crisis the Koreans were facing that was unlike any since the famine that claimed 30 million people in China nearly four decades ago.

He made his third visit to North Korea in October 1997 to again call on the world to focus its attention on the disaster unfolding there.
Perhaps what Tony so effectively conveys when he works to help end the suffering of the world’s hungry people is his personal conviction that lending humanitarian aid is above politics. In his discussions with North Korean leaders about their country’s acceptance of peace talks, they expressed concern about the agenda for the talks and that food aid would not be used as a political weapon during the talks. He assured them that the United States had a long tradition of providing food aid solely on a humanitarian basis, which he personally considers a point of pride, and that this policy will continue. He urged them to begin formal negotiations on the peace talks with that assurance.

He made his fourth trip to famine-stricken North Korea in November 1998, traveling to cities in the far northeastern part of the country and a town south of the Pyongyang capital, visiting orphanages, schools, hospitals, and an “alternative food” factory, before returning to Pyongyang for meetings with senior North Korean government officials and aid workers. He reported that grave-covered hillsides and overflowing orphanages were the most visible changes there since he visited a year earlier.

He observed that the food donated by the United States and others is helping to save the lives of children in North Korea, but that food alone won’t cure the ills there. Stopping the famine will take a new focus on health—one sufficiently to combat the debilitating effects of contaminated water and an almost complete lack of medicine and one he found missing in the current approach of the government of North Korea. He also reported that private and United Nations health initiatives are impossibly underfunded.

Yet in his visits throughout the countryside, where no one can escape the ravages of famine, Tony Hall found something in this fourth visit with the North Koreans that made him realize that his efforts to help turn the tide toward a brighter future for these suffering people were bearing fruit. He found—hope. He called “heroic” the efforts of ordinary North Koreans to overcome their difficulties, as he saw an “alternative food factory” which turns seaweed into food. The noodles that are becoming a staple in the diets of too many people. He saw people working at all hours of the day and night, moving the cabbage harvest, gathering twigs for kitchen fires, and cleaning already cleanly picked fields. Denuded hills and rows of crops planted three-quarters up the hill were clear evidence of their desperate efforts.

And when he had the chance to speak with ordinary citizens through his own interpreter and out of the presence of his government “minders,” he had seen earlier visits replaced with absolute determination in their voices to overcome their troubles. Even faced with slow starvation, the telltale signs of which show on skin darkened by malnutrition, these brave people have hope, a hope that Tony Hall in his work as a humanitarian ambassador has helped instill by showing the people of North Korea that the community of nations cares and is there to help them in their time of need—“When I was hungry, you gave Me food.”

Tony’s success took him to southern Sudan in Africa in May 1998 where famine was threatening 700,000 Sudanese people in a nation torn by a 15-year civil war and where 2 million lives had already been lost. His own eloquent words in June 1998 from his trip observations may best reflect why Tony Hall is the right person to now be the U.S. ambassador to the U.N. world food programs:

“What I witnessed in Ethiopia convinced me that there was no greater service, besides to the people who elected me to Congress, than to help people who are desperately poor that they can’t even feed themselves. I have been to dozens of countries since then, to some of the regions hit hard by both natural disasters and man-made ones. But it was not until I visited the forgotten nation of Sudan two weeks ago that I began to see conditions as terrible as those in Ethiopia. The humanitarian aid reaching those people is a drop in the bucket of what is needed. If we are sincere about stopping the death toll from climbing from two million—
to three million people—we have to do more.

The people of southern Sudan need food and medicine. But they also need peace, and we should not squander the narrow window that may now exist to bring an end to this hideous war . . . Anyone who has seen the terrible condition of the people in southern Sudan feels in and enhance and support urgent negotiations, struck a chord. It’s taken some time, but fueled by one of the largest humanitarian relief efforts in history, with the United States providing the greatest share of aid, today’s headlines report that break-through peace talks in Sudan could very well pave the way to end the 19-year civil war in which more than 2 million people have died. Tony Hall speaks for those in so many desolate places in the world who can’t speak for themselves. Playwright George Bernard Shaw once said, “You see things; and you say, ‘Why?’ But I dream things that never were; and I say, ‘Why not?’”

Tony Hall says “Why not?” and follows those words with action. Why not work to stop the suffering of the poorest of the poor? Why not help to feed the starving people? Why not help the desperate people of Sierra Leone or the Sudan?

George Bernard Shaw also said, “The worst sin towards our fellow creature is not to hate them, but to be indifferent to them: that’s the essence of inhumanity.” There is no fiber in Tony Hall’s body that knows indifference. He is the essence of humanitarianism, the embodiment of service to mankind, a follower who daily lives Christ’s teachings as he seeks ways to feed the hungry and give drink to the thirsty.

His leadership and his vision embrace and offer succor to those in need, even in the most remote corners of the world. His concept to end hunger serves as a beacon to light the way. His achievements in providing lifesaving food to so many is the road map to ending starvation. His efforts to end human misery in the world inspire others to take up that cause.

Tony Hall is an inspiration to everyone fortunate enough to know him. He has a wonderful combination of compassion and passion filled with spiritual purpose—compassion to see the suffering in the less fortunate in the world and the passion to work to do something about it.

Today is a bittersweet time for me, to be sure. My best friend in Congress is leaving, but he will now have the world’s stage to continue his life’s work of helping to make a difference in the lives of those less fortunate in our world.

Godspeed, my dear friend.

The Honorable Tony Hall

Hon. F. James Sensenbrenner, Jr.

Of Wisconsin

In the House of Representatives

Thursday, July 25, 2002

Mr. SENSENBERN, Mr. Speaker, it is with mixed emotion that I say goodbye to my dear friend and colleague, TONY HALL. Anyone who knows Tony, knows him to be one of the most considerate, and kindest gentlemen ever to grace this House with his presence. There is a reason why he has been nominated three times for the Nobel Peace Prize, because there are few of us who would be honored just to be considered once.

Tony’s commitment to the survival of children, particularly in poor countries, along with his support of development assistance programs in the world’s neediest countries, makes him eminently qualified to represent the United States and the United Nations food and agriculture agencies in Rome. Tony’s work and dedication in promoting hunger relief programs and improving international human rights conditions is legendary. I still remember when, nine years ago, in an effort to draw attention to the plight of hungry people in the US and around the world, he fasted for three weeks in response to the abolishment of the Hunger Committee.

Mr. Speaker, it’s this dedication and compassion that will make Tony an excellent Ambassador. While the House will lose a dear and respected friend once he is confirmed by the Senate, the United Nations will gain a fair and principled man who, I am certain, will do wonders for the poor and needy of the world. Though I am sad to see Tony leave, I am happy for him, and for all the good work that lies ahead of him.

Tribute to Rep. Tony Hall

Hon. David L. Hobson

Of Ohio

In the House of Representatives

Thursday, July 25, 2002

Mr. HOBSON, Mr. Speaker, I rise today to pay tribute to my good friend Tony Hall.

Years ago, Tony and I have worked together for the benefit of the citizens of the Miami Valley on numerous projects and initiatives. I am very happy that he has this new opportunity to work directly on hunger issues as the United Nations Representative, but it is still very sad to see him leave the House of Representatives.

Tony is now at the end of a nearly 24-year career representing the people of Montgomery County on Capitol Hill and is taking his crusade against hunger to a global stage.

The youngest son of one of Dayton’s most beloved mayors, Tony has been a football star, a Peace Corps volunteer, a noted world traveler, a devoted husband and father, and a
dedicated public servant. TONY has become the area’s longest-serving Congressman and a three-time Nobel nominee known worldwide of his work against hunger.

In Congress, HALL has been guided by faith and family and never chosen Capitol Hill events over the importance of being home with his wife and children. He has spent 21 years on the House Rules Committee, and I have been pleased to work with TONY on numerous local projects for the Miami Valley: from supporting the National Composites Center, to saving the Air Force Institute of Technology.

Ten years ago, TONY and I worked to establish the Dayton Aviation Heritage National Historical Park and we just recently embarked upon a new effort to create the National Aviation Heritage area to preserve Ohio’s aviation heritage for the future.

When I first came to Congress, TONY was one of the first Members of Congress to reach out to me, and show me the ropes. He didn’t have to do that, and I have always appreciated his willingness to make me feel comfortable in this new environment.

Nobody goes around Capitol Hill grumbling about TONY HALL. He is the genuine article, he works hard for the constituents and he is a man of principle, and of his word.

TONY has managed to be a positive force, despite the difficult challenges he has faced in his personal life. We are all better people because TONY HALL has been here.

As Ohio’s Seventh District Representative to the Congress of the United States, I take this opportunity to join with members of the Ohio delegation to honor the efforts and the many outstanding achievements of Rep. TONY HALL. His many contributions as a member of the House of Representatives and leadership will be remembered.

RECOGNIZING THE HONORABLE TONY HALL

HON. RALPH REGULA
OF OHIO
IN THE HOUSE OF REPRESENTATIVES
Thursday, July 25, 2002

Mr. REGULA. Mr. Speaker, I would like to join my colleagues in bidding farewell to TONY HALL. As Dean of the Ohio Democrats, TONY has provided leadership within the delegation. I have enjoyed serving as co-dean with TONY in working on issues that affect our state. From aerospace to defense to technology to education issues, TONY has been at the forefront of developing sound public policy for the benefit of all Ohioans.

TONY has never shied away from the tough issues. His dedication to hunger issues and human rights was born long ago and derives from his spiritual commitment. His life embodies the second great commandment to “Love your neighbor.”

That steadfastness has motivated others to get involved and to make a difference. His advocacy of these issues has taken him to numerous hotspots around the globe. Each time he returned home he brought new insights into the problems facing mankind and oppressed communities around the world. He will leave a legacy of better health and quality of life for thousands of less fortunate individuals.

TONY’s life will be an inspiration for many others. Like the ripple of a pebble in a pool of water, his life will ripple on in the lives and good works of many others. This is a remarkable achievement over a distinguished career in the House.

TONY now brings these gifts to a new assignment at the United Nations. I can think of no other who will be as dedicated to improving the lives of others around the world as him.

He is an inspiration to each of us and we are the richer for having been his colleague.
HIGHLIGHTS

Senate and House agreed to the Conference Report on H.R. 3763, Corporate and Auditing Accountability, Responsibility, and Transparency Act.

Senate passed H.R. 3210, Terrorism Risk Protection Act.

Senate passed H.R. 5121, Legislative Branch Appropriations Act.


Senate

Chamber Action

Routine Proceedings, pages S7323–S7389

Measures Introduced: Twelve bills and four resolutions were introduced, as follows: S. 2790–2801, S.J. Res. 42, S. Res. 305–306, and S. Con. Res. 131.

Page S7372

Measures Reported:

  H.R. 4737, to reauthorize and improve the program of block grants to States for temporary assistance for needy families, improve access to quality child care, with an amendment in the nature of a substitute. (S. Rept. No. 107–221)

  S. 2797, making appropriations for the Departments of Veterans Affairs and Housing and Urban Development, and for sundry independent agencies, boards, commissions, corporations, and offices for the fiscal year ending September 30, 2003. (S. Rept. No. 107–222)


  S. Res. 300, encouraging the peace process in Sri Lanka, with an amendment and with an amended preamble.

Page S7371

Measures Passed:

  Terrorism Risk Protection Act: Senate passed H.R. 3210, to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism, after striking all after the enacting clause and inserting in lieu thereof the text of S. 2600, Senate companion measure, as passed the Senate on June 18, 2002.

  Senate insisted on its amendment, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Sarbanes, Dodd, Reed, Schumer, Gramm, Shelby, and Enzi.

Page S7332

Legislative Branch Appropriations: By 85 yeas to 14 nays (Vote No. 191), Senate passed H.R. 5121, making appropriations for the Legislative Branch for the fiscal year ending September 30, 2003, after inserting the text of S. 2720, Senate committee-reported bill, and after taking action on the following amendments proposed thereto:

Pages S7336–42, S7350

  Adopted:

  Durbin/Bennett Amendment No. 4319, making certain technical corrections.

Page S7337

  Durbin/Bennett Amendment No. 4320, to modify provisions relating to the Capitol Police

Page S7339

  Durbin (for Landrieu/Durbin) Amendment No. 4321, to set aside funds for activities relating to the Louisiana Purchase Bicentennial Celebration.

Page S7339

  Durbin (for Cochran/Durbin/Bennett) Amendment No. 4322, to provide funding for the Congressional Award Act.

Page S7339
Durbin (for Specter/Durbin) Amendment No. 4323, to provide for a pilot program for mailings to town meetings. Pages S7339–41

Durbin (for Dodd) Amendment No. 4324, providing public safety exception to inscriptions requirement on mobile offices. Page S7341

Senate insisted on its amendments, requested a conference with the House thereon, and the Chair was authorized to appoint the following conferees on the part of the Senate: Senators Durbin, Johnson, Reed, Byrd, Bennett, Stevens, and Cochran. Page S7350

Greater Access to Affordable Pharmaceuticals Act: Senate continued consideration of S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, taking action on the following amendments proposed thereto:

Adopted:

Rockefeller Amendment No. 4316 (to Amendment No. 4299), to provide temporary State fiscal relief. (Subsequently, the pending cloture motion on the amendment was withdrawn. Pages S7327–36, S7350

Pending:

Reid (for Dorgan) Amendment No. 4299, to permit commercial importation of prescription drugs from Canada. Pages S7327–36

During consideration of this measure today, Senate also took the following action:

By 75 yeas to 24 nays (Vote No. 190), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to waive section 205 of H. Con. Res. 290, 2001 Congressional Budget Resolution, with respect to Rockefeller Amendment No. 4316 (to Amendment No. 4299), listed above. Subsequently, the point of order that the emergency designation in Section C of the amendment, violates section 205 of H. Con. Res. 290, 2001 Congressional Budget Resolution, was not sustained. Pages S7327–36

A unanimous-consent agreement was reached providing for further consideration of the bill on Friday, July 26, 2002, with Senator Gregg or his designee being recognized to offer a second degree amendment. Page S7365

Corporate and Auditing Accountability, Responsibility, and Transparency Act Conference Report: By a unanimous vote of 99 yeas (Vote No. 192), Senate agreed to the conference report on H.R. 3763, to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, clearing the measure for the President. Pages S7350–65

Nomination/Greater Access to Affordable Pharmaceuticals Act—Agreement: A unanimous-consent agreement was reached providing that immediately after the cloture vote on the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit, all time post cloture be considered used, and that on Monday, July 29, at 5:30 p.m., the Senate proceed to Executive Session to vote on the nomination, that upon confirmation, the President be immediately notified of the Senate’s action, and the Senate return to Legislative Session; further that on Friday, July 26, immediately following the cloture vote on the nomination, the Senate return to Legislative Session and resume consideration of S. 812, to amend the Federal Food, Drug, and Cosmetic Act to provide greater access to affordable pharmaceuticals, and Senator Gregg or his designee be recognized to offer a second degree amendment; that during Friday’s session, there be up to 3 hours for debate with respect to the amendment, with the time equally divided and controlled between Senators Kennedy and Gregg or their designees; that whenever the Senate resumes consideration of S. 812, the Gregg or designee amendment remain debatable. Page S7365

Nomination—Agreement: A unanimous-consent agreement was reached providing for the consideration of the nomination of Christopher C. Conner, to be United States District Judge for the Middle District of Pennsylvania, The Judiciary, on Friday, July 26, 2002, with a vote to occur thereon, following the cloture vote on the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit. Pages S7366, S7384

Appointments:

Congressional Hunger Fellows Program: The Chair, on behalf of the Republican Leader, pursuant to Public Law 107–227, appointed the following individuals to the Board of Trustees of the Congressional Hunger Fellows Program. Page S7384

National Skill Standards Board: The Chair, on behalf of the President pro tempore, pursuant to Public Law 103–227, appointed the following individual to the National Skill Standards Board for a term of four years: Upon the recommendation of the Republican Leader: Betty W. DeViney of Tennessee, Representative of Business. Page S7384

Nominations Confirmed: Senate confirmed the following nominations: Paul A. Quander, Jr., of the District of Columbia, to be Director of the District of Columbia Offender Supervision, Defender, and Courts Services Agency for a term of six years. (New Position)
Paul S. Atkins, of Virginia, to be a Member of the Securities and Exchange Commission for the remainder of the term expiring June 5, 2003.

Cynthia A. Glassman, of Virginia, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2006.

Roslynn R. Mauskopf, of New York, to be United States Attorney for the Eastern District of New York for the term of four years.

Todd Walther Dillard, of Maryland, to be United States Marshal for the Superior Court of the District of Columbia for the term of four years. (Reappointment)

Robert R. Rigsby, of the District of Columbia, to be an Associate Judge of the Superior Court of the District of Columbia for the term of fifteen years.

Harold D. Stratton, of New Mexico, to be Chairman of the Consumer Product Safety Commission.

Harold D. Stratton, of New Mexico, to be a Commissioner of the Consumer Product Safety Commission for the remainder of the term expiring October 26, 2006.


David William Thomas, of Delaware, to be United States Marshal for the District of Delaware for the term of four years.

Thomas M. Fitzgerald, of Pennsylvania, to be United States Marshal for the Western District of Pennsylvania for the term of four years.

G. Wayne Pike, of Virginia, to be United States Marshal for the Western District of Virginia for the term of four years.

Steven D. Deatherage, of Illinois, to be United States Marshal for the Central District of Illinois for the term of four years.

Harvey Jerome Goldschmid, of New York, to be a Member of the Securities and Exchange Commission for the term expiring June 5, 2004.

Roel C. Campos, of Texas, to be a Member of the Securities and Exchange Commission for a term expiring June 5, 2005.

Nominations Received: Senate received the following nominations:

Jeffrey S. White, of California, to be United States District Judge for the Northern District of California.

Kent A. Jordan, of Delaware, to be United States District Judge for the District of Delaware.

Sandra J. Feuerstein, of New York, to be United States District Judge for the Eastern District of New York.

1 Air Force nomination in the rank of general.

34 Army nominations in the rank of general.
testimony from Donald H. Rumsfeld, Secretary of Defense; and Gen. Richard B. Myers, USAF, Chairman, Joint Chiefs of Staff.

Hearings will resume on Thursday, August 1.

BUSINESS MEETING

Committee on Banking, Housing, and Urban Affairs: Committee ordered favorably reported the nominations of Paul S. Atkins, of Virginia, Harvey Jerome Goldschmid, of New York, Cynthia A. Glassman, of Virginia, and Roel C. Campos, of Texas, each to be a Member of the Securities and Exchange Commission.

AVIATION SECURITY

Committee on Commerce, Science, and Transportation: Committee held hearings to examine the Transportation Security Administration and aviation security transition, focusing on the deployment of baggage screening equipment, cockpit security, and air cargo security, receiving testimony from Senators Bob Smith and Murkowski; Norman Y. Mineta, Secretary of Transportation, who was accompanied by several of his associates; Gerald Dillingham, Director, Physical Infrastructure Issues, General Accounting Office; Richard D. Stephens, Boeing Company, Seal Beach, California; Craig Coy, Massachusetts Port Authority, East Boston; Stephen Luckey, National Flight Security Committee, Washington, D.C.; and Ed Davidson, Northwest Airlines, Inc., St. Paul, Minnesota.

Hearings recessed subject to call.

NATIONAL FOREST SYSTEMS

RESTORATION PROJECTS

Committee on Energy and Natural Resources: Subcommittee on Public Lands and Forests concluded hearings on S. 2672, to provide opportunities for collaborative restoration projects on National Forest System and other public domain lands, after receiving testimony from Jim Hughes, Deputy Director, Bureau of Land Management, Department of the Interior; Thomas J. Mills, Deputy Chief, Business Operations, Forest Service, Department of Agriculture; Joyce Dearstynne, Framing Our Community, Elk City, Idaho; Maia Enzer, Sustainable Northwest, Portland, Oregon; and Steve Holmer, American Lands Alliance, Washington, D.C.

BUSINESS MEETING

Committee on Environment and Public Works: Committee ordered favorably reported the following business items:

S. 1602, to help protect the public against the threat of chemical attack, with an amendment in the nature of a substitute;

S. 1746, to amend the Atomic Energy Act of 1954 and the Energy Reorganization Act of 1974 to strengthen security at sensitive nuclear facilities, with an amendment in the nature of a substitute;

S. 1850, to amend the Solid Waste Disposal Act to bring underground storage tanks into compliance with subtitle I of that Act, to promote cleanup of leaking underground storage tanks, and to provide sufficient resources for such compliance and cleanup, with an amendment in the nature of a substitute;

S. 2771, to amend the John F. Kennedy Center Act to authorize the Secretary of Transportation to carry out a project for construction of a plaza adjacent to the John F. Kennedy Center for the Performing Arts; and

The nominations of John S. Bresland, of New Jersey, to be a Member, and Carolyn W. Merritt, of Illinois, to be Chairperson and Member, each of the Chemical Safety and Hazard Investigation Board, and John Peter Suarez, of New Jersey, to be Assistant Administrator for Enforcement and Compliance, Environmental Protection Agency.

BUSINESS MEETING

Committee on Foreign Relations: Committee ordered favorably reported the following business items:

Agreement Establishing the South Pacific Regional Environment Programme, done at Apia on June 16, 1993 (Treaty Doc. 105–32), with one declaration;

Treaty Between the Government of the United States of America and the Government of Niue on the Delimitation of a Maritime Boundary, signed in Wellington, May 13, 1997 (Treaty Doc. 105–53);

S. Res. 300, encouraging the peace process in Sri Lanka, with an amendment; and

The nominations of Randolph Bell, of Virginia, for the rank of Ambassador during his tenure of service as Special Envoy for Holocaust Issues, James Irvin Gadsden, of Maryland, to be Ambassador to the Republic of Iceland, James Franklin Jeffrey, of Virginia, to be Ambassador to the Republic of Albania, Michael Klosson, of Maryland, to be Ambassador to the Republic of Cyprus, Norman J. Pattiz, of California, to be a Member of the Broadcasting Board of Governors, Paul William Speltz, of Texas, to be United States Director of the Asian Development Bank, with the rank of Ambassador, Mark Sullivan, of Maryland, to be United States Director of the European Bank for Reconstruction and Development, and Kenneth Y. Tomlinson, of Virginia, to be a Member and Chairman of the Broadcasting Board of Governors.

Also, committee began consideration of the Convention on the Elimination of All Forms of Discrimination Against Women, adopted by the United Nations General Assembly on December 18, 1979, and signed on behalf of the United States of America
on July 17, 1980 (Treaty Doc. 96–53), but did not complete action thereon, and will meet again on Tuesday, July 30.

BUSINESS MEETING

Committee on Governmental Affairs: Committee approved the motion to authorize the Chairman to withdraw the committee amendments to S. 2452, to establish the Department of National Homeland Security and the National Office for Combating Terrorism, as approved by the committee on May 22, 2002, when the committee ordered the bill favorably reported, and today, approved a floor amendment in the nature of a substitute to S. 2452 (pending on Senate calendar).

VIOLENCE AGAINST WOMEN IN THE WORKPLACE

Committee on Health, Education, Labor, and Pensions: Committee concluded hearings to examine violence against women in the workplace, focusing on coordinated community response partnerships with employers, to educate them about the dangers of domestic violence, sexual assault, and stalking, and assist them in establishing effective policies and programs; after receiving testimony from Diane Stuart, Director, Violence Against Women Office, Office of Justice Programs, Department of Justice; Kathy Evsich, Women Against Domestic Violence, Swannanoa, North Carolina; Sidney Harman, Harman International Industries, Inc., Washington, D.C.; and Kathy Rodgers, NOW-Legal Defense and Education Fund, New York, New York.

INDIAN MONEY ACCOUNTS

Committee on Indian Affairs: Committee concluded hearings to examine the July 2, 2002 Report of the Department of the Interior to Congress on historical accounting of Individual Indian Money Accounts, after receiving testimony, after receiving testimony from McCoy Williams, Director, Financial Management and Assurance, General Accounting Office; James Cason, Associate Deputy Secretary, Bert Edwards, Executive Director, Office of Historical Trust Accounting, and Tom Slonaker, Special Trustee for American Indians, all of the Department of the Interior; and William F. Causey, Nixon Peabody, LLP, Washington, D.C.

DEPARTMENT OF JUSTICE

Committee on the Judiciary: Committee concluded oversight hearings to examine Department of Justice issues, including its ability to mobilize law enforcement resources and the justice system in order to prevent future terrorist attacks on the United States and its citizens, the nation’s murder and crime rate, counter-terrorism efforts and budget requests, background checks, visa requirements, and Civil Rights interests, receiving testimony from John D. Ashcroft, Attorney General, Department of Justice.
House of Representatives

Chamber Action


Reports Filed: Reports were filed today as follows:

- H.R. 4620, to accelerate the wilderness designation process by establishing a timetable for the completion of wilderness studies on Federal lands (H. Rept. 107–613);
- S. 1057, to authorize the addition of lands to Pu‘uhonua o Honaunau National Historical Park in the State of Hawaii (H. Rept. 107–614);
- H. Res. 502, providing for consideration of H.R. 5005, to establish the Department of Homeland Security (H. Rept. 107–615); and

Conference report on H.R. 333, to amend title 11, United States Code (H.Rept. 107–617);
- H. Res. 506, waiving points of order against the conference report to accompany H.R. 333, to amend title 11, United States Code (H.Rept. 107–618);
- H. Res. 507, waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (H.Rept. 107–619); and
- H. Res. 508, providing for consideration of motions to suspend the rules (H. Rept. 107–620).

Corporate and Auditing Accountability, Responsibility, and Transparency Act Conference Report: The House agreed to the conference report on H.R. 3763, Corporate and Auditing Accountability, Responsibility, and Transparency Act by a yea-and-nay vote of 423 yea to 3 nays, Roll No. 348. The conference report was considered pursuant to the order of the House of Wednesday, July 24.

Bob Stump National Defense Authorization Act for Fiscal Year 2003: The House agreed to the Senate amendment to H.R. 4546, to authorize appropriations for fiscal year 2003 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces, with an amendment in the nature of a substitute. The House amendment consists of the text of H.R. 4546 and the text of H.R. 4547, as passed by the House. The House then insisted on its amendment and asked for a conference with the Senate.

Appointed as conferees: From the Committee on Armed Services, for consideration of the House amendment and the Senate amendment, and modifications committed to conference: Chairman Stump and Representatives Hunter, Hansen, Weldon of Pennsylvania, Hefley, Saxton, McHugh, Everett, Bartlett of Maryland, McKeon, Watts of Oklahoma, Thornberry, Hostettler, Chambliss, Jones of North Carolina, Hilleary, Graham, Skelton, Spratt, Ortiz, Evans, Taylor of Mississippi, Abercrombie, Meehan, Underwood, Allen, Snyder, Reyes, Turner, and Tauscher.

From the Permanent Select Committee on Intelligence for consideration of matters within the jurisdiction of that committee under clause 11 of rule X: Chairman Goss and Representatives Bereuter and Pelosi.

From the Committee on Education and the Workforce, for consideration of secs. 341–343, and 366 of the House amendment, and secs. 331–333, 542, 656, 1064, and 1107 of the Senate amendment, and modifications committed to conference: Representatives Isakson, Wilson of South Carolina, and George Miller of California.

From the Committee on Energy and Commerce, for consideration of secs. 601 and 3201 of the House amendment, and secs. 311, 312, 601, 3135, 3155, 3171–3173, and 3201 of the House amendment, and modifications committed to conference: Chairman Tauzin and Representatives Barton of Texas and Dingell.

From the Committee on Government Reform, for consideration of secs. 323, 804, 805, 1003, 1004, 1101–1106, 2811, and 2813 of the House amendment, and secs. 241, 654, 817, 907, 1007–1009, 1061, 1101–1106, 2811, and 3173 of the Senate amendment, and modifications committed to conference: Chairman Burton and Representatives Weldon of Florida and Waxman.

From the Committee on International Relations, for consideration of secs. 1201, 1202, 1204, Title XI, and sec. 3142 of the House amendment, subtitle A of Title X, secs. 1212–1216, 3136, 3151, and 3156–3161 of the Senate amendment, and modifications committed to conference: Chairman Hyde and Representatives Gilman and Lantos.

From the Committee on Judiciary, for consideration of secs. 811 and 1033 of the House amendment, and secs. 1067 and 1070 of the Senate amendment, and modifications committed to conference:
Chairman Sensenbrenner and Representatives Smith of Texas and Conyers.

From the Committee on Resources, for consideration of secs. 311, 312, 601, title XIV, secs. 2821, 2832, 2841, and 2863 of the House amendment, and secs. 601, 2821, 2823, 2828, and 2841 of the Senate amendment, and modifications committed to conference: Representatives Duncan, Gibbons, and Rahall.

From the Committee on Science, for consideration of secs. 244, 246, 1216, 3155, and 3163 of the Senate amendment, and modifications committed to conference: chairman Boehlert, Smith of Michigan, and Hall of Texas.

From the Committee on Transportation and Infrastructure, for consideration of sec. 601 of the House amendment, and secs. 601 and 1063 of the Senate amendment, and modifications committed to conference: Chairman Young of Alaska, LoBiondo, and Brown of Florida.

From the Committee on Veterans’ Affairs, for consideration of secs. 641, 651, 721, 723, 724, 726, 727, and 728 of the House amendment, and secs. 541 and 641 of the Senate amendment, and modifications committed to conference: Chairman Smith of New Jersey, Bilirakis, Jeff Miller of Florida, Finner, and Carson.

Agreed to the Taylor of Mississippi motion to instruct conferees to insist upon the provisions of section 1551 of the House amendment (relating to the establishment of at least one Weapons of Mass Destruction Civil Support Team in each State) by a yea-and-nay vote of 419 yeas to 2 nays, Roll No. 349.

Agreed to close the meetings of the conference at such times as classified national security material may be broached by a recorded vote of 420 ayes to 3 noes, Roll No. 350.

Suspension—Improving Access to Long-Term Care: The House agreed to suspend the rules and pass H.R. 4946, amended, to amend the Internal Revenue Code to provide health care incentives related to long-term care by a yea-and-nay vote of 362 yeas to 61 nays, Roll No. 351. Agreed to amend the title so as to read “A bill to amend the Internal Revenue Code of 1986 to provide health care incentives.”. The motion was debated on July 23.

Special Meeting of the Congress in New York, New York: The House agreed to H. Con. Res. 448, providing for a special meeting of the Congress in New York, New York, on Friday, September 6, 2002, in remembrance of the victims and the heroes of September 11, 2001, in recognition of the courage and spirit of the City of New York, and for other purposes. And the House agreed to H. Con. Res. 449, providing for representation by Congress at a special meeting in New York, New York on Friday, September 6, 2002.

Recess: The House recessed at 3:34 p.m. and reconvened at 7 p.m.

Party Designation: Read a letter from Representative Goode wherein he requested that his party designation be changed to Republican on all official publications and databases of the House of Representatives, effective August 1, 2002.


Pursuant to the rule, the amendment in the nature of a substitute recommended by the Select Committee on Homeland Security now printed in the bill (H. Rept. 107–609, Part 1) was considered as an original bill for the purpose of amendment.

Agreed To:

Young of Alabama Amendment No. 2 printed in H. Rept. 107–615 that restores FEMA as an entity and maintain its role as the lead agency for the Federal Response Plan;

Cox Amendment No. 4 printed in H. Rept. 107–615 that clarifies that the Department of Homeland Security is responsible for cybersecurity and protection of its infrastructure;

Israel Amendment No. 5 printed in H. Rept. 107–615 that establishes an advisory committee for the Under Secretary for Science and Technology;

Woolsey Amendment No. 7 printed in H. Rept. 107–615 that establishes a Homeland Security Institute as a research and development center;

Hunter Amendment No. 9 printed in H. Rept. 107–615 that expresses the sense of Congress that the completion of the San Diego Border Fence Project should be a priority of the Department of Homeland Security;

Ose Amendment No. 10 printed in H. Rept. 107–615 that requires a plan within one year to consolidate and co-locate regional and field offices in each of the cities with existing offices transferred to the Department of Homeland Security;

Velázquez Amendment No. 11 printed in H. Rept. 107–615 that ensures that the Department of Homeland Security has procurement goals for small businesses;

Hastings of Florida Amendment No. 12 printed in H. Rept. 107–615 that directs the Secretary to
comply with laws protecting equal employment opportunity and providing whistleblower protections;

Kingston Amendment No. 13 printed in H. Rept. 107–615 that ensures that if the Federal Law Enforcement Training Center is transferred to the Department of Justice, the Department of Justice will not alter the operations of the center;

Rush Amendment No. 15 printed in H. Rept. 107–615 that establishes an office for state and local government coordination; and

Shays Amendment No. 16 printed in H. Rept. 107–615 that requires biennial reports to Congress on the status of homeland security preparedness, including an assessment for each state, and a report within one year of enactment that assesses the progress of the Department in implementing the Act to ensure that core functions of each entity transferred to the Department are maintained and strengthened and recommending any conforming changes in law necessary to the further implementation of the Act.

Amendments Offered and Further Proceedings Postponed Until Friday, July 26:

Oberstar Amendment No. 1 printed in H. Rept. 107–615 that seeks to retain FEMA as an independent agency with responsibility for natural disaster preparedness, response, and recovery;

Cardin Amendment No. 8 printed in H. Rept. 107–615 that preserves the Customs Service as a distinct entity within the Department of Homeland Security; and

Rogers of Kentucky Amendment No. 14 printed in H. Rept. 107–615 that gives permissive authority to the Secretary to establish and operate a permanent Joint Interagency Homeland Security Task Force.

Withdrawn:

Rivers Amendment No. 6 printed in H. Rept. 107–615 was offered but subsequently withdrawn that sought to establish an Office of Inquiries within the Department of Science and Technology to review proposals to develop or deploy products that would contribute to homeland security.

Agreed to H. Res. 502, the rule that provided for consideration of the bill by voice vote. Earlier, agreed to consider the resolution by unanimous consent.

Recess: the House recessed at 12:40 a.m. on Friday, July 26 and reconvened at 8:21 a.m. on Friday, July 26.

Memorial for Chaplain Ford: Representative Horn asked unanimous consent to print the remarks from the Memorial Service held for the late Rev. Dr. James David Ford at the Capitol by members and staff of the House of Representatives. Dr. Ford was Chaplain of the House from January 15, 1979 until March 23, 2000. July 25 is the anniversary of Dr. Ford’s birth.

Senate Messages: Messages received from the Senate today appear on pages H5614–15 and H5631.

Referrals: S. 434 was referred to the Committee on Resources and S. 1175 was held at the desk.

Quorum Calls—Votes: Three yea-and-nay votes and one recorded vote developed during the proceedings of the House today and appears on pages H5480, H5607, H5608, and H5609. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 8:24 a.m. on Friday, July 26.

Committee Meetings

DRUG REIMPORTATION

Committee on Energy and Commerce: Subcommittee on Health held a hearing entitled “Examining Prescription Drug Reimportation: a Review of a Proposal to Allow Third Parties to Reimport Prescription Drugs.” Testimony was heard from William Hubbard, Senior Associate Commissioner, Office of Policy, Planning and Legislation, FDA, Department of Health and Human Services; and public witnesses.

U.S. NATIONAL CLIMATE CHANGE ASSESSMENT

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled “The U.S. National Climate Change Assessment: Do the Climate Models Project a Useful Picture of Regional Climate?” Testimony was heard from public witnesses.

REAUTHORIZATION REQUESTS—WORLDBANK INTERNATIONAL DEVELOPMENT ASSOCIATION AND AFRICAN DEVELOPMENT FUND

Committee on Financial Services: Subcommittee on International Monetary Policy and Trade held a hearing on the expected authorization requests on the U.S. participation in the World Bank-International Development Association and the African Development Fund. Testimony was heard from John Taylor, Under Secretary, International Affairs, Department of the Treasury.
DIET, PHYSICAL ACTIVITY, AND DIETARY SUPPLEMENTS—IMPROVING HEALTH

Committee on Government Reform: Held a hearing on “Diet, Physical Activity, and Dietary Supplements—the Scientific Basis for Improving Health, Saving Money, and Preserving Personal Choice.” Testimony was heard from the following officials of the Department of Health and Human Services: Paul Coates, Director, Office of Dietary Supplements, NIH; and William Dietz, M.D., Director, Division of Nutrition and Physical Activity, Centers for Disease Control and Prevention; and public witnesses.

USING RUSSIAN DEBT TO ENHANCE SECURITY

Committee on International Relations: Held a hearing on Loose Nukes, Biological Terrorism, and Chemical Warfare: Using Russian Debt to Enhance Security. Testimony was heard from Representative Tauscher; Alan P. Larson, Under Secretary, Economic, Business, and Agricultural Affairs, Department of State; and public witnesses.

MISCELLANEOUS MEASURES

Committee on International Relations: Subcommittee on International Operations and Human Rights approved for full Committee action, as amended, the following measures: H. Con. Res. 349, calling for an end to the sexual exploitation of refugees; and H. Con. Res. 351, expressing the sense of Congress that the United States should condemn the practice of execution by stoning as a gross violation of human rights.

OUTER CONTINENTAL SHELF LANDS ACT AMENDMENTS

Committee on Resources: Subcommittee on Energy and Mineral Resources held a hearing on H.R. 5156, to amend the Outer Continental Shelf Lands Act to protect the economic and land use interests of the Federal Government in the management of outer continental shelf lands for energy-related and certain other purposes. Testimony was heard from Johnnie Burton, Director, Minerals Management Service, Department of the Interior; and a public witness.

MARINE MAMMAL PROTECTION ACT AMENDMENTS

Committee on Resources: Subcommittee on Fisheries Conservation, Wildlife and Oceans approved for full Committee action, as amended, H.R. 4781, Marine Mammal Protection Act Amendments of 2002.

MISCELLANEOUS MEASURES

Committee on Resources: Subcommittee on Forests, and Forests Health, the Subcommittee on National Parks, Recreation and Public Lands, and the Subcommittee on Fisheries Conservation and Oceans held a joint hearing on the following bills: H.R. 2386, Outfitters Policy Act of 2002; H.R. 1811, PILT and Refuge Revenue Sharing Permanent Funding Act; H.R. 5081, Property Tax Endowment Act of 2002; H.R. 5180, to direct the Secretary of Agriculture to convey real property in the Dixie National Forest in the State of Utah; and H.R. 5032, to authorize the Secretary of Agriculture to convey National Forest System lands in the Mendocino National Forest, California, to authorize the use of the proceeds from such conveyances for National Forest purposes. Testimony was heard from Representatives McInnis and Radanovich; the following officials of the Department of the Interior: Sherry Barnett, Deputy Assistant Director, Renewable Resources, Bureau of Land Management; and Chris Kearney, Deputy Assistant Secretary, Policy/International Affairs; Abigail Kimbell, Associate Deputy Chief, National Forest System, USDA; and public witnesses.

HOMELAND SECURITY ACT

Committee on Rules: Granted, by voice vote, a structured rule providing 90 minutes of debate on H.R. 5005, Homeland Security Act of 2002. The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute recommended by the Select Committee on Homeland Security now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the bill, as amended.

The rule provides that no amendment to the committee amendment in the nature of a substitute shall be in order except those printed in the Rules Committee report accompanying the resolution and amendments en bloc described in section 3 of the
resolution. The rule provides that each amendment printed in the report may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole, except as specified in section 4 of the resolution.

The rule waives all points of order against the amendments printed in the report or amendments en bloc described in section 3 of the resolution. The rule provides that it shall be in order at any time for the chairman of the Select Committee on Homeland Security or his designee to offer amendments en bloc consisting of amendments printed in the report not earlier disposed of or germane modifications of any such amendment.

The rule provides that amendments en bloc offered pursuant to the rule shall be considered as read (except that modifications shall be reported), shall be debatable for 20 minutes equally divided and controlled by the chairman and ranking minority member of the Select Committee on Homeland Security or their designees, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule provides that for the purpose of inclusion in such amendments en bloc, an amendment printed in the form of a motion to strike may be modified to the form of a germane perfecting amendment to the text originally proposed to be stricken. The rule provides that the original proponent of an amendment included in such amendments en bloc may insert a statement in the Congressional Record immediately before the disposition of the amendments en bloc.

The rule provides that the Chairman of the Committee of the Whole may recognize for consideration of any amendment printed in the report out of the order printed, but not sooner than one hour after the chairman of the Select Committee on Homeland Security or his designee announces from the floor a request to that effect. Finally, the rule provides one motion to recommit with or without instructions.

SAME DAY CONSIDERATION OF RESOLUTIONS REPORTED FROM THE COMMITTEE ON RULES

Committee on Rules: Granted, by voice vote, a resolution waiving clause 6(a) of rule XIII (requiring a two-thirds vote to consider a rule on the same day it is reported from the Rules Committee) against certain resolutions reported from the Rules Committee. The rule applies the waiver to any special rule reported on the legislative day of Friday, July 26, 2002, providing for the consideration or disposition of conference reports to accompany any of the following bills: H.R. 3009, H.R. 3295, H.R. 333.

PROVIDING FOR CONSIDERATION OF MOTIONS TO SUSPEND THE RULES

Committee on Rules: Granted, by voice vote, a resolution providing that suspensions will be in order at any time on the legislative day of Wednesday, September 4, 2002. The resolution provides that the Speaker or his designee will consult with the Minority Leader or his designee on any suspension considered under the rule.

CONFERENCE REPORT—BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2001

Committee on Rules: Granted, by voice vote, a rule waiving all points of order against the conference report and against its consideration. The rule provides that the conference report shall be considered as read.

DOE’S OFFICE OF SCIENCE—FUTURE DIRECTION

Committee on Science: Subcommittee on Energy held a hearing on Future Direction of the Department of Energy's Office of Science. Testimony was heard from Raymond Orbach, Director, Office of Science, Department of Energy; Gary Jones, Director, National Resources and Environment, GAO; and public witnesses.

OVERSIGHT—BETTER TRANSPORTATION SYSTEMS

Committee on Transportation and Infrastructure: Subcommittee on Highways and Transit held an oversight hearing on Transportation Solutions in a Community Context: the Need for Better Transportation Systems for Everyone. Testimony was heard from public witnesses.

VETERANS’ LEGISLATION

Committee on Veterans’ Affairs: Subcommittee on Benefits concluded hearings on the following bills: H.R. 5111, Servicemember’s Civil Relief Act; and H.R. 4017, Soldiers’ and Sailors’ Civil Relief Equity Act. Testimony was heard from public witnesses.

SSI PROGRAMS—FRAUD AND ABUSE

Committee on Ways and Means: Subcommittee on Human Resources held a hearing on fraud and abuse in the Supplemental Security Income (SSI) program. Testimony was heard from the following officials of the SSA: James B. Lockhart, I, Deputy Commissioner; and James G. Huse, Jr., Inspector General; Robert Robertson, Director, Education, Workforce,
Joint Meetings

9/11 INTELLIGENCE INVESTIGATION

Joint Hearing: Senate Select Committee on Intelligence held joint closed hearings with the House Permanent Select Committee on Intelligence to examine events surrounding September 11, 2001.

Joint hearings recessed subject to call.

SECURING AMERICA’S FUTURE ENERGY ACT

Conferees met to resolve the differences between the Senate and House passed versions of H.R. 4, to enhance energy conservation, research and development and to provide for security and diversity in the energy supply for the American people, but did not complete action thereon, and recessed subject to call.

NEW PUBLIC LAWS

(For last listing of Public Laws, see DAILY DIGEST of July 24, 2002, p. D821)


H.R. 3971, to provide for an independent investigation of Forest Service firefighter deaths that are caused by wildfire entrapment or burnover. Signed on July 24, 2002. (Public Law 107–203)

COMMITTEE MEETINGS FOR FRIDAY, JULY 26, 2002

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Armed Services: to hear and consider the nominations of Lt. Gen. James T. Hill, USA, for appointment to the grade of general and assignment as Commander in Chief, United States Southern Command; and Vice Adm. Edmund P. Giambastiani Jr., USN, for appointment to the grade of admiral and assignment as Commander in Chief, United States Joint Forces Command, 9:30 a.m., SR–222.

Committee on Health, Education, Labor, and Pensions: Subcommittee on Children and Families, to hold hearings to examine birth defect screening, focusing on strategies for prevention and ensuring quality of life, 9:30 a.m., SD–430.

House


Committee on Government Reform, Subcommittee on Criminal Justice, Drug Policy, and Human Resources, to mark up a report entitled “Federal Law Enforcement at the Borders and Ports of Entry: Challenges and Solutions;” followed by a hearing on “Impact of Potential Restrictions on Anti-Drug Media Campaign Contractors,” 10 a.m., 2203 Rayburn.

Committee on Rules: Emergency meeting to consider the following: Conference report to accompany H.R. 333, Bankruptcy Reform; a resolution providing for same day consideration of certain measures; and a resolution making suspensions in order on Sept. 4, 2002; 8 a.m. (legislative day of Thursday, July 25), H–313 Capitol.
Next Meeting of the Senate
9:55 a.m., Friday, July 26

Program for Friday: Senate will vote on the motion to close further debate on the nomination of Julia Smith Gibbons, of Tennessee, to be United States Circuit Judge for the Sixth Circuit; following which, Senate will consider the nomination of Christopher C. Conner, to be United States District Judge for the Middle District of Pennsylvania, The Judiciary, with a vote to occur thereon.

Also, Senate will continue consideration of S. 812, Greater Access to Affordable Pharmaceuticals Act.

Next Meeting of the HOUSE OF REPRESENTATIVES
9 a.m., Friday, July 26


Extensions of Remarks, as inserted in this issue

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Green, Mark, Wisc., E1385, E1388
Gutierrez, Luis V., Ill., E1390
Hastings, Alice L., Fla., E1369, E1371, E1373
Hoehn, David L., Ohio, E1404
Horn, Stephen, Calif., E1397
Jackson-Lee, Sheila, Tex., E1401
Kirk, Mark Steven, Ill., E1374
Larson, John B., Conn., E1375
Lee, Barbara, Calif., E1398
Lipinski, William O., Ill., E1394
Loftgren, Zoe, Calif., E1392
McInnis, Scott, Colo., E1383, E1385, E1387, E1389, E1390, E1392, E1396
Matsui, Robert T., Calif., E1393
Mateen, Robert T., Calif., E1393
Miller, Dan, Fla., E1382
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Mink, Patsy T., Hawaii, E1370
Moore, Dennis, Kansas, E1375
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Pelosi, Nancy, Calif., E1400, E1401
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Rangel, Charles B., N.Y., E1374
Regula, Ralph, Ohio, E1465
Reyes, Silvestre, Tex., E1380, E1392
Riley, Bob, Ala., E1372
Rogers, Mike, Mich., E1379, E1400
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Rush, Bobby L., Ill., E1390
Sanchez, Loretta, Calif., E1388
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Walsh, James T., N.Y., E1402
Watkins, Wes, Okla., E1377
Watts, J.C., Jr., Okla., E1401
Weldon, Curt, Pa., E1378
Wick, Roger F., Md., E1397
Wolf, Frank R., Va., E1388, E1402
Wynn, Albert Russell, Md., E1371