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House of Representatives

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. ARMEY. 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. SWEENEY). Is there objection to the request of the gentleman from Texas?

Ms. PELOSI. Mr. Speaker, reserving the right to object, I have a question for the leader. Mr. Leader, is it my understanding that the Waxman amendment, No. 94, which you just sought unanimous consent to roll until tomorrow with the debate and the vote, would be taken up as the first amendment tomorrow when we come into the House?

Mr. ARMEY. That would be fine with this gentleman. I would think if the gentleman from California (Mr. WAXMAN) is ready, of course, to begin, we would naturally want to take our votes, I think, to kind of get everybody in the body get things going and then move forward with the Waxman amendment.

Ms. PELOSI. I thank the distinguished leader.

Mr. Speaker, I withdraw my reservation of objection.

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

There was no objection.

ANNOUNCEMENT REGARDING CONFERENCE REPORT ON BANKRUPTCY BILL

Mr. ARMEY. 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. ARMEY. 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 Texas?

There was no objection.

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HOMELAND SECURITY ACT OF 2002

The SPEAKER pro tempore (Mr. SWEENEY). 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 gentlewoman 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 a 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

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by relinquishing our freedoms or closing our society.

This is an enemy not constrained by traditional borders. It is not constrained by any moral compass that distinguishes between the lives of civilians, women and children. To fight such an enemy, new solutions are required.

Here at home, the need for new solutions is great. Our ability to deal with foreign terrorists remains limited. Many of our security resources are scattered, our technology is outdated on too many occasions, and the missions 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, our short-term success should not inspire complacency. In this battle, time is of the essence. We must not take any more time than is absolutely necessary to do this job and to do it right.

The enemies of freedom present a great challenge to our society. Our response must be even greater. They must not win.

Let me close by recalling the words of our Founders. They remind us that the government was established, 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 Constitution, 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. We all share an important mission, a common mission. 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 every elected official takes an oath to protect and defend the Constitution. Clearly our Founding Fathers knew that we could do both, defend our country and protect our liberties.

I want to say at the outset, I want to commend the distinguished majority leader for his vigilance, indeed, his leadership, in protecting our civil liberties in this bill.

For example, I am pleased that he rejected the so-called TIPS program, which would have Americans reporting on Americans. Throughout the debate, throughout the hearings, throughout the markup, he was, as I say, ever-vigilant and a leader in protecting civil liberties. I want to make that point of commendation and congratulations to the leader at the outset.

We agreed on many things in the bill, but not everything; and I wanted to commend the gentleman for a very important value that all of us in this body share, and many Americans are concerned about at this time.

Thank you, Mr. Leader.

Mr. Chairman, on September 11, the American people suffered a serious blow, the intensity of which we will never forget. Out of respect for those who died and their loved ones, we have a solemn obligation to work together to make our country safer. For some of the families of victims, the sound of a plane flying overhead fills them with terror. Indeed, any warning of a possible terrorist act intensifies their grief.

As the senior Democrat on the Permanent Select Committee on Intelligence, and as the distinguished chairman presiding, where he also serves, we know full well the dangers our country faces from the terrorists. We have before us today a historic opportunity to shape a Department of Homeland Security that will make the American people safer, while also honoring the principles and freedoms of our great Nation.

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

For example, out of the blue, the Republicans attempted to remove altogether the deadline for installation of devices to screen baggage for explosives. When that failed, they needlessly extended the deadline.

Then, ignoring the bipartisan recommendations of the Committee on Government Reform, the Republican bill weakens good government laws and civil service protections. By doing so, it invites problems of corruption, favoritism, and low morale that were the reasons that the civil service was established in the first place. Civil service is a backbone of a democratic government. We must preserve it.

The bill before us also ignores the bipartisan agreement on liability and instead inserts a provision so unprecedented in its sweep that it prompted the Reserve Officers Association of the United States to write yesterday to the gentleman from Texas (Mr. ARMEY), ''This is not the time to immunize those who risk the lives of innocent American troops through willful misconduct.''

As for the Department itself, it is a 1950s version of the bureaucracy. I had hoped that we could set up a Department that would be lean and agile and of the future, that would maximize the use of technology, that would capitalize on the spirit of innovation and new technologies. But, sadly, it does not.

Instead, we have, as I say, this bloated 1950s bureaucratic Department which the General Accounting Office says will take between 5 and 10 years for the Department to be up and running, and, in its current form, will cost $4.5 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 $4.5 billion just on management and rearranging 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 prevented 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. We had hoped we could have an amendment that would prevent that from happening.

I look forward to the debate and hope that bipartisanship will prevail so that we can vote with pride in the new Department. That bipartisanship will be, as I say, in the form of amendments which have come from the standing committees, in most cases by unanimous vote, certainly bipartisan; and hopefully the House will work its will in support of bipartisanship.

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 gentleman 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 disturbing 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 attack 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 around the government. So the idea was if we can 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 section where several 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 infrastructure. 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, so they actually 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. Building 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 this reorganization.

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.

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

Mr. Speaker, over 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 some of the dozens of different 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 about what should be done. 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 of the new century 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 to consolidate 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 for 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, 1 introduced H.R. 1158, to implement the Hart-Rudman recommendation 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 were introduced in Congress, 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. A number of additional hearings were held on these and other proposals. The Senate bill was reported out of the Government Reform Committee on May 22, 2002. The President announced his proposal on June 6, 2002.

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 (see Question 1), let's get right 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 under one umbrella and one chain of command many of the government agencies responsible for homeland security. The Hart-Rudman Commission found more than 40 government entities with some responsibility for homeland security. After September 11, the Administration said that it is more like 100. There is no way that many organizations spread all around the Federal Government can effectively work together. Their efforts are, at best, fragmented and duplicative, or, at worst, they are at cross-purposes.

The new Department of Homeland Security would bring together those various entities that deal with border security, cyber terrorism, emergency response, and countermeasures for chemical, biological, nuclear, and radiological weapons. Only by bringing them together under one chain of command can they be as effective as we need them to be.

Let's take border security as one example. Currently, at our borders we have the Border Patrol, part of the Immigration and Naturalization Service, which is in the Department of Justice. We also have the Customs Service, which is a part of the Department of the Treasury. We also have the Coast Guard, an entity within the Department of Transportation, along with the new Transportation Security Administration (international airports are like borders). We also have inspectors from the Department of Agriculture's Animal and Plant Health Inspection Service stationed at the border to keep out plant and livestock diseases. All of those entities have different bosses, different equipment, and even different regulations that govern them. No one person or entity, is in charge,

As a side note, 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, reliable communications with other government agencies.

Control over our borders is essential to protecting our homeland. We must have those organizations and individuals responsible for border security be as effective as possible. That means they must operate as one integrated, seamless unit. They must have one coach, one playbook, and one quarterback. No team can be effective without a clear chain of command and clear direction.

Another important consideration is that first responders need one federal contact rather than five or 40. Local officials have repeatedly expressed frustration at not knowing which federal agency has the lead and at not knowing who to call in an emergency. This plan would give them one phone number, rather than a phone book.

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 review 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 no policy at all.'' 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 21)

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. But 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, modes of transportation and critical infrastructure;

One department to coordinate communications with state and local governments, private industry, and the American people;

One department to help train and equip first responders; One department to focus research and development and swift fielding of technology;

One department with a seat at the Cabinet table and considerable bureaucratic weight in the inevitable battles over turf and money.

Many of the agencies with responsibility for homeland security are in departments that have other, very different missions. To continue with the example of border security, the Customs Service is in the Department of the Treasury, whose primary mission is managing the financial affairs of the country. Indeed, the primary mission of the Customs Service for much of our history was to enforce trade laws and collect tax revenue to help run the government. And it still needs to do that. But even more important to the country today is the Custom Service's responsibility to keep chemical, biological, nuclear, and radiological weapons out of the country. In light of this new, higher priority which we must all give to homeland security, the Customs Service should be moved into a Department whose primary mission is consistent with that responsibility.

We could go through similar reasoning with the other agencies charged with border and transportation security. Some of them have other important missions besides homeland security which they must perform—the Coast Guard, for example—but if we look at the overall needs and priorities of the country, homeland security must have a greater emphasis. The consequences of not putting homeland security at the top of the list of priorities could certainly be catastrophic.

Another way that the new Department can make us safer is by helping set priorities within 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 and set priorities, placing more resources and attention in one area and less in another. That becomes very hard to do when the agencies charged with setting priorities and taking steps to reduce them are scattered around the government.

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

In sum, creating a Department of Homeland Security makes us safer by helping make homeland security a higher national priority and by making our homeland security efforts more effective. It is no magic answer, but given all that is at stake, every added measure of security counts.

QUESTION 4: HOW GOES THIS REORGANIZATION AFFECT EMERGENCY RESPONDERS?

If anyone needed a reminder that local emergency responders are at 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 were first 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 try to stop an attack.

However we reorganize federal agencies, empowering first responders is tremendously important to making the country safer. Organizations representing them, such as 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 we have all heard from frustrated local officials who need help in finding the appropriate federal office to deal with some problem. Rather than have a whole directory of phone numbers of federal agencies, local officials will have one number to call.

In addition, the Department will build upon the strengths of FEMA, including its existing structure with ten regional offices across the country and its close working relationships with state and local officials.

Building upon that foundation, the new Department will administer grants to help cities and counties acquire needed equipment. It will help provide and set the standards for needed training, consolidating several programs with similar missions. It will assist communities in planning for emergencies. Perhaps most importantly, it will provide the primary channel of communication between the federal government and state and local governments on homeland security—communication that will go both ways.

For instance, if the Department receives information that shopping malls may be a target of attack, it will communicate with the appropriate state and local officials. On the other hand, if several local police departments notice a suspicious pattern of behavior, they could communicate their concerns to the Department, and the Department may take some action. Providing a regular channel of communication between state and local officials and the federal government will be one of the most important functions of the Department of Homeland Security.

Helping coordinate and provide standards among local responders is another. We have learned that communication difficulties were a key problem on September 11. Helping to ensure that all of the emergency responders in a metropolitan area have compatible communication equipment, for example, will be an important benefit, not just for terrorist attacks, but for emergency response and law enforcement activities of all kinds.

The Department of Homeland Security will empower these local heroes by helping them do their jobs and by being their champion in the federal government. All of our communities will be safer as a result.

QUESTION 5: HOW DO WE KNOW IF THE AGENCIES BEING MOVED WILL STILL PERFORM THEIR OTHER MISSIONS?

Our federal government is big and complex, and a number of government agencies have multiple missions. We expect FEMA to respond to a disaster, whether it is caused by a hurricane or a terrorist. We expect the Coast Guard to perform search and rescue, protect our maritime resources, and guard our coastline. No cabinet department has perfectly clean lines.

Yet, the way we organize ourselves does say something about what we think is important. And given the changes in the world and in technology, we have to put greater focus on protecting Americans here at home. But what about all of those other jobs?

Sometimes it is relatively easy to split an organization. For example, the Animal and Plant Health Inspection Service (APHIS) has a section which helps provide border security. Other sections are devoted to tasks inside the United States. It is possible, and preferable, to move that portion of APHIS which helps protect our border to the new Department of Homeland Security while leaving the rest of it at the Department of Agriculture.

Other agencies are not so easily split. In fact, the commandant of the Coast Guard has said that dividing it would threaten its ability to do any job properly.

The Hart-Rudman Commission called the Coast Guard a ''model homeland security agency given its unique blend of law enforcement, regulatory, and military authorities that allow it to operate within, across, and beyond the U.S. border.'' In fact, if you think 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 Transportation. There is no reason it will not continue to perform its many jobs, but its critical role in protecting the United States and its citizens will be enhanced. (Note that the Coast Guard would be moved in the new Department as a separate entity; it would not be merged with other border security organizations.)

A number of the agencies moving into the Department of Homeland Security will be in an even better position to perform their other duties. In order to fulfill its responsibilities for homeland security, the Coast Guard will need new ships and equipment. Those same ships and aircraft are involved in all of the Coast Guard's tasks and will make the entire organization stronger. It is also more likely to get the additional resources it needs as a part of the Department of Homeland Security.

As part of the Department of Homeland Security, FEMA will be the critical link between the federal government and state and local governments. It will provide grants, conduct training, and be the pipeline for communications up and down the line. Those capabilities and those relationships, which

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 components of the Department of Homeland Security will perform their other important missions is us—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, we face 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 reorganizing existing ones.

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 whatever start-up or transition costs there may be can 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, unnecessary spending. There is no doubt we will be spending significantly more money on real homeland security, as we should. But, we should also 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 and 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 size is just right?

The short answer is that the new Department should be whatever size it takes to do the job. Obviously, we cannot put every function related to homeland 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 it.

If we want the Department to be responsible for border security, as most everyone does, then it must have all of the border security agencies. Border and 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 section. To significantly reduce the size of the Department, you have to either leave one of the border agencies out or you have to have fewer people on the border. Neither of those options makes us safer.

Most agree that the new Department should take the lead on cyber 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 responders are on the front lines 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 also help ensure good communication among different levels of government and even among various emergency responders. But, it needs to build upon the existing FEMA structure and relationships to ''hit the ground running.''

It is important to remember that this reorganization does not make government bigger. All of the people working for the Border Patrol, Coast Guard, etc., will be federal employees—with or without this new Department. The issue is not the size of the federal workforce; it is how we can best organize that workforce to protect our Nation.

Congressional oversight will be needed to make sure that the bureaucracy inside the new Department is truly ''lean and mean'' and that resources go where they count the most—on the ground at the front lines.

It boils down to this: we should look at those areas important to homeland security where the federal effort is fragmented, bring them together under one chain of command, and give them the tools they need to protect the country—whatever size it takes to do the job.

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 weakness. 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, those characteristics are generally not found in government organizations.

If we receive information that leads us to believe that we should acquire a particular vaccine in a hurry, we need to have a Department that can do that, within limits, without waiting on a bill from Congress or on approval of a reprogramming request. Some funding flexibility will be especially important during the transition phase of the new Department.

We face even bigger challenges with people. 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 position. It is very difficult 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 experience we need to fight cyber attacks, the federal government must compete with industry. 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 Department in a time of war, merging various cultures and organizations, and significantly increasing the 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 authority to help identify, develop, and then field technology as rapidly as possible.

The President has been clear that he is not trying to overturn federal employee protections 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, realigning existing agencies, creating new capabilities to fight terrorism—it seems like a lot in one bill. Understandably, some Members are concerned 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 President's proposal and assume that the best we can do to keep our Nation secure is keep the current system with dozens of different agencies—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 model. There is certainly a place for a White House coordinator to help set government-wide policies, in part because a number of agencies involved with homeland security will not be in the new Department. But, as Tom Ridge has learned, a White House coordinator is no substitute for a direct chain of command with day-to-day operational control over—and responsibility for—key functions. A coordinator and 100 people in the White House cannot ensure that communications 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 adding a few more down the road. Unfortunately, we do not have the luxury of time before we act. We need safer borders today, and the governmental entity charged with responsibility for our borders must have all of the pieces of border security under one chain of command. We need to strengthen federal support for emergency responders today, and we need better cyber security today. We cannot wait.

We must avoid setting up the new Department to fail. 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 system a few years ago, no one can credibly argue that the present system is as good as we can do. We must also resist the temptation to tamper around the edges in ways that may score political points but not count for much in dealing with future attacks. We must do what is right.

QUESTION 10: HOW SHOULD I VOTE ON CREATING THE NEW DEPARTMENT OF HOMELAND SECURITY?

Over the past few days, I have tried to answer some of the key questions and concerns about the new Department of Homeland Security. If there is any additional information I can provide, please let me or my office know.

As we discuss and debate all of the details involved in realigning so many government agencies, we should also remember the bigger picture and what is at stake.

Our country was suddenly and savagely attacked on September 11. Yet, we all recognize that the horrible tragedy of that day

may be only a taste of much greater tragedy to come. I hope not. But I also know that chemical, biological, nuclear, and radiological weapons are spreading to more and more nations and groups. I also know that many of those nations and groups are hostile to the United States and have little regard for innocent human life.

As the Gilmore Commission has said: ''The tragic attacks of September 11, 2001, the subsequent anthrax attacks, and persistent threats clearly demonstrate the importance of continuing to prepare our nation to counter more effectively the threats of terrorism. These attacks underscore the urgency by which we must act to implement fully a comprehensive national approach to preparedness.''

September 11 must serve as our wake-up call. We must act, and we should not be timid about it. We will all be judged by the adequacy of our response.

Unfortunately, it is always easier to attack and criticize than it is to formulate specific proposals and take responsible action. Some of the criticisms of creating the new Department are genuine; others may be excuses to prevent reform. We cannot let turf protection trump real security.

Of course, there are uncertainties with any new endeavor. Even with perfect legislation, the management of this new Department will be an enormous challenge. And even if it is managed perfectly, there are no guarantees that future attacks will not be successful. But, we must do everything we can to be ready.

This reorganization will help us to be ready and to be safer. But our work will not end there. Everyone of us will have a continuing duty, through our committees and individually, to pursue a host of issues related to homeland security.

We are at war. Many lives and our vital freedoms are at stake. Those trying to hurt us are always probing for vulnerabilities and will stop at nothing, using any method of attack they can get their hands on. We have no silver bullets in this war. But it seems to me that we owe the people we represent, those who came before, and those who will come after us our very best efforts to preserve and secure this great country and its people.

Creating a Department of Homeland Security will make us safer—not perfectly safe, but safer. Please vote ''yes'' on H.R. 5005.

Ms. PELOSI. Mr. Chairman, I am pleased to yield 5 minutes to the gentleman from New Jersey (Mr. MENENDEZ), the vice chair of our Democratic Caucus and a valued member of the Select Committee on Homeland Security.

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

Mr. MENENDEZ. Mr. Chairman, I thank the gentlewoman for her leadership on the Select Committee on Homeland Security on our side of the aisle in leading us on some of the key issues that we wanted to pursue.

Mr. Chairman, in the work of securing the homeland, there are no Democrats or Republicans, there are only patriots. America has never been so powerful. Our culture, our government, our commerce, our ideals, our humanity, virtually everything we do and all that we stand for has a global reach that is unprecedented in the history of civilization. Yet, America has never been so vulnerable as it was on September 11. I will never forget that day; it will be seared in my memory forever, that I 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, as we work to establish the new Department of Homeland Security, we must get this right the first time.

Let us get this right for Kelly Colasanti 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 project 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.

How we project 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 Committee on 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 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 with the gentleman from Minnesota (Mr. OBERSTAR) to make sure the traveling public keeps safe and we keep the TSA's feet to the fire.

Secondly, the most glaring problem, even crisis, I would say, with government performance leading up to September 11 was an unacceptable lack of coordination and information-sharing among Federal intelligence and law enforcement agencies and between the agencies and State and local authorities, first responders, and the private sector. This bill must include mechanisms that guarantee that such coordination and information-sharing indeed will occur. The minute that this Department goes on line, the new Secretary should have, in real-time, all of the intelligence and law enforcement information that he or she needs. The Chambliss-Shays-Harman-Menendez amendment should be adopted.

Finally, Governor Ridge has repeatedly said that if the hometown is secure, the homeland is secure. He is right. After September 11, we are in a new national security paradigm where Main Street is the frontline. We must fortify that frontline. We must provide our first responders the resources, training, and guidance they need to protect America's communities.

Now, we were asked repeatedly to provide flexibility for the Secretary in setting up this Department. As we provide some flexibility for the 107,000 employees about to be transferred by an act of Congress to a new department, homeland security should not mean the insecurity of those employees.

Yes, life in America has forever changed since September 11. Main Street is now the frontline of a new war. But American values have not changed and must not change. We continue to value liberty and freedom and justice and fairness. It is in that spirit of providing for security and preserving liberty that we will debate and offer amendments towards this goal. Together, together, I hope, if there are open minds and open hearts, we can provide for an even safer America, and we can do it in a bipartisan way.

Mr. ARMEY. Mr. Chairman, I yield 4 minutes to the gentleman from Louisiana (Mr. TAUZIN), the distinguished chairman of the Committee on Energy and Commerce.

Mr. TAUZIN. Mr. Chairman, I rise in support of H.R. 5005 which represents the President's ambitious and historic proposal to create the new Department of Homeland Security. I believe the President's proposal represented a great framework for congressional consideration, but I think the majority leader and the Select Committee on Homeland Security chairman, the gentleman from Texas (Mr. ARMEY), deserve so much better. He has really done a yeoman's job in not only building this program as the President requested, but creating a much stronger bill as a result of the way he has gone about his work. His leadership and his consultation with the committees of jurisdiction has been tremendous, and I know he has consulted so well with those on the other side as we process this bill.

I want to praise Governor Ridge and the administration for their flexibility and consideration of our concerns, and I think we all owe him and his department a debt of gratitude for the protection that he has given our country since 9–11 and the work he is doing to ensure homeland security as we go forward.

Ever since the anthrax attacks in this country, the threat of bioterrorism has become much more of a reality to our people, and the importance

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 redoing it, the bill 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, but also, traditionally, the needs of public health. So I want to thank the gentleman from Texas (Mr. ARMEY) 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 run by those agencies. I am pleased 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. Our Nation's ability today 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 sending out information about key homeland security technologies such as radiation and bio-weapon detectors.

I particularly want to thank the gentleman from North Carolina (Mr. BURR) of our committee, the gentlewoman from New Mexico (Mrs. WILSON), and the gentlewoman from California (Ms. HARMAN) 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 the print, within 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, the business software lines told 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 situation by reorganizing, and a wonderful method it can be for creating 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 Committee 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, even for 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 administrating the national flood insurance program and cleaning up oil spills at sea.

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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 powers 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 with the gentleman from Texas (Mr. FROST) 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. In fact, I think it 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 Columbia 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 nation's vulnerability to 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 corporations from liability when they make 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 of 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. ARMEY will introduce an amendment to extend these liability exemptions to an even wider range of potentially defective products and services.

On July 9, 2002, I joined 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 ask unanimous consent 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 boll weevil. Giving the new Department dozens of unrelated responsibilities will bloat the size of the bureaucracy and dilute the new Department's counterterrorism mission.

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, but this bill does not give 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 (FACA).

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 make that I am not 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 reassuring. Here is what Petronius Arbiter, an advisor to Roman Emperor Nero, said nearly 2,000 years ago: 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 new situation by reorganizing; and a wonderful method it can be for creating the illusion of progress while producing confusion, inefficiency, and demoralization.

The Department of Energy was created 25 years ago and it is still dysfunctional. The Department of Transportation was created 35 years ago, yet as the National Journal reported, it ''still struggles to make its components cooperate, share information, and generally play nice.''

The model we are supposed to be emulating is the creation of the Department of Defense 50 years ago. But for over 35 years, 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.

To avoid the mistakes 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 elaborate ceremonies comes when 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 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.

HOUSE OF REPRESENTATIVES,
Washington, DC, July 9, 2002.

Hon. TOM RIDGE,
Director, Office of Homeland Security, The White House, Washington, DC.

DEAR GOVERNOR RIDGE: Congress is considering the President's proposal to create a new Department of Homeland Security on an accelerated schedule. But now that Congress has received the legislative language 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 be able to provide expeditious 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 coordinate the activities of 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, departments, or offices with security roles. 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 effect. For example, GAO has testified that programs transferred from the Department of Health and Human Services include ''essential public health functions that, while important for 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 internal 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 Office of Personnel Management, to waive all provisions of our civil service laws. These laws have evolved over many decades to ensure that our government has a professional civil service hired on the basis of merit rather than political favoritism. Yet the proposed legislation would allow the new Department to waive all of these protections, including those that prohibit patronage, protect whistle-blowers, provide for collective bargaining rights, and ensure health and retirement benefits.

A similar approach 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 extraordinary powers to avoid meaningful congressional oversight. Not only would the new Department be able to exempt itself from civil service, procurement, and property laws, it would also 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 the country against terrorism.'' Although Administration officials have compared this restructuring to the formation of the Department of Defense in the 1940s, that 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. There is no national strategy 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 nonpartisan Congressional Budget Office, 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 normally an approach that produces sound 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 issues and questions 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 the 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 issued on June 7, 2002, 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 inevitably will expand 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 that, absent 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), which is now currently part of the Department of Agriculture, into the new Department. APHIS has nearly 8,000 full-time employees (FTEs), but few have responsibility 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

Maintaining the missing pet network at www.missingpet.net.

Section 502(1) of the President's proposal would transfer the Federal Emergency Management Agency (FEMA) into the new Department. To date, however, FEMA has had a limited role in counterterrorism. According to former FEMA director James Lee Witt, ''[o]ver the last decade FEMA has responded to more than 500 emergency and major disaster events. Two of those were related to terrorism (Oklahoma City and New York City).'' In Mr. Witt's view, ''[f]olding FEMA into a homeland or national security agency will seriously compromise the nation's previously effective response to natural hazards.'' Major FEMA responsibilities that are unrelated to homeland security include:

Providing flood insurance and mitigation services (including pre-disaster mitigation, 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, ''[a]fter September 11, the Coast Guard's port secunty mission grew from approximately 1–2 percent of daily operations to between 50–60 percent today.'' Without a sustained 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 149 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, as mistakes potentially could 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 falls to include provisions that would ensure the coordination of the more than 100 federal entities that will continue to have significant homeland secunty functions.

According to the Administration, ''responsibilities for homeland security are dispersed among more than 100 different government organizations.'' Indeed, an organizational chart provided by the White House listed 153 different agencies, departments, and offices with a role in homeland security. The While 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 simplfv this patchwork and may even make it worse. Even after all of the changes proposed in the President's legislative language, the federal govemnient would continue to have well over 100 agencies, departments, and offices involved in homeland security. According to an analysis 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.

One example of the continued need for coordination across agencies involves providing emergency response. According to the Administration: ''Currently, if a chemical or biological attack were to occur, Americans could receive warnings and health care information from a long list of govenrment organizations, including HHS, FEMA, EPA, GSA, DOJ, OSHA, OPM, USPS, DOD, USAMRIID, and the Surgeon General—not to mention a cacophony of local agencies.''

But under the President's proposal, all but one of these 11 federal agencies (FEMA) would continue to exist, and this one agency would be replaced by the 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.''

The Administration's proposal, however, would further fragment regulation of the food supply by transferring some of Agriculture's responsibilities to the new Department, creating a fourth food safety agency. APHIS, which is charged with inspecting imports to ensure that pests and bugs that could harm crops or livestock do not enter the United States, would become part of the new Department. But the Food Safety Inspection Service of the Department of Agriculture, which inspects domestic and imported meat and poultry for threats to human health, would remain at Agriculture. The nonsensical result, as GAO has observed, is that ''the focus appears to be on enhancing protection of livestock and crops from terrorist acts, rather than on protecting the food supply as a whole.''

One area In which coordination is urgently needed is among law enforcement and intelligence agencies, in particular the Federal Bureau of Investigation (FBI) and the Central Intelligence Agency (CIA). How the new Department would relate to these agencies is not clear, however. One of the primary missions of the new Department is to ''[p]revent terrorist attacks within the United States.'' The Administration says that a new department with this mission is needed because ''[t]oday no one single government agency has homeland and security as its primary mission.'' But the FBI has also just undergone a major reorganization. Now, its primary mission is also ''[p]rotecting the United States from terrorist attack''—identical to that of the new Department of Homeland Security. As a result, rather than having no single federal agency with homeland security as its mission, the Administration seems to be proposing two.

Under the Administration's proposal for a new Department of Homeland Security, there will be a new office for intelligence and threat analysis. This office will assist in ''pulling together information and intelligence from a variety of sources.'' Similarly, under FBI Director Mueller's reorganization proposal, there will be a new office in the FBI called the Office of Intelligence that will also assist in ''pulling together bits and pieces of information that often comes from separate sources.'' The Department of Homeland Security's intelligence office would ''have the ability to view the dangers facing the homeland comprehensively, ensure that the President is briefed on relevant information, and take necessary protective action.'' Similarly, the FBI's intelligence office will be charged with ''providing analytic products to policy makers and investigators that will allow us to prevent terrorist acts.'' This does not appear to be a recipe for a unified approach.

The investigation of the September 11 attacks has already revealed serious lapse in the analysis and sharing of intelligence information. In July 2001, as FBI special agent in Phoenix reported to this supervisors that followers of Osama bin Laden might be training at U.S. aviation schools and suggested a nationwide canvass of the schools. But this warning was apparently ignored. As early as January 2001, the CIA obtained information that two of the September 11 assailants—Nawaz al-Hazmi and Khalid al-Midhar—met with al-Qaeda agents in Malasya. But this information was not provided to the INS until August 2001, by which time al-Hamzi and al-Midhar had already entered the United States.

The Administration's proposed bill, however, does not adequately address these problems. Although the bill gives the Secretary of Homeland Security rights of access to reports, assessments, and analytical information from other agencies that relate to threats and vulnerabilities, the Department remains primarily a ''consumer'' of intelligence information collected by agencies outside its control after that information is already processed by those agencies. This passive role will not ensure that the new Department obtains access to information that the collecting agencies deem insignificant, such as the warning from the FBI agent about flight schools. Although the Administration's bill allows for the transmittal of ''raw'' intelligence from outside agencies to the Department of Homeland Security, the Department is not given the resources to cope with the volume and complexity of this information. Moreover, the new Department has no ''tasking'' authority to direct what intelligence is collected, making it difficult for the new Department to ensure that possible threats it identifies are properly pursued.

Another concern is the potential for confusion and interference in the actual response to bioterrorist incidents. The FBI will bring a law enforcement focus to the scene of a bioterrorist event, while the new Department will be concerned with the emergency response. Under the President's proposal, it is unclear which will prevail. Under Presidential Decision Directive 62, which was signed during the previous Administration, the FBI was designated as the lead agency for ''crisis management,'' which included efforts to anticipate, prevent, and resolve terrorist attacks. FEMA was designated the lead agency for ''consequence management.'' which included broader measures to protect

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 General Services Administration (GSA)), but not others (the security forces protecting Department of Energy, Veterans, and judicial buildings). Moreover, removing the Federal Protective Service from GSA creates its own problems because, as GAO has observed, ''security needs to be integrated into the decisions about location, design and operation of federal facilities.''

What is urgently needed is an effective entity at the While House level that can unify the disparate federal agencies with homeland 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 2001, and which you head. But 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 (HHS). Section 502(5) of the President's proposal would move the Office of the Assistant Secretary for Public Health Emergency Preparedness and ''the functions of the Secretary of Health and Human Services related thereto'' to the new Department of Homeland Security. This provision makes little sense. In the Public Health Security and Bioterrorism 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 aqencies within the Department respond to public health emergencies. Moving this office to another department will not eliminate the need for a coordinating office within HHS. It will simply recreate the same problems within HBS 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 Secretary's office. Obviously, this cavalier attitude is seriously misinformed.

Section 505 is also problematic. It transfers control over HHS programs to provide assistance for state and local preparedness from HBS 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 public health threats, including threats that are not related to terrorism. As GAO has stated, these programs ''Include essential public health functions that, while Important for homeland security, are critical to basic public health core capacities.'' As a result, GAO made the following conclusions: ''We are concerned that this approach may disrupt the synergy that exists in these dual-purpose programs. We are also concerned that the separation of control over the programs from their operations could lead to difficulty in balancing priorities. Although 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 both the goals of 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, approving and denying visas is an important activity of the State Department. which processes about 400,000 immigrant visas and over six million non-immigrant visas annually. To perform this function, the State 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 State Department must concur in policy decisions, or whether this is merely an administrative function. 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 back to the Secretary of State 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 potentially very broad. For example, section 302(2)(G) of the President's proposal would transfer ''the advanced scientific computing research program and activities'' at Lawrence Livermore Laboratory to the new Department. Although the exact scope of this provision is unclear, it appears to encompass parts of the Lawrence Livermore Laboratory's Computation 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 its key mission—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 life science activity within the 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 pollution) would stay at DOE. Splitting this highly specialized work risks weakening the effectiveness of both.

IV. LACK OF RECOGNITION OF DISPARATE IMMIGRATION FUNCTIONS

In April, the House passed legislation (H.R. 3231) recognizing the two distinct functions of the INS: an immigration services function and an enforcement function. As part of this reform effort, the bill would split the INS into a Bureau of Citizenship and Immigration Services and a Bureau of Immigration Enforcement, both under the supervision of an Associate Attorney General for Immigration Affairs within the Department of Justice. The legislation aimed to correct long-standing and widely-recognized systemic problems within the INS by separating out its distinct and often conflicting service and enforcement functions.

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 services from immigration law 32 enforcement.''

Despite these assurances, however, the legislative language proposed by the President would import the INS into the new Department of Homeland Security intact and unreformed. There are no details whatsoever regarding the structure of the INS after it is transferred to the new Department. As a result, the Administration's proposal fails to address internal structural and coordination problems that hamper the effectiveness of the INS.

V. EXEMPTIONS FROM ''GOOD GOVERNMENT'' LAWS

The Administration's proposal would create broad exemptions to the nation's ''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 Officers Act, the law governing Chief Information Officers, 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 professional civil service hired on the basis of merit rather than political favoritism. Section 730 of the President's proposal, however, would give the Secretary the authority to create an alternative personnel system. The only limitation in the statute is that the system should be ''flexible, contemporary and grounded in the public employment principles of merit and fitness.''

Under the President's proposal, employees of the new Department could 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 workers and their families would undermine the mission of the new Department. The civil service provisions that become optional include the following:

The prohibition on discrimination against employees 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 preferences for veterans in hiring and in reductions-in-force;

The protection from arbitrary dismissal or demotion through due process appeal rights to the Merit Systems 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 System and the Federal Employees' Retirement System; and

Health insurance through the Federal Employees' Health Benefits Program.

Moreover, important programs for ensuring diversity in the 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 obtain certain specialized services in an emergency, there do not appear to be any limits on its use. For example, current law requires these types of contracts to be temporary (no longer than one year) and subject to salary caps (no higher than the GS–15 level). The President's proposal would allow these contracts to go on indefinitely and at any rate. In effect, the section provides an alternative vehicle for bypassing the protections and requirements of the civil service system.

B. Exemption From Procurement Rules

Under section 732(c) of the President's proposal, the new Secretary could waive any and all procurement statutes and regulations, and the Secretary would not be required to comply with the cornerstone procurement principles of open and competitive bidding. In a section-by-section analysis provided by the While House, the Administration asserts that ''normal procurement operations would be subject to current govemment-wide procurement statutes and regulations.'' To the contrary, however, the legislative language would add the new Department to the list of entities listed in 40 U.S.C. 474, such as the Postal Service, which would exempt entirely the Department from the federal government's normal acquisition laws.

As a result, there is no guarantee that the new Department would be getting the lowest prices, the best quality, or the best deals. Fundamental principles of federal procurement such as the following would not apply:

The requirement that acquisitions be publicly advertised;

The requirement that sufficient notice be given to allow companies to respond;

The requirement that all responsible bidders be given the chance to compete for a given acquisition; and

The requirement that all contractors be rated on the same criteria when competing for a given contract.

These bedrock principles have helped to maintain competition in federal contracting, which history has proven to be the best way to ensure the best quality at the lowest prices while maintaining a system free of favoritism or abuse. In addition, long-standing preferences for small- and minority-owned businesses designed to encourage their development and access to federal contracts would no longer be guaranteed.

Section 732(a) of the President's proposal would explicitly grant the new Department so-called ''other transactions authority'' for research and development contracts. This 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 new inventions discovered through research funded by the federal taxpayer. In reviewing the use of this authority by the Defense Department, the Inspector General found that these types of contracts ''do not provide the government a number of significant protections, ensure the prudent expenditure of taxpayer dollars, or prevent fraud.''

C. Exemption From Property Rules

The new Department will acquire a considerable inventory of federal property, particularly through the Coast Guard, which owns valuable real estate across the country. Sections 732(d) and (f) of the President's proposal, however, would give the new Department broad authority to acquire and dispose of both real and personal property. Specifically, the Department could acquire replacement real property through exchange or transfer with other agencies or through the sale or long-term lease to the private sector. In addition, the Department would be authorized to retain the proceeds of such transactions.

Currently, under the 1949 Property Act, federal agencies must determine whether they own ''excess'' property they no longer need. GSA then screens this excess property for other federal uses. If there are no federal uses for the property, GSA declares the property ''surplus'' and screens it for ''homeless'' or ''public benefit'' uses, such as for schools, correctional institutions, airports, and other entitles. If no beneficial public use is found for the property, GSA may sell the property through negotiated sales at fair market value without restrictions on use. The property may also be sold to the public through a bidding process if a negotiated sale does not occur. Under the Administration's proposal, however, none of these procedures will apply.

The Government Reform Committee reported a comprehensive reform of federal property laws earlier this year (H.R. 3947). This reform gave agencies more flexibility to manage their property, but it also included safeguards to ensure that agencies respond to community input, consider local zoning laws, and receive fair market value. None of these safeguards are incorporated into the Administration's proposal.

D. Exemption From Freedom of Information Act

Section 204 of the President's proposal would exempt the new Department from complying fully with the Freedom of Information Act (FOIA). If nonfederal entities or individuals provide information voluntarily to the new Department that relates to infrastructure vulnerabilities or other vulnerabilities to terrorism, that information would not be subject to FOIA. This exemption would apply to information that ''is or has been in the possession of the Department.''

FOIA was designed to preserve openness and accountability in government. In order to protect sensitive information, FOIA already contains sufficient exemptions from disclosure. These exemptions cover critical infrastructure information. FOIA does not require the disclosure of national security information (exemption 1), sensitive law enforcement information (exemption 7), or confidential business information (exemption 4). Therefore, new exemptions to its provisions do not appear necessary.

The danger in creating new exemptions to FOIA is that important information about health and safety issues could be withheld from the public. In fact, the provision is drafted so broadly that it could be used to ''launder'' embarrassing information through the new Department and thereby prevent public disclosure.

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

Congress addressed this issue by carefully balancing the goal of informing emergency responders and the public about 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 readily posted on the Internet. Congress ensured public access to basic information about the risk management plans, preserving the right of Americans to know about chemical accidents that could impact their families and communities. Under the President's proposal, however, chemical companies could now prevent the disclosure of all Risk Management Plans under FOIA simply by sending them to the new Department.

E. Exemption From Federal Advisory Committee Act

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 promote good-government values such as openness, accountability, and a balance of viewpoints. Generally, FACA requires that such committees announce their meetings, hold their meetings in public, take minutes 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 Defense, currently operate under FACA without difficulty. The President's proposal contains no explanation why the new Department could not also comply with FACA. In fact, the only two agencies that are exempt from FACA are the Central Intelligence Agency and the Federal Reserve.

At least 27 advisory committees that currently exist would be transferred to the new Department under the President's proposal. These existing advisory committees, which are currently subject to FACA, include the Navigational Safety Advisory Committee at the Coast Guard, the Advisory Committee of the National Urban Search and Rescue System at FEMA, the Advisory Committee on International Child Labor Enforcement at the Customs Service, and 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 FACA requirement on balance and openness.

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 protections. Section 207, for example, provides that a person who serves on a committee that is advising an agency on a specific matter cannot lobby the agency about the same matter after leaving the advisory committee. No rationale is provided for exempting members of advisory committees from these protections against conflicts of interest.

F. Exemption From Chief Financial Officer Act

Section 103(d)(4) of the President's proposal would authorize the President to appoint the Department's Chief Financial Officer (CFO) without Senate confirmation. Current law requires that a CFO of a cabinet department either be: (1) appointed by the President with Senate confirmation; or (2) designated by the President from among agency officials who are Senate-confirmed. In either case, current law requires that CFOs be Senate-confirmed.

In addition, the President's proposal contains no language making the CFO Act applicable to the new Department. The CFO Act contains core financial management, accountability, and reporting requirements that are at least as important for the new Department as they are for other covered agencies, which include all existing cabinet departments. Moreover, section 602 of the President's proposal provides that the CFO shall report to the Secretary or to another official of the Department as the Secretary may direct. This section is inconsistent with the CFO Act, which requires that the CFO report directly to the agency head regarding financial management matters.

These exemptions from financial management requirements make little sense. According to GAO, ''[i]t is important to re-emphasize that the department should be brought under the Chief Financial Officers (CFO) Act and related financial management statutes.''

G. Exemption From Chief Information Officer Legislation

The proposal does not appear to give the Chief Information Officer (CIO) of the new Department the same status and responsibilities as CIOs at other agencies. Section 603 of the President's proposal provides that the CIO shall report to the Secretary or to another official of the Department as the Secretary may direct. The Clinger-Cohen Act, however, requires that the CIO report directly to the agency head.

In addition, the Clinger-Cohen Act specifies numerous responsibilities for CIOs. These include developing an accounting, financial, and asset management system that is reliable, consistent, and timely; developing and maintaining information systems; and assessing and reporting on progress made in developing information technology systems. The President's legislative language, however, does not specify any responsibilities for the CIO. In fact, the bill would assign responsibility for information technology systems to an Under Secretary for Management at the new Department, a responsibility assigned to the CIO under the Clinger-Cohen Act.

H. Limits on Access to Information by Inspector General

Section 710 of the President's proposal would subject the Inspector General (IG) of the new Department to the Secretary's control and would authorize the Secretary to prevent the IG from doing work in areas involving certain information. These areas are quite broad and extend to information concerning any ''matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.'' Under the President's proposal, the Secretary could prohibit the IG from doing work ''if the Secretary determines that such prohibition is necessary . . . to preserve the national security or to prevent a significant impairment to the interests of the United States.''

IGs at certain other agencies (such as the Defense Department and the Justice Department) have similar limitations on access. But in those cases, the IGs are directed to report to Congress if the relevant Secretary impedes their access to necessary information. In the case of the IG for the new Department, this important check on Secretarial interference has been eliminated. Instead, the proposal would give the responsibility of reporting interference with an IG investigation to the Secretary, who would have an obvious conflict of interest in full reporting.

VI. EXEMPTION FROM CONGRESSIONAL OVERSIGHT

In addition to creating 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 a lump-sum appropriation of more than $30 billion. In transferring the various existing agencies to the new Department, several provisions of the President's proposal allow the Secretary to transfer agency balances to the new Department. Section 803(e) of the President's proposal allows the new Secretary to allocate those funds as the Secretary sees fit, and it expressly overides 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 allow the new Secretary to rewrite appropriations relating to both homeland security and all other functions conducted by the new Department.

Section 733(b) creates for the new Secretary a permanent blanket grant of authority to transfer between appropriations accounts up to 5 percent of the appropriations made each year for agencies within the new Department, so long as the Appropriations Committees are given 15 days notice. This provision could allow the Secretary to transfer $2 billion or more per year rather than addressing potential funding misallocations through the annual congressional appropriations process.

In addition, section 733(a) allows the Secretary to ''establish, consolidate, alter, or discontinue'' any organizational unit in the new Department, including those established by statute, upon 90 days notice to Congress. Although the Coast Guard and the Secret Service are exempt from this provision, all other agencies transferred to the new Department could be abolished entirely with no input from Congress.

VII. POTENTIAL FOR SERIOUS DISRUPTION IN THE WAR ON TERROR

The Administration asserts that the ''current components of our homeland security structure will continue to function as normal and there will be no gaps in protection as planning for the new Department moves forward.'' Unfortunately, this is a difficult goal to achieve, and the proposal submitted to Congress contains no implementation plan that shows how disruptions will be avoided.

In fact, the history of corporate and government reorganizations is not encouraging. As a management professor from Columbia University recently remarked, ''[t]o think that a structural solution can bring about a major improvement in performance is a major mistake.'' In the corporate world, more mergers fail than succeed.'' According to one expert, ''[p]rivate-sector data show that productivity usually drops by 50 percent in the first four to eight months following the initial announcement of a merger, largely because employees are preoccupied with their now uncertain future.

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 Defense 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 four different amendments, the last being the Goldwater-Nichols Act of 1986, before the problems created by the 1947 reorganization were finally addressed.

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 consolidated functions in new departments to effectively build on their combined strengths, and it is not uncommon for these structures to remain as management challenges for decades. . . . [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 the country against terrorism.''

Given this history, the burden should be on the Administration to show how this bureaucratic reorganization can be accomplished successfully. But virtually no detail has been provided to Congress that addresses these serious implementation issues.

VIII. LACK OF NATIONAL STRATEGY

Most experts recommend three concrete 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 failing to have 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 policymaking or resource allocations.'' 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 terrorism. The executive order establishing the Office provided that: ''The mission of the Office shall be to develop and implement the coordination of a comprehensive national strategy to secure The United States from terrorist threats or attacks.''

When you assumed your position, you also recognized that developing this strategy was your top assignment, calling it 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 strategy 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 made this statement: ''The United States has never had a national blueprint for securing itself from the threat of terrorism. This year, with the publication of the National Strategy for Homeland Security, it will.''

Unfortunately, this strategy has not been developed. As a result, Congress still does not have a list of priorities set forth in a clear way and cannot gauge whether your reorganization proposal best serves the nation's security goals. 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: ''The Bush Administration is doing the wrong thing for the wrong reasons. . . . What worries me the most is that we've put the cart before the horse: We're organizing, and then we're going to figure out what to do.''

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 elements (such as the threat analysis unit and the state, local, and private sector coordination functions), as well as the department-wide management and Administration units, can be funded from savings achieved by eliminating redundancies inherent in the current structure.''

This is not a credible statement. CBO has examined the costs of the reorganization proposal put forth by Senator Lieberman (S. 2452). 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.'' In addition, CBO states that the new Department would require additional funding for ''centralized leadership, coordination, and support services,'' and that ''new departmental staff would be hired over the first two years following enactment of the legislation.''

The Administration's proposal is significantly more ambitious and costly than Senator Lieberman's. It includes more agencies, such as the Transportation Security Administration with over 40,000 employees. Moreover, it requires the new Department to take on a host of new functions, including:

A new office for ''Intelligence and Threat Analysis'' to ''fuse and analyze intelligence and other information pertaining to threats to the homeland from multiple sources,'' including a new ''system for conveying actionable intelligence and other information'' and a new system to ''consolidate the federal government's lines of communication with state and local public safety agencies and with the private sector'';

A new ''state-of-the-art visa system, one in which visitors are identified by biometric information'';

A new ''automated entry-exit system that would verify compliance with entry conditions, student status such as work limitations and duration of stay, for all categories of visas'';

New ''interoperable communicattions,'' including ''equipment and systems'' for the ''hundreds of offices from across the government and the country'' that make up the ''emergency response community'' (this would be a ''top priority'' of the new Department); and

A new ''national system for detecting the use of biological agents within the United States,'' including a new ''national public health data surveillance system,'' and a new ''sensor network to detect and report the release of bioterrorist pathogens in densely populated areas.''

In addition to these new functions, the President's proposal would establish an entirely new bureaucracy, complete with a management hierarchy and accompanying staff. According to the President's legislative language, the new Department would have up to 22 Deputy, Under, and Assistant Secretaries. This is more than the number of Deputy, Under, and Assistant Secretaries at the Department of Health and Human Services, which administers a budget about ten times the proposed 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 short term, 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.''

Mark Everson, Controller at the Office of Federal Financial Management within the White House Office of Management and Budget, was asked about these costs at a staff briefing on July 1, 2002. He said that the Administration bad no estimate of the transition costs of creating the new Department and no estimate of the level of savings to be achieved by combining agencies. The only thing he said he 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

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 ''[n]o Cabinet secretary was directly consulted about a plan that would strip 170,000 employees and $37 billion in funding from existing departments. In fact, there was so little communication between the White House and the agencies that at least one major agency had to call the minority staff of the Committee on Government Reform to learn whether it was affected by the reorganization plan.

This closed process utilized by the Administration is ill-suited to ensuring that all potential problems are identified and addressed beforehand. Moreover, the risk of making policy mistakes is compounded by the rushed process being used in Congress to consider the legislation. It is not clear how in this process the time and opportunity will be found to make sure the legislation is done correctly

XI. CONCLUSION

The issues raised in this letter exemplify the serious questions that should be resolved before Congress completes work on this legislation. For this reason, we urge you to respond in detail and in writing to the concerns raised in this letter by July 15, before the House select committee starts its consideration of this bill.

Sincerely,

HENRY A. WAXMAN,
Ranking Minority Member, Committee on Government Reform.

DAVID R. OBEY,
Ranking Minority Member, Committee on Appropriations.

APPENDIX A—TRANSFERRED FUNCTIONS NOT RELATED TO HOMELAND SECURITY

ANIMAL PLANT HEALTH INSPECTION SERVICE

Animal Welfare Act: APHIS enforces the Animal Welfare Act, the act that regulates the exhibition of animals in zoos and circuses and the transportation of animals on commercial airlines.

Biotechnology Regulatory Policy: APHIS regulates the movement, importation, and field testing of genetically engineered plants and microorganisms.

Canadian Geese: APHIS works with state wildlife agencies and local governments to address problems with non-migratory, resident Canadian geese.

Disease and Pest Detection and Eradication: APHIS is responsible for the detection and eradication of pests and diseases that affect crops and livestock. For example, on September 20, 2001, APHIS implemented the accelerated National Scrapie Eradication Program. A few of the other pests and diseases APHIS monitors for and eradicates include: the boll weevil; the fruit fly; rabies; the Asian Longhorned Beetle; the citrus canker program; and the plum pox virus.

Horse Protection Act: APHIS enforces the Horse Protection Act, the act which prohibits horses subjected to a process called soring from participating in exhibitions, sales, shows, or auctions.

Missing Pet: APHIS maintains the missing pets network at *www.missingpet.net*.

National Poultry Improvement Plan: This is an industry/state/federal program that establishes standards for evaluating poultry breeding stock and hatchery products to ensure they are free from hatchery-disseminated and egg-transmitted diseases.

Noxious weeds: APHIS cooperates with federal, state, and private organizations to detect and respond to infestations of invasive plants, such as branched broomrape and small broomrape.

Screwworm: APHIS is working to ensure that screwworm is not reintroduced into the United States. This eradication program is close to its goal of establishing a permanent sterile screwworm barrier in the eastern third of Panama.

Trade Issue Resolution and Management: APHIS monitors emerging foreign pest and disease threats at their origin before they have an opportunity to reach U.S. ports. APHIS also participates in trade agreements.

Veterinary Biologics: APHIS regulates veterinary biologics including vaccines and diagnostic kits.

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 interdicts drugs illegally brought into this country on the waterways.

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

Maritime Mobility Missions: The Coast Guard provides aids to navigation and bridge administration to ensure that vessels are able to navigate our waterways.

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

Protection of Natural Resources: The Coast Guard protects 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 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 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 Program, such as assisting with production of educational and guidance materials.

Quality Assessment Program for Contractor Labs: 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.

Hazards Mitigation Program: FEMA provides grants to states and local governments to implement hazard mitigation measures to reduce the loss of life and property 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 improve model building codes 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 from Fire: 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.

SECRET SERVICE

Prevention of Counterfeiting: The Counterfeit Division of the Secret Service has exclusive jurisdiction to investigate 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. ARMEY. 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 commend 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 greatest 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 that is good. 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 protectors have the best available 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 utilizes the most up-to-date wireless last-mile 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 initiative to create a statewide broadband network for municipalities, 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 links and wireless last-mile technology is used to provide local high-speed 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 officials 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 response to emergency situations. The findings of this study should provide examples of 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 verdict first, evidence later.

A provision in this legislation would extend a deadline for screening of checked luggage aboard aircraft by explosive detection systems out off into the future after last year, just eight months ago in this very Chamber, we voted 410 to 9 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 vote in 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 pronouncement of a need for a Department of Homeland Security than this body will become and begin to undermine 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 gentleman from Georgia (Mr. Gingrich), fashioned 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 through this body and 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 politic and in the Nation as a whole to strengthen security that never will we have to worry. 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 bag match and 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 make them applicable by action 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 of the people of this 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. LOBIONDO).

Mr. LOBIONDO. 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 focussed 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 chairman 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 its effect on our Nation's security, I have, again, had these principles frame my views. First, we must ensure that anything we do in Washington will not negatively effect 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 security.

Fortunately, the Select Committee and the White House have agreed that an intact Coast Guard doing all of its multi mission tasks is the right 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 must 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 jungle, and I want to thank the majority leader, the gentleman from Texas (Mr. ARMEY), the gentleman from Alaska (Mr. YOUNG), the gentleman from New Jersey (Mr. MENENDEZ) and the gentleman 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 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 legislative proposal is good for the Coast Guard and the right direction for America at this difficult 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 gentlewoman from

Michigan, (Ms. KILPATRICK), an important member of the Committee on Appropriations.

(Ms. KILPATRICK asked and 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 where 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 our country to exist and to 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 paycheck 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.

□ 2115

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 this legislation and then come back and put 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 stands 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.

The terrorists will have won 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 bio-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. Originally 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 disrespects the rules of warfare which clearly is what terrorist do. The Germans defeated the inflexible Maginot Line by outflanking it. Using a concept of ''unrestricted warfare,'' the Germans, disregarded 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; and to build networks that multiply human intelligence.

We can leave the departments exactly where they are and doing 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 units, 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 our flex-defense network.

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 instructive, then we should look at a more recent event—The Gulf of Tonkin Resolution. That Resolution appealed to patriotism to respond 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 authority from Congress. The resolution passed unanimously in the House and with only Senators Morse (D–OR) and Gruening (D–AK) opposing.

With the publication of the Pentagon Papers in the New York Times, in June and July of 1972, the American people learned that the CIA with the full knowledge of the President had contrived the incident at Tonkin.

Only Congress can declare war. With the passage of the Gulf of Tonkin Resolution, Congress relinquished its Constitutional authority to declare war to the President. 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 shifting of congressional powers 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.

The 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 not protecting federal employees rights.

My conscious will not permit me to agree with this bill's construction of 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 us all.

This bill would give a two-year authority to unilaterally transfer up to two percent of appropriations between department functions. This can be done 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 that 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 hope people will read the legislation so that we can keep to the facts.

Shaping of this legislation, Mr. Chairman, has been and will continue to be a daunting task. 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 it will be 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. Without it, the needed consolidation and streamlining just will not happen; it will not work.

Second, beyond this huge organizational challenge, the new Department must be able to meet an agile, 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 we have as Members 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 a threat 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 which 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. Secondly, even though some 22 offices and agencies are being pulled into that Department, there are 111 agencies that have something 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 effectively.

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 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 commit 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, and to our President. What a great job he has done 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 such as the FBI 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 making what is going to be a tremendous change that the GAO says is going to take a decade probably to really work out.

I am a little bit torn because some of my favorite folks and the folks I respect the most in this body are divided on this, the gentleman from Texas (Mr. THORNBERRY), the gentleman from Wisconsin (Mr. OBEY), the gentleman from Ohio (Mr. PORTMAN), some others. But let me just touch on a few points.

First of all, Moses did not come down from the mountaintop with gold tablets that said this bill is the answer. There are other potential answers out there. I think we ought to try to make our case why in some detail this is the particular answer, what other option to me would have been to do, what we all thought that was going to happen with Governor Ridge from the get-go, which was he was going to be a close confidant, adviser to the President that could have authority and accountability and with laser-like effort could go into agencies and correct where we saw the problems. 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 bill on the floor yesterday, 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 concern 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 policies and problems in the State Department. 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 volunteer 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 that we need 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. PORTMAN. 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 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 malignant and benign interruptions.

□ 2130

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 GISRA'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 GISRA 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 minimum and 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 cyber-intrusions.

In Presidential Decision Directive 63, issued by the previous administration, concerns about the 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, civil litigation protection 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, including information-sharing organizations, to move forward without fear from government reprisals, and allow us to have a timely and accurate assessment of the vulnerabilities of each sector to physical and cyberattacks and allow for the formulation of proposals to eliminate these vulnerabilities without increasing government regulation, or expanding unfunded Federal 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 unevaluated, perhaps denying the Government breakthrough technology.

In February, I held a hearing in my Subcommittee 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 within 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 ARMEY 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 ARMEY'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 terror-fighting technologies for dissemination 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 screening proposals for terror-fighting technology 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 give the new Department 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 say, yes, we have a real threat, then say should we call Indianapolis, 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 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 invention and deployment 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 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.

Ms. PELOSI. Mr. Chairman, I am very pleased to yield 3 minutes to the gentleman from Texas (Mr. HALL), the ranking member on the Committee on Science, a committee which has three

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 not to say that I agree with 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 illustrious 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, making quick 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, the gentleman from Texas (Mr. ARMEY), 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 President's initial proposal. I am particularly pleased that the bill before us places a clear focus on the new Department on science and technology, two of our most potent tools in fighting terrorism.

The single most important recommendation that the Committee on Science made was the creation of an Under Secretary for Science and Technology, a provision that was supported bipartisanly and unanimously in the Committee on Science and in the Select Committee. Chairman BOEHLERT is to be commended for his strong leadership on this issue.

I would also note that the President's counterterrorism strategy, published last week, cites science and technology as one of the heralded and one of the homeland security strategy's four 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.

Our committee made over a dozen constructive changes to the President's proposal and our markup. The Select Committee did not incorporate a few that I want to highlight.

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.

Also, Mr. Chairman, the gentlewoman from California (Ms. LOFGREN) 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. LOFGREN and Mr. EHLERS led the charge in blocking the transfer of NIST's Computer Security Division to the new Department. Many high-tech organizations have warned that this transfer would actually hurt national security by choking off productive interactions between the government and the private sector on computer security issues.

An amendment in the bill authored by the gentleman from Washington (Mr. BAIRD) explicitly directs the Under 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 gentlewoman from California (Ms. WOOLSEY) creates a Homeland Security Institute. The Institute would be a non-profit organization assisting the Secretary in much 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 groups.

It includes proposed language by the gentlewoman from Michigan (Ms. RIVERS) that strengthens the channels through which creative American inventors can propose their ideas and technologies to the appropriate government officials. Many of us 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 gentlewoman 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.)

Mr. WELDON of Pennsylvania. Mr. Chairman, I wore this bracelet for 9 months, since September 11. This bracelet was given me by the widow of Ray Downing, one of my best friends.

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 encourage 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 a 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 document. It was 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 we pay attention to the real 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.

□ 2145

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 creates 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 unions to represent employees. The bill would allow the Secretary the authority to exempt some employees from organizing unions. Currently only the President has that authority.

Second, those allowed to organize would not necessarily be afforded current features such as agency recommendation of unions as the exclusive representatives of employees, a right to have union representation at grievances, and the requirement to mediate disputes with unions in the case of an impasse.

The bill allows the Department to establish its own 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 union busting. Many of these 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 procedures. We are asking 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. ARMEY) for his leadership in fashioning this legislation which provides the reorganization needed 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 wanted 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 the 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, not pretend, security at our airports. The American people deserve and demand real security, not political posturing from us. 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 think even today as we debate this homeland security 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.

My visit to Ground Zero was as any other American because the grief was so overwhelming I wanted to be in the process of the lost souls and heroes that gave their lives on September 11. In tribute to them, I think it is important to address some of the concerns with this legislation.

I want a Department of Homeland Security. I have worked and reviewed and looked at options and opportunities to improve the legislation.

I am disappointed that even in the rush that we would not take the time for a full debate in the open daylight for the American people to be engaged. We are making a historic change in the way we do business in America. I think it is important for the RECORD to reflect, Mr. Chairman, that we are concerned about due process and civil liberties; that even though we stand together as Americans, we are concerned that we should ensure that there is no racial profiling in this particular legislation.

I think that we should be concerned that we have an FBI and a CIA that works, and whether or not we have whistleblower protection. I believe that we should reflect on these issues, and I hope as we do so, we will find the kind of department that will work well for all Americans.

Mr. PORTMAN. Mr. Chairman, I yield myself 10 seconds simply to make the point and give the gentlewoman some comfort that section 2301, whistleblower protection, is very much a part of this legislation. If the gentlewoman looks at the language, it is explicitly referenced.

Mr. Chairman, I yield 2 minutes to the gentleman 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. ARMEY), 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 we were able to recover in 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 to focus 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 have a special liaison 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. PORTMAN. 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 impending 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 meet 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 these necessary powers.

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 added by the Select Committee clarify roles 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'd 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 bill, 30 to 1.

Government Reform paid particular attention to important management issues. Not only is creating 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 in Atlanta, which has the largest federal government presence outside of Washington, D.C. We learned a very important lessons 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 without flexibility.

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 should these 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 outweights the importance of certain civil service administrative procedures. When are we 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 though 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 first proposed in the Judiciary 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 arbitrarily or any more than 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 the Department. 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 Americans' 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 all 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, all while 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 40,000 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.

□ 2200

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 Congress cannot just rubber-stamp 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 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 important 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 Illinois (Mr. DAVIS) to provide for a senior-level official within the new Department to coordinate counternarcotics 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 ARMEY, Speaker HASTERT and the gentleman from Ohio (Mr. PORTMAN) 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 congressional 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 counternarcotics officer who will be a senior official in the Department to assure this coordination.

The new counternarcotics officer 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 nonterrorism functions and it is important that we have this senior level coordinator.

Our Subcommittee's oversight 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 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 analysis of the threat. 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 different agencies. Little in this bill 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 will have a 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 integrate, 10 years for the Department to be up and running.

In the meantime this reorganization itself will represent a threat to the security of our Nation because it will induce paralysis and administrative breakdown.

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 for 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 a comprehensive 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, major disasters 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 portion 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 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. I thank the gentlewoman for yielding me this time.

Mr. Chairman, I want to address an amendment that I will offer on this floor tomorrow relating to indemnity of Federal contractors who will provide to the government sophisticated antiterrorism equipment. The language that I will offer on the floor tomorrow was passed unanimously by the Committee on Government Reform, but unfortunately taken out of the bill by the Republican majority on a special panel. I was very amused when I looked at some talking points about the amendment I will offer tomorrow that was put out by the Republican leadership tonight. It says, and I quote, The trial lawyers, through an amendment expected to be offered by Representative TURNER, and I might say I find that very amusing because the amendment I am offering tomorrow was prepared by Representative TOM DAVIS, and I as the chairman and ranking member of the Technology and Procurement Subcommittee of Government Reform, and the amendment was brought to me by Lockheed Martin, Northrop Grumman and the Information Technology Association of America.

What it simply asked was that we extend to the Department of Homeland Security the authority that current law already gives to the Department of Defense to indemnify against claims of damage over certain limits. It has been suggested that this approach, which as I say is already in existing law for the Department of Defense, will open the Treasury of the United States to unlimited claims.

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. DELAURO), 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.

Ms. DELAURO. Mr. Chairman, I have been proud to work with Chairman ARMEY, 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 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.

However, very legitimate concerns still exist. I disagree with the committee's decision to extend the deadline for the Transportation Security Agency to check baggage on airlines. The American public and their children should feel safe on those airlines that the airplane is not going to explode. The Secretary of Transportation told us he could meet the deadlines over and over again. I am also concerned about provisions that broaden the FOIA exemption which undermine the civil service protections for 170,000 Federal workers, both union and nonunion. That particular provision goes against the unanimous bipartisan vote of the Committee on Government Reform.

I am disappointed that the Committee on Rules did not make in order my amendment which would have banned the Homeland Security Department from contracting with corporations that are owned and operated in the United States who incorporate themselves on paper overseas for the sole reason of avoiding U.S. taxes. These corporations have abandoned our country at a critical time in our history, leaving senior citizens, soldiers who are fighting overseas, and companies who are doing the right thing, to pay the costs of the war on terrorism. They should not be rewarded for putting profits over patriotism with the contracts from the very department that is charged with screening our homeland and securing our homeland.

I am optimistic that we can address these problems. And with regard to my amendment, all we are asking these corporations to do is to pay American taxes on American profits. These companies should not abandon the United States of America at a time in its greatest need. The President has told us that we are on a wartime footing. And when these companies take their revenue overseas, they put that burden of taxation on working men and women and those who are fighting overseas.

Details do matter. As I said before, we owe the American people nothing less than getting this right the first time. We all want to make America safe.

Mr. PORTMAN. Mr. Chairman, I yield the balance of my time to the gentleman from Texas (Mr. ARMEY), the distinguished majority leader. He led the Select Committee panel, he listened to all the standing committees, and he did a good job in presenting a fair and open process with the gentlewoman from California (Ms. PELOSI).

The CHAIRMAN. The gentleman from Texas is recognized for 4½ minutes.

□ 2215

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 remind ourselves. It was the unthinkable; so horrible, so awful, so sneaky, so vicious.

We should not fault ourselves because we had not thought about it. Americans would not think of such an atrocity. We did not anticipate it. We were not expecting it. We were not ready. It was a classic sneak attack.

Four airplanes, carefully selected, loaded heavily with fuel for a cross-coast trip, took off that morning. Nobody could have imagined even as the hijacking went on, as vicious as it must have been at the time it happened, nobody could have imagined what those hijackers must have had for their destination plan.

Can you imagine the fear, the terror, of those travelers in those first three planes, when at some point in each of those three planes, at some point those passengers must have realized the awful thing these hijackers had in mind?

I think often about the terror they must have felt in their hearts, the helplessness, the hopelessness, the despair that they must have felt. It was particularly bad, I believe, in the case of those first three planes because they were so helpless. By the time they realized what their destiny was, it was too late. Nothing could be done but to realize this awful thing visited upon our land and their place in it.

But there was a fourth plane, a fourth plane, where the passengers of the plane, by virtue of American technology, became aware of exactly what was in the evil minds of those hijackers en route, before it was too late, while they could act. We know from the conversations they had over their cell phones that they huddled in the back of the plane and they laid the best plans they could, grasped for those resources available to them, checked their courage and their resourcefulness, and came up with what plan was available.

We do not know the destination of that plane. Was it the White House? Was it our own Capitol? Was it the CIA headquarters? But whatever those evil doers in that cockpit had in mind, it was clear it was to take the lives of far more people than were in that plane.

And this is the important thing we must remember: when America knew the evil that it was against, America acted. With whatever they had, they acted. And we know with those resounding words that we keep hearing over and over and over in this great land from Todd Beamer, ''Let's roll,'' America acted with what it had.

Our victims became our heroes. When they knew what they must do, they did it. Now the President of the United States has called upon us to respect that, gather our resources around us, focus what we have, and try to recognize the danger. It may come by sea, it may come by air, it may come by land, it may come insidious ways not yet imagined. We know it will come. But what the President of the United States called upon us to do was to get ready, prepare ourselves, imitate as we can, the best we can, the actions of those heroes in Flight 93.

He has given us an outline. Our 12 standing committees have acted, each of them in accordance with their better understanding, their knowledge, their awareness and their experience on how to best hone these tools and bring them together, weld them and unite them in a common course of defense and safety and security. They have trusted their work to our select committee, and I believe we have honored it, and honored it well. We have now brought it to the floor for a final chance to make whatever corrections we can.

I am reminded when I think of the greatness of this institution of Sam Rayburn from Texas, our great Speaker. We honored him from both sides of the aisle. Sam was a man with a sense of humor. He reminded us often, ''Don't sweat the small things.''

There are no complaints with this bill that are borne out of the big things. We are all in agreement that we have got the right model, that we put the right pieces together. By and large, we have honed the right tools.

Our concerns here are about the smaller things. Look at the amendments. They are not about big things; they are about smaller things, the fine points, as it were. Let us have a fair contest. Let us have the votes.

But I must tell you, we have got the right package of defense, safety and security, honor and respect of those great heroes to carry on what they started in Flight 93. We know the danger. We have the resources, and we can act.

When the voting is done on these amendments and when we rise from this committee, let us put all of our small disappointments aside and let us try to rise with our voting card to take that tool, as Todd Beamer would have us do, and let's roll, and defend America as they did.

Ms. MILLENDER-McDONALD. Mr. Chairman, I am united with the President and with my colleagues in our determination to win the war against terrorism. We have a responsibility to all Americans to reduce the risk of further attacks. There is not one person in this Congress who does not agree that we need better coordination between Federal agencies in order to fight the very real threat of terrorism.

This is the most important piece of legislation that we will consider in the 107th Congress and, we all need to make certain that this new Department of Homeland Security will make the country and our citizens safer. This new department will be charged with assessing our vulnerabilities, gathering and disseminating our intelligence information, and preparing and working with our local responders. We should all be cognizant that it was the local first responders who answered the challenges of September 11 and if we are to ever be truly prepared then we must properly train and equip our local police and fire departments.

I recognize that this legislation will pass the House today and I support its passage. However, I urge caution as we agree to the proposed transfer of several federal agencies to the new Department of Homeland Security, particularly the Coast Guard, and the Federal Emergency Management Agency. As we move the Coast Guard and these other agencies into the new Department of Homeland Security, we will need to exercise close congressional oversight to ensure that we do not overlook the significant other functions that these agencies already make on a daily basis and how these contributions will be maintained.

I would like to thank the Select Committee for adopting the Transportation and Infrastructure Committee's recommendation for an annual assessment of terrorist related threats to public transportation. This language which I authored, directs the Secretary, in consultation with the heads of other appropriate Federal departments and agencies, to conduct an assessment of potential terrorist related threats to all forms of public transportation and public gatherings.

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. If we are to restore America's 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 vulnerable our citizens can be while exercising their freedom of mobility. Public transportation clearly remains a target and we should access that threat and make the necessary changes that can measurably improve the ability of our transportation systems to ensure enhanced security.

I am committed to a strong, effective Homeland Security and hope that as we move forward with this legislation, we will revisit and

review and in some instances restructure areas of the Department to ultimately create an efficient and effective homeland that is secure. We must continue to assess the Department's performance as the protector of the homeland.

Mr. CHAMBLISS. Mr. Chairman, I have heard some concerns about the Strategic National Stockpile. One of today's most serious potential threats to our national security is bioterrorism. The CDC is an integral part of the homeland defense, because of its ability to identify, classify, and recommend courses of action in dealing with biological and chemical threats.

The Strategic National Stockpile Program demonstrated its excellence and reliability through its on time delivery of the Stockpile's 50 ton ''push packs'' on September 11, 2001 and in the numerous smaller deployments after that date. The push packs are delivered through the nation's public health system and deployment requires continuous medical supervision in order to assure that the medical supplies and pharmaceuticals are provided to the right people and used correctly as medically recommended by Centers for Disease Control and Prevention in Atlanta, Georgia.

Being on the front lines of the war on bioterrorism, the CDC is prepared to respond to emergencies such as a terrorist attack using smallpox virus, anthrax, a worldwide flu pandemic, or a large-scale exposure to deadly toxic chemicals.

It is my hope that the transfer of the stockpile to the Department of Homeland Security will occur with minimum disturbance to the current program. The stockpile should remain an integral part of responding to disease outbreaks and other public health emergencies. CDC has been very successful in their response to all types of public health emergencies and we need to ensure the proposed changes do not negatively impact our ability to make our country safer.

Mr. WU. Mr. Chairman, I rise tonight in support of the Davis amendment to H.R. 5005, the Homeland Security Act. I believe this amendment is crucial to making sure that the Homeland Defense Department and other agencies in charge of Americans' safety are adequately equipped to combat terrorism and other major disasters.

Initially after the September 11 terrorist attacks, I met with a group of Oregonians working in high technology. They were not only eager to offer their services in defense of our country, they also offered many sound ideas on how best to improve our national security. I came away from these meetings convinced that it is critical for us to recruit the best ideas, whether from public, private, or nonprofit sectors, in our fight against terrorism.

In the House Science Committee, I joined Representatives LYNN RIVERS and MIKE HONDA in offering the amendment to H.R. 5005. Today, I remain strongly supportive of creating a technology portal within the Homeland Security Department to reach out to the private sector. The Rivers/Wu amendment would do just that by establishing a technology clearinghouse to recruit innovative solutions from the private sector to enhance homelands security.

I would also like to commend the gentleman from Virginia, Mr. DAVIS, for offering a similar amendment, which is included in the manager's amendment. Good ideas, no matter where the proposal came from, should be implemented.

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 support of House Resolution 5005 enacting the Homeland Security Act of 2002.

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 today 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 is 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 billions 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 Division 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.

Requries that adequate staffing 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 recommendations of the Intelligence Committee on title 2 of H.R. 5005.

Before I offer the committee's recommendation, let me give you an idea of why the committee took its action. If you look at the overall structure of the new department, you will notice that the vast majority of the organization has to do with planning, implementation, protection and response to terrorist threats and actions. What we also know is that combating terrorism relies very much on timely, well-coordinated access to intelligence and other sensitive information. I would submit that if the analytical portion of the Department doesn't work, the rest of the Department's operations and functions are somewhat academic.

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 Security will have to rely only on Intelligence Community analysis that may be fractious, contradictory, 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 will fuse intelligence and other information from the Intelligence 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 information and sophisticated information tools.

An equally important duty of the Intelligence Analysis Center will be to integrate intelligence and other information to produce and disseminate strategic and tactical vulnerability assessments with respect to terrorist threats. The Intelligence Analysis Center would be charged with developing a comprehensive national plan to provide for the security of key national resources and critical infrastructures. The Intelligence Analysis Center would also review and recommend improvements in law, policy and procedure for sharing intelligence and other information within the Federal Government and between the Federal, State, and local governments.

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 Foreign 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 pertaining to terrorist threats against the United States, as well as to ensure proper coordination between the Department and Federal intelligence and law enforcement agencies.

The Intelligence Committee's recommendation envisions an Intelligence Analysis Center that is agile in terms of personnel and infrastructure, appropriately flexible in terms of its authorities and its capacity to address rapidly changing threats to the United States, and unique to our government in that it incorporates the best analytical practices and capabilities found in both the government 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. 5005

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. 306. Homeland Security Science and Technology Coordination Council.
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.

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—IMMIGRATION ENFORCEMENT

Sec. 411. Transfer of functions to under Secretary for Border and Transportation Security.
Sec. 412. Establishment of Bureau of Border Security.
Sec. 413. Professional responsibility and quality review.
Sec. 414. Employee discipline.
Sec. 415. Report on improving enforcement functions.

CHAPTER 2—CITIZENSHIP AND IMMIGRATION SERVICES

SUBCHAPTER A—TRANSFERS OF FUNCTIONS

Sec. 421. Establishment of Bureau of Citizenship and Immigration Services.
Sec. 422. Citizenship and Immigration Services Ombudsman.
Sec. 423. Professional responsibility and quality review.
Sec. 424. Employee discipline.
Sec. 425. Office of Immigration Statistics within Bureau of Justice Statistics.
Sec. 426. Preservation of Attorney General's authority.
Sec. 427. Effective date.
Sec. 428. Transition.

SUBCHAPTER B—OTHER PROVISIONS

Sec. 431. Funding for citizenship and immigration services.
Sec. 432. Backlog elimination.
Sec. 433. Report on improving immigration services.
Sec. 434. Report on responding to fluctuating needs.
Sec. 435. Application of Internet-based technologies.
Sec. 436. Children's affairs.

CHAPTER 3—GENERAL PROVISIONS

Sec. 441. Abolishment of INS.
Sec. 442. Voluntary separation incentive payments.
Sec. 443. Authority to conduct a demonstration project relating to disciplinary action.
Sec. 444. Sense of Congress.
Sec. 445. Reports and implementation plans.
Sec. 446. Immigration functions.

Subtitle C—United States Customs Service

Sec. 451. Establishment; Commissioner of Customs.
Sec. 452. Retention of customs revenue functions by Secretary of the Treasury.
Sec. 453. Establishment and implementation of cost accounting system; reports.
Sec. 454. Preservation of Customs funds.
Sec. 455. Separate budget request for Customs.
Sec. 456. Payment of duties and fees.
Sec. 457. Definition.
Sec. 458. GAO report to Congress.
Sec. 459. Allocation of resources by the Secretary.
Sec. 460. Reports to Congress.
Sec. 461. Customs user fees.

TITLE V—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.

Subtitle B—United States Secret Service

Sec. 711. Functions transferred.

Subtitle C—Critical Infrastructure Information

Sec. 721. Short title.
Sec. 722. Definitions.
Sec. 723. Designation of critical infrastructure protection program.
Sec. 724. Protection of voluntarily shared critical infrastructure information.
Sec. 725. No private right of action.

Subtitle D—Acquisitions

Sec. 731. Research and development projects.
Sec. 732. Personal services.
Sec. 733. Special streamlined acquisition authority.
Sec. 734. Procurements from small businesses.

Subtitle E—Property

Sec. 741. Department headquarters.

Subtitle F—Support Anti-Terrorism by Fostering Effective Technologies Act of 2002 (the SAFETY Act)

Sec. 751. Short title.
Sec. 752. Administration.
Sec. 753. Litigation management.
Sec. 754. Risk management.
Sec. 755. Definitions.

Subtitle G—Other Provisions

Sec. 761. Establishment of human resources management system.
Sec. 762. Advisory committees.
Sec. 763. Reorganization; transfer of appropriations.
Sec. 764. Miscellaneous authorities.
Sec. 765. Military activities.
Sec. 766. Regulatory authority.
Sec. 767. Provisions regarding transfers from Department of Energy.
Sec. 768. Counternarcotics officer.
Sec. 769. Office of International Affairs.
Sec. 770. Prohibition of the terrorism information and prevention system.
Sec. 771. Review of pay and benefit plans.
Sec. 772. Role of the District of Columbia.
Sec. 773. Transfer of the Federal Law Enforcement Training Center.

TITLE VIII—TRANSITION

Subtitle A—Reorganization Plan

Sec. 801. Definitions.
Sec. 802. Reorganization plan.

Subtitle B—Transitional Provisions

Sec. 811. Transitional authorities.
Sec. 812. Savings provisions.
Sec. 813. Terminations.
Sec. 814. Incidental transfers.
Sec. 815. National identification system not authorized.
Sec. 816. Continuity of Inspector General oversight.
Sec. 817. Reference.

TITLE IX—CONFORMING AND TECHNICAL AMENDMENTS

Sec. 901. Inspector General Act of 1978.
Sec. 902. Executive Schedule.
Sec. 903. United States Secret Service.
Sec. 904. Coast Guard.
Sec. 905. Strategic National Stockpile and smallpox vaccine development.
Sec. 906. Biological agent registration; Public Health Service Act.
Sec. 907. Transfer of certain security and law enforcement functions and authorities.
Sec. 908. Transportation security regulations.
Sec. 909. Railroad security laws.
Sec. 910. Office of Science and Technology Policy.
Sec. 911. National Oceanographic Partnership Program.
Sec. 912. Chief Financial Officer.
Sec. 913. Chief Information Officer.

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

Sec. 1001. National Homeland Security Council.

Sec. 1002. Function.
Sec. 1003. Membership.
Sec. 1004. Other functions and activities.
Sec. 1005. Homeland security budget.
Sec. 1006. Staff composition.
Sec. 1007. Relation to the National Security Council.

SEC. 2. DEFINITIONS.

In this Act, the following definitions apply:

(1) Each of the terms ''American homeland'' and ''homeland'' means the United States.

(2) The term ''appropriate congressional committee'' means any committee of the House of Representatives or the Senate having legislative or oversight jurisdiction under the Rules of the House of Representatives or the Senate, respectively, over the matter concerned.

(3) The term ''assets'' includes contracts, facilities, property, records, unobligated or unexpended balances of appropriations, and other funds or resources (other than personnel).

(4) The term ''critical infrastructure'' has the meaning given that term in section 1016(e) of Public Law 107–56 (42 U.S.C. 5195c(e)).

(5) The term ''Department'' means the Department of Homeland Security.

(6) The term ''emergency response providers'' includes Federal, State, and local emergency public safety, law enforcement, emergency response, emergency medical (including hospital emergency facilities), and related personnel, agencies, and authorities.

(7) The term ''executive agency'' means an executive agency and a military department, as defined, respectively, in sections 105 and 102 of title 5, United States Code.

(8) The term ''functions'' includes authorities, powers, rights, privileges, immunities, programs, projects, activities, duties, and responsibilities.

(9) The term ''key resources'' means publicly or privately controlled resources essential to the minimal operations of the economy and government.

(10) The term ''local government'' means—

(A) a county, municipality, city, town, township, local public authority, school district, special district, intrastate district, council of governments (regardless of whether the council of governments is incorporated as a nonprofit corporation under State law), regional or interstate government entity, or agency or instrumentality of a local government;

(B) an Indian tribe or authorized tribal organization, or Alaska Native village or organization; and

(C) a rural community, unincorporated town or village, or other public entity.

(11) The term ''major disaster'' has the meaning given in section 102(2) of the Robert T. Stafford Disaster Relief and Emergency Assistance Act (42 U.S.C. 5122).

(12) The term ''personnel'' means officers and employees.

(13) The term ''Secretary'' means the Secretary of Homeland Security.

(14) The term ''State'' means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and any possession of the United States.

(15) The term ''terrorism'' means any activity that—

(A) involves an act that—

(i) is dangerous to human life or potentially destructive of critical infrastructure or key resources; and

(ii) is a violation of the criminal laws of the United States or of any State or other subdivision of the United States; and

(B) appears to be intended—

(i) to intimidate or coerce a civilian population;

(ii) to influence the policy of a government by intimidation or coercion; or

(iii) to affect the conduct of a government by mass destruction, assassination, or kidnapping.

(16) The term ''United States'', when used in a geographic sense, means any State of the United States, the District of Columbia, the Commonwealth of Puerto Rico, the Virgin Islands, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, any possession of the United States, and any waters within the jurisdiction of the United States.

SEC. 3. CONSTRUCTION; SEVERABILITY.

Any provision of this Act held to be invalid or unenforceable by its terms, or as applied to any person or circumstance, shall be construed so as to give it the maximum effect permitted by law, unless such holding shall be one of utter invalidity or unenforceability, in which event such provision shall be deemed severable from this Act and shall not affect the remainder thereof, or the application of such provision to other persons not similarly situated or to other, dissimilar circumstances.

SEC. 4. EFFECTIVE DATE.

This Act shall take effect thirty days after the date of enactment or, if enacted within thirty days before January 1, 2003, on January 1, 2003.

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) IN GENERAL.—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 all 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 by law with respect to entities transferred to the Department under this Act, primary responsibility for investigating and prosecuting acts of terrorism shall be vested not in the Department, but rather in Federal, State, and local law enforcement agencies with jurisdiction over the acts in question.

SEC. 102. SECRETARY; FUNCTIONS.

(a) SECRETARY.—(1) There is a Secretary of Homeland Security, 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.

(3) All functions of all officers, employees, and organizational units of the Department are vested in the Secretary.

(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 cooperative 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 otherwise provided by law; and

(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.

(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, with the private sector, and with other entities, including by—

(1) coordinating with State and local government personnel, agencies, and authorities, and with the private sector, to ensure adequate planning, equipment, training, and exercise activities;

(2) coordinating and, as appropriate, consolidating, the Federal Government's communications and systems of communications relating to homeland security with State and local government personnel, agencies, and authorities, the private sector, other entities, and the public; and

(3) distributing or, as appropriate, coordinating the distribution of, warnings and information to State and local government personnel, agencies, and authorities and to the public.

(d) MEETINGS OF NATIONAL SECURITY COUNCIL.—The Secretary may, subject to the direction of the President, attend and participate in meetings of the National Security Council.

(e) ISSUANCE OF REGULATIONS.—The issuance of regulations by the Secretary shall be governed by the provisions of chapter 5 of title 5, United States Code, except as specifically provided in this Act, in laws granting regulatory authorities that are transferred by this Act, and in laws enacted after the date of enactment of this Act.

(f) SPECIAL ASSISTANT TO THE SECRETARY.—The Secretary shall appoint a Special Assistant to the Secretary who shall be responsible for—

(1) creating and fostering strategic communications with the private sector to enhance the primary mission of the Department to protect the American homeland;

(2) advising the Secretary on the impact of the Department's policies, regulations, processes, and actions on the private sector;

(3) interfacing with other relevant Federal agencies with homeland security missions to assess the impact of these agencies' actions on the private sector;

(4) creating and managing private sector advisory councils composed of representatives of industries and associations designated by the Secretary to—

(A) advise the Secretary on private sector products, applications, and solutions as they relate to homeland security challenges; and

(B) advise the Secretary on homeland security policies, regulations, processes, and actions that affect the participating industries and associations;

(5) working with Federal laboratories, Federally funded research and development centers, other Federally funded organizations, academia, and the private sector to develop innovative approaches to address homeland security challenges to produce and deploy the best available technologies for homeland security missions;

(6) promoting existing public-private partnerships and developing new public-private partnerships to provide for collaboration and mutual support to address homeland security challenges; and

(7) assisting in the development and promotion of private sector best practices to secure critical infrastructure.

(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. 272 note) and Office of Management and Budget Circular A–119.

SEC. 103. OTHER OFFICERS.

(a) DEPUTY SECRETARY; UNDER SECRETARIES.—There are the following officers, appointed by the President, by and with the advice and consent of the Senate:

(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.

(5) An Under Secretary for Emergency Preparedness and Response.

(6) An Under Secretary for Management.

(7) Not more than four Assistant Secretaries.

(8) A Chief Financial Officer.

(b) INSPECTOR GENERAL.—There is an Inspector General, who shall be appointed as provided in section 3(a) of the Inspector General Act of 1978.

(c) COMMANDANT OF THE COAST GUARD.—To assist the Secretary in the performance of the Secretary's functions, there is a Commandant of the Coast Guard, who shall be appointed as provided in section 44 of title 14, United States Code, and who shall report directly to the Secretary. In addition to such duties as may be provided in this Act and as assigned to the Commandant by the Secretary, the duties of the Commandant shall include those required by section 2 of title 14, United States Code.

(d) OTHER OFFICERS.—To assist the Secretary in the performance of the Secretary's functions, there are the following officers, appointed by the President:

(1) A General Counsel, who shall be the chief legal officer of the Department.

(2) Not more than eight Assistant Secretaries.

(3) A Director of the Secret Service.

(4) A Chief Information Officer.

(e) PERFORMANCE OF SPECIFIC FUNCTIONS.—Subject to the provisions of this Act, every officer of the Department shall perform the functions specified by law for the official's office or prescribed by the Secretary.

SEC. 104. NATIONAL COUNCIL OF FIRST RESPONDERS.

(a) FINDINGS.—The Congress finds the following:

(1) First responders are key to protecting the health and safety of our citizens against disasters.

(2) First responders are the Nation's ready reaction force of dedicated and brave people who save lives and property when catastrophe strikes.

(3) First responders have the knowledge, training, and experience to save lives, often under the most difficult conditions imaginable.

(4) First responders play an important role in helping to develop and implement advances in life saving technology.

(5) First responders are uniquely qualified to advise the Department of Homeland Security on the role of first responders in defending our Nation against terrorism.

(b) ESTABLISHMENT AND ADMINISTRATION.—

(1) There is established within the Department of Homeland Security a National Council of First Responders (in this section referred to as the ''Council'').

(2) The President shall appoint the members of the Council. The Council shall consist of not less than 100 members, no more than 10 of whom may be residents of the same State. Members of the Council shall be selected from among the ranks of police, firefighters, emergency medical technicians, rescue workers, and hospital personnel who are employed in communities, tribal governments, and political subdivisions of various regions and population sizes.

(3) The Director of Homeland Security shall appoint a Chairman of the Council.

(4) Members shall be appointed to the Council for a term of 3 years.

(5) Membership shall be staggered to provide continuity.

(6) The Council shall meet no fewer than 2 times each year.

(7) Members of the Council shall receive no compensation for service on the Council.

(8) The Secretary shall detail a single employee from the Department of Homeland Security to the Council for the purposes of:

(A) Choosing meeting dates and locations.

(B) Coordinating travel.

(C) Other administrative functions as needed.

(c) DUTIES.—The Council shall have the following duties:

(1) Develop a plan to disseminate information on first response best practices.

(2) Identify and educate the Secretary on the latest technological advances in the field of first response.

(3) Identify probable emerging threats to first responders.

(4) Identify needed improvements to first response techniques and training.

(5) Identify efficient means of communication and coordination between first responders and local, State, and Federal officials.

(6) Identify areas in which the Department can assist first responders.

(7) Evaluate the adequacy and timeliness of resources being made available to local first responders.

(d) REPORTING REQUIREMENT.—The Council shall report to the Congress by October 1 of each year on how first responders can continue to be most effectively used to meet the ever-changing challenges of providing homeland security for the United States.

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.

The Secretary, acting through the Under Secretary for Information Analysis and Infrastructure Protection, shall be responsible for the following:

(1) Conducting analysis of information, including foreign intelligence and open source information, lawfully collected by Federal, State and local law enforcement agencies and by elements of the intelligence community with respect to threats of terrorist acts against the United States.

(2) Integrating information, intelligence, and intelligence analyses to produce and disseminate infrastructure vulnerability assessments with respect to such threats.

(3) Identifying priorities for protective and support measures by the Department, by other executive agencies, by State and local governments, by the private sector, and by other entities.

(4) Reviewing, analyzing, and recommending improvements in law, policy, and procedure for the sharing of intelligence and other information with respect to threats against the United States within the Federal Government and between the Federal Government and State and local governments.

(5) Under the direction of the Secretary, developing a comprehensive national plan to provide for the security of key resources and critical infrastructures.

(6) Coordinating with other executive agencies, State and local government personnel, agencies, and authorities, and the private sector, to provide advice on implementation of such comprehensive national plan.

(7) Supporting the intelligence and information requirements of the Department.

(8) Administering the Homeland Security Advisory System, exercising primary responsibility for public advisories relating to terrorist threats, and (in coordination with other executive agencies) providing specific warning information to State and local government personnel, agencies, and authorities, the private sector, other entities, and the public, as well as advice about appropriate protective actions and countermeasures.

SEC. 202. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The National Infrastructure Protection Center of the Federal Bureau of Investigation (other than the Computer Investigations and Operations Section), including the functions of the Attorney General relating thereto.

(2) The National Communications System of the Department of Defense, including the functions of the Secretary of Defense relating thereto.

(3) The Critical Infrastructure Assurance Office of the Department of Commerce, including the functions of the Secretary of Commerce relating thereto.

(4) The Energy Security and Assurance Program of the Department of Energy, including the National Infrastructure Simulation and Analysis Center and the functions of the Secretary of Energy relating thereto.

(5) The Federal Computer Incident Response Center of the General Services Administration, including the functions of the Administrator of General Services relating thereto.

SEC. 203. ACCESS TO INFORMATION.

The Secretary shall have access to all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b), and to all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed, that may be collected, possessed, or prepared by any executive agency, except as otherwise directed by the President. The Secretary shall also have access to other information relating to the foregoing matters that may be collected, possessed, or prepared by an executive agency, as the President may further provide. With respect to the material to which the Secretary has access under this section—

(1) the Secretary may obtain such material by request, and may enter into cooperative arrangements with other executive agencies to share such material on a regular or routine basis, including requests or arrangements involving broad categories of material;

(2) regardless of whether the Secretary has made any request or entered into any cooperative arrangement pursuant to paragraph (1), all executive agencies promptly shall provide to the Secretary—

(A) all reports, assessments, and analytical information relating to threats of terrorism in the United States and to other areas of responsibility described in section 101(b);

(B) all information concerning infrastructure or other vulnerabilities of the United States to terrorism, whether or not such information has been analyzed;

(C) all information relating to significant and credible threats of terrorism in the United States, whether or not such information has been analyzed, if the President has provided that the Secretary shall have access to such information; and

(D) such other material as the President may further provide;

(3) the Secretary shall have full access and input with respect to information from any national collaborative information analysis capability (as referred to in section 924 of the National Defense Authorization Act for Fiscal Year 2002 (Public Law 107–107; 115 Stat. 1199)) established jointly by the Secretary of Defense and the Director of Central Intelligence; and

(4) the Secretary shall ensure that any material received pursuant to this section is protected from unauthorized disclosure and handled and used only for the performance of official duties, and that any intelligence information shared under this section shall be transmitted, retained, and disseminated consistent with the authority of the Director of Central Intelligence to protect intelligence sources and

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. PROCEDURES 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. PRIVACY OFFICER.

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

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

(2) assuring that 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;

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

(4) conducting a privacy impact assessment of proposed rules of the Department or that of the Department on the privacy of personal information, including the type of personal information collected and the number of people affected; and

(5) preparing a report to Congress on an annual basis on activities of the Department that affect privacy, including complaints of privacy violations, implementation of the Privacy Act of 1974, internal controls, and other matters.

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 carrying 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 the increased use by civilian executive agencies of techniques and tools to enhance the security of Federal critical information systems, including, as appropriate, consideration of cryptography;

(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 vulnerability assessment techniques.

(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 AGREEMENTS REGARDING AUDITS.—Each civilian executive agency may enter into an agreement with the team under paragraph (1) for the conduct of audits under such paragraph of the Federal critical information systems of the agency. Such agreement shall establish the terms of the audit and shall include provisions to minimize the extent to which the audit disrupts the operations of the agency.

(4) REPORTS.—Promptly after completing an audit under paragraph (1) of a civilian executive agency, the team under such paragraph shall prepare a report summarizing the findings 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 3502 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; NFIP 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.

(2) The Intelligence Analysis Center is a program of the intelligence community for purposes of the National Foreign Intelligence Program (as defined in section 3(6) of the National Security Act of 1947 (50 U.S.C. 401a(6))).

(b) FUNCTIONS.—The Under Secretary for Information Analysis and Infrastructure Protection, through the Intelligence Analysis Center, shall carry out the duties specified in paragraphs (1), (2), (3), (6), and (7) of section 201(b).

(c) DETAIL OF CERTAIN PERSONNEL.—

(1) IN GENERAL.—The Secretary and the Director of Central Intelligence, the Secretary of Defense, the Attorney General, the Secretary of State, or the head of another agency or department as the case may be, shall enter into cooperative arrangements to provide for an appropriate number of individuals to be detailed to the Under Secretary to perform analytical functions and duties with respect to the mission of the Department from the following agencies:

(A) The Central Intelligence Agency.

(B) The Federal Bureau of Investigation.

(C) The National Security Agency.

(D) The National Imagery and Mapping Agency.

(E) The Department of State.

(F) The Defense Intelligence Agency.

(G) Any other agency or department that the President determines appropriate.

(2) TERMS OF DETAIL.—Any officer or employee of the United States or a member of the Armed Forces who is detailed to 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 as required by the Under Secretary.

(d) INCLUSION 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);

(2) by redesignating subparagraph (J) as subparagraph (K); and

(3) by inserting after subparagraph (I) the following new subparagraph:

''(J) the Intelligence Analysis Center of the Department of Homeland Security; and''.

SEC. 212. MISSION OF THE INTELLIGENCE ANALYSIS CENTER.

(a) IN GENERAL.—The mission of the Intelligence Analysis Center is as follows:

(1) ANALYSIS AND PRODUCTION.—

(A) Correlating and evaluating information and intelligence related to the mission of the Department collected from all sources available.

(B) Producing all-source collaborative intelligence analysis, warnings, tactical assessments, and strategic assessments of the terrorist threat and infrastructure vulnerabilities of the United States.

(C) Providing appropriate dissemination of such assessments.

(D) 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 pertaining to threats of acts of terrorism against the United States.

(2) COORDINATION OF INFORMATION.—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.

(b) STRATEGIC AND TACTICAL MISSIONS 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:

(1) Domestic terrorism.

(2) International terrorism.

(3) Counterintelligence.

(4) Transnational crime.

(5) Proliferation of weapons of mass destruction.

(6) Illicit financing of terrorist activities.

(7) Cybersecurity and cybercrime.

(8) Key resources and critical infrastructures.

(c) STAFFING OF THE INTELLIGENCE ANALYSIS CENTER.—

(1) FUNCTIONS TRANSFERRED.—In accordance with title VIII, 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 Federal Bureau of Investigation (other than the Computer Investigations and Operations Section).

(B) The Critical Infrastructure Assurance Office of the Department of Commerce.

(C) The Federal Computer Incident Response Center of the General Services Administration.

(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 Protective Service.

(2) STRUCTURE.—It is the sense of Congress that the Under Secretary should model the Intelligence Analysis Center on the technical, analytic approach of the Information Dominance Center of the Department of the Army to the maximum extent feasible and appropriate.

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 responsibility for—

(1) developing, in consultation with other appropriate executive agencies, a national policy and strategic plan for, identifying priorities, goals, objectives and policies for, and 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 definable goals 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—

(A) for preventing the importation of chemical, biological, radiological, and nuclear weapons and related materials;

(B) for detecting, preventing, and protecting against terrorist attacks that involve such weapons or related materials; and

(C) for interoperability of communications systems for emergency response providers;

(7) ensuring that the research, development, demonstration, testing, and evaluation activities of the Department are aligned with the Department's procurement needs;

(8) facilitating the deployment of technology that will serve to enhance homeland security, including through the establishment of a centralized Federal repository for information relating to technologies described 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;

(9) providing guidance, recommendations, and technical assistance as appropriate to assist Federal, State, and local government and private sector efforts to evaluate and implement the use of technologies described in subparagraphs (A), (B), and (C) of paragraph (6); and

(10) developing and overseeing the administration of guidelines for merit review of research and development projects throughout the Department, and for the dissemination of research conducted or sponsored by the Department.

SEC. 302. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) The program under section 351A of the Public Health Service Act, and functions thereof, including the functions of the Secretary of Health and Human Services relating thereto, subject to the amendments made by section 906(a)(3), except that such transfer shall not occur unless the program under section 212 of the Agricultural Bioterrorism Protection Act of 2002 (subtitle B of title II of Public Law 107–188), and functions thereof, including the functions of the Secretary of Agriculture relating thereto, is transferred to the Department.

(2) Programs and activities of the Department of Energy, including the functions of the Secretary of Energy relating thereto (but not including programs and activities relating to the strategic nuclear defense posture of the United States), as follows:

(A) The programs and activities relating to chemical and biological national security, and supporting programs and activities directly related to homeland security, of the non-proliferation and verification research and development program.

(B) The programs and activities relating to nuclear smuggling, and other programs and activities directly related to homeland security, within the proliferation detection program of the non-proliferation and verification research and development program.

(C) Those aspects of the nuclear assessment program of the international materials protection and cooperation program that are directly related to homeland security.

(D) Such life sciences activities of the biological and environmental research program related to microbial pathogens as may be designated by the President for transfer to the Department and that are directly related to homeland security.

(E) The Environmental Measurements Laboratory.

(F) The advanced scientific computing research program and activities at Lawrence Livermore National Laboratory.

(3) The homeland security projects within the Chemical Biological Defense Program of the Department of Defense known as the Biological Defense Homeland Security Support Program and the Biological Counter-Terrorism Research Program.

SEC. 303. CONDUCT OF CERTAIN PUBLIC HEALTH-RELATED ACTIVITIES.

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 of Health and Human Services shall set priorities, goals, objectives, and policies and develop a coordinated strategy for such activities in collaboration with the Secretary of Homeland Security to ensure consistency with the national policy and strategic plan developed pursuant to section 301(1).

SEC. 304. 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 issues, or to carry out other responsibilities under this Act, including coordinating and integrating both the extramural and intramural programs described in section 307.

SEC. 305. MISCELLANEOUS PROVISIONS.

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

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

(c) 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.

(d) NOTIFICATION OF PRESIDENTIAL LIFE SCIENCES DESIGNATIONS.—Not later than 60 days before effecting any transfer of Department of Energy life sciences activities pursuant to section 302(2)(D) of this Act, the President shall notify the Congress of the proposed transfer 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. 306. HOMELAND SECURITY SCIENCE AND TECHNOLOGY COORDINATION COUNCIL.

(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 composed 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(4).

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 the responsibilities under section 301(3) through both extramural and intramural programs.

(b) EXTRAMURAL PROGRAMS.—(1) The Secretary, acting through the Under Secretary for Science and Technology, shall operate extramural 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; and

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

(2)(A) 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.

(B) 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 of the Department until at least 30 days after the transmittal of the report required by paragraph (3)(E).

SEC. 308. TRANSFER OF PLUM ISLAND ANIMAL DISEASE CENTER, DEPARTMENT OF AGRICULTURE.

(a) TRANSFER REQUIRED.—In accordance with title VIII, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security the Plum Island Animal Disease Center of the Department of Agriculture, including the assets and liabilities of the Center.

(b) CONTINUED DEPARTMENT OF AGRICULTURE ACCESS.—Upon the transfer of the Plum Island Animal Disease Center, the Secretary of Homeland Security and the Secretary of Agriculture shall enter into an agreement to ensure Department of Agriculture access to the center for research, diagnostic, and other activities of the Department of Agriculture.

(c) NOTIFICATION.—At least 180 days before any change in the biosafety level at the facility described in subsection (a), the President shall notify the Congress of the change and describe the reasons therefor. No such change may be made until at least 180 days after the completion of the transition period defined in section 801(2).

TITLE IV—BORDER AND TRANSPORTATION SECURITY

Subtitle A—General Provisions

SEC. 401. UNDER SECRETARY FOR BORDER AND TRANSPORTATION SECURITY.

The Secretary, acting through the Under Secretary for Border and Transportation Security, shall be responsible for the following:

(1) Preventing the entry of terrorists and the instruments of terrorism into the United States.

(2) Securing the borders, territorial waters, ports, terminals, waterways, and air, land, and sea transportation systems of the United States, including managing and coordinating governmental activities at ports of entry.

(3) Carrying out the immigration enforcement functions vested by statute in, or performed by, the Commissioner of Immigration and Naturalization (or any officer, employee, or component of the Immigration and Naturalization Service) immediately before the date on which the transfer of functions specified under section 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 subtitle C, administering the customs laws of the United States.

(6) Conducting the 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 title VIII, 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 subtitle C.

(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 the functions of the Administrator of General Services relating thereto.

(5) The Office of National Preparedness of the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency 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.

(7) The National Domestic Preparedness Office of the Federal Bureau of Investigation, 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. 1104(a)) or any other provision of law, and except as provided in subsection (b) of this section, the Secretary—

(1) shall be vested exclusively with all authorities to issue regulations with respect to, administer, and enforce the provisions of such Act, and of all other immigration and nationality laws, relating to the functions of consular officers of the United States in connection with 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 provided by the Secretary 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; and

(2) shall have authority to confer or impose upon any officer or employee 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).

(b) AUTHORITY OF THE SECRETARY OF STATE.—

(1) IN GENERAL.—Notwithstanding subsection (a), the Secretary of State may direct a consular officer to refuse a visa to an alien if the Secretary of State deems such refusal necessary or advisable in the foreign policy or security interests of the United States.

(2) CONSTRUCTION REGARDING AUTHORITY.—Nothing in this section shall be construed as affecting the authorities of the Secretary of State under the following provisions of law:

(A) Section 101(a)(15)(A) of the Immigration and Nationality Act (8 U.S.C. 1101(a)(15)(A)).

(B) Section 204(d)(2) of the Immigration and Nationality Act (8 U.S.C. 1154) (as it will take effect upon the entry into force of the Convention on Protection of Children and Cooperation in Respect to Inter-Country Adoption).

(C) Section 212(a)(3)(B)(vi)(II) of the Immigration and Nationality Act.

(D) Section 212(a)(3)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(3)(C)).

(E) Section 212(a)(10)(C) of the Immigration and Nationality Act (8 U.S.C. 1182(a)(10)(C)).

(F) Section 219(a) of the Immigration and Nationality Act (8 U.S.C. 1189(a)).

(G) Section 237(a)(4)(C) of the Immigration and Nationality Act (8 U.S.C. 1227(a)(4)(C)).

(H) Section 401 of the Cuban Liberty and Democratic Solidarity (LIBERTAD) Act of 1996 (22 U.S.C. 6034; Public Law 104–114).

(I) Section 613 of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 1999 (as contained in section 101(b) of division A of Public Law 105–277) (Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999; 112 Stat. 2681; H.R. 4328 (originally H.R. 4276) as amended by section 617 of Public Law 106–553).

(J) Section 801 of H.R. 3427, the Admiral James W. Nance and Meg Donovan Foreign Relations Authorization Act, Fiscal Years 2000 and 2001, as enacted by reference in Public Law 106–113.

(K) Section 568 of the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 2002 (Public Law 107–115).

(3) CONSTRUCTION REGARDING DELEGATION OF AUTHORITY.—Nothing in this section shall be construed to affect any delegation of authority to the Secretary of State by the President pursuant to any proclamation issued under section 212(f) of the Immigration and Nationality Act (8 U.S.C. 1182(f)).

(c) ASSIGNMENT OF HOMELAND SECURITY EMPLOYEES TO DIPLOMATIC AND CONSULAR POSTS.—

(1) IN GENERAL.—The Secretary is authorized to assign employees of the Department of Homeland Security to any diplomatic and consular posts abroad to perform the following functions:

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

(B) Review any or all such applications prior to their adjudication, either on the initiative of the employee of the Department of Homeland Security or upon request by a consular officer or other person charged with adjudicating such applications.

(C) Conduct investigations with respect to matters under the jurisdiction of the Secretary.

(2) PERMANENT ASSIGNMENT; PARTICIPATION IN TERRORIST LOOKOUT COMMITTEE.—When appropriate, employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) 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. 1733).

(3) TRAINING AND HIRING.—

(A) The Secretary shall ensure that any employees of the Department of Homeland Security assigned to perform functions described in paragraph (1) shall be provided all necessary training to enable them to carry out such functions, including training in foreign languages, interview techniques, fraud detection techniques, and other skills required by such employees, in conditions in the particular country where each employee is assigned, and in other appropriate areas of study.

(B) The Secretary shall promulgate regulations within 60 days of the enactment of this Act establishing foreign language proficiency requirements for employees of the Department performing the functions described in paragraph (1) and providing that preference shall be given to individuals who meet such requirements in hiring employees for the performance of such functions.

(C) The Secretary is authorized to use the National Foreign Affairs Training Center, on a reimbursable basis, to obtain the training described in subparagraph (A).

(d) NO CREATION OF PRIVATE RIGHT OF ACTION.—Nothing in this section shall be construed to create or authorize a private right of action to challenge a decision of a consular officer or other United States official or employee to grant or deny a visa.

(e) STUDY REGARDING USE OF FOREIGN NATIONALS.—

(1) IN GENERAL.—The Secretary of Homeland Security shall conduct a study of the role of foreign nationals in the granting or refusal of visas and other documents authorizing entry of aliens into the United States. The study shall address the following:

(A) The proper role, if any, of foreign nationals in the process of rendering decisions on such grants and refusals.

(B) Any security concerns involving the employment of foreign nationals.

(C) Whether there are cost-effective alternatives to the use of foreign nationals.

(2) REPORT.—Not later than 1 year after the date of the enactment of this Act, the Secretary shall submit a report containing the findings of the study conducted under paragraph (1) to the Committee on the Judiciary, the Committee on International Relations, and the Committee on Government Reform of the House of Representatives, and the Committee on the Judiciary, the Committee on Foreign Relations, and the Committee on Government Affairs of the Senate.

(f) REPORT.—Not later than 120 days after the date of the enactment of this Act, the Director of the Office of Science and Technology Policy shall submit to the Congress a report on how the provisions of this section will affect procedures for the issuance of student visas.

(g) VISA ISSUANCE PROGRAM FOR SAUDI ARABIA.—Notwithstanding any other provision of law, after the date of the enactment of this Act all third party screening, interview waiver, or other non-interview visa issuance programs in Saudi Arabia shall be terminated. On-site personnel of the Department of Homeland Security shall review all visa applications prior to adjudication. All visa applicants in Saudi Arabia shall be interviewed unless on-site personnel of the Department of Homeland Security determine, in writing and pursuant to written guidelines issued by the Secretary of Homeland Security, that the alien is unlikely to present a risk to homeland security. The Secretary of Homeland Security shall promulgate such guidelines not later than 30 days after the date of the enactment of this Act.

SEC. 404. TRANSFER OF CERTAIN AGRICULTURAL INSPECTION FUNCTIONS OF THE DEPARTMENT 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 Secretary 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:

(1) The Act commonly known as the Virus-Serum-Toxin Act (the eighth paragraph under the heading ''Bureau of Animal Industry'' in the Act of March 4, 1913; 21 U.S.C. 151 et seq.).

(2) Section 1 of the Act of August 31, 1922 (commonly known as the Honeybee Act; 7 U.S.C. 281).

(3) Title III of the Federal Seed Act (7 U.S.C. 1581 et seq.).

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

(5) The Animal Protection Act (subtitle E of title X of Public Law 107–171; 7 U.S.C. 8301 et seq.).

(6) The Lacey Act Amendments of 1981 (16 U.S.C. 3371 et seq.).

(7) Section 11 of the Endangered Species Act of 1973 (16 U.S.C. 1540).

(c) EXCLUSION OF QUARANTINE ACTIVITIES.—For purposes of this section, the term ''functions'' does not include any quarantine activities carried out under the laws specified in subsection (b).

(d) EFFECT OF TRANSFER.—

(1) COMPLIANCE WITH DEPARTMENT OF AGRICULTURE REGULATIONS.—The authority transferred pursuant to subsection (a) shall be exercised by the Secretary of Homeland Security in accordance with the regulations, policies, and procedures issued by the Secretary of Agriculture regarding the administration of the laws specified in subsection (b).

(2) RULEMAKING COORDINATION.—The Secretary of Agriculture shall coordinate with the Secretary of Homeland Security whenever the Secretary of Agriculture prescribes regulations, policies, or procedures for administering the laws specified in subsection (b) at the locations referred to in subsection (a).

(3) EFFECTIVE ADMINISTRATION.—The Secretary of Homeland Security, in consultation with the Secretary of Agriculture, may issue such directives and guidelines as are necessary to ensure the effective use of personnel of the Department of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(e) TRANSFER AGREEMENT.—

(1) AGREEMENT REQUIRED; REVISION.—Before the end of the transition period, as defined in section 801(2), the Secretary of Agriculture and the Secretary of Homeland Security shall enter into an agreement to effectuate the transfer of functions required by subsection (a). The Secretary of Agriculture and the Secretary of Homeland Security may jointly revise the agreement as necessary thereafter.

(2) REQUIRED TERMS.—The agreement required by this subsection shall specifically address the following:

(A) The supervision by the Secretary of Agriculture of the training of employees of the Secretary of Homeland Security to carry out the functions transferred pursuant to subsection (a).

(B) The transfer of funds to the Secretary of Homeland Security under subsection (f).

(3) COOPERATION AND RECIPROCITY.—The Secretary of Agriculture and the Secretary of Homeland Security may include as part of the agreement the following:

(A) Authority for the Secretary of Homeland Security to perform functions delegated to the Animal and Plant Health Inspection Service of the Department of Agriculture regarding the protection of domestic livestock and plants, but not transferred to the Secretary of Homeland Security pursuant to subsection (a).

(B) Authority for the Secretary of Agriculture to use employees of the Department of Homeland Security to carry out authorities delegated to the Animal and Plant Health Inspection Service regarding the protection of domestic livestock and plants.

(f) PERIODIC TRANSFER OF FUNDS TO DEPARTMENT OF HOMELAND SECURITY.—

(1) TRANSFER OF FUNDS.—Out of funds collected by fees authorized under sections 2508 and 2509 of the Food, Agriculture, Conservation, and Trade Act of 1990 (21 U.S.C. 136, 136a), the Secretary of Agriculture shall transfer, from time to time in accordance with the agreement under subsection (e), to the Secretary of Homeland Security funds for activities carried out by the Secretary of Homeland Security for which such fees were collected.

(2) LIMITATION.—The proportion of fees collected pursuant to such sections that are transferred to the Secretary of Homeland Security under this subsection may not exceed the proportion of the costs incurred by the Secretary of Homeland Security to all costs incurred to carry out activities funded by such fees.

(g) TRANSFER OF DEPARTMENT OF AGRICULTURE EMPLOYEES.—During the transition period, the Secretary of Agriculture shall transfer to the Secretary of Homeland Security not more than 3,200 full-time equivalent positions of the Department of Agriculture.

(h) PROTECTION OF INSPECTION ANIMALS.—Title V of the Agricultural Risk Protection Act of 2000 (7 U.S.C. 2279e, 2279f) is amended—

(1) in section 501(a)—

(A) by inserting ''or the Department of Homeland Security'' after ''Department of Agriculture''; and

(B) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Agriculture'';

(2) by striking ''Secretary'' each place it appears (other than in sections 501(a) and 501(e)) and inserting ''Secretary concerned''; and

(3) by adding at the end of section 501 the following new subsection:

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

''(1) the Secretary of Agriculture, with respect to an animal used for purposes of official inspections by the Department of Agriculture; and

''(2) the Secretary of Homeland Security, with respect to an animal used for purposes of official inspections by the Department of Homeland Security.''.

SEC. 405. FUNCTIONS OF ADMINISTRATOR OF GENERAL SERVICES.

(a) OPERATION, MAINTENANCE, AND PROTECTION OF FEDERAL BUILDINGS AND GROUNDS.—Nothing in this Act may be construed to affect the functions or authorities of the Administrator of General Services with respect to the operation, maintenance, and protection of buildings and grounds owned or occupied by the Federal Government and under the jurisdiction, custody, or control of the Administrator. Except for the law enforcement and related security functions transferred under section 402(4), the Administrator shall retain all powers, functions, and authorities vested in the Administrator under the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 471 et seq.) and other provisions of law that are necessary for the operation, maintenance, and protection of such buildings and grounds.

(b) COLLECTION OF RENTS AND FEES; FEDERAL BUILDINGS FUND.—

(1) STATUTORY CONSTRUCTION.—Nothing in this Act may be construed—

(A) to direct the transfer of, or affect, the authority of the Administrator of General Services to collect rents and fees, including fees collected for protective services; or

(B) to authorize the Secretary or any other official in the Department to obligate amounts in the Federal Buildings Fund established by section 210(f) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(f)).

(2) USE OF TRANSFERRED AMOUNTS.—Any amounts transferred by the Administrator of General Services to the Secretary out of rents and fees collected by the Administrator shall be used by the Secretary solely for the protection of buildings or grounds owned or occupied by the Federal Government.

SEC. 406. FUNCTIONS OF TRANSPORTATION SECURITY ADMINISTRATION.

(a) CONSULTATION WITH FEDERAL 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. The Secretary shall establish a liaison office within the Department for the purpose of consulting with the Administrator of the Federal Aviation Administration.

(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 report containing 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 day before 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.—Notwithstanding any other provision of this Act, and subject to subsection (b), the Transportation Security Administration shall be maintained as a distinct entity within the Department under the Under Secretary for Border Transportation and Security.

(b) SUNSET.—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 44903(c) of the number and type of explosive detection systems that will be required to 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 44903(c) determines that the airport will not be able to make the modifications to the airport's terminal buildings that are necessary to accommodate the 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, not later than December 1, 2002, a plan 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 under 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 rather than 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 44903(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.

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

''(4) 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.''.

(b) 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(b)(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.''.

(3) 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 subchapter for an airport development project grant for activities described in section 47102(3)(B)(ii) (relating to security equipment) or section 47102(3)(B)(x) (relating to installation of bulk explosive detection systems).''.

Subtitle B—Immigration and Nationality Functions

CHAPTER 1—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 Justice established under chapter 2, including potentially conflicting policies or operations.

(4) PROGRAM TO COLLECT INFORMATION RELATING TO FOREIGN STUDENTS.—The Assistant Secretary of the Bureau of Border Security shall be responsible for administering the program to collect information relating to nonimmigrant foreign students and other exchange program participants described in section 641 of the Illegal Immigration Reform and Immigrant Responsibility Act of 1996 (8 U.S.C. 1372), including the Student and Exchange Visitor Information System established under that section, and shall use such information to carry out the enforcement functions of the Bureau.

(5) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the date on which the transfer of functions

specified under section 411 takes effect, the Assistant Secretary of the Bureau of Border Security shall design and implement a managerial rotation program under which employees of such bureau holding positions 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 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 policy research and analysis on immigration enforcement issues; and

(C) coordinating immigration policy issues with the Chief of Policy 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 LIAISON.—

(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. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

The Under Secretary for Border and Transportation Security shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Border Security that are not subject to investigation by the Inspector General for the Department;

(2) inspecting the operations of the Bureau of Border Security and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Border Security.

SEC. 414. EMPLOYEE DISCIPLINE.

The Under Secretary for Border and Transportation Security may, notwithstanding any other provision of law, impose disciplinary action, including termination of employment, pursuant to policies and procedures applicable to employees of the Federal Bureau of Investigation, on any employee of the Bureau of Border Security who willfully deceives the Congress or agency leadership on any matter.

SEC. 415. REPORT ON IMPROVING ENFORCEMENT FUNCTIONS.

(a) IN GENERAL.—The Secretary, not later than 1 year after being sworn into office, shall submit to the Committees on Appropriations and the Judiciary of the United States House of Representatives and of the Senate 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 State, the Assistant Attorney General for Citizenship and Immigration Services, the Director of the Federal Bureau of Investigation, 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 heads of State and 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 Justice 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 adjudications on the provision of government benefits or 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;

(B) shall oversee the administration of such policies;

(C) shall advise the Deputy Attorney General with respect to any policy or operation of the Bureau of Citizenship and Immigration Services that may affect the Bureau of Border Security of the Department of Homeland Security, including potentially conflicting policies or operations;

(D) shall meet regularly with the Ombudsman described in section 422 to correct serious service problems identified by the Ombudsman; and

(E) shall establish procedures requiring a formal response to any recommendations submitted in the Ombudsman's annual report to the Congress within 3 months after its submission to the Congress.

(4) MANAGERIAL ROTATION PROGRAM.—

(A) IN GENERAL.—Not later than 1 year after the effective date specified in section 427, the Assistant Attorney General for Citizenship and Immigration Services shall design and implement a managerial rotation program under which employees of such bureau holding positions 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 field office and one service center of such bureau.

(B) REPORT.—Not later than 2 years after the effective date specified in section 427, the Attorney General shall submit a report to the Congress on the implementation of such program.

(5) PILOT INITIATIVES FOR BACKLOG ELIMINATION.—The Assistant Attorney General for Citizenship and Immigration Services is authorized to implement innovative pilot initiatives to eliminate any remaining backlog in the processing of immigration benefit applications, and to prevent any backlog in the processing of such applications from recurring, in accordance with section 204(a) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)). Such initiatives may include measures such as increasing personnel, transferring personnel to focus on areas with the largest potential for backlog, and streamlining paperwork.

(b) TRANSFER OF FUNCTIONS FROM COMMISSIONER.—There are transferred from the Commissioner of Immigration and Naturalization to the Assistant Attorney General for Citizenship and Immigration Services the following functions, and all personnel, infrastructure, and funding provided to the Commissioner in support of such functions immediately before the effective date specified in section 427:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(3) Adjudications of asylum and refugee applications.

(4) Adjudications performed at service centers.

(5) All other adjudications performed by the Immigration and Naturalization Service immediately before the effective date specified in section 427.

(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.

(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;

(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 Border Security of the Department of Homeland Security.

(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 assistance 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 visa petition appeal proceedings before the Executive Office for Immigration Review and in other legal or administrative 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.—

(A) IN GENERAL.—The Chief Budget Officer shall be responsible for—

(i) formulating and executing the budget of the Bureau of Citizenship and Immigration Services;

(ii) financial management of the Bureau of Citizenship and Immigration Services; and

(iii) collecting all payments, fines, and other debts for the Bureau of Citizenship and Immigration Services.

(3) AUTHORITY AND FUNCTIONS OF AGENCY CHIEF FINANCIAL OFFICERS.—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.

(f) CHIEF OF CONGRESSIONAL, INTERGOVERNMENTAL, AND PUBLIC AFFAIRS.—

(1) IN GENERAL.—There shall be a position of Chief of Congressional, Intergovernmental, and Public Affairs for the Bureau of Citizenship and Immigration Services.

(2) FUNCTIONS.—The Chief of Congressional, Intergovernmental, and Public Affairs shall be responsible for—

(A) providing information relating to immigration services to the Congress, including information on specific cases relating to immigration services issues;

(B) serving as a liaison with other Federal agencies on immigration services issues; and

(C) responding to inquiries from the media and the general public on immigration services issues.

(g) BORDER SECURITY LIAISON.—

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

(2) FUNCTIONS.—The Border Security Liaison shall be responsible for the appropriate allocation and coordination of resources involved in supporting shared support functions for the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services, including—

(A) information resources management, including computer databases and information technology;

(B) records and file management; and

(C) forms management.

(h) CHIEF OF OFFICE OF CITIZENSHIP.—

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

(2) FUNCTIONS.—The Chief of the Office of Citizenship for the Bureau of Citizenship and Immigration Services shall be responsible for promoting instruction and training on citizenship responsibilities for aliens interested in becoming naturalized citizens of the United States, including the development of educational materials.

SEC. 422. CITIZENSHIP AND IMMIGRATION SERVICES OMBUDSMAN.

(a) IN GENERAL.—Within the Department of Justice, there shall be a position of Citizenship and Immigration Services Ombudsman (in this section referred to as the ''Ombudsman''). The Ombudsman shall report directly to the Deputy Attorney General. The Ombudsman shall have a background in customer service as well as immigration law.

(b) FUNCTIONS.—It shall be the function of the Ombudsman—

(1) to assist individuals and employers in resolving problems with the Bureau of Citizenship and Immigration Services;

(2) to identify areas in which individuals and employers have problems in dealing with the Bureau of Citizenship and Immigration Services;

(3) to the extent possible, to propose changes in the administrative practices of the Bureau of Citizenship and Immigration Services to mitigate problems identified under paragraph (2); and

(4) to identify potential legislative changes that may be appropriate to mitigate such problems.

(c) ANNUAL REPORTS.—

(1) OBJECTIVES.—Not later than June 30 of each calendar year, the Ombudsman shall report to the Committee on the Judiciary of the United States House of Representatives and the Senate on the objectives of the Office of the Ombudsman for the fiscal year beginning in such calendar year. Any such report shall contain full and substantive analysis, in addition to statistical information, and—

(A) shall identify the initiatives the Office of the Ombudsman has taken on improving services and responsiveness of the Bureau of Citizenship and Immigration Services;

(B) shall contain a summary of the most pervasive and serious problems encountered by individuals and employers, including a description of the nature of such problems;

(C) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action has been taken and the result of such action;

(D) shall contain an inventory of the items described in subparagraphs (A) and (B) for which action remains to be completed and the period during which each item has remained on such inventory;

(E) shall contain an inventory of the items described in subparagraphs (A) and (B) for which no action has been taken, the period during which each item has remained on such inventory, the reasons for the inaction, and shall identify any official of the Bureau of Citizenship and Immigration Services who is responsible for such inaction;

(F) shall contain recommendations for such administrative and legislative action as may be appropriate to resolve problems encountered by individuals and employers, including problems created by excessive backlogs in the adjudication and processing of immigration benefit petitions and applications; and

(G) shall include such other information as the Ombudsman may deem advisable.

(2) REPORT TO BE SUBMITTED DIRECTLY.—Each report required under this subsection shall be provided directly to the committees described in paragraph (1) without any prior review or comment from the Attorney General, Deputy Attorney General, Assistant Attorney General for Citizenship and Immigration Services, or any other officer or employee of the Department of Justice or the Office of Management and Budget.

(d) OTHER RESPONSIBILITIES.—The Ombudsman—

(1) shall monitor the coverage and geographic allocation of local offices of the Ombudsman;

(2) shall develop guidance to be distributed to all officers and employees of the Bureau of Citizenship and Immigration Services outlining the criteria for referral of inquiries to local offices of the Ombudsman;

(3) shall ensure that the local telephone number for each local office of the Ombudsman is published and available to individuals and employers served by the office; and

(4) shall meet regularly with the Assistant Attorney General for Citizenship and Immigration Services to identify serious service problems and to present recommendations for such administrative action as may be appropriate to resolve problems encountered by individuals and employers.

(e) PERSONNEL ACTIONS.—

(1) IN GENERAL.—The Ombudsman shall have the responsibility 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 local office of the Ombudsman.

(2) CONSULTATION.—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.

(f) RESPONSIBILITIES OF BUREAU OF CITIZENSHIP AND IMMIGRATION SERVICES.—The Assistant Attorney General for Citizenship and Immigration Services shall establish procedures requiring a formal response to all recommendations submitted to such Assistant Attorney General by the Ombudsman within 3 months after submission to such director.

(g) OPERATION OF LOCAL OFFICES.—

(1) IN GENERAL.—Each local ombudsman—

(A) shall report to the Ombudsman or the delegate thereof;

(B) may consult with the appropriate supervisory personnel of the Bureau of Citizenship and Immigration Services regarding the daily operation of the local office of such ombudsman;

(C) shall, at the initial meeting with any individual or employer seeking the assistance of such local office, notify such individual or employer that the local offices of the Ombudsman operate independently of any other component of the Department of Justice and report directly to the Congress through the Ombudsman; and

(D) at the local ombudsman's discretion, may determine not to disclose to the Bureau of Citizenship and Immigration Services contact with, or information provided by, such individual or employer.

(2) MAINTENANCE OF INDEPENDENT COMMUNICATIONS.—Each local office of the Ombudsman shall maintain a phone, facsimile, and other means of electronic communication access, and a post office address, that is separate from those maintained by the Bureau of Citizenship and Immigration Services, or any component of the Bureau of Citizenship and Immigration Services.

SEC. 423. PROFESSIONAL RESPONSIBILITY AND QUALITY REVIEW.

(a) IN GENERAL.—The Assistant Attorney General for Citizenship and Immigration Services shall be responsible for—

(1) conducting investigations of noncriminal allegations of misconduct, corruption, and fraud involving any employee of the Bureau of Citizenship and Immigration Services that are not subject to investigation by the Department of Justice Office of the Inspector General;

(2) inspecting the operations of the Bureau of Citizenship and Immigration Services and providing assessments of the quality of the operations of such bureau as a whole and each of its components; and

(3) providing an analysis of the management of the Bureau of Citizenship and Immigration Services.

(b) SPECIAL CONSIDERATIONS.—In providing assessments in accordance with subsection (a)(2) with respect to a decision of the Bureau of Citizenship and Immigration Services, or any of its components, consideration shall be given to—

(1) the accuracy of the findings of fact and conclusions of law used in rendering the decision;

(2) any fraud or misrepresentation associated with the decision; and

(3) the efficiency with which the decision was rendered.

SEC. 424. EMPLOYEE DISCIPLINE.

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 policies and procedures 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. 3731 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 Statistics.

''(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. Such statistical information shall include information and 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), including region-by-region statistics 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.

''(2) 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.

''(c) 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 established under section 305 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 Statistics Branch of the Office of Policy and Planning of the Immigration and Naturalization Service with respect to the following:

(1) Adjudications of immigrant visa petitions.

(2) Adjudications of naturalization petitions.

(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 AMENDMENTS.—Section 302(c) of the Omnibus Crime Control and Safe Streets Act of 1968 (42 U.S.C. 3732(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''; and

(3) by adding at the end the following:

''(24) collect, maintain, compile, analyze, publish, and disseminate information and statistics involving the functions of the Bureau of Citizenship and Immigration Services and the Executive Office for Immigration Review.''.

SEC. 426. PRESERVATION OF ATTORNEY GENERAL'S AUTHORITY.

(a) IN GENERAL.—Any function for which this subchapter vests responsibility in an official other than the Attorney General, or which is transferred by this subchapter to such an official, may, notwithstanding any provision of this subchapter, be performed by the Attorney General, or the Attorney General's delegate, in lieu of such official.

(b) REFERENCES.—In a case in which the Attorney General performs a function described in subsection (a), any reference in any other Federal law, Executive order, rule, regulation, document, or delegation of authority to the official otherwise responsible for the function is deemed to refer to the Attorney General.

SEC. 427. EFFECTIVE DATE.

Notwithstanding section 4, this subchapter, and the amendments made by this subchapter, shall take effect on the date on which the transfer of functions specified under section 411 takes effect.

SEC. 428. TRANSITION.

(a) REFERENCES.—With respect to any function transferred by this subchapter to, and exercised on or after the effective date specified in section 427 by, 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 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 Assistant Attorney General for Citizenship and Immigration Services; or

(2) to such component is deemed to refer to the Bureau of Citizenship and Immigration Services.

(b) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this subchapter may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in section 427.

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) of section 812 shall apply to a transfer of functions under this subchapter 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 subchapter (and functions that the Attorney General determines are properly related to the functions of the Bureau of Citizenship and Immigration Services), and the assets, liabilities, contracts, property, records, and unexpended balance of appropriations, authorizations, 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 1950, 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 only for the purposes 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.

(4) AUTHORITIES OF ATTORNEY GENERAL.—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 with regard to the functions transferred by this subchapter, and may make such additional incidental dispositions of personnel, assets, liabilities, grants, contracts, property, records, and unexpended balances of appropriations, authorizations, allocations, and other funds held, used, arising from, available to, or to be made available in connection with such functions, as may be necessary to carry out the provisions of this subchapter. The Attorney General shall provide for such further measures and dispositions as may be necessary to effectuate the purposes of this subchapter.

Subchapter B—Other Provisions

SEC. 431. FUNDING FOR CITIZENSHIP AND IMMIGRATION SERVICES.

(a) ESTABLISHMENT OF FEES FOR ADJUDICATION AND NATURALIZATION SERVICES.—Section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) is amended by striking ''services, including the costs of similar services provided without charge to asylum applicants or other immigrants.'' and inserting ''services.''.

(b) AUTHORIZATION OF APPROPRIATIONS FOR REFUGEE AND ASYLUM ADJUDICATIONS.—There are authorized to be appropriated such sums as may be necessary to carry out the provisions of sections 207 through 209 of the Immigration and Nationality Act (8 U.S.C. 1157–1159). All funds appropriated under this subsection shall be deposited into the Immigration Examinations Fee Account established under section 286(m) of the Immigration and Nationality Act (8 U.S.C. 1356(m)) and shall remain available until expended.

SEC. 432. BACKLOG ELIMINATION.

Section 204(a)(1) of the Immigration Services and Infrastructure Improvements Act of 2000 (8 U.S.C. 1573(a)(1)) is amended by striking ''not later than one year after the date of enactment of this Act;'' and inserting ''1 year after the date of the enactment of the Homeland Security Act of 2002;''.

SEC. 433. REPORT ON IMPROVING IMMIGRATION SERVICES.

(a) IN GENERAL.—The Attorney General, not later than 1 year after the effective date of this Act, shall submit to the Committees on the Judiciary and Appropriations of the United States House of Representatives and of the Senate a report with a plan detailing how the Bureau of Citizenship and Immigration Services, after the transfer of functions specified in subchapter 1 takes effect, will complete efficiently, fairly, and within a reasonable time, the adjudications described in paragraphs (1) through (5) of section 421(b).

(b) CONTENTS.—For each type of adjudication to be undertaken by the Assistant Attorney General for Citizenship and Immigration Services, the report shall include the following:

(1) Any potential savings of resources that may be implemented without affecting the quality of the adjudication.

(2) The goal for processing time with respect to the application.

(3) Any statutory modifications with respect to the adjudication that the Attorney General considers advisable.

(c) CONSULTATION.—In carrying out subsection (a), the Attorney General shall consult with the Secretary of State, the Secretary of Labor, the Assistant Secretary of the Bureau of Border Security of the Department of Homeland Security, and the Director of the Executive Office for Immigration Review to determine how to streamline and improve the process for applying for and making adjudications described in section 421(b) and related processes.

SEC. 434. REPORT ON RESPONDING TO FLUCTUATING NEEDS.

Not later than 30 days after the date of the enactment of this Act, the Attorney General shall submit to the Congress a report on changes in law, including changes in authorizations of appropriations and in appropriations, that are needed to permit the Immigration and Naturalization Service, and, after the transfer of functions specified in subchapter 1 takes effect, the Bureau of Citizenship and Immigration Services, to ensure a prompt and timely response to emergent, unforeseen, or impending changes in the number of applications for immigration benefits, and otherwise to ensure the accommodation of changing immigration service needs.

SEC. 435. APPLICATION OF INTERNET-BASED TECHNOLOGIES.

(a) ESTABLISHMENT OF TRACKING SYSTEM.—The Attorney General, not later than 1 year after the effective date of this Act, in consultation with the Technology Advisory Committee established under subsection (c), shall establish an Internet-based system, that will permit a person, employer, immigrant, or nonimmigrant who has filings with the Attorney General for any benefit under the Immigration and Nationality Act (8 U.S.C. 1101 et seq.), access to online information about the processing status of the filing involved.

(b) FEASIBILITY STUDY FOR ONLINE FILING AND IMPROVED PROCESSING.—

(1) ONLINE FILING.—The Attorney General, in consultation with the Technology Advisory Committee established under subsection (c), shall conduct a feasibility study on the online filing of the filings described in subsection (a). The study shall include a review of computerization and technology of the Immigration and Naturalization Service relating to the immigration services and processing of filings related

to immigrant services. The study shall also include 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 (b)(1).

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 vested by statute in, or 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 submitted to the Congress on how to ensure that qualified and independent legal counsel is timely appointed to represent the interests of each such child, consistent with the law regarding appointment of counsel that is in effect on the date of the enactment of this Act;

(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;

(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 of facilities in which unaccompanied alien children reside;

(H) reuniting unaccompanied alien children with a parent abroad in appropriate cases;

(I) compiling, 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 the subject;

(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—

(A) shall consult with appropriate juvenile justice professionals, the Director of the Bureau of Citizenship and Immigration Services of the Department of Justice, and the Assistant Secretary of the Bureau of Border Security 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 exploitive activity; and

(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. 1522(d)) for the placement of unaccompanied alien children.

(c) RULE OF CONSTRUCTION.—Nothing in this section may be construed to transfer the responsibility for adjudicating benefit 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 by this section, any reference in 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; or

(2) to such component is deemed to refer to the Office of Refugee Resettlement of the Department of Health and Human Services.

(f) OTHER TRANSITION ISSUES.—

(1) EXERCISE OF AUTHORITIES.—Except as otherwise provided by law, a Federal official to whom a function is transferred by this section may, for purposes of performing the function, exercise all authorities under any other provision of law that were available with respect to the performance of that function to the official responsible for the performance of the function immediately before the effective date specified in subsection (d).

(2) SAVINGS PROVISIONS.—Subsections (a), (b), and (c) 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, records, and unexpended balance of appropriations, authorizations, 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 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 pursuant 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 ''placement'' means the placement of an unaccompanied alien child in either a detention facility or an alternative to such a facility; and

(2) 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; or

(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 continuous service with 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

(3) 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 any resources for voluntary separation incentive payments under this section, such official shall submit to the appropriate committees of Congress 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

(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 on 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) 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 receive under section 5595(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;

(4) may not be made except in the case of any qualifying 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 may be 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, remit to the Office of Personnel Management for deposit in the Treasury of the United States to the credit of the Civil Service Retirement and Disability Fund the amount required under paragraph (2).

(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 additional costs to the retirement systems under title 5, United States Code (payable out of the Civil Service Retirement and Disability Fund) resulting from the voluntary separation of the employees described in paragraph (3), as determined under regulations of the Office of Personnel Management.

(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 paragraph (3).

(3) COMPUTATIONS TO BE BASED ON SEPARATIONS OCCURRING IN THE FISCAL YEAR INVOLVED.—The employees described in this paragraph are those employees who receive a voluntary separation incentive payment under this section based on their separating from service during the fiscal year with respect to which the payment under this subsection relates.

(4) FINAL BASIC PAY DEFINED.—In this subsection, the term ''final basic pay'' means, 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 or works for any agency of 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 this section are not intended to necessarily reduce the total number of full-time equivalent positions in any covered entity.

(2) USE OF VOLUNTARY SEPARATIONS.—A covered entity may redeploy or use the full-time equivalent positions vacated by voluntary separations under this section to make other positions available to more critical locations or more critical occupations.

SEC. 443. AUTHORITY TO CONDUCT A DEMONSTRATION PROJECT RELATING TO DISCIPLINARY ACTION.

(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 571 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 such title 5 would otherwise 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 as provided in section 7702(e)(1) of such title 5 (in the matter following subparagraph (C) thereof).

(e) CERTAIN EMPLOYEES.—Employees shall not be included within 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 elect to participate in 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 7121 of such title 5).

(f) REPORTS.—The General Accounting Office shall prepare and submit 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 on any 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 missions of the Bureau of Border Security of the Department of Homeland Security and the Bureau of Citizenship and Immigration Services of the Department of Justice are equally important 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 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.

(2) 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) Recommendations for conforming 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 separating the administrative support systems of the Immigration and Naturalization Service in order to provide for separate administrative support systems for the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(d) COMPTROLLER GENERAL STUDIES AND REPORTS.—

(1) STATUS REPORTS ON TRANSITION.—Not later than 18 months after the date on which the transfer of functions specified under section 411 takes effect, and every 6 months thereafter, until full implementation of this subtitle has been completed, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report containing the following:

(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 taken place, identifying the reasons why the transfer has not taken place.

(B) If the transfers of functions made by chapters 1 and 2 have been completed, an identification of any issues that have arisen due to the completed transfers.

(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 date on which the transfer of functions specified under section 411 takes effect, the Comptroller General of the United States shall submit to the Committees on Appropriations and on the Judiciary of the United States House of Representatives and the Senate a report, following a study, containing the following:

(A) Determinations of whether the transfer of functions from the Immigration and Naturalization Service to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security have improved, with respect to each function transferred, the following:

(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 determinations under subparagraph (A).

(C) Any recommendations for further improvements to the Bureau of Citizenship and Immigration Services and the Bureau of Border Security.

(3) REPORT ON FEES.—Not later than 1 year after the date of 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 report examining whether the Bureau of Citizenship and Immigration Services is likely to derive sufficient funds from fees to carry out its functions in the absence of appropriated funds.

SEC. 446. IMMIGRATION FUNCTIONS.

(a) ANNUAL REPORT.—

(1) IN GENERAL.—One year after the date of the enactment of this Act, and each year thereafter, the Attorney General shall submit a report to the President, to the Committees on the Judiciary and Government Reform of the United States House of Representatives, and to the Committees on the Judiciary and Government Affairs of the Senate, on the impact the transfers made by this subtitle has had on immigration functions.

(2) MATTER INCLUDED.—The report shall address the following with respect to the period covered by the report:

(A) The aggregate number of all immigration applications and petitions received, and processed, by the Department;

(B) Region-by-region statistics on the aggregate number of immigration applications and petitions filed by an alien (or filed on behalf of an alien) and denied, disaggregated by category of denial and application or petition type.

(C) The quantity of backlogged immigration applications and petitions that have been processed, the aggregate number awaiting processing, and a detailed plan for eliminating the backlog.

(D) The average processing period for immigration applications and petitions, disaggregated by application or petition type.

(E) The number and types of immigration-related grievances filed with any official of the Department of Justice, and if those grievances were resolved.

(F) Plans to address grievances and improve immigration services.

(G) Whether immigration-related fees were used consistent with legal requirements regarding such use.

(H) Whether immigration-related questions conveyed by customers to the Department of Justice (whether conveyed in person, by telephone, or by means of the Internet) were answered effectively and efficiently.

(b) SENSE OF THE CONGRESS REGARDING IMMIGRATION SERVICES.—It is the sense of the Congress that—

(1) the quality and efficiency of immigration services rendered by the Federal Government should be improved after the transfers made by this subtitle take effect; and

(2) the Attorney General should undertake efforts to guarantee that concerns regarding the quality and efficiency of immigration services are addressed after such effective date.

Subtitle C—United States Customs Service

SEC. 451. ESTABLISHMENT; COMMISSIONER OF CUSTOMS.

(a) ESTABLISHMENT.—There is established in the Department the United States Customs Service, under the authority of the Under Secretary for Border and Transportation Security, which shall be vested with those functions set forth in section 457(7), and the personnel, assets, and liabilities attributable to those functions.

(b) COMMISSIONER OF CUSTOMS.—

(1) IN GENERAL.—There shall be at the head of the Customs Service a Commissioner of Customs, who shall be appointed by the President, by and with the advice and consent of the Senate.

(2) COMPENSATION.—Section 5314 of title 5, United States Code, is amended by striking

''Commissioner of Customs, Department of the Treasury''

and inserting

''Commissioner of Customs, Department of Homeland Security.''.

(3) CONTINUATION IN OFFICE.—The individual serving as the Commissioner of Customs on the day before the effective date of this Act may serve as the Commissioner of Customs on and after such effective date until a Commissioner of Customs is appointed under paragraph (1).

SEC. 452. RETENTION OF CUSTOMS REVENUE FUNCTIONS BY SECRETARY OF THE TREASURY.

(a) RETENTION BY SECRETARY OF THE TREASURY.—

(1) RETENTION OF AUTHORITY.—Notwithstanding sections 401(5), 402(1), and 808(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 authority to the Secretary at the discretion of the Secretary of the Treasury. The Secretary of the Treasury shall consult with the Secretary regarding the exercise of any such authority not delegated to the Secretary.

(2) STATUTES.—The provisions of law referred to in paragraph (1) are the following: 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 Reconciliation Act of 1985 (19 U.S.C. 58c); section 251 of the Revised Statutes of the United States (19 U.S.C. 66); section 1 of the Act of June 26, 1930 (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, 1911 (19 U.S.C. 198); the Trade Act of 1974; the Trade Agreements Act of 1979; the North American Free Trade Area Implementation Act; the Uruguay Round Agreements Act; the Caribbean Basin Economic Recovery Act; the Andean Trade Preference Act; the African Growth and Opportunity Act; and any other provision of law vesting customs revenue functions in the Secretary of the Treasury.

(b) MAINTENANCE OF CUSTOMS REVENUE FUNCTIONS.—

(1) MAINTENANCE OF FUNCTIONS.—Notwithstanding any other provision of this Act, the Secretary may not consolidate, alter, discontinue, or diminish those functions described in paragraph (2) performed by the United States Customs Service (as established under section 451) on or after the effective date of this Act, reduce the staffing level, or the compensation or benefits under title 5, United States Code, of personnel attributable to such functions, or reduce the resources attributable to such functions, and the Secretary shall ensure that an appropriate management structure is implemented to carry out such functions.

(2) FUNCTIONS.—The functions referred to in paragraph (1) are those functions performed by the following personnel, and associated 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 Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(c) NEW PERSONNEL.—The Secretary of the Treasury is authorized to appoint up to 20 new personnel to work with personnel of the Department in performing customs revenue functions.

SEC. 453. ESTABLISHMENT AND IMPLEMENTATION OF COST ACCOUNTING SYSTEM; REPORTS.

(a) ESTABLISHMENT AND IMPLEMENTATION.—

(1) IN GENERAL.—Not later than September 30, 2003, the Commissioner of Customs shall, in accordance with the audit of the Customs Service's fiscal years 2000 and 1999 financial statements (as contained in the report of the Office of the Inspector General of the Department of the Treasury issued on February 23, 2001), establish and implement a cost accounting system for expenses incurred in the operation of the Customs Service.

(2) ADDITIONAL REQUIREMENT.—The cost accounting system described in paragraph (1) shall provide for an identification of expenses based on the type of operation, the port at which the operation took place, the amount of time spent on the operation by personnel of the Customs Service, and an identification of expenses based on any other appropriate classification necessary to provide for an accurate and complete accounting of the expenses.

(3) USE OF MERCHANDISE PROCESSING FEES.—The cost accounting system described in paragraph (1) shall provide for an identification of all amounts expended pursuant to section 13031(f)(2) of the Consolidated Omnibus Budget Reconciliation Act of 1985.

(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 subsection (a) is fully implemented, the Commissioner of Customs shall prepare and submit to the Committee on Ways and Means of the House of Representatives and the Committee on Finance of the Senate on a quarterly basis a report on the progress of implementing the cost accounting system pursuant to subsection (a).

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 505(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: ''If an import activity summary statement is filed, the importer 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, whichever 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 assessment.

(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) Collecting accurate import data for compilation of international trade statistics.

(6) Enforcing reciprocal trade agreements.

(7) Functions performed by the following personnel, and associated 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 Specialist, Fines and Penalties Specialists, attorneys of the Office of Regulations and Rulings, Customs Auditors, International Trade Specialists, Financial Systems Specialists.

(8) Functions performed by the following offices, with respect to any function described in any of paragraphs (1) through (7), and 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 that sets forth all trade functions performed by the executive branch, specifying each agency that performs each such function.

SEC. 459. ALLOCATION OF RESOURCES BY THE SECRETARY.

(a) IN GENERAL.—The Secretary shall ensure that adequate staffing is provided to assure that 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 taking any action 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 services'' means those customs revenue functions described in paragraphs (1) through (6) and (8) 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 such 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 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), $350,000,000.

''(B) There is authorized to be appropriated from the Account in fiscal years 2003 through 2005 such amounts as are available in that Account for the development, establishment, and implementation of the Automated Commercial Environment computer system for the processing of merchandise that is entered or released and for other purposes related to the functions of the Department of Homeland Security. Amounts appropriated pursuant to this subparagraph are authorized to remain available until expended.

''(C) In adjusting the fee imposed by subsection (a)(9)(A) for fiscal year 2006, the Secretary of the Treasury shall reduce the amount estimated to be collected 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) Helping to ensure the preparedness of emergency response providers for terrorist attacks, major disasters, and other emergencies.

(2) With respect to the Nuclear Incident Response Team (regardless of whether it is operating as an organizational unit of the Department pursuant to this title)—

(A) establishing standards and certifying when those standards have been met;

(B) conducting joint and other exercises and training and evaluating performance; and

(C) providing funds to the Department of Energy and the Environmental Protection Agency, as appropriate, for homeland security planning, exercises and training, and equipment.

(3) Providing the Federal Government's response to terrorist attacks and major disasters, including—

(A) managing such response;

(B) directing the Domestic Emergency Support Team, the Strategic National Stockpile, the National Disaster Medical System, and (when operating as an organizational unit of the Department pursuant to this title) the Nuclear Incident Response Team;

(C) overseeing the Metropolitan Medical Response System; and

(D) coordinating other Federal response resources in the event of a terrorist attack or major disaster.

(4) Aiding the recovery from terrorist attacks and major disasters, interventions to treat the psychological consequences of terrorist attacks or major disasters and provision for training for mental health workers to allow them to respond effectively to such attacks or disasters.

(5) Building a comprehensive national incident management system with Federal, State, and local government personnel, agencies, and authorities, to respond to such attacks and disasters.

(6) Consolidating existing Federal Government emergency response plans into a single, coordinated national response plan.

(7) Developing comprehensive programs for developing interoperative communications technology, and helping to ensure that emergency response providers acquire such technology.

SEC. 502. FUNCTIONS TRANSFERRED.

In accordance with title VIII, there shall be transferred to the Secretary the functions, personnel, assets, and obligations of the following:

(1) Except as provided in section 402, the Federal Emergency Management Agency, including the functions of the Director of the Federal Emergency Management Agency relating thereto, and the Integrated Hazard Information System of the Department of Defense.

(2) The Office of Emergency Preparedness, the National Disaster Medical System, and the Metropolitan Medical Response System of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services and the Assistant Secretary for Public Health Emergency Preparedness relating thereto.

(3) The Strategic National Stockpile of the Department of Health and Human Services, including the functions of the Secretary of Health and Human Services relating thereto.

SEC. 503. NUCLEAR INCIDENT RESPONSE.

(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) INDEMNIFICATION OF CONTRACTORS 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 operating 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 not to any extension or renewal of such 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 nuclear or radiological emergency support functions (including accident response, search response, advisory, and technical operations functions), radiation exposure functions at the medical assistance facility known as the Radiation Emergency Assistance/Training Site (REAC/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 hospital preparedness 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 collaboration 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, accounting, and finance.

(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) IMMIGRATION ENFORCEMENT.—

(1) IN GENERAL.—In addition to the responsibilities described in subsection (a), the Under Secretary for Management shall be responsible for the following:

(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'' prepared by the Immigration and Naturalization Service (as in effect immediately before the date on which the transfer of functions specified under section 411 takes effect), including region-by-region statistics on the aggregate 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.

(2) TRANSFER OF FUNCTIONS.—In accordance with title VIII, there shall be transferred to the Under Secretary for Management all functions performed immediately before such transfer occurs by 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 investigations 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, the Inspector General shall be under the authority, direction, and control of the Secretary with respect to audits or investigations, or the issuance of subpoenas, that require access to sensitive information concerning—

(1) intelligence, counterintelligence, or counterterrorism matters;

(2) ongoing criminal investigations or proceedings;

(3) undercover operations;

(4) the identity of confidential sources, including protected witnesses;

(5) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to the protection of any person or property authorized protection by section 3056 of title 18, United States Code, section 202 of title 3 of such Code, or any provision of the Presidential Protection Assistance Act of 1976; or

(6) other matters the disclosure of which would, in the Secretary's judgment, constitute a serious threat to national security.

(b) PROHIBITION OF CERTAIN INVESTIGATIONS.—With respect to the information described in subsection (a), the Secretary may prohibit the Inspector General from carrying out or completing any audit or investigation, or from issuing any subpoena, after such Inspector General has decided to initiate, carry out, or complete such audit or investigation or to issue such subpoena, if the Secretary determines that such prohibition is necessary to prevent the disclosure of any information described in subsection (a), to preserve the national security, or to prevent a significant impairment to the interests of the United States.

(c) 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. Within 30 days after receipt of any such notice, the Inspector General shall transmit a copy of such notice and a written response thereto that includes (1) a statement as to whether the Inspector General agrees or disagrees with such exercise and (2) the reasons for any disagreement, to the President of the Senate and the Speaker of the House of Representatives and to appropriate committees and subcommittees of the Congress.

(d) ACCESS TO INFORMATION BY CONGRESS.—The exercise of authority by the Secretary described in subsection (b) should not be construed as limiting the right of Congress or any committee of Congress to access any information it seeks.

(e) OVERSIGHT RESPONSIBILITY—The Inspector General Act of 1978 (5 U.S.C. App.) is amended by inserting after section 8I 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 internal 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 report to 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 not customarily in the public domain and related to the security of critical infrastructure or protected systems—

(A) actual, potential, or threatened interference with, attack on, compromise of, or incapacitation of critical infrastructure or protected systems by either physical or computer-based attack or other similar conduct (including the misuse of or unauthorized access to all types of communications and data transmission systems) that violates Federal, State, or local law, harms interstate commerce of the United States, or threatens public health or safety;

(B) the ability of any critical infrastructure or protected system to resist such interference, compromise, or incapacitation, including any planned or past assessment, projection, or estimate of the vulnerability of critical infrastructure or a protected system, including security testing, risk evaluation thereto, risk management planning, or risk audit; or

(C) any planned or past operational problem or solution regarding critical infrastructure or protected systems, including repair, recovery, reconstruction, insurance, or continuity, to the extent it is related to such interference, compromise, or incapacitation.

(4) CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.—The term ''critical infrastructure protection program'' means any component or bureau of a covered Federal agency that has been designated by the President or any agency head to receive critical infrastructure information.

(5) INFORMATION SHARING AND ANALYSIS ORGANIZATION.—The term ''Information Sharing and Analysis Organization'' means any formal or informal entity or collaboration created or employed by public or private sector organizations, for purposes of—

(A) gathering and analyzing critical infrastructure information in order to better understand security problems and interdependencies related to critical infrastructure and protected systems, so as to ensure the availability, integrity, and reliability thereof;

(B) communicating or disclosing critical infrastructure information to help prevent, detect, mitigate, or recover from the effects of a interference, compromise, or a incapacitation problem related to critical infrastructure or protected systems; and

(C) voluntarily disseminating critical infrastructure information to its members, State, local, and Federal Governments, or any other entities that may be of assistance in carrying out the purposes specified in subparagraphs (A) and (B).

(6) PROTECTED SYSTEM.—The term ''protected system''—

(A) means any service, physical or computer-based system, process, or procedure that directly or indirectly affects the viability of a facility of critical infrastructure; and

(B) includes any physical or computer-based system, including a computer, computer system, computer or communications network, or any component hardware or element thereof, software program, processing instructions, or information or data in transmission or storage therein, irrespective of the medium of transmission or storage.

(7) VOLUNTARY.—

(A) IN GENERAL.—The term ''voluntary'', in the case of any submittal of critical infrastructure information to a covered Federal agency, means the submittal thereof in the absence of such agency's exercise of legal authority to compel access to or submission of such information and may be accomplished by a single entity or an Information Sharing and Analysis Organization on behalf of itself or its members.

(B) EXCLUSIONS.—The term ''voluntary''—

(i) in the case of any action brought under the securities laws as is defined in section 3(a)(47) of the Securities Exchange Act of 1934 (15 U.S.C. 78c(a)(47))—

(I) does not include information or statements contained in any documents or materials filed with the Securities and Exchange Commission, or with Federal banking regulators, pursuant to section 12(i) of the Securities Exchange Act of 1934 (15 U.S.C. 781(I)); and

(II) with respect to the submittal of critical infrastructure information, does not include any disclosure or writing that when made accompanied the solicitation of an offer or a sale of securities; and

(ii) does not include information or statements submitted or relied upon as a basis for making licensing or permitting determinations, or during regulatory proceedings.

SEC. 723. DESIGNATION OF CRITICAL INFRASTRUCTURE PROTECTION PROGRAM.

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 regarding the security of critical infrastructure and protected systems, if analysis, warning, interdependency study, recovery, reconstitution, or other informational purpose, 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 civil action arising under Federal or State 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 made available pursuant 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; and

(F) does not constitute a waiver of any applicable privilege or protection provided under law, such as trade secret protection.

(2) EXPRESS STATEMENT.—For purposes of paragraph (1), the term ''express statement'', with respect to information or records, means—

(A) in the case of written information or records, a written marking on the information or records substantially similar to the following: ''This information is voluntarily submitted to the Federal Government in expectation of protection from disclosure as provided by the provisions of the Critical Infrastructure Information Act of 2002.''; or

(B) in the case of oral information, a similar written statement submitted within a reasonable period following the oral communication.

(b) LIMITATION.—No communication of critical infrastructure information to a covered Federal agency made pursuant to this subtitle shall be considered to be an action subject to the requirements of the Federal Advisory Committee Act (5 U.S.C. App. 2).

(c) INDEPENDENTLY OBTAINED INFORMATION.—Nothing in this section shall be construed to limit or otherwise affect the ability of a State, local, or Federal Government entity, agency, or authority, or any third party, under applicable law, to obtain critical infrastructure information in a manner not covered by subsection (a), including any information lawfully and properly disclosed generally or broadly to the public and to use such information in any manner permitted by law.

(d) TREATMENT OF VOLUNTARY SUBMITTAL OF INFORMATION.—The voluntary submittal to the Government of information or records that are protected from disclosure by this subtitle shall not be construed to constitute compliance with any requirement to submit such information to a Federal agency under any other provision of law.

(e) PROCEDURES.—

(1) IN GENERAL.—The Secretary of the Department of Homeland Security shall, in consultation with appropriate representatives of the National Security Council and the Office of Science and Technology Policy, establish uniform procedures for the receipt, care, and storage by Federal agencies of critical infrastructure information that is voluntarily submitted to the Government. The procedures shall be established not later than 90 days after the date of the enactment of this subtitle.

(2) ELEMENTS.—The procedures established under paragraph (1) shall include mechanisms regarding—

(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 the 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.

(f) PENALTIES.—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 that one year, or both, and shall be removed from office or employment.

(g) AUTHORITY TO ISSUE WARNINGS.—The Federal Government may provide advisories, 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) the source of any voluntarily submitted critical infrastructure information that forms the basis for the warning; or

(2) information that is proprietary, business sensitive, relates specifically to the submitting person or entity, or is otherwise not appropriately in the public domain.

(h) AUTHORITY TO DELEGATE.—The President may delegate authority to a critical infrastructure protection program, designated under subsection (e), to enter into a voluntary agreement to promote critical infrastructure security, including with any Information Sharing and Analysis Organization, or a plan of action as otherwise defined in section 708 of the Defense Production Act of 1950 (50 U.S.C. App. 2158).

SEC. 725. NO PRIVATE RIGHT OF ACTION.

Nothing in this subtitle may be construed to create a private right of action for enforcement of any provision of this Act.

Subtitle D—Acquisitions

SEC. 731. RESEARCH AND DEVELOPMENT PROJECTS.

(a) AUTHORITY.—During the five-year period following the effective date of this Act, the Secretary may carry out a pilot program under which the Secretary may exercise the following authorities:

(1)(A) In carrying out basic, applied, and advanced research and development projects for response to existing or emerging terrorist threats, the Secretary may exercise the same authority (subject to the same limitations and conditions) with respect to such research and projects as the Secretary of Defense may exercise under section 2371 of title 10, United States Code (except for subsections (b) and (f) of such section), after making a determination that—

(i) the use of a contract, grant, or cooperative agreement for such projects is not feasible or appropriate; and

(ii) use of other authority to waive Federal procurement laws or regulations would not be feasible or appropriate to accomplish such projects.

(B) The annual report required under subsection (h) of such section 2371, as applied to the Secretary by this paragraph, shall be submitted to the President of the Senate and the Speaker of the House of Representatives.

(2)(A) Under the authority of paragraph (1) and subject to the limitations of such paragraph, the Secretary may carry out prototype projects, in accordance with the requirements and conditions provided for carrying out prototype projects under section 845 of the National Defense Authorization Act for Fiscal Year 1994 (Public Law 103–160; 10 U.S.C. 2371 note).

(B) In applying the authorities of such section 845—

(i) subsection (c) thereof shall apply with respect to prototype projects under this paragraph, except that in applying such subsection any reference in such subsection to the Comptroller General shall be deemed to refer to the Comptroller General and the Inspector General of the Department; and

(ii) the Secretary shall perform the functions of the Secretary of Defense under subsection (d) thereof.

(b) REPORT.—Not later than one year after the effective date of this Act, and annually thereafter, the Comptroller General shall report to the Committee on Government Reform of the House of Representatives and the Committee on Governmental Affairs of the Senate on—

(1) whether use of the authorities described in subsection (a) attracts nontraditional Government contractors and results in the acquisition of needed technologies; and

(2) if such authorities 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 defense contractor'' as defined in section 845(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) in accordance with 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 1 year) or intermittent 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 (as described in section 101) 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 Government Reform 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) INCREASED MICRO-PURCHASE THRESHOLD FOR CERTAIN PROCUREMENTS.—(1) The Secretary may designate certain employees of the Department to make procurements described in subsection (a) for which in the administration of section 32 of the Office of Federal Procurement Policy Act (41 U.S.C. 428) the amount specified in subsections (c), (d), and (f) of such section 32 shall be deemed to be $5,000.

(2) The number of employees designated under paragraph (1) shall be—

(A) fewer than the number of employees of the Department who are authorized to make purchases without obtaining competitive quotations, pursuant to section 32(c) of the Office of Federal Procurement Policy Act (41 U.S.C. 428(c));

(B) sufficient to ensure the geographic dispersal of the availability of the use of the procurement authority under such paragraph at locations reasonably considered to be potential terrorist targets; and

(C) sufficiently limited to allow for the careful monitoring of employees designated under such paragraph.

(3) Procurements made under the authority of this subsection shall be subject to review by a designated supervisor on not less than a monthly basis. The supervisor responsible for the review shall be responsible for no more than 7 employees making procurements under this subsection.

(c) SIMPLIFIED ACQUISITION PROCEDURES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem the simplified acquisition threshold referred to in section 4(11) of the Office of Federal Procurement Policy Act (41 U.S.C. 403(11)) to be $175,000.

(2) Section 18(c)(1) of the Office of Federal Procurement Policy Act is amended—

(A) by striking ''or'' at the end of suparagraph (F);

(B) by striking the period at the end of subparagraph (G) and inserting ''; or''; and

(C) by adding at the end the following new subparagraph:

''(H) the procurement is by the Secretary of Homeland Security pursuant to the special procedures provided in section 733(c) of the Homeland Security Act of 2002.''.

(d) APPLICATION OF CERTAIN COMMERCIAL ITEMS AUTHORITIES.—(1) With respect to a procurement described in subsection (a), the Secretary may deem any item or service to be a commercial item for the purpose of Federal procurement laws.

(2) The $5,000,000 limitation provided in section 31(a)(2) of the Office of Federal Procurement Policy Act (41 U.S.C. 427(a)(2)) and section 303(g)(1)(B) of the Federal Property and Administrative Services Act of 1949 (41 U.S.C. 253(g)(1)(B)) shall be deemed to be $7,500,000 for purposes of property or services under the authority of this subsection.

(3) Authority under a provision of law referred to in paragraph (2) that expires under section 4202(e) of the Clinger-Cohen Act of 1996 (divisions D and E of Public Law 104–106; 10 U.S.C. 2304 note) shall, notwithstanding such section, continue to apply for a procurement described in subsection (a).

(e) REPORT.—Not later than 180 days after the end of fiscal year 2005, the Comptroller General shall submit to the Committee on Governmental Affairs of the Senate and the Committee on Government Reform of the House of Representatives a report on the use of the authorities provided in this section. The report shall contain the following:

(1) An assessment of the extent to which property and services acquired using authorities provided under this section contributed to the capacity of the Federal workforce to facilitate the mission of the Department as described in section 101.

(2) An assessment of the extent to which prices for property and services acquired using authorities provided under this section reflected the best value.

(3) The number of employees designated by each executive agency under subsection (b)(1).

(4) An assessment of the extent to which the Department has implemented subsections (b)(2) and (b)(3) to monitor the use of procurement authority by employees designated under subsection (b)(1).

(5) Any recommendations of the Comptroller General for improving the effectiveness of the implementation of the provisions of this section.

SEC. 734. PROCUREMENTS FROM SMALL BUSINESSES.

There is established in the Department an office to be known as the ''Office of Small and Disadvantaged Business Utilization''. The management of such office shall be vested in the manner described in section 15(k) of the Small Business Act (15 U.S.C. 644(k)) and shall carry out the functions described in such section.

Subtitle E—Property

SEC. 741. DEPARTMENT HEADQUARTERS.

(a) IN GENERAL.—Subject to the requirements of the Public Buildings Act of 1959 (40 U.S.C. 601 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 facility shall be constructed to such standards and specifications and at such a location as the Administrator of General Services decides. 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 headquarter facility, as well as other Government-owned or leased facilities, available to the Secretary pursuant to the Administrator's authorities under section 210 of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490 et seq.) and there is authorized to

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 F—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) DESIGNATION 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 United States government use 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 protections under the 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) Evaluation of all scientific studies that can be feasibly conducted in order to assess the capability of the technology to substantially reduce risks 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 substantive law for decision in any such action shall be derived from the law, including choice of law principles, of the State in which such acts of terrorism occurred, unless such law 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) SPECIAL RULES.—In an action brought under this section for damages the following provisions apply:

(1) No punitive damages intended to punish or deter, exemplary 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)(A) Noneconomic 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 no plaintiff may recover noneconomic damages unless the plaintiff suffered physical harm.

(B) For purposes of subparagraph (A), the term ''noneconomic damages'' means damages for losses for physical and emotional pain, 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 in an action under this section 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 product liability lawsuit be filed for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in paragraphs (2) and (3) of this subsection, 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 Secretary will be exclusively responsible for the review and approval of anti-terrorism technology for purposes of establishing a government contractor defense in any product liability lawsuit for claims arising out of, relating to, or resulting from an act of terrorism when qualified anti-terrorism technologies approved by the Secretary, as provided in this paragraph and paragraph (3), have been deployed in defense against such act and such claims result or may result in loss to the Seller. Upon the Seller's submission to the Secretary for approval of anti-terrorism technology, the Secretary will conduct a comprehensive review of the design of such technology and determine whether it will perform as intended, conforms to the Seller's specifications, and is safe for use as intended. The Seller will conduct safety and hazard analyses on such technology and will supply the Secretary with all such information.

(3) For those products reviewed and approved by the Secretary, the Secretary will issue a certificate of conformance to the Seller and place the product on an Approved Product 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—

(1) 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

(2) participates in a conspiracy to commit any such act of terrorism or any such 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 (''Seller'') shall obtain liability insurance of such types and in such amounts as shall be required in accordance with this section to satisfy otherwise compensable third-party 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.

(2) For the total claims related to one such act of terrorism, the Seller is not required to obtain liability insurance of more than the maximum amount of liability insurance reasonably available from private sources on the world market at prices and terms that will not unreasonably distort the sales price of Seller's anti-terrorism technologies.

(3) Liability insurance obtained pursuant to this subsection shall, in addition to the Seller, protect the following, to the extent of their potential liability for involvement in the manufacture, qualification, sale, use, or operation of qualified anti-terrorism technologies deployed in defense against an act of terrorism:

(A) contractors, subcontractors, suppliers, vendors and customers of the Seller.

(B) contractors, subcontractors, suppliers, and vendors of the customer.

(4) Such liability insurance under this section shall provide coverage against third party claims arising out of, relating to, or resulting from the sale or use of anti-terrorism technologies.

(b) RECIPROCAL WAIVER OF CLAIMS.—The Seller shall enter into a reciprocal waiver of claims with its contractors, subcontractors, suppliers, vendors and customers, and contractors and subcontractors of the customers, involved in the manufacture, sale, use or operation of qualified anti-terrorism technologies, under which each party to the waiver agrees to be responsible for losses, including business interruption losses, that it sustains, or for losses sustained by its own employees resulting from an activity resulting from an act of terrorism when qualified anti-terrorism technologies have been deployed in defense against such act.

(c) EXTENT OF LIABILITY.—Notwithstanding any other provision of law, liability for all claims against a Seller 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, whether for compensatory or punitive damages or for contribution or indemnity, shall not be in an amount greater than the limits of liability insurance coverage required to be maintained by the Seller under this section.

SEC. 755. DEFINITIONS.

For purposes of this subtitle, the following definitions apply:

(1) QUALIFIED ANTI-TERRORISM TECHNOLOGY.—For purposes of this subtitle, the term ''qualified anti-terrorism technology'' means any product, device, or technology designed, developed, or modified for the specific purpose of preventing, detecting, identifying, or deterring acts of terrorism and limiting the harm such acts might otherwise cause, that is designated as such by the Secretary.

(2) ACT OF TERRORISM.—(A) The term ''act of terrorism'' means any act that the Secretary determines meets the requirements under subparagraph (B), as such requirements are further defined and specified by the Secretary.

(B) REQUIREMENTS.—An act meets the requirements of this subparagraph if the act—

(i) is unlawful;

(ii) causes harm to a person, property, or entity, in the United States, or in the case of a domestic United States air carrier or a United States-flag vessel (or a vessel based principally in the United States on which United States income tax is paid and whose insurance coverage is subject to regulation in the United States), in or outside the United States; and

(iii) uses or attempts to use instrumentalities, weapons or other methods designed or intended to cause mass destruction, injury or other loss to citizens or institutions of the United States.

(3) INSURANCE CARRIER.—The term ''insurance carrier'' means any corporation, association, society, order, firm, company, mutual, partnership, individual aggregation of individuals, or any other legal entity that provides commercial property and casualty insurance. Such term includes any affiliates of a commercial insurance carrier.

(4) LIABILITY INSURANCE.—

(A) IN GENERAL.—The term ''liability insurance'' means insurance for legal liabilities incurred by the insured resulting from—

(i) loss of or damage to property of others;

(ii) ensuing loss of income or extra expense incurred because of loss of or damage to property of others;

(iii) bodily injury (including) to persons other than the insured or its employees; or

(iv) loss resulting from debt or default of another.

(5) LOSS.—The term ''loss'' means death, bodily injury, or loss of or damage to property, including business interruption loss.

(6) NON-FEDERAL GOVERNMENT CUSTOMERS.—The term ''non-Federal Government customers'' means any customer of a Seller that is not an agency or instrumentality of the United States Government with authority under Public Law 85-804 to provide for indemnification under certain circumstances for third-party claims against its contractors, including but not limited to State and local authorities and commercial entities.

Subtitle G—Other Provisions

SEC. 761. ESTABLISHMENT OF HUMAN RESOURCES MANAGEMENT SYSTEM.

(a) AUTHORITY.—

(1) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by adding at the end the following:

''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 Homeland Security may, in regulations prescribed jointly with the Director of the Office of Personnel 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 established 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, including the principles of hiring based on merit, fair treatment without regard to political affiliation or other non-merit considerations, equal pay for equal work, and protection of employees against reprisal for whistleblowing;

''(B) any provision of section 2302, relating to prohibited personnel practices;

''(C)(i) any provision of law referred to in section 2302(b)(1); or

''(ii) any provision of law implementing any provision of law referred to in section 2302(b)(1) by—

''(I) providing for equal employment opportunity through affirmative action; or

''(II) providing any right or remedy available to any employee or applicant for employment in the civil service;

''(D) any other provision of this title (as described in subsection (c)); or

''(E) any rule or regulation prescribed under any provision of law referred to in any of the preceding subparagraphs of this paragraph;

''(4) ensure that employees may organize, bargain collectively, and participate through labor organizations of their own choosing in decisions which affect them, subject to any exclusion from coverage or limitation on negotiability established by law or under subsection (a) for employees engaged in intelligence, counterintelligence, investigative, or security work which directly affects national security; and

''(5) permit the use of a category rating system for evaluating applicants for positions in the competitive service.

''(c) OTHER NONWAIVABLE PROVISIONS.—The other provisions of this title, as referred to in subsection (b)(3)(D), are (to the extent not otherwise specified in subparagraph (A), (B), (C), or (D) of subsection (b)(3))—

''(1) subparts A, B, E, G, and H of this part; and

''(2) chapters 41, 45, 47, 55, 57, 59, 72, 73, and 79, and this chapter.

''(d) LIMITATIONS RELATING TO PAY.—Nothing in this section shall constitute authority—

''(1) to modify the pay of any employee who serves in—

''(A) an Executive Schedule position under subchapter II of chapter 53 of title 5, United States Code; or

''(B) a position for which the rate of basic pay is fixed in statute by reference to a section or level under subchapter II of chapter 53 of such title 5;

''(2) to fix pay for any employee or position at an annual rate greater than the maximum amount of cash compensation allowable under section 5307 of such title 5 in a year; or

''(3) to exempt any employee from the application of such section 5307.

''(e) SUNSET PROVISION.—Effective 5 years after the date of the enactment of this section, all authority to issue regulations under this section (including regulations which would modify, supersede, or terminate any regulations previously issued under this section) shall cease to be available.''.

(2) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

''97. Department of Homeland Security 9701''.

(b) EFFECT ON PERSONNEL.—

(1) NON-SEPARATION OR NON-REDUCTION IN GRADE OR COMPENSATION OF FULL-TIME PERSONNEL AND PART-TIME PERSONNEL HOLDING PERMANENT POSITIONS.—Except as otherwise provided in this Act, the transfer pursuant to this Act of full-time personnel (except special Government employees) and part-time personnel holding permanent positions shall not cause any such employee to be separated or reduced in grade or compensation for one year after the date of transfer to the Department.

(2) POSITIONS COMPENSATED IN ACCORDANCE WITH EXECUTIVE SCHEDULE.—Any person who, on the day preceding such person's date of transfer pursuant to this Act, held a position compensated in accordance with the Executive Schedule prescribed in chapter 53 of title 5, United States Code, and who, without a break in service, is appointed in the Department to a position having duties comparable to the duties performed immediately preceding such appointment shall continue to be compensated in such new position at not less than the rate provided for such previous position, for the duration of the service of such person in such new position.

(3) COORDINATION RULE.—Any exercise of authority under chapter 97 of title 5, United States Code (as amended by subsection (a)), including under any system established under such chapter, shall be in conformance with the requirements of this subsection.

SEC. 762. ADVISORY COMMITTEES.

The Secretary may establish, appoint members of, and use the services of, advisory committees, as the Secretary may deem necessary. An advisory committee established under this section may be exempted by the Secretary from Public Law 92–463, but the Secretary shall publish notice in the Federal Register announcing the establishment of such a committee and identifying its purpose and membership. Notwithstanding the preceding sentence, members of an advisory committee that is exempted by the Secretary under the preceding sentence who are special Government employees (as that term is defined in section 202 of title 18, United States Code) shall be eligible for certifications under subsection (b)(3) of section 208 of title 18, United States Code, for official actions taken as a member of such advisory committee.

SEC. 763. REORGANIZATION; TRANSFER OF APPROPRIATIONS.

(a) REORGANIZATION.—

(1) IN GENERAL.—The Secretary may allocate or reallocate functions among the officers of the Department, and may establish, consolidate, alter, or discontinue organizational units within the Department, but only—

(A) pursuant to section 802; or

(B) after the expiration of 60 days after providing notice of such action to the appropriate congressional committees, which shall include an explanation of the rationale for the action.

(2) LIMITATIONS.—(A) Authority under paragraph (1)(A) does not extend to the abolition of any agency, entity, organizational unit, program, 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, entity, organizational unit, program, or function established or required to be maintained by statute.

(b) TRANSFER OF APPROPRIATIONS.—

(1) IN GENERAL.—Except as otherwise specifically 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 BEQUESTS.—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 authorities that the Secretary of Transportation has with respect to the Department of Transportation under section 324 of title 49, United States Code.

(d) REDELEGATION OF FUNCTIONS.—Unless otherwise provided in the delegation 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 Secretary any authority to engage in warfighting, the military defense of the United States, or other military activities, nor shall anything in this Act limit the existing authority of the Department of Defense or the Armed Forces 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 official 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 such date of enactment is exercised by another official of the executive branch with respect to such agency, program, or function. Any such transferred authority may not be exercised by an official from whom it is transferred upon transfer of such agency, program, or function to the Secretary or another Federal official pursuant to this Act. This Act may not be construed as altering or diminishing the regulatory authority 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 from the Department of Energy to the Department of Homeland Security are being carried out through contracts with the operator of

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.

(b) HOMELAND SECURITY CENTER.—(1) Notwithstanding section 307, the Secretary, acting through the Under Secretary for Science and Technology, shall establish at a national security laboratory of the National Nuclear Security Administration, a center to serve as the primary location for carrying out research, development, test, and evaluation activities of the Department related to the goals described in section 301(6)(A) and (B). The Secretary shall establish, in concurrence with the Secretary of Energy, such additional centers at one or more national laboratories of the Department of Energy as the Secretary considers appropriate to serve as secondary locations for carrying out such activities.

(2) Each center established under paragraph (1) shall be composed of such facilities and assets as are required for the performance of such activities. The particular facilities and assets shall be designated and transferred by the Secretary of Energy with the concurrence of the Secretary.

(c) REIMBURSEMENT OF COSTS.—In the case of an activity carried out by the operator of a national laboratory of the Department of Energy but under contract with the Department of Homeland Security, the Department of Homeland Security shall reimburse the Department of Energy for costs of such activity through a method under which the Secretary of Energy waives any requirement for the Department of Homeland Security to pay administrative charges or personnel costs of the Department of Energy or its contractors in excess of the amount that the Secretary of Energy pays for an activity carried out by such contractor and paid for by the Department of Energy.

(d) LABORATORY DIRECTED RESEARCH AND DEVELOPMENT BY THE DEPARTMENT OF ENERGY.—No funds authorized to be appropriated or otherwise made available to the Department in any fiscal year may be obligated or expended for laboratory directed research and development activities carried out by the Department of Energy unless such activities support the mission of the Department described in section 101.

(e) DEPARTMENT OF ENERGY COORDINATION ON HOMELAND SECURITY RELATED RESEARCH.—The Secretary of Energy shall ensure that any research, development, test, and evaluation activities conducted within the Department of Energy that are directly or indirectly related to homeland security are fully coordinated with the Secretary to minimize duplication of effort and maximize the effective application of Federal budget resources.

SEC. 768. 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 interdicting the entry 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 a senior official appointed by the Secretary.

(b) DUTIES OF THE DIRECTOR.—The Director shall have the following duties:

(1) To promote information and education exchange with nations friendly to the United States in order to promote sharing of best practices and technologies relating 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, response, and crisis management.

(2) To identify areas for homeland security information and training exchange where the United States has a demonstrated weakness 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 known 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 the Office 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 after the date of enactment, 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 2301 of title 5, United States Code.

SEC. 772. ROLE OF THE DISTRICT OF COLUMBIA.

The Secretary (or the Secretary's designee) shall work in cooperation 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 the activities of the Federal Government for the enhancement of domestic preparedness against the consequences of terrorist attacks.

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 or 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 proposed allocations within the Department of unexpended funds transferred in connection with transfers under the plan.

(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 revise 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 the President has transmitted the reorganization plan to the appropriate congressional committees pursuant to subsection (a); or

(B) the end of the transition period.

(2) STATUTORY CONSTRUCTION.—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.

(3) 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 functions relating to the agency immediately 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 executive agency may, on a reimbursable basis, provide services or detail personnel to assist with the transition.

(c) TRANSFER OF FUNDS.—Until the transfer of an agency 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; and

(2) for purposes for 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 any such funds transfer is made.

(d) ACTING OFFICIALS.—(1) During the transition period, pending the advice and consent of

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 to be made by and with such 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 designation, to act in such office until 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 of designation.

(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 Department of any 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.

(e) TRANSFER OF PERSONNEL, ASSETS, OBLIGATIONS, AND FUNCTIONS.—Upon the transfer of an agency to the Department—

(1) the personnel, assets, and obligations held by or available in connection with the agency shall be transferred to the Secretary for appropriate allocation, subject to the approval of the Director of the Office of Management and Budget and in accordance with the provisions of section 1531(a)(2) of title 31, United States Code; and

(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 pursuant to section 763(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 subsection 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) For purposes of 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 and 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 appeals therefrom, 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 or 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 shall be had, 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, directives, or delegations 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 following such transfer if they refer to the agency by name.

(e) EMPLOYMENT PROVISIONS.—(1) Notwithstanding the generality of the foregoing (including subsections (a) and (d)), in and for the Department the Secretary may, in regulations prescribed jointly with the Director of the Office of Personnel Management, adopt the rules, procedures, terms, and conditions, established by statute, rule, or regulation before the effective date of this Act, relating to employment in any agency transferred to the Department pursuant to this Act; and

(2) except as otherwise provided in this Act, or under authority granted by this Act, the transfer pursuant to this Act of personnel shall not alter the terms and conditions of employment, including compensation, of any employee so transferred.

SEC. 813. TERMINATIONS.

Except as otherwise provided in this Act, whenever all the functions vested by law in any agency have been transferred pursuant to this Act, each position and office the incumbent of which was authorized to receive compensation at the rates prescribed for an office or position at level II, III, IV, or V, of the Executive Schedule, shall terminate.

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, available, or to be made available, in connection with the functions transferred by this Act, as the Director may deem necessary to accomplish the purposes of this Act.

SEC. 815. NATIONAL IDENTIFICATION SYSTEM NOT AUTHORIZED.

Nothing in this Act shall be construed to authorize the development of a national identification system or card.

SEC. 816. CONTINUITY OF INSPECTOR GENERAL OVERSIGHT.

Notwithstanding the transfer of an agency to the Department pursuant to this Act, the Inspector General that exercised oversight of such agency prior to such transfer shall continue to exercise oversight of such agency during the period of time, if any, between the transfer of such agency to the Department pursuant to this Act and the appointment of the Inspector General of the Department of Homeland Security in accordance with section 103(b) of this Act.

SEC. 817. REFERENCE.

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 any officer or office the functions of which are so 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 ''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 Secretaries, Department of Homeland Security.'' as a new item after ''Affairs.'' the third place it appears;

(4) in section 5315, by inserting ''Assistant Secretaries, Department of Homeland Security.'', ''General Counsel, Department of Homeland Security.'', ''Chief Financial Officer, Department of Homeland Security.'', ''Chief Information Officer, Department of Homeland Security.'', and ''Inspector General, Department of Homeland Security.'' as new items after ''Affairs.'' the first place it appears; and

(5) in section 5315, by striking ''Commissioner of Immigration and Naturalization, Department of Justice.''.

(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 section 3056 of title 18, by striking ''of the 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, 53, 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 101(9), 130b(a), 130b(c)(4), 130c(h)(1), 379, 513(d), 575(b)(2), 580(e)(6), 580a(e), 651(a), 671(c)(2), 708(a), 716(a), 717, 806(d)(2), 815(e), 888, 946(c)(1), 973(d), 978(d), 983(b)(1), 985(a), 1033(b)(1), 1033(d), 1034, 1037(c), 1044d(f), 1058(c), 1059(a), 1059(k)(1), 1073(a), 1074(c)(1), 1089(g)(2), 1090, 1091(a), 1124, 1143, 1143a(h), 1144, 1145(e), 1148, 1149, 1150(c), 1152(a), 1152(d)(1), 1153, 1175, 1212(a), 1408(h)(2), 1408(h)(8), 1463(a)(2), 1482a(b), 1510, 1552(a)(1), 1565(f), 1588(f)(4), 1589, 2002(a), 2302(1), 2306b(b), 2323(j)(2), 2376(2), 2396(b)(1), 2410a(a), 2572(a), 2575(a), 2578, 2601(b)(4), 2634(e), 2635(a), 2734(g), 2734a, 2775, 2830(b)(2), 2835, 2836, 4745(a), 5013a(a), 7361(b), 10143(b)(2), 10146(a), 10147(a),

10149(b), 10150, 10202(b), 10203(d), 10205(b), 10301(b), 12103(b), 12103(d), 12304, 12311(c), 12522(c), 12527(a)(2), 12731(b), 12731a(e), 16131(a), 16136(a), 16301(g), and 18501 by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(2) Section 801(1) of such title is amended by striking ''the General Counsel of the Department of Transportation'' and inserting ''an official designated to serve as Judge Advocate General of the Coast Guard by the Secretary of Homeland Security''.

(3) Section 983(d)(2)(B) of such title is amended by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(4) Section 2665(b) of such title is amended by striking ''Department of Transportation'' and inserting ''Department in which the Coast Guard is operating''.

(5) Section 7045 of such title is amended—

(A) in subsections (a)(1) and (b), by striking ''Secretaries of the Army, Air Force, and Transportation'' both places it appears and inserting ''Secretary of the Army, the Secretary of the Air Force, and the Secretary of Homeland Security''; and

(B) in subsection (b), by striking ''Department of Transportation'' and inserting ''Department of Homeland Security''.

(6) Section 7361(b) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(7) Section 12522(c) of such title is amended in the subsection heading by striking ''TRANSPORTATION'' and inserting ''HOMELAND SECURITY''.

(c) TITLE 37, U.S.C.—Title 37, United States Code, is amended in sections 101(5), 204(i)(4), 301a(a)(3), 306(d), 307(c), 308(a)(1), 308(d)(2), 308(f), 308b(e), 308c(c), 308d(a), 308e(f), 308g(g), 308h(f), 308i(e), 309(d), 316(d), 323(b), 323(g)(1), 325(i), 402(d), 402a(g)(1), 403(f)(3), 403(l)(1), 403b(i)(5), 406(b)(1), 417(a), 417(b), 418(a), 703, 1001(c), 1006(f), 1007(a), and 1011(d) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(d) OTHER DEFENSE-RELATED LAWS.—(1) Section 363 of Public Law 104–193 (110 Stat. 2247) is amended—

(A) in subsection (a)(1) (10 U.S.C. 113 note), by striking ''of Transportation'' and inserting ''of Homeland Security''; and

(B) in subsection (b)(1) (10 U.S.C. 704 note), by striking ''of Transportation'' and inserting ''of Homeland Security''.

(2) Section 721(1) of Public Law 104–201 (10 U.S.C. 1073 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(3) Section 4463(a) of Public Law 102–484 (10 U.S.C. 1143a note) is amended by striking ''after consultation with the Secretary of Transportation''.

(4) Section 4466(h) of Public Law 102–484 (10 U.S.C. 1143 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(5) Section 542(d) of Public Law 103–337 (10 U.S.C. 1293 note) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(6) Section 740 of Public Law 106–181 (10 U.S.C. 2576 note) is amended in subsections (b)(2), (c), and (d)(1) by striking ''of Transportation'' each place it appears and inserting ''of Homeland Security''.

(7) Section 1407(b)(2) of the Defense Dependents' Education Act of 1978 (20 U.S.C. 926(b)) is amended by striking ''of Transportation'' both places it appears and inserting ''of Homeland Security''.

(8) Section 2301(5)(D) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6671(5)(D)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(9) Section 2307(a) of of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 6677(a)) is amended by striking ''of Transportation'' and inserting ''of Homeland Security''.

(10) Section 1034(a) of Public Law 105–85 (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. 465(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 added 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 Coast Guard to the Department.

SEC. 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. 300hh–12) is amended—

(1) in subsection (a)(1)—

(A) 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'' between ''in coordination with'' and ''the Secretary of Veterans Affairs''; and

(C) by inserting ''of Health and Human Services'' after ''as are 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 section shall take effect on the date of transfer of the Strategic National Stockpile of the Department of Health and Human Services to the Department.

SEC. 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. 262a) is amended—

(1) in subsection (a)(1)(A), by inserting ''(as defined in subsection (l)(9))'' after ''Secretary'';

(2) in subsection (h)(2)(A), by inserting ''Department of Homeland Security, the'' before ''Department of Health and Human Services''; and

(3) in subsection (l), by inserting after paragraph (8) a new paragraph as follows:

''(9) The term 'Secretary' means the Secretary of Homeland Security, in consultation with the Secretary of Health and Human Services.''.

(b) PUBLIC HEALTH SECURITY AND BIOTERRORISM PREPAREDNESS AND RESPONSE ACT OF 2002.—Section 201(b) of the Public Health Security and Bioterrorism Preparedness and Response Act of 2002 (Public Law 107–188; 42 U.S.C. 262a note) is amended by striking ''Secretary of Health and Human Services'' and inserting ''Secretary of Homeland Security''.

(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.

SEC. 907. TRANSFER OF CERTAIN SECURITY AND LAW ENFORCEMENT FUNCTIONS AND AUTHORITIES.

(a) AMENDMENT TO PROPERTY ACT.—Section 210(a)(2) of the Federal Property and Administrative Services Act of 1949 (40 U.S.C. 490(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'.

''SEC. 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 secured by the Federal Government (including any agency, instrumentality, or wholly owned or mixed-ownership corporation thereof) and the persons on the property.

''(b) OFFICERS AND AGENTS.—

''(1) DESIGNATION.—The Secretary may designate employees of the Department of Homeland Security, including employees transferred to the Department from the Office of the Federal Protective Service of the General Services Administration pursuant to the Homeland Security Act of 2002, as officers and agents for duty in connection with the protection of property owned or occupied by the Federal Government and persons on the property, including duty in areas outside the property to the extent necessary to protect the property and persons on the property.

''(2) POWERS.—While engaged in the performance of official duties, an officer or agent designated under this subsection may—

''(A) enforce Federal laws and regulations for the protection of persons and property;

''(B) carry firearms;

''(C) make arrests without a warrant for any offense against the United States committed in the presence of the officer or agent or for any felony cognizable under the laws of the United States if the officer or agent has reasonable grounds to believe that the person to be arrested has committed or is committing a felony;

''(D) serve warrants and subpoenas issued under the authority of the United States; and

''(E) conduct investigations, on and off the property in question, of offenses that may have been committed against property owned or occupied by the Federal Government or persons on the property.

''(F) carry out such other activities for the promotion of homeland security as the Secretary may prescribe.

''(c) REGULATIONS.—

''(1) IN GENERAL.—The Secretary, in consultation with the Administrator of General Services, may prescribe regulations necessary for the protection and administration of property owned or occupied by the Federal Government and persons on the property. The regulations may include reasonable penalties, within the limits prescribed in paragraph (2), for violations of the regulations. The regulations shall be posted and remain posted in a conspicuous place on the property.

''(2) PENALTIES.—A person violating a regulation prescribed under this subsection shall be fined under title 18, United States Code, imprisoned for not more than 30 days, or both.

''(d) DETAILS.—

''(1) REQUESTS OF AGENCIES.—On the request of the head of a Federal agency having charge or control of property owned or occupied by the Federal Government, the Secretary may detail officers and agents designated under this section for the protection of the property and persons on the property.

''(2) APPLICABILITY OF REGULATIONS.—The Secretary may—

''(A) extend to property referred to in paragraph (1) the applicability of regulations prescribed under 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) AUTHORITY OUTSIDE FEDERAL PROPERTY.—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) SECRETARY 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 Secretary and 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(l)(2)(B), by inserting ''for a period not to exceed 30 days'' after ''effective''; and

(2) in section 114(l)(2)(B), by inserting ''ratified or'' after ''unless''.

SEC. 909. RAILROAD SECURITY LAWS.

Title 49, United States Code, is amended—

(1) in section 20106 by inserting in the second sentence, '', including security,'' after ''railroad safety'' and ''or the Secretary of Homeland Security'' after ''Secretary of Transportation''; and

(2) in section 20105—

(A) by inserting ''or the Secretary of Homeland Security'' after ''Secretary of Transportation'' in subsection (a);

(B) by inserting ''of Transportation or the Secretary of Homeland Security'' after ''issued by the Secretary'' in subsection (a);

(C) by inserting ''of Transportation or the Secretary of Homeland Security, as appropriate,'' after ''to the Secretary'' in subsection (a), and after ''Secretary'' in subsection (b)(1)(A)(iii) and (B)(iv), the first place it appears in subsections (b)(1)(B) and (B)(iii) and (d), each place it appears in subsections (c)(1), (c)(2), (e), and (f), and the first four times it appears in subsection (b)(3);

(D) by inserting ''of Transportation or the Secretary of Homeland Security, as appropriate'' after ''Secretary'' in subsection (b)(1)(A)(ii), (b)(1)(B)(ii), the second place it appears in subsection (b)(1)(B)(iii), and the last place it appears in subsection (b)(3);

(E) in subsection (d), by replacing ''Secretary's'' with ''Secretary of Transportation's'' and adding before the period at the end ''or the Secretary of Homeland Security's duties under section 114''; and

(F) in subsection (f), by adding before the period at the end ''or section 114''.

SEC. 910. OFFICE OF SCIENCE AND TECHNOLOGY POLICY.

The National Science and Technology Policy, Organization, and Priorities Act of 1976 is amended—

(1) in section 204(b)(1) (42 U.S.C. 6613(b)(1)), by inserting ''homeland security,'' after ''national security,''; and

(2) in section 208(a)(1) (42 U.S.C. 6617(a)(1)), by inserting ''the Office of Homeland Security,'' after ''National Security Council,''.

SEC. 911. NATIONAL OCEANOGRAPHIC PARTNERSHIP PROGRAM.

Section 7902(b) of title 10, United States Code, is amended by adding at the end the following new paragraphs:

''(13) The Under Secretary for Science and Technology of the Department of Homeland Security.

''(14) Other Federal officials the Council considers appropriate.''.

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 subparagraph after subparagraph (F):

''(G) 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. 684) shall apply with respect to the Chief Information Officer of the Department.

(2) Section 5131(c) of the Clinger-Cohen Act of 1996 (40 U.S.C. 1441(c)) is amended by inserting ''or appointed'' after ''a Chief Information Officer designated''.

(b) TITLE 44.—Chapter 35 of title 44, United States Code, is amended—

(1) in section 3506(a)(2)—

(A) in subparagraph (A) by striking ''subparagraph (B)'' and inserting ''subparagraphs (B) and (C)''; and

(B) by adding at the end the following:

''(C) The Chief Information Officer of the Department of Homeland Security shall be an individual who is appointed by the President.'';

(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)(3) of section 3506, by inserting ''or appointed'' after ''The Chief Information Officer designated''.

TITLE X—NATIONAL HOMELAND SECURITY COUNCIL

SEC. 1001. NATIONAL HOMELAND SECURITY COUNCIL.

There is established within the Executive Office 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.

The members of the Council shall be the following:

(1) The President.

(2) The Vice President.

(3) The Secretary of Homeland Security.

(4) The Attorney General.

(5) The Secretary of Health and Human Services.

(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 designated by the President.

SEC. 1004. OTHER FUNCTIONS AND ACTIVITIES.

For the purpose of more effectively coordinating the policies and functions of the United States Government relating to homeland security, the Council shall—

(1) assess the objectives, commitments, and risks of the United States in the interest of homeland security and to make resulting recommendations to the President;

(2) oversee and review homeland security policies of the Federal Government and to make resulting recommendations to the President; and

(3) perform such other functions as the President 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 Executive 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 SECURITY 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 may otherwise direct.

The CHAIRMAN. No amendment to the amendment in the nature of a substitute is in order except those printed in House Report 107–615 and amendments en 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 Member 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 amendment, 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 en bloc consisting of amendments printed in the report not earlier disposed of or germane modifications of any such amendment.

Amendments en bloc shall be considered read, except that modification shall be reported, shall be debatable 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 amendment included in the amendments en bloc may insert a statement in the CONGRESSIONAL RECORD immediately before disposition of the amendment en bloc.

The chairman of the Committee of the Whole may recognize for consideration 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 amendment No. 1 printed in House Report 107–615.

AMENDMENT NO. 1 OFFERED BY MR. OBERSTAR

Mr. OBERSTAR. 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 402(5) of the bill (and redesignate subsequent paragraphs accordingly).

In section 501(1) of the bill, strike '', major disasters, and other emergencies''.

In the matter preceding subparagraph (A) of section 501(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 501(5) of the bill, strike and ''disasters''.

Strike section 501(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 ''(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 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 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 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.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, the Federal Emergency Management Agency shall remain the lead agency for the Federal Response Plan establish under Executive Order 12148 (44 Fed. Reg. 43239) and Executive Order 12656 (53 Fed. Reg. 47491).

(2) 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 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 Government 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 four federally declared disasters emerging from terrorism: the World Trade Center, the Pentagon, the bombing of the Murrah Federal Building, and the attack on the World Trade Center in 1993, effectively, efficiently. Its response was never diminished by its independent status and was, in fact, enhanced by that status.

Since 1976, FEMA has responded to 927 federally declared disasters and 77 emergency declarations resulting from 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, of State and local officials, 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 elevated the effectiveness of 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 morass of Washington agencies and allowed it ''to effectively coordinate the resources of 26 Federal agencies following disaster events.'' James Lee Witt said the plan to move FEMA to the new Department ''would be a mistake.''

I concur.

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

The CHAIRMAN. Is the gentleman from Texas (Mr. ARMEY) opposed to the amendment?

Mr. ARMEY. Mr. Chairman, I rise in opposition.

The CHAIRMAN. The gentleman is recognized for 10 minutes in opposition to the amendment.

Mr. ARMEY. Mr. Chairman, I yield 3 minutes to the gentleman from Pennsylvania (Mr. WELDON).

(Mr. WELDON of Pennsylvania asked 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 1993.

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 made a commitment to your firefighters that you would work with them, that you would listen to them, because each of you in your districts have hundreds of firefighters, both paid and volunteer, who are the backbone of FEMA. Eighty-five percent of them are volunteer.

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 the Federal Emergency Management Agency must 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 slapping 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 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, will the gentleman yield?

Mr. OBERSTAR. I yield to the gentleman from Pennsylvania.

Mr. WELDON of Pennsylvania. Every fire organization opposes this amendment. Every one.

□ 2230

Mr. OBERSTAR. Mr. Chairman, it is an overcharacterization, to use the gentleman's language.

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

Mr. COSTELLO. Mr. Chairman, I rise in support of the amendment offered by myself, the gentleman from Minnesota (Mr. OBERSTAR), and the gentleman from Indiana (Mr. ROEMER). 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 groups 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 coordinating 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. OBERSTAR), 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 this agency that has been very effective. The agency will be more 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. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY).

Mr. THORNBERRY. 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 quickly 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 that 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 tornadoes and 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. OBERSTAR. 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, so I rise tonight in very strong support for the Oberstar-Costello-Roemer amendment to maintain the independence of the Federal Emergency Management Agency.

FEMA's primary mission is to provide assistance after natural disasters. It is recognized throughout the country as the premium agency that people can depend upon. It has helped all sorts of disaster victims. It has helped certainly an entire island in my State when a hurricane hit there about 10 years ago. It not only responds to the disaster, but it helps people replace their home, repair damaged conditions, and it brings comfort and solace to the individuals who are devastated. FEMA is an entirely unique agency and to put it into this very large homeland security agency which has an entirely different mission would completely subsume the efficiency, purpose, and mission of FEMA.

So I hope that this House will support this amendment to keep FEMA and the integrity of this operation outside the Department. It can coordinate activities with the new Department, but leave FEMA as an independent agency.

Mr. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Connecticut (Mr. SHAYS).

Mr. SHAYS. Mr. Chairman, 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 part of the homeland security office.

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds.

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 become severely diminished as Congress crafts legislation to create the new department.''

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

Mr. ARMEY. Mr. Chairman, it is my pleasure to yield 1 minute to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH 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 arguments 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 fact is, the 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 statutorily established FEMA 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 move 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 fungible dollars that can go from one 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 committee reported out 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 mammoth bureaucracy 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 stranded 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. ARMEY. Mr. Chairman, I yield myself the remaining time.

□ 2245

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, throughout that long day of the markup, the gentlewoman from California said repeatedly locality, locality, locality.

When America is safe in our communities, America is safe. We know, we understand, we all intuitively grasp at some level and it is grasped at the most pain any acute level of understanding by the firefighters of America that this new threat we face, this insidious infliction that could be visited, yes, on my community or your community.

Mr. Chairman, our firefighters know that this requires us to have a relationship with the Federal Government unlike we have had before, and when someone is in the local community and they think of the catastrophe that might come, be it a flood, a vicious storm or a vicious attack from somebody who hates our way of life, the local community is most comfortable with the agency they know, FEMA; FEMA with whom they share training, FEMA whom they know by name, FEMA whom they have seen in action before. When the crisis strikes, they want that familiar face.

Members might say if their singular concern is the well-being of FEMA as an institution and organization in Federal Government, it is better to keep it out here alone on its pedestal. One might say that if one was willing to betray FEMA because FEMA sees itself as the Federal force for comfort repair in every community in America and FEMA wants to be there. And this Congress should honor FEMA by putting them where they are needed most.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR).

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

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

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Minnesota (Mr. OBERSTAR) will be postponed.

It is now in order to consider amendment No. 2 printed in House Report 107–615.

AMENDMENT NO. 2 OFFERED BY MR. YOUNG OF ALASKA

Mr. YOUNG of Alaska. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the 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) 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 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 positioning emergency equipment and supplies, through evacuating potential victims, through providing food, water, shelter, and medical case to those in need, and through restoring 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.

(b) FEDERAL RESPONSE PLAN.—

(1) ROLE OF FEMA.—Notwithstanding any other provision of this Act, 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 12656 (53 Fed. Reg. 47491).

(2) 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 revise the Federal Response Plan to reflect the establishment of and incorporate the Department.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Alaska (Mr. YOUNG) and a Member opposed each will control 10 minutes.

Mr. YOUNG of Alaska. Mr. Chairman, who is going to have the time in opposition?

The CHAIRMAN. Who takes the time in opposition to the amendment?

Mr. OBERSTAR. Mr. Chairman, I seek the time in opposition.

The CHAIRMAN. The gentleman from Minnesota (Mr. OBERSTAR) will be recognized for 10 minutes.

The Chair recognizes the gentleman from Alaska (Mr. YOUNG).

(Mr. YOUNG of Alaska asked and was given permission to revise and extend his remarks.)

Mr. YOUNG of Alaska. Mr. Chairman, I yield myself such time as I may consume.

I can only agree with what has been said about FEMA. And if I thought for a moment that homeland security would not become a reality, I would be supporting the gentleman from Minnesota's (Mr. OBERSTAR) amendment. But I am also a very practical individual who believes that if we are going to have homeland security and FEMA is in it, it ought to be an entity as one unit. I frankly do not know how this got into the committee's markup because what it does is weaken FEMA.

It actually, I believe, is a turf war, and I think that is very unfortunate because at the very beginning when President Bush asked for Homeland Security, I told him personally that my opposition to the proposal was not a turf war, it was how it was going to be constructed. I will give the gentleman from Texas (Mr. ARMEY) credit and the gentlewoman from California (Ms. PELOSI) credit for, in fact, answering most of my questions on the Coast Guard, and I thank them for that because it is the right thing to do.

I do think it was wrong thing to do to divide FEMA. I believe FEMA should stay intact as an entity so it can do the job people expect it to do, so it can do the job it has done and will continue to do the job under the Homeland Security bill. A lot has been said here about the importance of FEMA responding, and as all of my colleagues know it, in the New York tragedy that happened with the terrorists, FEMA was on the frontlines and did an outstanding job. So I compliment FEMA for that.

Much has been said about who supports and who does not support. I can say that I have found no one that opposes my amendment other than the Committee on the Judiciary. The firefighters support my amendment, as they should. The FEMA people themselves support my amendment as an entity. This was not the President's suggestion. This, in fact, was the ad hoc committee's suggestion.

I think in retrospect, as they look at it, maybe there was a slight mistake made, not intentionally, but because someone else asked for it and did not understand the ratification of it. So I am asking my colleagues tonight and hopefully in the vote tomorrow that if the gentleman from Minnesota's (Mr. OBERSTAR) amendment fails to at least accept the idea of keeping FEMA as an entity, because if that was not to happen, I think we would lose the total effectiveness of FEMA as a respondent, as we mentioned, to earthquakes and terrorists attacks, et cetera.

So I again ask my colleagues to support this amendment and make sure that we have an agency that can do the job correctly under the Secretary of Homeland Security.

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

Mr. OBERSTAR. Mr. Chairman, I yield myself 30 seconds. And I do so again in support of the unanimous position of the Committee on Transportation and Infrastructure, a wisely reported measure that would keep FEMA as an independent agency.

The plan of the Select Committee would chop off one entity of FEMA and send it to another sector, another box within the Department of Homeland Security, and keep the body of FEMA intact in another box. That does not make any sense at all.

That does not make any sense at all. That is why we wanted to keep the agency together.

Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. SMITH).

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

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

Mr. Chairman, I oppose this amendment. I support the separation of the Office of National Preparedness from the Federal Emergency Management Agency, FEMA. This was recommended by the Committee on the Judiciary in its views on H.R. 5005.

Mr. Chairman, FEMA has an important role to play when a natural disaster occurs. Its core mission is to provide assistance to States and local officials. In sharp contrast to FEMA's natural disaster mission, the stated function of the Offices of National Preparedness, ONP, currently within FEMA, is to respond to terrorist attacks. This office is similar to the Department of Justice's Offices of Domestic Preparedness, and yet both programs train State and local first responders for such events.

Merging the Office of National Preparedness with the Office of Domestic Preparedness will ensure the Federal coordination of State and local first responders. It ensures that they both receive law enforcement crisis management training and consequence management training.

As James Witt, the former director of FEMA stated, ''FEMA has become a model agency by focusing on its prime mission: Responding to disasters and trying to reduce their impact in the future.''

Mr. Chairman, this mission is inconsistent with the purpose of ONP, which is described by Bruce Baughman, director of ONP at FEMA, in a January 30, 2002 letter, is to oversee ''consequence management and the impacts as a result of 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, fire fighters and other emergency responders, who must be trained together to assure a coordinated response.

FEMA, however, has stated that it will NOT provide training and equipment needs to first responders for law enforcement's crisis management functions. But a terrorist attack is a Federal crime 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 impact as a result of a weapons of mass destruction (WMD) incident. ONP's mission fits more appropriately with the other first responder programs.

The 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 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 WTC 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 imbalanced focus for an agency which generally responds to natural disasters. For a future 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 SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary.
JOHN CONYERS, 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 SENSENBRENNER, Chairman, Committee on the Judiciary; JOHN CONYERS, 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 of the House Intelligence Committee; 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 Prepareness (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. For instance, they must be trained in detection 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 Prepareness, and the National Domestic Prepareness Office training programs. Together, these programs will ensure a coodinated 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'' will *not exist* if ONP is placed back into FEMA because as Director Allbaugh 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 training, planning and exercises for 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 Alaska. 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 chairman for yielding me time.

Mr. Chairman, I want to preface my statement by making clear that I support our first responders and the vital worth 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 respect 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.

The amendment offered 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 to 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 Pennsylvania (Mr. WELDON), 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 Brookings 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 we not respect 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, I do not care what the Committee on the Judiciary says. My friend from Texas (Mr. SMITH) 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 call upon and they have told us what they want in black and white.

□ 2300

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 Brookings Institution told us how to organize this Department.

Vote for the firefighters. Vote for this amendment, and vote down the Oberstar amendment.

FIRE SERVICE POSITION PAPER ON THE PROPOSED DEPARTMENT OF HOMELAND SECURITY

Overview

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 future emergency incidents, including terrorist attacks, hazardous materials and emergency medical services incidents, technical rescues and fires. These, plus many other challenges, are 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 is tasked with 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 clearly articulated from the onset, placing heavy emphasis on response times and exposure to risks. First responders are fire and rescue, emergency medical services and law enforcement personnel. This definition will determine to a large extent the distribution of federal funds to local, state and federal response agencies. To this end, it is imperative that funding for training and equipment reach the local level where it is needed most. Moreover, existing federal programs benefiting local first responders must be preserved. Of particular importance to the fire service is the Assistance to Firefighters grant program, authorized at $900 million for fiscal year 2003. Congress needs to fully fund this program to bring all fire departments up to a baseline level of readiness and keep them there. Furthermore, fire departments should be able to apply these funds to all uses contained in the enabling legislation, including initiatives to hire career firefighters and to recruit and retain volunteer firefighters. Any new grant programs addressing terrorism must be inclusive of all first responders and authorized to deliver at least 90 percent of all funds to local public safety agencies.

3. Local first responders are this nation's primary defense against terrorism. Without sufficient staffing and training, the risk of injury or death increases dramatically. This is why fire departments—both volunteer and career—must have adequate staffing levels and continuous training. Training must consist of existing national programs that utilize first responders to train first responders, and take full advantage of state and regional training centers. Moreover, training and equipment must conform to nationally-recognized voluntary consensus standards where such standards exist.

4. The tragic events of September 11th have again demonstrated the importance of communications to public safety. This issue, itself, is not limited to on-scene communications, but encompasses a wide variety of needs including: access to intelligence data on possible terrorist threats/attacks, additional spectrum for interoperability of radio systems, and new technologies that can track the positions of firefighters inside buildings.

These are some important components of the blueprint for a Department of Homeland Security. We ask for both Congress and the administration to give these concerns their every consideration as they lay the groundwork for a new federal agency. Firefighters have long recognized their role in protecting our nation against threats of all magnitude and will continue to serve on the front lines against future attacks. No matter what the final configuration of the complete national response plan to terrorism, the fire service and other first responders will always be first to arrive at the scene. They must be properly staffed, trained, and equipped in order to make a positive difference at the ''moment of truth.'' It is imperative that they be given the recognition and 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 grant program that provides direct 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 Assistance to Firefighters grant program remains separate and distinct from any new funding programs for first responders and that it be fully funded to the amounts authorized by law. This is because local fire and emergency services departments are the only organizations deployed for the purpose of saving lives and mitigating property and environmental damage caused by natural or manmade disasters. They are strategically located throughout America and staffed, trained and equipped to arrive on the scene within 4 to 6 minutes of notification of an incident. It is only the local government level that Federal funds intended for first responders can be assured of being utilized for the purposes intended. Furthermore, fire departments should be able to apply these funds to all uses contained in the enabling legislation, including initiatives to hire career firefighters and to recruit and retain volunteer firefighters.

Providing support for the basics of fire fighting enhances all fire department responsibilities, including terrorism response. The history of the program to date: Authorized at $900 million through fiscal year 2004, Funded at $100 million for fiscal year 2001 and $360 million for fiscal year 2002, Almost 20,000 departments (of a total of 26,350) sought funding in each of the first 2 years in amounts approaching $3 billion each year.

FIRST RESPONDER GRANT PROGRAM

America's fire and emergency service stands strongly in support of the proposed

$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 through 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 adequate 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 overnight must be corrected.

Thirdly, the States must expedite the funding to local governments. States are already undertaking needs assessments for terrorism preparedness, so within a limited amount of time the funding should be distributed to local governments.

Finally, if a match 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.

WEAPONS OF MASS DESTRUCTION (WMD) TRAINING

The current WMD fire fighter training program operated by the Office of Domestic Preparedness in the U.S. Department of Justice must be retained and strengthened. The organizations that currently provide specialized WMD training under this program posses invaluable expertise and experience, which should be preserved under any plan to reorganize federal training programs. It is important to utilize existing and established programs to ensure the right training reaches the right people.

STANDARDIZATION OF EQUIPMENT

The InterAgency Board for Equipment Standardization and InterOperability (IAB) is designed to establish 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 explosives incident response equipment. In addition to radio communication systems, interoperability applies to a firefighter's protective gear and 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 made 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 federal agencies. 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—specifically the fire and emergency services, emergency medical services and law enforcement—serve a primary role in the development of all federal initiatives dealing 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 that is 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. It is not part of the manager'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 enthusiastic supporter 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, dismantle 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.

I have worked diligently to establish 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 trying to do; 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 also 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 disaster, manmade disasters, 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. ARMEY. 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 gentleman 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: ''including, but not limited to, power production, generation, and distribution systems, information technology and telecommunications systems (including satellites), electronic financial and property record storage and transmission systems, emergency preparedness communications systems, and the physical and

technological assets that support such systems''.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. COX) and a Member opposed each will 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. Chairman, 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 our 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 computers 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 Informational 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 technology systems, both 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 critical 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 clarifies that when we use 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.

The second reason 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, and information technology assets. As much as 90 percent of our Nation's critical information technology infrastructure, such as financial records, energy distribution, and communication systems are privately 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, former 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:

At the end of title III, insert the following new section:

SEC. 309. HOMELAND SECURITY SCIENCE AND TECHNOLOGY ADVISORY COMMITTEE.

(a) ESTABLISHMENT.—There is established within the Department of a Homeland Security Science 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 Under Secretary for Science and Technology, including identifying research areas of potential importance to the security of the Nation.

(b) MEMBERSHIP.—

(1) APPOINTMENT.—The Advisory Committee shall consist of 20 members appointed by the Under Secretary for Science and Technology, which shall include emergency first-responders or representatives of organizations or associations of emergency first-responders. The Advisory Committee shall also include representatives of citizen groups, including economically disadvantaged communities. The individuals appointed as members of the Advisory Committee—

(A) shall be eminent in fields such as emergency response, research, engineering, new product development, business, and management consulting;

(B) shall be selected solely on the basis of established records of distinguished service;

(C) shall not be employees of the Federal Government; and

(D) shall be so selected as to provide representation of a cross-section of the research, development, demonstration, and deployment activities supported by the Under Secretary for Science and Technology.

(2) NATIONAL RESEARCH COUNCIL.—The Under Secretary for Science and Technology may enter into an arrangement for the National Research Council to select members of the Advisory Committee, but only if the panel used by the National Research Council reflects the representation described in paragraph (1).

(c) TERMS OF OFFICE.—

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(1) IN GENERAL.—Except as otherwise provided in this subsection, the term of office of each member of the Advisory Committee shall be 3 years.

(2) ORIGINAL APPOINTMENT.—The original members of the Advisory Committee shall be appointed to three classes of three members each. One class shall have a term of one year, one a term of two years, and the other a term of three years.

(3) VACANCIES.—A member appointed to fill a vacancy occurring before the expiration of the term for which the member's predecessor was appointed shall be appointed for the remainder of such term.

(d) ELIGIBILITY.—A person who has completed two consecutive full terms of service on the Advisory Committee shall thereafter be ineligible for appointment during the one-year period following the expiration of the second such term.

(e) MEETINGS.—The Advisory Committee shall meet at least quarterly at the call of the Chair or whenever one-third of the members so request in writing. Each member shall be given appropriate notice of the call of each meeting, whenever possible not less than 15 days before the meeting.

(f) QUORUM.—A majority of the members of the Advisory Committee not having a conflict of interest in the matter being considered by the Advisory Committee shall constitute a quorum.

(g) CONFLICT OF INTEREST RULES.—The Advisory Committee shall establish rules for determining when one of its members has a conflict of interest in a matter being considered by the Advisory Committee

(h) REPORTS.—

(1) ANNUAL REPORT.—The Advisory Committee shall render an annual report to the Under Secretary of Science and Technology

for transmittal to the Congress on or before January 31 of each year. Such report shall describe the activities and recommendations of the Advisory Committee during the previous year.

(2) ADDITIONAL REPORTS.—The Advisory Committee may render to the Under Secretary for transmittal to the Congress such additional reports on specific policy matters as it considers appropriate.

(i) FACA EXEMPTION.—Section 14 of the Federal Advisory Committee Act shall not apply to the Advisory Committee.

Amend the table of contents accordingly.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from New York (Mr. ISRAEL) and a Member opposed each will control 5 minutes.

The gentleman from New York (Mr. ISRAEL) is recognized for 5 minutes.

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

Mr. Chairman, we also share the desire to see that something like September 11 never happens again. As a Member would whose district lies about 40 miles from what we now call ''Ground Zero,'' the consideration of the Homeland Security Act holds a very special importance for me. My district lost over 100 people on that tragic day.

One of the great pleasures of serving on the Committee on Science with the gentleman from New York (Mr. BOEHLERT), the chairman of that committee, is the bipartisan manner in which he has guided the committee. I take pride, as I am sure he does, that legislation produced in the Committee on Science bears the input and the collaboration of all of its members. This was true when we debated those areas of the Homeland Security Act that fell in the purview of the committee and passed an amendment to create an advisory committee of the first responders, specifically in the Office of Science and Technology.

Let me explain why this is so necessary. As I said before, my Congressional District is about 40 miles from Ground Zero. Lots of first responders live there. Lots of first responders lived there, until September 11.

Our first responders have something unique and something special to offer the new Homeland Security Department, particularly in the areas of researching and developing new sciences and new technologies to save and protect lives, including their own, in engineering issues, in identifying research and budget priorities for new emergency equipment, even the apparel that protects them.

The compromise that was developed in the committee creates an advisory committee of 20 first responders. They would be selected by the Under Secretary of Science and Technology. They would be eminent in emergency response, research, engineering, and new product development. Mr. Chairman, the fact is that first responders will be the end users. They are the customers of the new technologies and sciences that are developed in the Office of Science and Technology, and they deserve a place at the drawing board.

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 ideas are, and 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 the 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 the amendment offered by the gentleman from New York (Mr. ISRAEL).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider 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 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 Numbered 30) to—

(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) and a Member opposed each will control 5 minutes.

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 their 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 at the 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. BOEHLERT), who supported the amendment in committee, for his leadership in this matter. I would also like to thank the gentlewoman from California (Ms. HARMAN), the gentleman from Virginia (Mr. DAVIS), the gentleman from Connecticut (Mr. SHAYS), the gentleman from Georgia (Mr. CHAMBLISS) for the bipartisan cooperation that occurred in getting effective practical language into the manager's amendment. And, Mr. Chairman, the gentleman 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.

Although there are 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

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. I yield to the gentlewoman from California.

Ms. PELOSI. 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 that exist in 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 presenting 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 to be 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 may include the following:

(1) Systems analysis, risk analysis, and simulation and modeling to determine the vulnerabilities of the Nation's critical infrastructures and the effectiveness of the systems deployed to reduce those vulnerabiblities.

(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 deployed to enhance the security of institutions, facilities, and infrastructure that may be terrorist targets.

(4) Identification of instances when common standards and protocols could improve the 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 OF INSTITUTE ACTIVITIES.—In carrying out the duties described in subsection (c), the Institute shall consult widely with representatives from private industry, institutions of higher education, and nonprofit institutions.

(e) ANNUAL REPORTS.—The Institute shall transmit to the Security 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.

□ 2330

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. BOEHLERT) 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. ARMEY), 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, HHS 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 and emergency personnel 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 be able to supply the depth 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 the current institutes, 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 amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 8 printed in House Report 107–615.

AMENDMENT NO. 8 OFFERED BY MR. CARDIN

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. ARMEY) 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 Secret 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 on reorganizations that may occur 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. ARMEY. 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. 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 resources 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. ARMEY) 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 using the 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. The Customs Service is one of the oldest agencies in the Federal Government. It has a tremendously important function to perform, and it preserves the appropriate congressional oversight. I would urge the majority leader to take a look at it. Without this, the drafting is somewhat suspect.

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

Mr. ARMEY. 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 adopted. 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 committees of 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. The gentleman from Ohio (Mr. PORTMAN) urges Members to follow the wisdom of the Committee on Ways and Means.

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

Mr. Chairman, there is nothing in this amendment that alters that at all. I really did listen very carefully to the majority leader and the gentleman from Connecticut (Mr. SHAYS) because I want to make sure what we do for the Customs Service is consistent with what is in the Customs Service's best interest, and in the best interest of homeland security.

Let me explain the dilemma we have because I think there is a drafting problem without this amendment. We have cut out 25 percent of the Customs Service, calling it the U.S. Customs Service, but it only performs the revenue and trade functions. There is now the other 75 percent which is sort of in no man's land because the U.S. Customs Service is now only revenue and trade.

This amendment says that there will be an entity that deals with the other 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 say to 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 100 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. ARMEY. Mr. Chairman, I yield 2 minutes to the gentleman from Texas (Mr. THORNBERRY) to close on our side.

Mr. THORNBERRY. Mr. Chairman, I oppose this amendment for two reasons. The first reason is the comments that we have already heard: That there were extensive negotiations with the White House and others about how to best deal with the Customs Service. I understand the gentleman's point that this does not reverse those negotiations, but yet part of those negotiations were that the nontrade part of the Customs Service would be merged into one border security entity. This amendment would change that, so it does upset the negotiations which have gone on.

Secondly, part of the key purpose of the border and transportation security of this entity would be to have one seamless team at the border. Now since the Coast Guard is on the water, they are easier to differentiate, and we can have them as a distinct entity, as one of the compromises in this bill does, but it is much more difficult to have a separate entity, different uniforms, for the people who are watching the people come over the border versus the employees who are watching the goods or

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 one 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 radios. To 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.

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

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.

□ 2345

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 the Congress that completing the 14-mile border fence project required to be carried our 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 Chair recognizes 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 smugglers' 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 an area 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 that we have built 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, to 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 could move fairly 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 we should complete 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 accrue to our 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 gentlewoman from California (Mrs. DAVIS) 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 for years on national 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 great respect for my colleague who has 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.

Securing 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 travel, 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 terrorists 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's end. Further, completion 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.

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, this use of technology 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 present, the dedicated men and women who work at the ports of entry are becoming increasingly taxed by the new

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 integrate existing technologies to increase 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 cooperation.

Rather than constructing an old fashioned triple layered wall along the border, a wall that creates a false sense of security, endangers border patrol agents and diverts our needed resources, 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 develop its own priorities without burdening 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 colleague, but let me just say that the opposition which has been stated to the border fence is, at best, bizarre. When we started this fence, Mr. Chairman, there were 300 drug trucks a month full of cocaine and marijuana which were hurtling across the border in these uncontrolled areas, in this mountainous region, the region extending from Otay Mesa to the Pacific coast. 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 murdered 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 and Shadows'' 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 modern fence, it is 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, Mr. Chairman, is, at best, a bizarre 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 deterrents to illegal crossing and could be a deterrent to the crossing of a terrorist organization into that area just a few miles south of the biggest naval base on the west coast.

Ms. PELOSI. Mr. Chairman, I yield the balance of my time to the gentlewoman from California (Mrs. DAVIS).

Mrs. DAVIS of California. Mr. Chairman, I think the area we are talking about is one that we believe now with our new technologies and with some greater priorities that are set as well with the community, that we can provide 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 crossings.

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

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 10 printed in House Report 107–615.

AMENDMENT NO. 10 OFFERED BY MR. OSE

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 10 offered by Mr. OSE:

At the end of title VI add the following:

SEC. . 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 Department under this Act, if such offices are located 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 transferred to the Secretary under this Act.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from California (Mr. OSE) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from California (Mr. OSE).

Mr. OSE. Mr. Chairman, I yield myself 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. Before I do that, I want to make sure that I compliment my good friend the gentleman from Massachusetts (Mr. TIERNEY) who is the subcommittee ranking member with whom I have worked very closely in analyzing the President's bill and drafting bipartisan amendments to perfect it. The President's proposal includes moving agencies which currently have 10 different regional and field office structures into the new department. Neither the President's bill nor the special committee's substitute mentions any changes in these regional and field offices, although changes could be made under the select committee's section 763(a) reorganization authority, to consolidate, alter or discontinue organizational units.

My amendment would require the new department's under secretary for management to develop a consolidation/collocation plan within 1 year. The plan would examine consolidating and collocating regional and field offices in each of the cities with any existing regional or field office in the transferred agencies. My amendment would retain at least one Department of Homeland Security office in each of these cities.

Staff in these consolidated/collocated offices could be cross-trained to respond to the full range of functions which may need to be performed locally. Besides improving Federal preparedness and response, consolidation and collocation should result in overhead and other efficiency savings.

Five examples of existing and different 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 Naturalization Service; the Department of Transportation's Coast Guard; the Department of Treasury's Customs Bureau; 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 Massachusetts 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 gentleman from Massachusetts (Mr. TIERNEY).

□ 2400

Mr. TIERNEY. Mr. Chairman, I thank the gentleman for yielding.

I rise in support of this amendment that was, as was said, to make a plan regarding the consolidation of officers and the crosstraining of Federal employees that ought to be consolidated into the new Department of Homeland Security. I want to thank and commend the gentleman from California (Mr. OSE) with whom I serve in the Committee of Government Reform Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs. As he stated, we have had the opportunity 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: on 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 families 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 terrorism are, as we know, local; and each community has to be prepared for crisis response and catastrophe management. Since September 11, we have

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 suspicious packages and stepped up patrols 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 communicate 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 cooperation, with communication, and with coordination at all levels of government.

But 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 cautionary tale. We simply must train personnel within different agencies that have different cultures and different skills to talk to one another, to share information before disaster strikes.

That is why I join Mr. OSE in introducing this ''good government'' amendment, to ensure that local first responders have a primary point of contact and coordination within the Federal 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 response rather than a bloated 19th century structure, we are not going to effectively fight terrorism from Washington, D.C. Any respected 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.

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

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 11 printed in House Report 107–615.

AMENDMENT NO. 11 OFFERED BY MS. VELÁZQUEZ

Ms. VELÁZQUEZ. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 11 offered by Ms. VELÁZQUEZ:

In section 734 of the bill, insert before the first sentence the following:

(a) OFFICE OF SMALL AND DISADVANTAGED BUSINESS UTILIZATION.—

At the end of section 734 of the bill add the following new subsection:

(b) SMALL BUSINESS PROCUREMENT GOALS.—

(1) IN GENERAL.—The Secretary shall annually establish goals for the participation by small business concerns, by small business concerns owned and controlled by service-disabled veterans, by qualified HUBZone small business concerns, by small business concerns owned and controlled by socially and economically disadvantaged individuals, and by small business concerns owned and controlled by women (as such terms are defined pursuant to the Small Business Act (15 U.S.C. 631 et seq.) and relevant regulations promulgated thereunder) in procurement contracts of the Department.

(2) DEPARTMENT GOALS NOT LESS THAN GOVERNMENT-WIDE GOALS.— Notwithstanding section 15(g) of the Small Business Act (15 U.S.C. 644(g)), each goal established under paragraph (1) shall be equal to or greater than the corresponding Government-wide goal established by the President under section 15(g)(1) of the Small Business Act (15 U.S.C. 644(g)(1)).

(3) INCENTIVE FOR GOAL ACHIEVEMENT.— Achivement of the goals established under paragraph (1) shall be an element in the performance standards for employees of the Department who have the authority and responsibility for achieving such goals.

The CHAIRMAN. Pursuant to House Resolution 502, the gentlewoman from New York (Ms. VELÁZQUEZ) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentlewoman from New York (Ms. VELÁZQUEZ).

Ms. VELÁZQUEZ. Mr. Chairman, I yield myself as much time as I may consume.

I rise today to ensure that the new Department has access to the innovative resources this Nation's small businesses can offer in the defense for our country.

The amendment offered with my colleagues from California and New Mexico makes sure that the American taxpayer gets the best value for the dollar and that the new Department of Homeland Security has access to the best work and highest technology by requiring the new agency to open up its estimated $37 billion market to our Nation's small businesses.

America's small businesses are the top innovators in the global economy. In an age when high technology will help keep us one step ahead of those who will do us harm, we cannot afford to ignore the contributions our small companies can make. When the private sector corporations need a job done quickly, they look to nimble, fast-working small businesses.

Unfortunately, small businesses face many obstacles when trying to win contracts from Federal agencies. The Velázquez-Issa-Wilson amendment will tear down barriers to part of that market by requiring the new Department of Homeland Security to have a small-business goal that is at least the statutory minimum of 23 percent.

The amendment also adds accountability to the process by including goal achievement in Federal contracting officers' performance evaluations.

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 afford 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.

The CHAIRMAN. The question is on the amendment offered by the gentlewoman from New York (Ms. VELÁZQUEZ).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider amendment No. 12 printed in House Report 107–615.

AMENDMENT NO. 12 OFFERED BY MR. HASTINGS OF FLORIDA

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 12 offered by Mr. HASTINGS of Florida:

At the end of title VII, insert the following new section:

SEC. 7 . REQUIREMENT TO COMPLY WITH LAWS PROTECTING EQUAL EMPLOYMENT OPPORTUNITY AND PROVIDING WHISTLEBLOWER PROTECTIONS.

Nothing in this Act shall be construed as exempting the Department from requirements applicable with respect to executive agencies—

(1) to provide equal employment protection for employees of the Department (including pursuant to the provisions in section 2302(b)(1) of title 5, United States Code, and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002 (Pub. L. 107–174)); or

(2) to provide whistleblower protections for employees of the Department (including pursuant to the provisions in section 2302(b)(8) of such title and the Notification and Federal Employee Antidiscrimination and Retaliation Act of 2002).

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Florida (Mr. HASTINGS) and a Member opposed each will control 5 minutes.

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

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

I would like to preface my remarks by thanking the majority leader and the minority whip and all of our colleagues who serve on the Select Committee on Homeland Security. In my judgment, they have done an outstanding job, notwithstanding the time constraints and other obstacles that they have been confronted with. I guess there is some comfort as a Member of this body in knowing that future legislation obviously will assist in refining the product that we will conclude with on tomorrow, and I also know that it is comforting to send a message around the world that this body is capable of responding to all challenges.

Mr. Chairman, I rise to introduce an amendment which adds a new section to title VII to H.R. 5005. The additional

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. ARMEY), 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 these 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 apply to employees of the new Department as well.

I urge my colleagues on both sides of the aisle to support this amendment.

Once again, I thank the gentleman from Texas (Mr. ARMEY) and the gentlewoman from California (Ms. PELOSI) 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 rise in mild opposition.

The CHAIRMAN. The gentleman from Connecticut is recognized for 5 minutes 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 Ohio (Mr. PORTMAN) 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 certainly know the intent 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 to him that 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. . FEDERAL LAW ENFORCMENT 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 with respect to the training of personnel to carry out that authority or the duties of that transferred agency.

(b) CONTINUITY OF OPERATIONS.—All activities of the Federal Law Enforcement Training Center transferred to the Department of Justice under this Act shall continue to be carried out at the locations such activities were carried out before such transfer.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Georgia (Mr. KINGSTON) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Georgia (Mr. KINGSTON).

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

Mr. Chairman, this amendment is rather straightforward. It has to do with a move to move the Federal Law Enforcement Training Center from the Department of Treasury into the Department of Justice. This move, which was not requested 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 Glynco, 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, is it simply says if you do that move that the ongoing 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.

BACKGROUND

FLETC was established as a Treasury bureau in 1970 through a Memorandum of Understanding signed by the heads of eight Federal agencies, including the Secretary of the Treasury 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, counteracting the trend towards proliferating and redundant law enforcement training throughout the government. Congress supported this decision by funding the construction of facilities for FLETC in Glynco, 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 goes unquestioned. The centralized site at Glynco has ensured that our federal law enforcement agents continued to get the best

training available from the best teachers while eliminating the red undancy in infrastructure that multiple sites would provide.

WHY FLETC SHOULD STAY IN TREASURY

The President's Homeland Security Department proposal consists of nine agencies with law enforcement/security functions. All nine (Immigration and Naturalization Service, United States Border Patrol, Federal Aviation Administration, Transportation Security Administration, United States Coast Guard, United States Customs Service, United States Secret Service, and GSA Federal Protection Services) 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 associate our federal law enforcement 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 attempts by the Justice Department to absorb FLETC, usually in conjunction with a new administration coming to power. Each time, a proper study was conducted and the findings concluded that such a move was not in the best interests of our Federal law enforcement. 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 experience with consolidated law enforcement training, they would be the largest customer of the CFLETC (providing about 40 percent of the students). No other agency seemed interested, or ready to assume the task. The CFLETC would be overseen by a multi-agency Board of Directors, they believed that each agency would have appropriate input as to its operation.

In fact, Ramsey Clark, the Attorney General at the time concluded that, ''The Attorney General basically objects to the center being located in a line agency because the agency will begin to dominate the training staff and curriculum and secondarily a better law enforcement image can emerge if training is centered in a non-enforcement agency.''

Phillip Hughes, then Director on the Bureau of the Budget (which would eventually become OPM) worried that ''Concentration of additional control over Federal law enforcement programs in the Department of Justice may raise opposition from Congress and the public through fear of the eventual emergence of a national police force.''

Others concurred and expressed their belief that widening the law enforcement footprint of a Justice Department that was already under criticism from some circles for having both enforcement and prosecution authority vested in the same agency.

The issue of Justice Department control did not resurface until 1976, when the FLETC had a new name and a new headquarters in Glynco, Georgia. Many of the existing participant agencies expressed concerns about the increasingly active and aggressive Justice Department role on the Board of Directors and the growing numbers of Justice students.

Again, concerns relating to the establishment of a national police force were expressed. Large numbers 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, and above all, dedicated itself to training excellence. The concerns gradually subsided.

Halfway through President Carter's administration, the President's reorganization project for federal law enforcement reached a tentative conclusion that the FLETC should be transferred to the Justice Department. Unwilling to lose one of Treasury's most successful bureaus, Treasury officials lobbied hard against any such transfer. And once again, other participating agencies expressed 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 budget and personnel, policy and program development, and longrange planning), and including 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 might have organizational stewardship over the Center, but FLETC belonged to all the agencies, large and small. The board members would not be ignored nor would they allow either Treasury or Justice to overlook their interests—and their interest in the Center. Consolidated training meant not just common training, but joint management, too.

Early in President Reagan's tenure, Justice officials seriously considered an effort to gain management control of the Center. Attorney General William French Smith agreed to support the concept if Secretary of the Treasury Donald Regan would not oppose it. When Regan resisted the idea, it was dropped. Throughout the 1980's, Justice periodically sent out feelers to gauge the reaction to bringing the FLETC into the Justice fold. Frank Keating, a former FBI agent, assistant secretary of Treasury and then as associate attorney general, saw the relationship between the two departments from both perspectives. Convinced that the Center properly belonged under Treasury, partly because 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 associate attorney general] the senior levels of the Justice Department and the FBI 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 smaller agencies, even though they are distinct, would be clouded, and their self-respect and their confidence and their ability to run themselves would be jeopardized by this nine-thousand pound gorilla coming down there to take over.''

The sporadic, almost half-hearted suggestions that Justice take over the training were tributes to the Center's success, the result of envy more than anything else. They sprang, too, from a superficial analysis that Justice's primary in federal law enforcement led logically to management of law enforcement training. Such a conclusion, however persuasive on its face, essentially ignored the historical forces that planted the Center squarely—and firmly—under Treasury.

Again, earlier this year, the administration looked into moving FLETC to Justice. After extensive studies, the bush administration decided that it would not be in their best interests.

WHERE DID THIS REQUEST COME FROM?

The Justice Department has made repeated attempts to take FLETC from Treasury, but each and every time, and after extensive reviews those attempts were thwarted. The decision to more FLETC from the Department of Treasury to the Department of Justice has been made without the benefit of hearings, studies or analysis. In fact, all past studies have concluded that FLETC should remain with the Treasury Department.

A recent Bush Administration study concurred that FLETC should remain in Treasury. The Bush Administration did not request this in their Department of Homeland Security proposal. Treasury did not propose FLETC's transfer. FLETC did not request this transfer. Homeland Security did not offer this proposal. Department of Justice did not request this either.

Mr. Chairman, I do want to make this last comment.

Mr. Chairman, I want to do what is best for homeland security; I want to do what is best for the training center and best for the law enforcement personnel. I just have not been convinced that the case has been made to move it out of Treasury into Justice, when most of the training is actually going to be done in homeland security. So I hope that the conferees work on that.

If the gentleman from Texas can give me some assurance, some comfort level in conference, I would love to hear it.

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.

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I want to say to the gentleman from South Carolina that I appreciate his efforts.

The CHAIRMAN. The gentleman is from Georgia, Mr. Leader.

Mr. KINGSTON. Mr. Chairman, I was going to let the gentleman from Arkansas continue.

Mr. ARMEY. Mr. Chairman, I want to thank the gentleman from Minnesota for that reminder, and now that we have gotten our geography lesson straight, let me thank the gentleman.

The gentleman from Georgia is absolutely right. This agency is so much more a service to this Nation in Georgia where it belongs than it ever could be in South Carolina. And, please, I want to encourage the gentleman to continue his work, and we will accept the amendment.

Mr. SMITH of Texas. Mr. Chairman, I rise in support of this amendment.

The Federal Law Enforcement Training Center-FLETC, which was established in 1970, is an interagency law enforcement training 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, and others.

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, combat terrorism, protect 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 for 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 support the American 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 is coordinated and centralized 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 carryout their 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. . JOINT ENTERAGENCY TASK FORCE.

(a) ESTABLISHMENT—The Secretary may establish and operate a permanent Joint Interagency Homeland Security Task Force composed of representatives from military and civilian agencies of the United States Government for the purposes of anticipating terrorist threats against 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 Forces 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 powers to the cooperating 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 in the war on terrorism 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 military, civilian, and intelligence agencies, working together in the same place. Given the inextricable 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 language 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 interagency 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 as we need something 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 or her core 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 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 therein lies the very danger.

In protecting 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 between 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 instincts as a country.''

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, police that are taught 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. Both of 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 freedoms 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 House, 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 tomorrow, 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 outside of the U.S. border in keeping with title X posse comitatus restrictions. If they have an internal problem, they turn to the National Guard under State control if there is a need for it, but relying upon domestic law enforcement forces that we have in place now.

Mr. ROGERS of Kentucky. Mr. Chairman, I urge the adoption of this amendment, and I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Kentucky (Mr. ROGERS).

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

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

The CHAIRMAN. Pursuant to clause 6 of rule XVIII, further proceedings on the amendment offered by the gentleman from Kentucky (Mr. ROGERS) will be postponed.

It is now in order to consider Amendment No. 15 printed in House report 107–615.

AMENDMENT NO. 15 OFFERED BY MR. RUSH

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

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 15 offered by Mr. RUSH:

At the end of subtitle G of title VII add the following:

SEC. 7__. OFFICE FOR STATE AND LOCAL GOVERNMENT COORDINATION.

(a) ESTABLISHMENT.—There is established within the Office of the Secretary the Office for State and Local Government Coordination, to oversee and coordinate departmental programs for and relationships with State and local governments.

(b) RESPONSIBILITIES.—The Office establised 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 government meaningful input from State and local government to assist the development of the 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 Chair recognizes 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 this country.

My amendment will work to make that good news even better by bridging the gaps between local first responders and the Federal Government. And it would do so specifically, Mr. Chairman, by creating an office for State and local government coordination, which will assist us in streamlining relations between the new Department and State and local governments. Most importantly, perhaps, the office will be responsible for developing a process for receiving meaningful input from local and State governments on how this most important partnership, this vital partnership, should be strengthened.

This amendment has the support of the administration, as well as the National Conference of State Legislators, the National Governors Association, the Council of State Governments, the U.S. Council of Mayors, the International City and County Management Association, the National League of Cities and, last but not least, the National Association of Counties.

□ 0030

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 minimize 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 we both 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 the amendment offered by the gentleman from Illinois (Mr. RUSH).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider 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—

(1) a report assessing the resources and requirements of executive agencies relating to border security and emergency preparedness issues;

(2) a report certifying the preparedness of the United States to prevent, protect against, and respond to natural disasters, cyber attacks, and incidents involving weapons of mass destruction; and

(3) a report assessing the emergency preparedness of each State, including an assessment of each State's to the responsibilities specified in section 501.

(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; and

(2) recommending any conforming changes in law necessary as a result of the enactment and implementation of this Act.

The CHAIRMAN. Pursuant to House Resolution 502, the gentleman from Connecticut (Mr. SHAYS) and a Member opposed will each control 5 minutes.

The Chair recognizes the gentleman from Connecticut (Mr. SHAYS).

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

Mr. Chairman, this amendment would add a section to the bill to require biannual reports to Congress on three matters: The status of efforts to improve border security and emergency preparedness; the status of our overall preparedness to prevent, mitigate and, if necessary, respond to large-scale emergencies; the status of each State preparedness.

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 changes of this substantial reorganization effort. These reports would provide a needed measure of transparency to 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 gentlewoman 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 produced and delivered 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 prepared each State government is 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. ARMEY. 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. THORNBERRY) 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. SENSENBRENNER 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:

Sec. 1. Short title; references; table of contents.

TITLE I—NEEDS-BASED BANKRUPTCY

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.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

Sec. 201. Promotion of alternative dispute resolution.
Sec. 202. Effect of discharge.
Sec. 203. Discouraging abuse of reaffirmation practices.
Sec. 204. Preservation of claims and defenses upon sale of predatory loans.
Sec. 205. GAO study and report on reaffirmation process.

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 and 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. Nondischargeability 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. Curbing abusive filings.
Sec. 304. Debtor retention of personal property security.
Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender 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. 319. Sense of Congress regarding expansion of rule 9011 of the Federal Rules of Bankruptcy Procedure.
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

Subtitle A—General Business Bankruptcy Provisions

Sec. 401. Adequate protection for investors.
Sec. 402. Meetings of creditors and equity security holders.
Sec. 403. Protection of refinance of security interest.
Sec. 404. Executory contracts and unexpired leases.
Sec. 405. Creditors and equity security holders committees.
Sec. 406. Amendment to section 546 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.

Subtitle B—Small Business Bankruptcy Provisions

Sec. 431. Flexible rules for disclosure statement and plan.
Sec. 432. Definitions.
Sec. 433. Standard form disclosure statement and plan.
Sec. 434. Uniform national reporting requirements.
Sec. 435. Uniform reporting rules and forms for small business cases.
Sec. 436. Duties in small business cases.
Sec. 437. Plan filing and confirmation deadlines.
Sec. 438. Plan confirmation deadline.
Sec. 439. Duties of the United States trustee.
Sec. 440. Scheduling conferences.
Sec. 441. Serial filer provisions.
Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee.
Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses.
Sec. 444. Payment of interest.
Sec. 445. Priority for administrative expenses.
Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan.
Sec. 447. 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 13 plans.
Sec. 717. Standards for tax disclosure.
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.

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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.
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Sec. 1201. Definitions.
Sec. 1202. Adjustment of dollar amounts.
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Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions.
Sec. 1206. Limitation on compensation of professional persons.
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Sec. 1221. Transfers made by nonprofit charitable corporations.
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Sec. 1226. Judicial education.
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Sec. 1231. Trustees.
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Sec. 1233. Direct appeals of bankruptcy matters to courts of appeals.
Sec. 1234. Involuntary cases.
Sec. 1235. Federal election law fines 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 debit card.
Sec. 1308. Study of bankruptcy impact of credit extended to dependent students.
Sec. 1309. Clarification of clear and conspicuous.

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—

(1) 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

(2) in subsection (b)—

(A) by inserting ''(1)'' 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 exists 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) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

''(II) $10,000.

''(ii)(I) 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, 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 an additional allowance 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, the 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 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 actual expenses are reasonable and necessary.

''(iii) 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 possession of the debtor's primary 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.

''(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

''(B)(i) 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; and

''(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 amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) 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.

''(C) 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 that determine whether a presumption arises under subparagraph (A)(i), that shows how each such amount is calculated.

''(3) 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 services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates 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 prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

''(i) a trustee files a motion for dismissal or conversion under this subsection; and

''(ii) the court—

''(I) grants such motion; and

''(II) 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—

''(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

''(ii) the payment of such civil penalty to the trustee, the United States trustee, or the bankruptcy administrator.

''(C) In the case of a petition, pleading, or written motion, the signature of an attorney

shall constitute a certification that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

''(ii) determined that the petition, pleading, or written motion—

''(I) is well grounded in fact; and

''(II) is warranted 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).

''(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information 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 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 award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee, United States trustee, or bankruptcy administrator) under this subsection if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

''(C) For purposes of this paragraph—

''(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

''(II) is engaged in commercial or business activity; and

''(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(I) a parent corporation; and

''(II) any other subsidiary corporation of the parent corporation.

''(6) Only the judge, United States trustee, or bankruptcy administrator may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or 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;

''(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 $525 per month for each individual in excess of 4.

''(7)(A) No judge, United States trustee, trustee, bankruptcy administrator, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(ii) 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 $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 debtor's spouse 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

''(ii) the debtor files a statement under penalty of perjury—

''(I) specifying that the debtor meets the requirement of subclause (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 the average 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 date on which current 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, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 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:

''(b)(1) 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, not later than 30 days after 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 reasons the United States trustee or bankruptcy administrator does not believe that such 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 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; or

''(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals .''.

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

''(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse is triggered under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has been triggered.''.

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'crime of violence' has the meaning given such term in section 16 of title 18; and

''(B) the term 'drug trafficking crime' has the meaning given such term in section 924(c)(2) of title 18.

''(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

''(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.''.

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (6) the following:

''(7) the action of the debtor in filing the petition was in good faith;''.

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting ''to unsecured creditors'' after ''to make payments''; and

(2) by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A) for the maintenance or support of the debtor or a dependent of the debtor or for a domestic support obligation that first becomes payable after the date the petition is filed and for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater 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;

''(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 $525 per month for each individual in excess of 4.''.

(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) 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:

''(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

''(A) such expenses are reasonable and necessary;

''(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

''(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

''(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.''.

(j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended by striking ''and 523(a)(2)(C)'' each place it appears and inserting ''523(a)(2)(C), 707(b), and 1325(b)(3)''.

(k) DEFINITION OF 'MEDIAN FAMILY INCOME'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (39) the following:

''(39A) 'median family income' means for any year—

''(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

''(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year;''.

(k) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

''707. Dismissal of a case or conversion to a case under chapter 11 or 13.''.

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 standards established to set guidelines 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 utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

''(1) a brief description of—

''(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

''(B) the types of services available from credit counseling agencies; and

''(2) statements specifying that—

''(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and

''(B) all information supplied by a debtor in connection with a bankruptcy case is subject to examination by the Attorney General.''.

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ''Director'') shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who serve in cases under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate debtors who are individuals on how to better manage their finances.

(b) TEST.—

(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) USE.—For an 18-month period beginning not later than 270 days after the date of enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(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 consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such 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)(1) 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 or on the Internet) that outlined the opportunities for available credit counseling and assisted that individual in performing a related budget analysis.

''(2)(A) 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 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).

''(B) Each United States trustee or bankruptcy administrator that makes a determination described in subparagraph (A) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee or bankruptcy administrator at any time.

''(3)(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 requirements of paragraph (1);

''(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

''(iii) is satisfactory to the court.

''(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 that the court, for cause, may order an additional 15 days.''.

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking ''or'' at the end;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) 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

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 required to complete such instructional courses under this section (Each United States trustee or bankruptcy administrator who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.).''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

''(2) 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 such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(g) The court shall not grant a discharge under this section to a debtor, unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

''(h) Subsection (g) shall not 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 instructional courses are not adequate to service the additional individuals who would be required to complete the instructional course by reason of the requirements of this section.

''(i) Each United States trustee or bankruptcy administrator that makes a determination described in subsection (h) shall review that determination not later than 1 year after the date of that determination, and not less frequently than every year thereafter.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—''; and

(2) by adding at the end the following:

''(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court—

''(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. Credit counseling agencies; financial management instructional courses

''(a) The clerk shall maintain a publicly available list of—

''(1) credit counseling agencies that provide 1 or more programs described in section 109(h) currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable; and

''(2) instructional courses concerning personal financial management currently approved by the United States trustee or the bankruptcy administrator for the district, as applicable.

''(b) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency or instructional course concerning personal financial management as follows:

''(1) The United States trustee or bankruptcy administrator shall have thoroughly reviewed the qualifications of the credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the programs or instructional courses which will be offered by such agency or provider, and may require an agency or provider of an instructional course which has sought approval to provide information with respect to such review.

''(2) The United States trustee or bankruptcy administrator shall have determined that the credit counseling agency or instructional course fully satisfies the applicable standards set forth in this section.

''(3) When an agency or instructional course is initially approved, such approval shall be for a probationary period not to exceed 6 months. An agency or instructional course is initially approved if it did not appear on the approved list for the district under subsection (a) immediately prior to approval.

''(4) At the conclusion of the probationary period under paragraph (3), 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 which has demonstrated during the probationary or subsequent period that such agency or instructional course—

''(A) has met the standards set forth under this section during such period; and

''(B) can satisfy such standards in the future.

''(5) Not later than 30 days after any final decision under paragraph (4), that occurs either after the expiration of the initial probationary period, or after any 2-year period thereafter, an interested person may seek judicial review of such decision in the appropriate district court of the United States.

''(c)(1) The United States trustee or bankruptcy administrator shall only approve a credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters as relate to the quality, effectiveness, and financial security of such programs.

''(2) To be approved by the United States trustee or bankruptcy administrator, a credit counseling agency shall, at a minimum—

''(A) 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;

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

''(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

''(D) 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;

''(E) provide adequate counseling with respect to client credit problems 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;

''(F) 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 subparagraph (E);

''(G) demonstrate adequate experience and background in providing credit counseling; and

''(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

''(d) 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 by telephone or through the Internet, if such instructional course or program is effective; and

''(D) the preparation and retention 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 and evaluation 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.

''(e) The district court may, at any time, investigate the qualifications of a credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such credit counseling agencies. The district court may, at any time, remove from the approved list under subsection (a) a credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) 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).

''(g)(1) No credit counseling agency may provide to a credit reporting agency information concerning whether a debtor who has received or sought instruction concerning personal financial management from the credit counseling agency.

''(2) A credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

(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:

''111. Credit counseling agencies; financial management instructional courses.''.

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

''(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

''(j) 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 a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor 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:

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

''(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency described in section 111 acting on behalf of the debtor;

''(B) the offer of the debtor under subparagraph (A)—

''(i) was made at least 60 days before the filing of the petition; and

''(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

''(C) no part of the debt under the alternative repayment schedule is nondischargeable.

''(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

''(A) the creditor unreasonably refused to consider the debtor's proposal; and

''(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).''.

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment plan between the debtor and any creditor of the debtor created by an approved credit counseling agency.''.

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the 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 an act by a creditor that is the holder of a secured claim, if—

''(1) such creditor retains 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. 203. DISCOURAGING ABUSE OF REAFFIRMATION PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, is amended—

(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:

''(k)(1) The disclosures required under subsection (c)(2) 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, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with the reaffirmation.

''(2) 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' may be equally conspicuous. 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 disclosed as—

''(i) 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 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to the agreement or, if no such periodic statement has been given to the debtor during the prior 6 months, 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 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 subclause (I) and the simple interest rate under subclause (II);

''(ii) 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 103 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, identifying the amount of such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

''(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating '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 disclosing that a security interest or lien in goods or property is asserted over some or all of the obligations the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

''(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 reaffirmation or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

''(ii) by making the statement: '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 give 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 reaffirmation or what 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.'.

''(J)(i) The following additional statements:

'''Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

'''1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

'''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 a 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, it will not be effective unless 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 with 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 (cancel) your reaffirmation at 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 or cancel, 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, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of the agreement in the future under certain conditions.

'''Are you required to enter into a reaffirmation agreement by any 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.

'''What 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 as 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 of 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's law or that the trustee has abandoned, 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, as agreed by the parties or determined by the court.'.

''(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

'''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.'.

''(4) The form of reaffirmation agreement required under this paragraph shall consist of the following:

'''Part B: Reaffirmation Agreement. I/we agree to reaffirm the obligations arising under the credit agreement described below.

'''Brief description of credit agreement:

'''Description of any changes to the credit agreement made as part of this reaffirmation agreement:

'''Signature: Date:

'''Borrower:

'''Co-borrower, if also reaffirming:

'''Accepted by creditor:

'''Date of creditor acceptance:'.

''(5)(A) The declaration shall consist of the following:

'''Part C: Certification by Debtor's Attorney (If Any).

'''I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor(s); (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

'''Signature of Debtor's Attorney: Date:'.

''(B) In the case of reaffirmations in which a presumption of undue hardship has been established, the certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

''(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

''(6)(A) The statement in support of reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of 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 $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if 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 satisfaction of the court how I can afford to make the payments here: _____.

'''2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

'''I believe this agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(7) The motion, which may be used if approval of the agreement by the court is required in order for it 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 where debtor is not represented by an attorney.). I (we), the debtor, affirm the following to be true and correct:

'''I am not represented by an attorney in connection with this reaffirmation agreement.

'''I believe this agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement above, and because (provide any additional relevant reasons the court should consider):

'''Therefore, I ask the court for an order approving this reaffirmation agreement.'.

''(8) The court order, which may be used to approve a reaffirmation, shall consist of the following:

'''Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

''(l) Notwithstanding any other provision of this title the following shall apply:

''(1) A creditor may accept payments from a debtor before and after the filing of a reaffirmation agreement with the court.

''(2) A creditor may accept payments from a debtor under a reaffirmation agreement which the creditor believes in good faith to be effective.

''(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

''(m)(1) Until 60 days after a reaffirmation agreement is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that the reaffirmation agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of the reaffirmation agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation which identifies additional sources of funds to make the payments as agreed upon under the terms of the reaffirmation agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove the agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor and such hearing shall be concluded before the entry of the debtor's discharge.

''(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.''.

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

''(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in

the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

''(b) UNITED STATES DISTRICT ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

''(1) a United States attorney for each judicial district of the United States; and

''(2) an agent of the Federal Bureau of Investigation (within the meaning of section 3107) for each field office of the Federal Bureau of Investigation.

''(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

''(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case which may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.''.

(2) CLERICAL AMENDMENT.—The analysis for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.''.

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended—

(1) by redesignating subsection (o) as subsection (p), and

(2) by inserting after subsection (n) the following:

''(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2001), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.''.

SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION PROCESS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation process that occurs under title 11 of the United States Code, to determine the overall treatment of consumers 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.

(b) 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 tactics found in connection with the reaffirmation process that occurs under title 11 of the United States Code.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before or after the entry of an order for relief under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before or after entry of an order for relief under this title, by reason of applicable provisions of—

''(i) a separation agreement, divorce decree, or property settlement agreement;

''(ii) an order of a court of record; or

''(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child, or parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt;''.

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as so redesignated, by striking ''First'' and inserting ''Second'';

(4) in paragraph (3), as so redesignated, by striking ''Second'' and inserting ''Third'';

(5) in paragraph (4), as so redesignated—

(A) by striking ''Third'' and inserting ''Fourth''; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as so redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as so redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as so redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

(9) by inserting before paragraph (2), as so redesignated, the following:

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of that person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

''(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date the petition was filed are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

''(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.''.

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If 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 become payable after the date on which the petition is filed.'';

(2) in section 1208(c)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date on which the petition is filed.'';

(3) in section 1222(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)(1)(B) 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.'';

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

''(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(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;'';

(5) in section 1225(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) if 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 for such obligation that first become payable after the date on which the petition is filed.'';

(6) in section 1228(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, but only to the extent provided for by the plan) have been paid'' after ''completion by the debtor of all payments under the plan'';

(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 ''; or''; 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)(1)(B) 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 a semicolon;

(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 1328(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 1328(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, but only to the extent 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 paternity;

''(ii) for the establishment or modification of an order for domestic support obligations;

''(iii) concerning child custody or visitation;

''(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 for payment of a domestic support obligation under a judicial or administrative order;

''(D) of the withholding, suspension, or restriction of drivers' licenses, professional and occupational licenses, and recreational licenses under State law, as specified in section 466(a)(16) of the Social Security Act;

''(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

''(F) of the interception of tax refunds, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

''(G) of the enforcement of medical obligations as specified under title IV of the Social Security Act;''.

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);

(2) in subsection (c), by striking ''(6), or (15)'' each place it appears and inserting ''or (6)''; and

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

(A) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(B) by inserting ''or'' after ''court of record,''; and

(C) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));'';

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting ''of a kind that is specified in section 523(a)(5); or''; and

(3) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) 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 ''or for a domestic support obligation that first becomes payable after the date on which the petition is filed'' after ''dependent of the debtor''.

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of 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;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(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).

''(2)(A) 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)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a 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.''.

(b) 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

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of 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) include in the notice required by clasue (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder of such claim and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (3), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a 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.''.

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of 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 provided under 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) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(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).

''(2)(A) The holder of a claim described in subsection (b)(6) 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)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a 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 that disclosure.''.

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of 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 provided under 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) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2) or (4) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (b)(6) 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)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a 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 that disclosure.''.

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

''(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

''(A)(i) 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; or

''(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

''(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 debtor who is an individual;''.

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or an employee of an attorney'' and inserting ''for the debtor or an employee of such attorney under the direct supervision of such attorney'';

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: ''If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer shall be required to—

''(A) sign the document for filing; and

''(B) print on the document the name and address of that officer, principal, responsible person or partner.''; and

(B) by striking paragraph (2) and inserting the following:

''(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice to debtors concerning bankruptcy petition preparers, which shall be on an official form issued by the Judicial Conference of the United States.

''(B) The notice under subparagraph (A)—

''(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

''(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

''(iii) shall—

''(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

''(II) be filed with any document for filing.'';

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''(2) For purposes'' and inserting ''(2)(A) Subject to subparagraph (B), for purposes''; and

(ii) by adding at the end the following:

''(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the preparer.''; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking ''(d)(1)'' and inserting ''(d)''; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

''(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

''(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

''(i) whether—

''(I) to file a petition under this title; or

''(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

''(ii) whether the debtor's debts will be eliminated or discharged in a case under this title;

''(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; or

''(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) in subsection (f)—

(A) by striking ''(f)(1)'' and inserting ''(f)''; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking ''(g)(1)'' and inserting ''(g)''; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) by inserting before paragraph (2), as so redesignated, the following:

''(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. 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 a petition, a bankruptcy petition preparer shall file a'' and inserting ''A'';

(ii) by inserting ''by the bankruptcy petition preparer shall be filed together with the petition,'' after ''perjury''; and

(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 turnover to the bankruptcy trustee 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 petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

''(C) An individual may exempt any funds recovered under this paragraph under section 522(b).''; and

(E) in paragraph (4), as so redesignated, by striking ''or the United States trustee'' and inserting ''the United States trustee, the bankruptcy administrator, or the court, on the initiative of the court,'';

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

''(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee, or bankruptcy administrator, and after the court holds a hearing with respect to that violation or act, the court shall order the bankruptcy petition preparer to pay to the debtor—'';

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking ''a violation of which subjects a person to criminal penalty'';

(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 penalty imposed under this section,'';

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(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 this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, the United States trustee, or the bankruptcy administrator.''; and

(11) by adding at the end the following:

''(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) 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 petition preparer—

''(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

''(B) advised the debtor to use a false Social Security account number;

''(C) failed to inform the debtor that the debtor was filing for relief under this title; or

''(D) prepared a document for filing in a manner that failed to disclose the identity of the preparer.

''(3) The debtor, the trustee, a creditor, the United States trustee, or the bankruptcy administrator may file a motion for an order imposing a fine on the bankruptcy petition preparer for each violation of this section.

''(4)(A) Fines imposed under this subsection in judicial 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 subparagraph shall be available to fund the enforcement of this section on a national basis.

''(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.''.

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

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 personal injuries resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated 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—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and'';

(iii) by adding at the end the following:

''(C) 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

(iv) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.'';

(C) by striking ''(b) Notwithstanding'' and inserting ''(b)(1) Notwithstanding'';

(D) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (3)'';

(E) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)'';

(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 retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the commencement 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 retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

''(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

''(ii)(I) 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 requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

''(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)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of that direct transfer.

''(D)(i) Any distribution that qualifies as an eligible rollover 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 distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from 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

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of that amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) 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.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of 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, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan that satisfies the requirements of section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) in the case of a loan from a 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 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) EXCEPTIONS TO 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(p) 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 amounts required to repay such loan shall not constitute '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 exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.''.

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting ''522(n),'' after ''522(d),''.

SEC. 225. 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 if 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;

''(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 excess contributions (as described in section 4973(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 $5,000;

''(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of filing of the petition, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a son, daughter, stepson, stepdaughter, grandchild, or step-grandchild of the debtor for the taxable year for which funds were paid or contributed;

''(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount 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

''(C) in the case of funds paid or contributed to such program 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 $5,000;''; and

(2) by adding at the end the following:

''(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

''(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

''(3) 'assisted person' means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000;'';

(2) by inserting after paragraph (4) the following:

''(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;''; and

(3) by inserting after paragraph (12) the following:

''(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) 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 taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

SEC. 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

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) 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 or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(i) the services that such agency will provide to such person; or

''(ii) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements 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, and 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;

''(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) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition 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 any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(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.

''(4) 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).

''(5) Notwithstanding 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 trustee or the debtor, 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.

''(d) No provision of this section, section 527, or section 528 shall—

''(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 law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

''§ 527. 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 completely and 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 specified in section 707(b)(2), and, 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) information that an assisted person provides 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 one substantially similar. 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 PREPARER.

''''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 PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER 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 case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

''''Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms 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 correctly and filed 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 first 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 afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on 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 give you legal advice.'.

''(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

''(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506 of this title.

''(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.''.

(b) CONFORMING AMENDMENT.—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 such agency will provide to such assisted person; and

''(B) the fees or charges for such services, and the terms of payment;

''(2) provide the assisted person with a copy of the fully executed and completed contract;

''(3) 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 includes—

''(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

''(B) statements such as '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 substantially 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. 230. 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 for the purposes of allowing such Office 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. PROTECTION 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 sell or lease 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—

''(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 (41) 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) an electronic 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 identified individual that, if disclosed, 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)(B) 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 at such hearing and shall 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 personally identifiable 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 OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting ''a consumer privacy ombudsman appointed under section 332,'' before ''an examiner''.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''332. Consumer privacy ombudsman.''.

SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF MINOR CHILDREN.

(a) PROHIBITION.—Title 11 of the United States Code, as amended by section 106, is amended by inserting after section 111 the following:

''§ 112. Prohibition on disclosure of name of minor children

''The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) appointed under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:

''112. Prohibition on disclosure of name of minor children.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by inserting ''and subject to section 112 of this title'' after ''section''.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. REINFORCEMENT OF THE FRESH START.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'';

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915''; and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 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 lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

''(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

''(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) 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);

''(bb) provide adequate protection as ordered by the court; or

''(cc) perform the terms of a plan confirmed 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 chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

''(aa) if a case under chapter 7, with a discharge; or

''(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 under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was

still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

''(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), 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 may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

''(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—

''(I) 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 other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence 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 failed to perform the terms of a plan confirmed 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 11 or 13, with a confirmed plan that will be fully performed; or

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to action of such creditor.''.

SEC. 303. CURBING 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 at the end 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) transfer of all or part ownership of, or other interest in, the real property without the consent of the secured creditor or court approval; or

''(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, an order entered under this 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 or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 224, is amended by inserting after paragraph (19), the following:

''(20) under subsection (a), of any act to enforce any lien against or security interest in real property 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 and a hearing;

''(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

''(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 a bankruptcy court order in a prior bankruptcy case prohibiting the debtor from being a debtor in another bankruptcy case;''.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

(A) in paragraph (4), by striking '', and'' at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in that personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

''(A) enters into an agreement with the creditor pursuant to section 524(c) of this title with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722 of this title.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) of this title is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filedbefore the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.''; and

(2) in section 722, by inserting ''in full at the time of redemption'' before the period at the end.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362, as amended by section 106—

(A) in subsection (c), by striking ''(e), and (f)'' and inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k) and transferring such subsection so as to insert it after subjection (j) as added by section 106; and

(C) by inserting after subsection (g) the following:

''(h)(1) 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 claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2) of this title—

''(A) to file timely any statement of intention required under section 521(a)(2) of this title with respect to that property or to indicate in that statement that the debtor will either surrender the property or retain it and, if retaining it, either redeem the property pursuant to section 722 of this title, reaffirm the debt it secures pursuant to section 524(c) of this title, or assume the unexpired lease pursuant to section 365(p) of this title if the trustee does not do so, as applicable; and

''(B) to take timely the action specified in that statement of intention, as it may be amended before expiration of the period for taking action, unless the statement of intention specifies reaffirmation and the creditor refuses to reaffirm on the original contract terms.

''(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the proceeding on the motion.''; and

(2) in section 521, as amended by sections 106 and 225—

(A) in subsection (a)(2) by striking ''consumer'';

(B) in subsection (a)(2)(B)—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a) of this title''; and

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C) by inserting '', except as provided in section 362(h) of this title'' before the semicolon; and

(D) by adding at the end the following:

''(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h) of this title, with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549 of this title, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement which has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) 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 nonbankruptcy law; 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 also 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:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.''.

(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) property commonly conveyed with a principal residence in the area where the real estate is located;

''(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or 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, the place 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 any exemption, the debtor may elect to exempt property that is specified under subsection (d).''.

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522 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, by inserting ''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 dependent of the debtor uses as a residence;

''(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

''(3) a burial plot for the debtor or a dependent of the debtor; or

''(4) real or personal property that the debtor or a dependent 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 subsection (b), if on such date 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 348(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'' and inserting ''only 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 chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; 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 conversion, notwithstanding 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 a prebankruptcy 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 (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

''(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

''(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

''(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, as amended by section 306, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

''(iii) if—

''(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

''(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or''.

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

''(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

''(A) proposed by the plan to the trustee;

''(B) scheduled in a lease of personal property directly to the lessor 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; and

''(C) 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 retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a 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 reasonable evidence of the maintenance 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 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

''(C)(i) 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 an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

''(II) cash 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

''(ii) for purposes of this subparagraph—

''(I) the terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

''(II) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''.

SEC. 311. AUTOMATIC STAY.

(a) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224 and 303, is amended by inserting after paragraph (21), the following:

''(22) subject to subsection (n), under subsection (a)(3), of the continuation of any eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving 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 before the date of the filing of the bankruptcy petition, 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 based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

''(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

(b) LIMITATIONS.—Section 362 of title 11, United States Code, as amended by sections 106 and 305, is amended by adding at the end the following:

''(n)(1) 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 for possession was entered; and

''(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

''(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

''(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

''(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

''(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) 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.

''(4) If a debtor, in accordance with paragraph (5), indicates on the 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)—

''(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

''(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

''(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

''(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the filing of the petition; and

''(ii) whether the debtor is claiming under paragraph (1) that 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.

''(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

''(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

''(o)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

''(2)(A) If the debtor files with the court 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 not apply, unless ordered to apply by the court under this subsection.

''(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

''(C) If the debtor can 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, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

''(D) 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 from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; 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 certification.

''(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

''(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.''.

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking ''six'' and inserting ''8''; and

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

''(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

''(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.''.

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

''(i) clothing;

''(ii) furniture;

''(iii) appliances;

''(iv) 1 radio;

''(v) 1 television;

''(vi) 1 VCR;

''(vii) linens;

''(viii) china;

''(ix) crockery;

''(x) kitchenware;

''(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

''(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

''(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

''(xv) 1 personal computer and related equipment.

''(B) The term 'household goods' does not include—

''(i) works of art (unless by or of the debtor, or any relative of the debtor);

''(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

''(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

''(iv) jewelry with a fair market value of more than $500 in the aggregate (except wedding rings); and

''(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.''.

(b) STUDY.—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 its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by this section, with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact that section 522(f)(4) of that title, as added by this section, has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to section 522(f)(4) of title 11, United States Code, consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) 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 striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

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)—

(A) by inserting ''(1)'' after ''(c)'';

(B) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(C) by adding at the end the following:

''(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number; and

(2) by adding at the end the following:

''(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

''(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

''(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 monetary penalty imposed under section 362(k) 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 receives notice effective under this section of the order for relief.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

(1) in subsection (a), as so designated by section 106, by amending paragraph (1) to read as follows:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

''(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or any bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or such bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

''(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

''(iv) copies of all payment advices or other evidence of payment received within 60 days before the filing of the petition, by the debtor from any employer of the debtor;

''(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;''; and

(2) by adding at the end the following:

''(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

''(2)(A) The debtor shall provide—

''(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

''(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

''(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply 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 unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

''(3) 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 the court 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) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

''(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

''(4) in a case under chapter 13—

''(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

''(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of such plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of the income of the debtor;

''(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

''(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of subsection (h).

''(h)(1) Not later than 180 days after the date of the enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

''(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

''(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 prepare and 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 of the tax information required to be provided under this section.

''(i) If requested by the United States trustee or by the trustee, the debtor shall provide—

''(1) 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

''(2) 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 521 of title 11, United States Code, as amended by sections 106, 225, 305, and 315, is amended by adding at the end the following:

''(j)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the 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 the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

''(3) 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 to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

''(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) 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''; and

(2) by adding at the end the 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;

''(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 $525 per month for each individual in excess of 4,

the plan may not 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 last;

''(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 $525 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 the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by section 102, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) 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—

''(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(II) 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 $525 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 1329(c), by striking ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''.

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by attorneys be submitted only after the debtors or the debtors' attorneys have made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

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 such specific period of time as the court finds is required 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 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.''.

(2) 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:

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) 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:

''(15) 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 amount of such claim; or

''(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)(2)) 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 payments, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11,

United States Code, is amended by inserting before the period at the end the following: '', except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section.''.

(d) EFFECT OF CONFIRMATION.—Section 1141(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 adding 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, as of the effective date of the plan, of property actually distributed under the plan on account of that claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 of this title on such date; and

''(ii) modification of the plan under section 1127 of this title is not practicable; and''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) 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. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 308, is amended by adding at the end the following:

''(p)(1)Except as provided in paragraph (2) of this subsection and sections 544 and 548 of this title, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the filing of the petition which exceeds in the aggregate $125,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

''(C) a burial plot for the debtor or a dependent of the debtor; or

''(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

''(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of that farmer.

''(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

''(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), and (C) of subsection (p) which exceeds in the aggregate $125,000 if—

''(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

''(B) the debtor owes a debt arising from—

''(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

''(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

''(iii) any civil remedy under section 1964 of title 18, United States Code; or

''(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

''(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), and (C) of subsection (p) is reasonably necessary for the support of the debtor and any dependent of the debtor.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting ''522(p), 522(q),'' after ''522(n),''.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal 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 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by the employer from employees for payment as contributions to—

''(i) an employee benefit plan subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986, a deferred compensation plan under section 457 of the Internal 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 1325(b)(2) of this title; or

''(ii) a health insurance plan regulated by State law whether or not subject to such title;''.

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

(2) by striking subsection (e) and inserting the following:

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the date of commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.''.

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. 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, $160; or

''(B) under chapter 13 of title 11, $150.''.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

''(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;'';

(2) in paragraph (2), by striking ''one-half'' and inserting ''three-fourths''; and

(3) in paragraph (4), by striking ''one-half'' and inserting ''100 percent''.

(c) COLLECTION AND DEPOSIT 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 28 U.S.C. section 1930(b) and 33.87 per centum of the fees hereafter collected under 28 U.S.C. section 1930(a)(1) and 25 percent of the fees hereafter collected under 28 U.S.C. section 1930(a)(3) shall be deposited as offsetting receipts to the fund established under 28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title''.

SEC. 326. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) 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 for the trustee 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 nonresidential real property lease, 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 or provision'' and inserting ''penalty rate or penalty provision'';

(2) in subsection (c)—

(A) in paragraph (2), by inserting ''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 (5); 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) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting ''or of a kind that 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 redesignating subparagraph (D) as subparagraph (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)(A) of title 11, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate including—

''(i) wages, salaries, 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 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 is based or to whether any services 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 layoff or termination of 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 523(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:

''(20) 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 or 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 provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship; or

''(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 lawful 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 such 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 523(a)(13) of title 11, United States Code, is amended by inserting ''or under the criminal law of a State'' after ''title 18''.

SEC. 331. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHAPTER 7.—Section 727(a) of title 11, 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 finds that there is 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); or''.

(b) CHAPTER 11.—Section 1141(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).''.

(c) CHAPTER 12.—Section 1228 of title 11, United States Code, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(f) 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—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(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), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(h) 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—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(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).''.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General 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:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A 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, as amended by sections 224, 303, and 311, is amended by inserting after paragraph (24) the following:

''(25) under subsection (a), of—

''(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

''(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by the securities self regulatory organization to enforce such organization's regulatory power; or

''(C) any act taken by the securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;''.

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 INTEREST.

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 ''30''.

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 debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, 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 a plan.

''(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

''(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.''.

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking ''subsection'' the first place it appears and inserting ''subsections (b) and''.

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 that is a small business concern (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) the aggregate amount of 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) be 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 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(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 ''and subject to the prior rights of holders of security 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 warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

''(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 2002, or any successor to such section 7–209.''.

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking ''(A) In'' and inserting ''In''; and

(B) by inserting ''to an examiner, trustee under chapter 11, or professional person'' after ''awarded''; and

(2) by adding at the end the following:

''(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326 of this title.''.

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.''.

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting '', or a nonconsumer debt against a noninsider of less than $10,000,'' after ''$5,000''.

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (2), on''; and

(2) by adding at the end the following:

''(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'' and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

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 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 entity or 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 13, 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) in subparagraph (D), by striking ''and'' at the end;

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

(3) by inserting after subparagraph (D) the following:

''(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and''.

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(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 certifying that election.

''(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 shall resolve 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)(A) For purposes of this subsection, the term 'assurance of payment' means—

''(i) a cash deposit;

''(ii) a letter of credit;

''(iii) a certificate of deposit;

''(iv) a surety bond;

''(v) a prepayment of utility consumption; or

''(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

''(B) 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 not consider—

''(i) the absence 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; or

''(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 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ''Notwithstanding section 1915 of this title, the'' and inserting ''The''; and

(2) by adding at the end the following:

''(f)(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 installments. For purposes of this paragraph, the term 'filing fee' means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

''(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.''.

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)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

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 benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''; and

(2) by striking subsection (f), and inserting the following:

''(f) Notwithstanding subsection (b), in a small business case—

''(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

''(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 20 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor'—

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent, liquidated secured and unsecured debts as of the date of the petition or the order for relief 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 active and representative 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 ''101(51D),'' after ''101(3),'' each place it appears.

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—

(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 307 the following:

''§ 308. 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 and other reports containing information including—

''(1) the debtor's profitability;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4)(A) whether the debtor is—

''(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)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; 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:

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States shall propose for adoption amended Federal Rules of Bankruptcy Procedure and Official Bankruptcy Forms to be used by small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) the small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help the small business debtor to understand the small business debtor's financial condition and plan the small business debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

''§ 1116. Duties of trustee or debtor in possession in small business cases

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court waives that requirement after notice and a hearing, upon a finding of extraordinary and compelling circumstances;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns and other required government filings; and

''(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

''(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting after the item relating to section 1115 the following:

''1116. Duties of trustee or debtor in possession in small business cases.''.

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan, and any necessary disclosure statement, shall be filed not later than 300 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after such plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).''.

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the entry of order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

''(i) begin to investigate the debtor's viability;

''(ii) inquire about the debtor's business plan;

''(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

''(iv) attempt to develop an agreed scheduling order; and

''(v) inform the debtor of other obligations;

''(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor and ascertain the state of the debtor's books and records and verify that the debtor has filed its tax returns; and

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.''.

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of that petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United

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 1104(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 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted 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 objects and 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 under paragraph (4)(A)—

''(i) for which there exists a reasonable justification for the act or omission; and

''(ii) that will be cured 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 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.

''(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 by 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 ordered under rule 2004 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 administrator;

''(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) revocation of an order of confirmation under section 1144;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan;

''(O) termination of a confirmed plan by reason of the 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 date on which 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.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) 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:

''(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.''.

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, 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 proprietorships, 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 Representatives a report summarizing that study.

SEC. 444. 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 paragraph, whichever is later'' after ''90-day period)''; 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, notwithstanding 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 each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured 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; or''.

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from a nondebtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);''.

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(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:

''(6) unless a trustee is serving in the case, if at the time of filing 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.''.

(b) DUTIES OF TRUSTEES.—Section 704(a) 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:

''(11) 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; and''.

(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), (5), (7), (8), (9), (10), and (11) of section 704;''.

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED 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 PETITION.

(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.

(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 format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than June 1, 2005, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by those debtors;

''(B) the current monthly income, average income, and average expenses of those debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the filing of the petition and the closing of the case for cases closed during the reporting period;

''(E) for cases closed during the reporting period—

''(i) the number of cases in which a reaffirmation was filed; and

''(ii)(I) the total number of reaffirmations filed;

''(II) of those cases in which a reaffirmation was filed, the number of cases in which the debtor was not represented by an attorney; and

''(III) of those cases in which a reaffirmation was filed, the number of cases in which the reaffirmation was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders entered determining the value of property securing a claim;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''§ 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 cases under 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) so as to facilitate 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 (b) 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. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

''(3) appropriate privacy concerns and safeguards.

''(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

''(1) information about the standard industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

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 audits 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 higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(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 directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002;''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002.

''(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 expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's 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 so designated by section 106, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor appointed under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(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:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), by inserting ''(except that such expenses, other than claims for wages, salaries, or commissions which arise after the filing of a petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)'' after ''507(a)(1)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of that property.

''(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

''(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

''(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), 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:

''(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.''.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(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 ''(1) upon payment'' and inserting ''(A) upon payment'';

(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 ''(2) upon payment'' and inserting ''(B) upon payment'';

(6) by striking ''(3) 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 district may—

''(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) 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 the filing of 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

''(a) 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 nonbankruptcy 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 1 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)(8) 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—

''(I) 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

''(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.''; and

(2) by adding at the end the following:

''An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of 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 prior case under this title or 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)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314, is amended by striking ''paragraph'' and inserting ''section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),''.

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

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 523(a) 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)(8) of title 11, United States Code, is amended by striking ''the debtor'' and inserting ''a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a 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 11 CASES.

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 subparagraph, 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 under section 301, 302, or 303; 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 to a class of creditors under section 1122(b)); and''; 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)(8), but 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(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', except in any case in which a purchaser is a purchaser described in section 6323 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 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''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 nonbankruptcy 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 726(b) 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 ''except''.

(c) REQUEST FOR PAYMENT OF 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 file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c), by inserting '', including the payment of all ad valorem property taxes with respect to the property'' before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section;'' and inserting the following: ''on or before the earlier of—

''(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

''(B) the date on which the trustee commences final distribution under this section;''.

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by sections 215 and 224, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting ''or equivalent report or notice,'' after ''a return,'';

(B) in clause (i), by inserting ''or given'' after ''filed''; and

(C) in clause (ii)—

(i) by inserting ''or given'' after ''filed''; and

(ii) by inserting '', report, or notice'' after ''return''; and

(2) by adding at the end the following:

''For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.''.

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by section 703, is amended by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by sections 102, 213, and 306, is amended by inserting after paragraph (8) the following:

''(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) 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 was required to file a tax return under applicable nonbankruptcy 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 an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

''(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

''(B) 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 which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

''(2) After notice and a hearing, and order entered before the tolling 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—

''(A) a period of not more than 30 days for returns described in paragraph (1); and

''(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

''(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.''.

(2) CONFORMING AMENDMENT.—The table of sections for 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.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), 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, whichever is in the best interest of the creditors and the estate.''.

(d) 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: '', and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should, 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 3015(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 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 before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, no objection to a claim for a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting ''including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records''; and

(2) by striking ''a hypothetical reasonable investor typical of holders of claims or interests'' and inserting ''such a hypothetical investor''.

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) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect 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 any case in which the 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 a tax liability, the governmental unit 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 taxing authority adequate protection (within the meaning of section 361) for the secured claim of that authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—Section 346 of 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, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and 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 shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make said returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by striking the item relating to section 346 and inserting the following:

''346. Special provisions related to the treatment of State and local taxes.''.

(b) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) by striking section 728;

(2) in the table of sections for chapter 7 by striking the item relating to section 728;

(3) in section 1146—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(4) in section 1231—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, 315, and 316, is amended by adding at the end the following:

''(k)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

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
''1502. Definitions.
''1503. International obligations of the United States.
''1504. Commencement of ancillary case.
''1505. Authorization to act in a foreign country.
''1506. Public policy exception.
''1507. Additional assistance.
''1508. Interpretation.
''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT
''1509. Right of direct access.
''1510. Limited jurisdiction.
''1511. Commencement of case under section 301 or 303.
''1512. Participation of a foreign representative in a case under this title.
''1513. Access of foreign creditors to a case under this title.
''1514. Notification to foreign creditors concerning a case under this title.
''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF
''1515. Application for recognition.
''1516. Presumptions concerning recognition.
''1517. Order granting recognition.
''1518. Subsequent information.
''1519. Relief that may be granted upon filing petition for recognition.
''1520. Effects of recognition of a foreign main proceeding.

''1521. Relief that may be granted upon recognition.
''1522. Protection of creditors and other interested persons.
''1523. Actions to avoid acts detrimental to creditors.
''1524. Intervention by a foreign representative.
''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES
''1525. Cooperation and direct communication between the court and foreign courts or foreign representatives.
''1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives.
''1527. Forms of cooperation.
''SUBCHAPTER V—CONCURRENT PROCEEDINGS
''1528. Commencement of a case under this title after recognition of a foreign main proceeding.
''1529. Coordination of a case under this title and a foreign proceeding.
''1530. Coordination of more than 1 foreign proceeding.
''1531. Presumption of insolvency based on recognition of a foreign main proceeding.
''1532. Rule of payment in concurrent proceedings.

''§ 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 of—

''(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 protects 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) This chapter applies where—

''(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 109(b);

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and 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) The court may not grant relief under this chapter 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.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 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 the center of its main interests;

''(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; and

''(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 territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

''§ 1503. International obligations of the United States

''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.

''§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

''§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

''§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

''§ 1507. Additional assistance

''(a) 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.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court 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 proceeds 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

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

''§ 1509. Right of direct access

''(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

''(b) If the court grants recognition under section 1515, and subject to any limitations that 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 court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) 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 an order granting recognition under section 1517.

''(d) 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.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

''(f) 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

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

''§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(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 advised 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

''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 regarding the debtor under this title.

''§ 1513. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726 of this title, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

''§ 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, under 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 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;

''(2) indicate whether secured creditors need to file their proofs of claim; and

''(3) contain any other information required to be included in such a 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 by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing the foreign proceeding 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 of 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) The documents 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 presume.

''(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 case of an individual, 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 recognizing a foreign proceeding shall be entered if—

''(1) the foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body; and

''(3) 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 debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. The case under this chapter may be closed in the manner prescribed under section 350.

''§ 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's appointment; 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, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(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 other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main 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 this section.

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to 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 in any 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—

''(1) sections 361 and 362 apply with respect to the debtor and that property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 of this title apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 1521. Relief that may be granted upon recognition

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation 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);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending 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, 544, 545, 547, 548, 550, and 724(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, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding,

the court must be satisfied that the relief relates to assets that, under the law 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 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 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 sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(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 1104(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 an action under subsection (a) 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 IV—COOPERATION 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, shall, subject to the supervision of the court, cooperate to the maximum extent possible 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) coordination of 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 and coordination 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(e) of title 28, to the extent that such other assets are not 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 cooperation and coordination 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 United States; and

''(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; and

''(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 inconsistent with the relief granted in the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain 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.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

''§ 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 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 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 insolvency 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 proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 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(n), 555 through 557, and 559 through 562 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(k) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; 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 body, including a person or body 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.—

(1) PROCEDURES.—Section 157(b)(2) 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:

''(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 TRUSTEES.—Section 586(a)(3) 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; or

''(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 by the foreign representative.''.

(d) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

''(3)(A) a foreign insurance company, engaged in such business in the United States; or

''(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 305(a) by striking paragraph (2) and inserting the following:

''(2)(A) a petition under section 1515 of this title for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''; 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—

(1) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(2) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), 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 securities contract under 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), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—Section 11(e)(8)(D)(iii) 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—

''(I) with 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 of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules 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;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), 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 commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—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) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), 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 forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) 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 transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date

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 participation 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 a 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

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' 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).''.

(f) DEFINITION OF SWAP AGREEMENT.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, 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, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including 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 Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(g) DEFINITION OF TRANSFER.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (A)—

(A) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(B) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(C) by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''; and

(2) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

SEC. 902. AUTHORITY OF THE CORPORATION WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(1) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(2) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 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.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(b) TECHNICAL AND CONFORMING AMENDMENT.—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.

(a) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) 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—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties

to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) 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.

''(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(b) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(c) RIGHTS AGAINST RECEIVER AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(1) by redesignating subparagraph (B) as subparagraph (D); and

(2) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be 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 for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.''.

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect 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 financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none 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:

''(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) 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), 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 themselves qualified financial contracts, 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. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period '', that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (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:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C), so redesignated, to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(5) by adding at the end the following new paragraph:

''(15) 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 liquidate 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. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (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:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions 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 (10)(B) of section 11(e) of the Federal Deposit Insurance Act and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other

than paragraphs (8)(E), (8)(F), and (10)(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), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with 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

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

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 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 (10)(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 EDGE ACT CORPORATIONS.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 407A; and

(2) by inserting after section 406 the following new 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) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under 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.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), 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 each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.''.

SEC. 907. BANKRUPTCY LAW AMENDMENTS.

(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)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as 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), 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 transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;'';

(D) in paragraph (48), by inserting '', or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

''(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

''(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

''(III) a currency swap, option, future, or forward agreement;

''(IV) an equity index or equity swap, option, future, or forward agreement;

''(V) a debt index or debt swap, option, future, or forward agreement;

''(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, weather derivative, or weather option;

''(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

''(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into an agreement or transaction 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), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including 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 Securities Investor Protection Act of 1970, the Commodity 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'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), 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 securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, or receiver or conservator for such entity and, when any such Federal reserve bank, receiver, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

''(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means—

''(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

''(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);''; and

(3) by striking paragraph (26) and inserting the following:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

''(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting '', pledged to, under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, under the control of,'' after ''held by'';

(C) by striking paragraph (17) and inserting the following:

''(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with

any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (26) the following:

''(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue.''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

''(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(C) by inserting ''or financial participant'' after ''swap participant'' each place such term appears; and

(2) by adding at the end the following:

''(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

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

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section 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 section heading to read as follows:

''§ 556. Contractual right to liquidate, terminate, or accelerate a 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 bylaw of a derivatives clearing organization (as defined 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 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,''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the third 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 bylaw of a derivatives clearing organization (as defined 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 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,''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement'';

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements'';

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''; and

(4) 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 bylaw of a derivatives clearing organization (as defined 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 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,''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15

''(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) 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.

''(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

''(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has

not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

''(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' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined 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 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.

''(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, 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 stayed or otherwise 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 proceeding under chapter 7 or 11 of this title (such enforcement not to be limited based on the presence 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 relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.''.

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, 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, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(m) STOCKBROKER LIQUIDATIONS.—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, financial participants, securities clearing agencies, 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, financial 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 exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'';

(2) in subsection (a)(3)(C), by inserting before the period the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561 of this title)''; and

(3) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,''.

(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,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in sections 362(b)(7) and 546(f), by inserting ''or financial participant'' after ''repo participant'' each place such term appears;

(3) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(5) in section 548(d)(2)(C), by inserting ''or financial participant'' after ''repo participant'';

(6) in section 548(d)(2)(D), by inserting ''or financial participant'' after ''swap participant'';

(7) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by striking the second sentence and inserting 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 defined 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 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 in writing, arising under common law, under law merchant, or by reason of normal business practice'';

(8) in section 556, by inserting '', financial participant,'' after ''commodity broker'';

(9) in section 559, by inserting ''or financial participant'' after ''repo participant'' each place such term appears; and

(10) in section 560, by inserting ''or financial participant'' after ''swap participant''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.'';

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 908. RECORDKEEPING REQUIREMENTS.

Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including 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).''.

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) 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 of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

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 master netting agreements

''(a) If the trustee rejects 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, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date or dates of such liquidation, termination, or acceleration.

''(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection

(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) the trustee, 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 table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

''562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 562 of this title shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FROM STAY.—

''(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a 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 law 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 Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on the date of the enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 302 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 (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(18),'' after ''101(3),'' each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

''(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

''(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

''(B) the holder of a particular claim agrees to a different treatment of that claim;''.

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by section 719, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

(c) 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 cases commenced under title 11 of the United States Code before such date.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''.

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''for the taxable year preceding the taxable year'' and inserting the following:

''for—

''(i) the taxable year preceding; or

''(ii) each of the 2d and 3d taxable years preceding;

the taxable year''.

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) in subparagraph (B) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.''.

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d) A plan may not be modified under this section—

''(1) to increase the amount of any payment due before the plan as modified becomes the plan;

''(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

''(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.''.

SEC. 1007. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' means—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

''(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;''; and

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case

is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

*(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';*

(2) in section 1203, by inserting ''or commercial fishing operation'' after ''farm''; and

(3) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)''.

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(e) Applicability.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesignating paragraph (27A) as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

''(27A) 'health care business'—

''(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

''(i) the diagnosis or treatment of injury, deformity, or disease; and

''(ii) surgical, drug treatment, psychiatric, or obstetric care; and

''(B) includes—

''(i) any—

''(I) general or specialized hospital;

''(II) ancillary ambulatory, emergency, or surgical treatment facility;

''(III) hospice;

''(IV) home health agency; and

''(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

''(ii) any long-term care facility, including any—

''(I) skilled nursing facility;

''(II) intermediate care facility;

''(III) assisted living facility;

''(IV) home for the aged;

''(V) domiciliary care facility; and

''(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;''.

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

''(40A) 'patient' means any person who obtains or receives services from a health care business;

''(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;''.

(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. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—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

''If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds 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 first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning 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 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 deposit 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 a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

''(A) if the records are written, shredding or burning the records; or

''(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.''.

(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.''.

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by section 445, is amended by adding at the end the following:

''(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

''(A) in disposing of patient records in accordance with section 351; or

''(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and''.

SEC. 1104. 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 232, is amended by inserting after section 332 the following:

''§ 333. Appointment of patient care ombudsman

''(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

''(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

''(B) 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 appointed 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 appointed 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).

''(b) An ombudsman appointed under subsection (a) shall—

''(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

''(2) 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; and

''(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is 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.

''(c)(1) An ombudsman appointed under subsection (a) 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 confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

''(2) An ombudsman appointed under subsection (a)(2)(B) 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 at the end the following:

''333. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting ''an ombudsman appointed under section 333, or'' before ''a professional person''; and

(2) in subparagraph (A), by inserting ''ombudsman,'' before ''professional person''.

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by sections 102, 219, and 446, is amended by adding at the end the following:

''(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

''(A) is in the vicinity of the health care business that is closing;

''(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

''(C) maintains a reasonable quality of care.''.

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, as amended by section 446, is amended by striking ''and (11)'' and inserting ''(11), and (12)''.

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (27), as amended by sections 224, 303, 311, 401, 718, and 907, the following:

''(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI of such Act or title XVIII of such Act.''.

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as hereinbefore amended by this Act, is amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A), (38), and (54A), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph and inserting a semicolon;

(6) by striking paragraph (54) and inserting the following:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) by indenting the left margin of paragraph (54A) 2 ems to the right; and

(8) in each of paragraphs (1) through (35), in each of paragraphs (36), (37), (38A), (38B) and (39A), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3),'' after ''522(d),'' each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

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 552(b)(1), by striking ''product'' each place it appears and inserting ''products''.

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking ''attorney's'' and inserting ''attorneys' ''.

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(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 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

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 ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1), or that''.

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) 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(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

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 ''subsection (c)'' and inserting ''subsections (c) and (i)''; 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 date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such 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 real 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 ''1009,''.

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(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(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 156(a) of title 18, 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''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before ''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 363(d) 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 moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.''.

(b) CONFIRMATION OF PLAN FOR REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213, 321, and 331, is amended by adding at the end the following:

''(17) All transfers of property of the 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 moneyed, business, or commercial corporation 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:

''(f) 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 the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the petition. The parties who may appear and be heard in a proceeding under this

section include the attorney general of the State in which the debtor is incorporated, was 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 or to require the approval of any other court for the transfer of property.

SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1223. 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 central district of California.

(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 Maryland.

(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 southern district of New York.

(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 Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(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 date 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)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(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)(F); 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 appointment dates of the bankruptcy judges appointed under paragraph (1)(D); 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)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge; shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years after the date of the enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankrupcy judges referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: ''Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located.''; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3''; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'';

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

''(A) by prorating such amount over the remaining duration of the plan; and

''(B) by monthly payments not to exceed the greater of—

''(i) $25; or

''(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of this title—

''(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior proceeding under this title; and

''(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).''.

SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

''(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the filing of the petition;''.

SEC. 1226. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test and reaffirmations under section 707(b) of title 11, United States Code, as amended by this Act.

SEC. 1227. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section and subsection (c) of section 507, 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 503(b)(9).''.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, 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 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a bankruptcy case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1229. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding at the end the following:

''(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

''(A) the tangible personal property is in the possession of the pledgee or transferee;

''(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

''(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b) of this title; or''.

SEC. 1231. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the 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 also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests 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.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

SEC. 1232. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.''.

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 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),''; and

(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 court, or the 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, certify that—

''(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for 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 may materially advance 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 or 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.

''(E) 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 make 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.

(3) PROCEDURE.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(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;

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT.—A petition 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 circuit clerk not later than 10 days after the certification 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 of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate 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 303 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 (h)(1), by inserting ''as to liability or amount'' before the semicolon at the end.

(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 cases commenced under title 11 of the United States Code before such date.

SEC. 1235. FEDERAL ELECTION 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 (14A) the following:

''(14B) incurred to pay fines or penalties 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:

''(11)(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 of $1,000 at 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. Making a typical 5% 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) Notwithstanding 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 5% 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 the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 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 (B).

''(E) The Board shall, by rule, periodically recalculate, 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 under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), 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), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

''(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following 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 an automated device 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) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

''(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

''(H) The Board shall—

''(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

''(ii) establish the table required under clause (i) by assuming—

''(I) a significant number of different annual percentage rates;

''(II) a significant number of different account balances;

''(III) a significant number of different minimum payment amounts; and

''(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

''(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(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 the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

''(K) 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 title 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 types of information 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, the need to consider those 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 make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and 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. ENHANCED DISCLOSURE 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. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISER.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) 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. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

''(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

''(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

''(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

''(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

''(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

''(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

''(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

''(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(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 credit card account for an introductory 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 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

''(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) 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.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(7) INTERNET-BASED SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the information described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

''(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(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.—The amendment made by subsection (a) and the 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. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of

the Truth in Lending Act (15 U.S.C. 1637(b)) 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 on or before a 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 late payment fee may be charged.

''(B) The amount of the late payment fee to be imposed if payment is made after such date.''.

(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. 1306. 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:

''(h) PROHIBITION ON 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 its 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(h) 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 present to Congress a report containing its 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. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers 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. 1309. CLARIFICATION 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 Trade Commission, 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)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model 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 under the provisions 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 and paragraph (2), 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 HOMESTEAD 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 the Judiciary, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

F. JAMES SENSENBRENNER,
HENRY J. HYDE,
GEORGE W. GEKAS,
LAMAR SMITH,
STEVE CHABOT,
BOB BARR,
RICK BOUCHER,

From the Committee on Financial Services, for consideration of secs. 901–906, 907A–909, 911, and 1301–1309 of the House bill, and secs. 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 sec. 1403 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
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.

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. 333, 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 with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clerical changes.

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 1-NEEDS-BASED BANKRUPTCY

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 of the debtor.

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.

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 and the United States trustee—a 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 consent of the debtor, under certain circumstances. In addition, section 102 of the conference report changes the current standard for dismissal from ''substantial abuse'' to ''abuse''. Section 102 of the conference report further amends Bankruptcy Code section 707(b) to mandate a presumption of abuse if the debtor's current monthly income (reduced by certain specified amounts) when multiplied by 60 is not less than the lesser of 25 percent of the debtor's nonpriority unsecured claims or $6,000 (whichever is greater), or $10,000.

To determine whether the presumption of abuse applies under section 707(b) of the Bankruptcy Code, section 102(a) of the conference report specifies certain monthly expense amounts that are to be deducted from the debtor's ''current monthly income'' (a defined term). The House bill and the Senate amendment contain similar, but not identical provisions with respect to these expenses. Section 102(a) incorporates those provisions that are identical in both bills. These include the following expense items:

the applicable monthly expenses for the debtor as well as for the debtor's dependents and spouse in a joint case (if the spouse is not otherwise a dependent) specified under the Internal Revenue Service's National Standards (with provision for an additional 5 percent for food and clothing if the debtor can demonstrate that such additional amount is reasonable and necessary) and the IRS Local Standards;

the actual monthly expenses for the debtor, the debtor's dependents, and the debtor's spouse in a joint case (if the spouse is not otherwise a dependent) for the categories specified by the Internal Revenue Service as Other Necessary Expenses;

reasonably necessary expenses incurred to maintain the safety of the debtor and the debtor's family from family violence as specified in section 309 of the Family Violence Prevention and Services Act or other applicable federal law, with provision for the confidentiality of these expenses;

the debtor's average monthly payments on account of secured debts and priority claims as explained below; and

if the debtor is eligible to be a debtor under chapter 13, the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to 10 percent of projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

With respect to secured debts, Section 102(a)(2)(C) of the conference report specifies that the debtor's average monthly payments on account of secured debts is calculated as the sum of the following divided by 60: (1) all amounts scheduled as contractually due to secured creditors for each month of the 60–month period following filing of the case; and (2) any additional payments necessary, in filing a plan under chapter 13, to maintain possession of the debtor's primary 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. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

With respect to priority claims, section 102(a)(2)(C) of the conference report specifies that the debtor's expenses for payment of such claims (including child support and alimony claims) is calculated as the total of such debts divided by 60. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

Although the House bill and the Senate amendment contain identical provisions permitting a debtor, if applicable, to deduct from current monthly income the continuation of actual expenses paid by the debtor that are reasonable and necessary for the care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (providing such individual is unable to pay for these expenses), the bills differ with respect to their respective definitions of ''immediate family''. The conference report adopts 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 or public elementary or secondary school of up to $1,500 per child if the debtor: (1) documents such expenses, and (2) provides a detailed explanation of why such expenses are reasonable and necessary. The conference report adopts the Senate amendment's additional requirement that the debtor explain why such expenses are not already accounted for under any of the Internal Revenue Service National and Local Standards, and Other Expenses categories as identified in section 707(b)(2)(I), as amended.

In addition, the conference report adopts the Senate amendment provision permitting a debtor to claim additional housing and utilities allowances based on the debtor's actual home energy expenses if the debtor documents such expenses and demonstrates that they are reasonable and necessary. The House bill has no comparable provision.

While the conference report replaces the current law's presumption in favor of granting relief requested by a chapter 7 debtor with a presumption of abuse (if applicable under the income and expense analysis previously described), this presumption may be rebutted only under certain circumstances. Section 102(a)(2)(C) of the conference report amends Bankruptcy Code section 707(b) to provide that the presumption of abuse may be rebutted only if: (1) the debtor demonstrates special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative; and (2) the additional expenses or adjustments cause the product of the debtor's current monthly income (reduced by the specified expenses) when multiplied by 60 to be less than the lesser of 25 percent of the debtor's nonpriority unsecured claims, or $6,000 (whichever is greater); or $10,000. In addition, the debtor must itemize and document each additional expense or income adjustment as well as provide a detailed explanation of the special circumstances that make such expense or adjustment necessary and reasonable. In addition, the debtor must attest under oath to the accuracy of any information provided to demonstrate that such additional expense or adjustment is required. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

To implement these needs-based reforms, the conference report, in section 102(a)(2)(C), requires the debtor to file, as part of the schedules of current income and current expenditures, a statement of current monthly income. This statement must show: (1) the calculations that determine whether a presumption of abuse arises under section 707(b) (as amended), and (2) how each amount is calculated. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

In a case where the presumption of abuse does not apply or has been rebutted, section 102(a)(2)(C) of the conference report amends Bankruptcy Code section 707(b) to require a court to consider whether: (1) the debtor filed the chapter 7 case in bad faith; or (2) the totality of the circumstances of the debtor's financial situation demonstrates abuse, including whether the debtor wants to reject a personal services contract and the debtor's financial need for such rejection. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

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 costs incurred in prosecuting a 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 such rule, order the assessment of an appropriate civil penalty against debtor's counsel and the payment of such penalty to the trustee, United States trustee, or bankruptcy administrator. This provision represents a compromise among House and Senate conferees. It differs from its antecedents in section 102(a)(2)(C) of the House bill and the Senate amendment in that it changes the mandatory standard to a discretionary standard and clarifies that a motion for costs or the imposition of a civil penalty must be made by a party in interest or by the court itself in accordance with rule 9011.

Section 102(a)(2)(C) of the conference report provides that the signature of an attorney on a petition, pleading or written motion shall constitute a certification that the attorney has: (1) performed a reasonable investigation into the circumstances that gave rise to such document; and (2) determined that such document is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under section 707(b)(1). In addition, such attorney's signature on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with the petition is incorrect. This provision is identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

Section 102(a)(2)(C) of the conference report amends section 707(b) of the Bankruptcy Code to permit a court on its own initiative or a party in interest in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure to award reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee, United States trustee or bankruptcy administrator) if the court: (i) does not grant the section 707(b) motion; and (ii) finds that either the movant violated rule 9011, or the attorney (if any) who filed the motion did not comply with subparagraph (4)(C) and the section 707(b) motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed under the Bankruptcy Code to such debtor. An exception applies with respect to a movant that is a ''small business'' with a claim in an aggregate amount of less than $1,000. A small business, for purposes of this provision, is defined as an unincorporated business, partnership, corporation, association or organization with less than 25 full-time employees that is engaged in commercial or business activity. The number of employees

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 conferees. It differs from its antecedents in section 102(a)(2)(C) of the House bill and the Senate amendment in that it changes the mandatory standard to a discretionary standard and clarifies that the motion for costs must be made by a party in interest or by the court. The use of the phraseology in this provision, ''in accordance with rule 9011 of the Federal Rules of Bankruptcy Procedure'', is intended to indicate that the procedures for the motion of a party in interest or a court acting on its own initiative are the procedures outlined in rule 9011(c).

The conference report includes two ''safe harbors'' with respect to its needs-based reforms. Section 102(a)(2)(C) of the conference report amends Bankruptcy Code section 707(b) to allow only a judge, United States trustee, or bankruptcy administrator to file a section 707(b) motion (based on the debtor's ability to repay, bad faith, or the totality of the circumstances) if the chapter 7 debtor's current monthly income (or in a joint case, the income of the debtor and the debtor's spouse) falls below the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household. This provision is substantively identical to section 102(a)(2)(C) of the House bill and the Senate amendment.

The conference report's second safe harbor only pertains to a motion under section 707(b)(2), that is, a motion to dismiss based on a debtor's ability to repay. Section 102(a)(2)(C) represents a compromise between the House and the Senate positions. The House provision prohibits a judge, United States trustee, trustee, bankruptcy administrator or other party in interest from filing such motion if the debtor's income falls below the state median family income for a family of equal or lesser size (adjusted for larger sized families), or the state median family income for one earner in the case of a one-person household. The Senate amendment takes into consideration the spouse's income only in a joint case.

Section 102(a)(2)(C) of the conference report does not consider the nonfiling spouse's income if the debtor and the debtor's spouse are separated under applicable nonbankruptcy law, or the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading section 707(b)(2). The debtor must file a statement under penalty of perjury specifying that he or she meets one of these criteria. In addition, the statement must disclose the aggregate (or best estimate) of the amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.

Section 102(b) of the conference report 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 debtor's spouse receive) from all sources, without regard to whether it is taxable income, in a specified six-month period preceding the filing of the bankruptcy case. The conference report adopts the Senate amendment's provision specifying that the six-month period is determined as ending on the last day of the calendar month immediately preceding the filing of the bankruptcy case, if the debtor files the statement of current income required by Bankruptcy Code section 521. If the debtor does not file such schedule, the court determines the date on which current income is calculated.

The term, ''current monthly income'', pursuant to section 102(b) of the conference report, includes any amount paid by any entity other than the debtor (or, in a joint case, the debtor and the debtor's spouse if not otherwise a dependent) on a regular basis for the household expenses of the debtor or the debtor's dependents (and, the debtor's spouse in a joint case, if not otherwise a dependent). It excludes Social Security Act benefits and payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes. In addition, the conference report provides that current monthly income does not include payments to victims of international or domestic terrorism as defined in section 2331 of title 18 of the United States Code on account of their status as victims of such terrorism. This provision with respect to victims of terrorism reflects a compromise among the conferees. It has no counterpart in either the House bill or the Senate amendment.

Section 102(c) of the conference report is substantively similar in part to its House and the Senate counterparts. The provision amends section 704 of the Bankruptcy Code to require the United States trustee or bankruptcy administrator in a chapter 7 case where the debtor is an individual to: (1) review all materials filed by the debtor; and (2) file a statement with the court (within 10 days following the meeting of creditors held pursuant to section 341 of the Bankruptcy Code) as to whether or not the debtor's case should be presumed to be an abuse under section 707(b). The court must provide a copy of such statement to all creditors within 5 days after its filing. Within 30 days of the filing of such statement, the United States trustee or bankruptcy administrator must file either: (1) a motion under section 707(b); or (2) a statement setting forth the reasons why such motion is not appropriate in any case where the debtor's filing should be presumed to be an abuse and the debtor's current monthly income exceeds certain thresholds. Section 102(c) of the conference report does not include a provision contained in the House bill and Senate amendment that permits a United States trustee or bankruptcy administrator to decline to file a section 707(b)(2) motion (pertaining to the debtor's ability to repay) under certain circumstances.

In a chapter 7 case where the presumption of abuse applies under section 707(b), section 102(d) of the conference report amends Bankruptcy Code section 342 to require the clerk to provide written notice to all creditors within ten days after commencement of the case stating that the presumption of abuse applies in such case. This provision is substantively identical to section 102(d) of the House bill and the Senate amendment.

Section 102(e) of the conference report provides that nothing in the Bankruptcy Code limits the ability of a creditor to give information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee, bankruptcy administrator, or trustee. This provision is substantively identical to section 102(e) of the House bill and the Senate amendment.

Section 102(f) of the conference report adds a provision to Bankruptcy Code section 707 to permit the court to dismiss a chapter 7 case filed by a debtor who is an individual on motion by a victim of a crime of violence (as defined in section 16 of title 18 of the United States Code) or a drug trafficking crime (as defined in section 924(c)(2) of title 18 of the United States Code). The case may be dismissed if the debtor was convicted of such crime and dismissal is in the best interest of the victims, unless the debtor establishes by a preponderance of the evidence that the filing of the case is necessary to satisfy a claim for a domestic support obligation. This provision is substantively identical to section 102(f) of the House bill and the Senate amendment.

Section 102(g) of the conference report amends section 1325(a) of the Bankruptcy Code to require the court, as a condition of confirming 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(g) of the House bill and the Senate amendment.

Section 102(h) of the conference report amends section 1325(b)(1) of the Bankruptcy Code to specify that the court must find, in confirming a chapter 13 plan to which there has been an objection, that the debtor's disposable income will be paid to unsecured creditors. It also amends section 1325(b)(2)'s definition of disposable income. As defined under this provision, the term means income received by the debtor (other than child support payments, foster care payments, or certain disability payments for a dependent child) less amounts reasonably necessary to be expended for: (1) the maintenance or support of the debtor or the debtor's dependent; (2) a domestic support obligation that first becomes due after the case is filed; (3) charitable contributions (as defined in section 548(d)(3)) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount that does not exceed 15 percent of the debtor's gross income for the year in which the contributions are made; and (4) if the debtor is engaged in business, the payment of expenditures necessary for the continuation, preservation, and operation of the business. As amended, section 1325(b)(3) provides that the amounts reasonably necessary to be expended under section 1325(b)(2) are determined in accordance with section 707(b)(2)(A) and (B) if the debtor's income exceeds certain monetary thresholds. This provision is substantively identical to section 102(h) of the House bill and the Senate amendment.

Section 102(i) of the conference report adopts the Senate's position in section 102(i) of the Senate amendment, which has no counterpart in the House bill. Section 102(i) amends Bankruptcy Code section 1329(a) to require the amounts paid under a confirmed chapter 13 plan to be reduced by the actual amount expended by the debtor to purchase health insurance for the debtor and the debtor's dependents (if those dependents do not otherwise have such insurance) if the debtor documents the cost of such insurance and demonstrates such expense is reasonable and necessary, and the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b). If the debtor previously paid for health insurance, the debtor must demonstrate that the amount is not materially greater than the amount the debtor previously paid. If the debtor did not previously have such insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor having similar characteristics. Upon request of any party in interest, the debtor must file proof that a health insurance policy was purchased.

Section 102(j) of the conference report represents a compromise between the House and Senate conferees and has no antecedent in either the House bill or Senate amendment. The provision amends section 104 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.

Section 102(k) adds to section 101 of the Bankruptcy Code a definition of ''median family income.'' This provision represents a compromise between the House and Senate

conferees and has no antecedent in either the House bill or Senate amendment.

Sec. 103. Sense of Congress and study

Section 103(a) of the conference report expresses the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service expense standards to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of the Bankruptcy Code, as amended. Section 103(b) requires the Executive Office for United States Trustees to submit a report within 2 years from the date of the Act's enactment regarding the utilization of the Internal Revenue Service guidelines for determining the current monthly expenses of a debtor under section 707(b) and the impact that the application of these standards has had on debtors and the bankruptcy courts. The report may include recommendations for amendments to the Bankruptcy Code that are consistent with the report's findings. This provision is substantially 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 342(b) of the Bankruptcy Code to require the clerk, before the commencement of a bankruptcy case by an individual whose debts are primarily consumer debts, to supply such individual with a written notice containing: (1) a brief description of chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of these chapters; (2) the types of services available from credit counseling agencies; (3) a statement advising that a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a bankruptcy case shall be subject to fine, imprisonment, or both; and (4) a statement warning that all information supplied by a debtor in connection with the case is subject to examination by the Attorney General. This provision is substantially identical to section 104 of the House bill and the Senate amendment.

Sec. 105. Debtor financial management training test program

Section 105 of the conference report requires the Director of the Executive Office for United States Trustees to: (1) consult with a wide range of debtor education experts who operate financial management education programs; and (2) develop a financial management training curriculum and materials that can be used to teach individual debtors how to manage their finances better. The Director must select six judicial districts to test the effectiveness of the financial management training curriculum and materials for an 18–month period beginning not later than 270 days after the Act's enactment date. For these six districts, the curricula and materials must be used as the instructional personal financial management course required under Bankruptcy Code section 111. Over the period of the study, the Director must evaluate the effectiveness of: (1) the curriculum and materials; and (2) a sample of existing consumer education programs (such as those described in the Report of the National Bankruptcy Review Commission) that are representative of consumer education programs sponsored by the credit industry, chapter 13 trustees, and consumer counseling groups. Not later than three months after concluding such evaluation, the Director must submit to Congress a report with findings regarding the effectiveness and cost of the curricula, materials, and programs. This provision is substantially 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 bankruptcy relief—to receive credit counseling within the 180–day period preceding the filing of a bankruptcy case by such individual. The credit counseling must be provided by an approved nonprofit budget and credit counseling agency consisting of either an individual or group briefing (which may be conducted telephonically or via the Internet) that outlined opportunities for available credit counseling and assisted the individual in performing a budget analysis. This requirement does not apply to a debtor who resides in a district where the United States trustee or bankruptcy administrator has determined that approved nonprofit budget and credit counseling agencies in that district are not reasonably able to provide adequate services to such individuals. Although such determination must be reviewed annually, the United States trustee or bankruptcy administrator may disapprove a nonprofit budget and credit counseling agency at any time.

A debtor may be temporarily exempted from this requirement if he or she submits to the court a certification that: (1) describes exigent circumstances meriting a waiver of this requirement; (2) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain such services within the five-day period beginning on the date the debtor made the request; and (3) is satisfactory to the court. This exemption terminates when the debtor meets the requirements for credit counseling participation, but not longer than 30 days after the case is filed, unless the court, for cause, extends this period up to an additional 15 days. This provision is substantively identical to section 106(a) of the House bill and the Senate amendment.

Section 106(b) of the conference report amends section 727(a) of the Bankruptcy Code to deny a discharge to a chapter 7 debtor who fails to complete a personal financial management instructional course. This provision, however, does not apply if the debtor resides in a district where the United States trustee or bankruptcy administrator has determined that the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator. 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 1328 of the Bankruptcy Code to deny 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 the approved instructional courses in that district are not adequate. Such determination must be reviewed annually by the United States trustee or bankruptcy administrator. This provision is substantively identical to section 106(c) of the House bill and the Senate amendment.

Section 106(d) of the conference report amends section 521 of the Bankruptcy Code to require a debtor who is an individual to file with the court: (1) a certificate from an approved nonprofit budget and credit counseling agency describing the services it provided the debtor pursuant to section 109(h); and (2) a copy of the repayment plan, if any, that was developed by the agency pursuant to section 109(h). 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 substantively identical to section 106(e) of the House bill and the Senate amendment. It adds section 111 to the Bankruptcy Code requiring the clerk to maintain a publically available list of approved: (1) credit counseling agencies that provide the services described in section 109(h) of the Bankruptcy Code; and (2) personal financial management instructional courses. Section 106(e) further provides that the United States trustee or bankruptcy administrator may only approve an agency or course provider under this provision pursuant to certain specified criteria. If such agency or provider course is approved, the approval may only be for a probationary period of up to six months. At the conclusion of the probationary period, the United States trustee or bankruptcy administrator may only approve such agency or instructional course for an additional one-year period and, thereafter for successive one-year periods, which has demonstrated during such period that it met the standards set forth in this provision and can satisfy such standards in the future.

Within 30 days after any final decision occurring after the expiration of the initial probationary period or after any subsequent two-year period, an interested person may seek judicial review of such decision in the appropriate United States district court. In addition, the district court, at any time, may investigate the qualifications of a credit counseling agency and request the production of documents to ensure the agency's integrity and effectiveness. The district court may remove a credit counseling agency that does not meet the specified qualifications from the approved list. The United States trustee or bankruptcy administrator must notify the clerk that a credit counseling agency or instructional course is no longer approved and the clerk must remove such entity from the approved list.

Section 106(e) prohibits a credit counseling agency from providing information to a credit reporting agency as to whether an individual debtor has received or sought personal financial management instruction. A credit counseling agency that willfully or negligently fails to comply with any requirement under the Bankruptcy Code with respect to a debtor shall be liable to the debtor for damages in an amount equal to: (1) actual damages sustained by the debtor as a result of the violation; and (2) any court costs or reasonable attorneys' fees incurred in an action to recover such damages.

Section 106(f) of the conference report amends section 362 of the Bankruptcy Code to provide that if a chapter 7, 11, or 13 case is dismissed due to the creation of a debt repayment plan, the presumption that a case was not filed in good faith under section 362(c)(3) shall not apply to any subsequent bankruptcy case commenced by the debtor. It also provides that the court, on request of a party in interest, must issue an order under section 362(c) confirming that the automatic stay has terminated. This provision is substantively identical to section 106(f) of the House bill and the Senate amendment.

Sec. 107. Schedules of reasonable and necessary expenses

For purposes of section 707(b) of the Bankruptcy Code, section 107 of the conference report requires the Director of the Executive Office for United States Trustees to issue schedules of reasonable and necessary administrative expenses (including reasonable attorneys' fees) relating to the administration of a chapter 13 plan for each judicial district not later than 180 days after the date of enactment of the Act. This provision is substantively identical to section 107 of the House bill and the Senate amendment.

TITLE II—ENHANCED CONSUMER PROTECTION

SUBTITLE A—PENALTIES FOR ABUSIVE CREDITOR PRACTICES

Sec. 201. Promotion of alternative dispute resolution

Section 201 of the conference report is substantively 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 on motion of the debtor, to reduce a claim based in whole on an unsecured consumer debt by up to 20 percent if: (1) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed by an approved credit counseling agency on behalf of the debtor; (2) the debtor's offer was made at least 60 days before the filing of the case; (3) the offer provided for payment of at least 60 percent of the debt over a period not exceeding the loan's repayment period or a reasonable extension thereof; and (4) no part of the debt is nondischargeable. The debtor has the burden of proving by clear and convincing evidence that: (1) the creditor unreasonably refused to consider the debtor's proposal; and (2) the proposed alternative repayment schedule was made prior to the expiration of the 60–day period. Section 201(b) amends section 547 of the Bankruptcy Code to prohibit the avoidance as a preferential transfer a payment by a debtor to a creditor pursuant to an alternative repayment plan created by an approved credit counseling agency.

Sec. 202. Effect of discharge

Section 202 of the conference report amends section 524 of the Bankruptcy Code in two respects. First, it provides that the willful failure of a creditor to credit payments received under a confirmed chapter 11, 12, or 13 plan constitutes a violation of the discharge injunction if the creditor's action to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor. This 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 to be made under the plan in the manner prescribed by the plan. Second, section 202 amends section 524 of the Bankruptcy Code to provide that the discharge injunction does not apply to a creditor having a claim secured by an interest in real property that is the debtor's principal residence if the creditor communicates with the debtor in the ordinary course of business between the creditor and the debtor and such communication is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of the pursuit of in rem relief to enforce the lien. Section 202 is substantively identical to section 202 of the House bill and the Senate amendment.

Sec. 203. Discouraging abuse of reaffirmation practices

Section 203 of the conference report effectuates a comprehensive overhaul of the law applicable to reaffirmation agreements. It is substantively identical to section 203 of the House bill and the Senate amendment.

Section 203(a) amends section 524 of the Bankruptcy Code to mandate that certain specified disclosures be provided to a debtor at or before the time he or she signs a reaffirmation agreement. These specified disclosures, which are the only disclosures required in connection with a reaffirmation agreement, must be in writing and be made clearly and conspicuously. In addition, the disclosure must include certain advisories and explanations. At the election of the creditor, the disclosure statement may include a repayment schedule. If the debtor is represented by counsel, section 203(a) mandates that the attorney file a certification stating that the agreement represents a fully informed and voluntary agreement by the debtor, that the agreement does not impose an undue hardship on the debtor or any dependent of the debtor, and that the attorney fully advised the debtor of the legal effect and consequences of such agreement as well as of any default thereunder. In those instances where the presumption of undue hardship applies, the attorney must also certify that the debtor is able to make the payments required under the reaffirmation agreement. Further, the debtor must submit a statement setting forth the debtor's monthly income and actual current monthly expenditures. If the debtor is represented by counsel and the debt being reaffirmed is owed to a credit union, a modified version of this statement may be used.

Notwithstanding any other provision 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 a reaffirmation agreement that the creditor believes in good faith to be effective. It further provides that the requirements specified in subsections (c)(2) and (k) of section 524 are satisfied if the disclosures required by these provisions are given in good faith.

Where the amount of the scheduled payments due on the reaffirmed debt (as disclosed in the debtor's statement) exceeds the debtor's available income, it is presumed for 60 days from the date on which the reaffirmation agreement is filed with the court that the agreement presents an undue hardship. The court must review such presumption, which can be rebutted by the debtor by a written statement explaining the additional sources of funds that would enable the debtor to make the required payments on the reaffirmed debt. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove 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.

Section 203(b) amends title 18 of the United States Code to require the Attorney General to designate a United States Attorney for each judicial district and to appoint a Federal Bureau of Investigation agent for each field office to have primary law enforcement responsibilities for violations of sections 152 and 157 of title 18 with respect to abusive reaffirmation agreements and materially fraudulent statements in bankruptcy schedules that are intentionally false or misleading. In addition, section 203(b) provides that the designated United States Attorney has primary responsibility with respect to bankruptcy investigations under section 3057 of title 18. Section 203(b) further provides that the bankruptcy courts must establish procedures for referring any case in which a materially fraudulent bankruptcy schedule has been filed.

Sec. 204. Preservation of claims and defenses upon sale of predatory loans

Section 204 of the conference report adds a provision to section 363 of the Bankruptcy Code with respect to sales of any interest in a consumer transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations). It provides that the purchaser of such interest through a bankruptcy sale under section 363 remains subject to all claims and defenses that are related to such assets to the same extent as that person would be subject to if the sale was not conducted under section 363. Section 204 of the conference report is derived from section 204 of the Senate amendment. There is no counterpart to this provision in the House bill.

Sec. 205. GAO Study on reaffirmation process

Section 205 of the conference report directs the Comptroller General of the United States to report to Congress on how consumers are treated in connection with the reaffirmation agreement process. This report must include: (1) the policies and activities of creditors with respect to reaffirmation agreements; and (2) whether such consumers are fully, fairly, and consistently informed of their rights under the Bankruptcy Code. The report, which must be completed not later than 18 months after the date of enactment of this Act, may include recommendations 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 accrues pre- or postpetition (including interest that accrues pursuant to applicable nonbankruptcy law) and is owed to or recoverable by: (1) a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative; or (2) a governmental unit. To qualify as a domestic support obligation, the debt 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 must be established or subject to establishment either pre- or postpetition pursuant to: (1) a separation agreement, divorce decree, or property settlement agreement; (2) an order of a court of record; or (3) a determination made in accordance with applicable nonbankruptcy law by a governmental unit. It does not apply to a debt assigned to a nongovernmental entity, unless it was assigned voluntarily by the spouse, former spouse, child, or parent solely for the purpose of collecting the debt. Section 211 is identical to section 211 of the House bill and the Senate amendment.

Sec. 212. Priorities for claims for domestic support obligations

Section 212 of the conference report amends section 507(a) of the Bankruptcy Code to accord first priority in payment to allowed unsecured claims for domestic support obligations that, as of the petition date, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or the parent, legal guardian, or responsible relative of such child, without regard to whether such claim is filed by the claimant or 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 such child's parent, legal guardian, or responsible relative to a governmental unit (unless the claimant assigned the claim voluntarily for the purpose of collecting the debt), or are owed directly

to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received by such unit under this provision be applied and distributed in accordance with nonbankruptcy law. Where a trustee administers assets that may be available for payment of domestic support obligations under section 507(a)(1) (as amended), administrative expenses of the trustee allowed under section 503(b)(1)(A), (2) and (6) of the Bankruptcy Code must be paid before such claims to the extent the trustee administers assets that are otherwise available for the payment of these claims. Section 212 is similar to section 212 of the House bill and the Senate amendment. The principal difference is the conference report's provision for the payment of trustee administrative expenses.

Sec. 213. Requirements to obtain confirmation and discharge in cases involving domestic support obligations

Section 213 is substantively identical to section 213 of the House bill and the Senate amendment. With respect to chapter 11 cases, section 213(1) adds a condition for confirmation of a plan. It amends section 1129(a) of the Bankruptcy Code to provide that if a chapter 11 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 213(2) of the conference report amends section 1208(c) of the Bankruptcy Code to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the case. Section 213(3) amends Bankruptcy Code section 1222(a) to permit a chapter 12 debtor to propose a plan that provides for less than full payment of all amounts owed for a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if all of the debtor's projected disposable income for a five-year period is applied to make payments under the plan. Section 213(4) of the conference report amends Bankruptcy Code section 1222(b) to permit a chapter 12 debtor to propose a plan that pays postpetition interest on claims that are nondischargeable under Section 1228(a), but only to the extent that the debtor has disposable income available to pay such interest after payment of all allowed claims in full. Section 213(5) amends Bankruptcy Code section 1225(a) to provide that if a chapter 12 debtor is required by judicial or administrative order or statute to pay a domestic support obligation, then the debtor must pay such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(6) amends section Bankruptcy Code section 1228(a) to condition the granting of a chapter 12 discharge upon the debtor's payment of certain postpetition domestic support obligations.

With respect to chapter 13 cases, section 213(7) of the conference report amends Bankruptcy Code section 1307(c) to provide that the failure of a debtor to pay any domestic support obligation that first becomes payable postpetition is cause for conversion or dismissal of the debtor's case. Section 213(8) amends Bankruptcy Code section 1322(a) to permit a chapter 13 debtor to propose a plan that pays less than the full amount of a claim entitled to priority under Bankruptcy Code section 507(a)(1)(B) if the plan provides that all of the debtor's projected disposable income over a five-year period will be applied to make payments under the plan. Section 213(9) amends Bankruptcy Code section 1322(b) to permit a chapter 13 debtor to propose a plan that pays postpetition interest on nondischargeable debts under section 1328(a), but only to the extent that the debtor has disposable income available to pay such interest after payment in full of all allowed claims. Section 213(10) amends Bankruptcy Code section 1325(a) 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 such obligations pursuant to such order or statute that became payable postpetition as a condition of confirmation. Section 213(11) amends Bankruptcy Code section 1328(a) to condition the granting of a chapter 13 discharge on the debtor's payment of certain postpetition domestic support obligations.

Sec. 214. Exceptions to automatic stay in domestic support proceedings

Under current law, section 362(b)(2) of the Bankruptcy Code excepts from the automatic stay the commencement or continuation of an action or proceeding: (1) for the establishment of paternity; or (2) the establishment or modification of an order for alimony, maintenance or support. It also permits the collection of such obligations from property that is not property of the estate. Section 214 makes several revisions to Bankruptcy Code section 362(b)(2). First, it replaces the reference to ''alimony, maintenance or support'' with ''domestic support obligations''. Second, it adds to section 362(b)(2) actions or proceedings concerning: (1) child custody or visitation; (2) the dissolution of a marriage (except to the extent 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. Fourth, it authorizes the reporting of overdue support owed by a parent to any consumer reporting agency pursuant to section 466(a)(7) of the Social Security Act. Fifth, it permits the interception of tax refunds as authorized by sections 464 and 466(a)(3) of the Social Security Act or analogous state law. 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 substantively identical to section 214 of the House bill and the Senate amendment.

Sec. 215. Nondischargeability of certain debts for alimony, maintenance, and support

Section 215 of the conference report amends Bankruptcy Code section 523(a)(5) to provide that a ''domestic support obligation'' (as defined in section 211 of the conference report) is nondischargeable and eliminates Bankruptcy Code section 523(a)(18). Section 215(2) amends Bankruptcy Code section 523(c) to delete the reference to section 523(a)(15) in that provision. Section 215(3) amends section 523(a)(15) to provide that obligations to a spouse, former spouse, or a child of the debtor (not otherwise described in section 523(a)(5)) incurred in connection with a divorce or separation or related action are nondischargeable irrespective of the debtor's inability to pay such debts. Section 215 is substantively identical to section 215 of the House bill and the Senate amendment.

Sec. 216. Continued liability of property

Section 216(1) of the conference report amends section 522(c) of the Bankruptcy Code to make exempt property liable for nondischargeable domestic support obligations notwithstanding any contrary provision of applicable nonbankruptcy law. Section 216(2) and (3) make conforming amendments to sections 522(f)(1)(A) and 522(g)(2) of the Bankruptcy Code. Section 216 is substantively identical to section 216 of the House bill and the Senate amendment.

Sec. 217. Protection of domestic support claims against preferential transfer motions

Section 217 of the conference report makes a conforming amendment to Bankruptcy Code section 547(c)(7) to provide that a bona fide payment of a debt for a domestic support obligation may not be avoided as a preferential transfer. This provision is substantively identical to section 217 of the House bill and the Senate amendment.

Sec. 218. Disposable income defined

Section 218 of the conference report amends section 1225(b)(2)(A) of the Bankruptcy Code to provide that disposable income in a chapter 12 case does not include payments for postpetition domestic support obligations. This provision is substantively identical to section 218 of the House bill. Its Senate counterpart included a duplicative amendment to section 1325(b)(2)(A) of the Bankruptcy Code that therefore was deleted from section 218 of the conference report.

Sec. 219. Collection of child support

Section 219 amends sections 704, 1106, 1202, and 1302 of the Bankruptcy Code to require trustees in chapter 7, 11, 12, and 13 cases to provide certain types of notices to child support claimants and governmental enforcement agencies. This provision is substantively derived from section 219 of the House bill and the Senate amendment. In addition to including a provision from the Senate amendment requiring chapter 12 trustees to give notice of the claim to the claimant, section 219 extends this requirement to chapter 7, 11 and 13 trustees as well. In addition, the conference report conforms internal statutory cross references to Bankruptcy Code section 523(a)(14A) and deletes the reference to Bankruptcy Code section 523(a)(14) with respect to chapter 13, as this provision is inapplicable to that chapter.

Section 219(a) requires a chapter 7 trustee to provide written notice to a domestic support claimant of the right to use the services of a state child support enforcement agency established under sections 464 and 466 of the Social Security Act in the state where the claimant resides for assistance in collecting child support during and after the bankruptcy case. The notice must include the agency's address and telephone number as well as explain the claimant's right to payment under the applicable chapter of the Bankruptcy Code. In addition, the trustee must provide written notice to the claimant and the agency of such claim and include the name, address, and telephone number of the child support claimant. At the time the debtor is granted a discharge, the trustee must notify both the child support claimant and the agency that the debtor was granted a discharge as well as supply them with the debtor's last known address, the last known name and address of the debtor's employer, and the name of each creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or holding a debt that was reaffirmed pursuant to Bankruptcy Code section 524. A claimant or agency may request the debtor's last known address from a creditor holding a debt that is not discharged under section 523(a)(2), (4) or (14A) or that is reaffirmed pursuant to section 524 of the Bankruptcy Code. A creditor who discloses such information, however, is not liable to the debtor or any other person by reason of such disclosure. Subsections (b), (c), and (d)

of section 219 of the conference report impose comparable requirements for chapter 11, 12, and 13 trustees.

Sec. 220. Nondischargeability of certain educational benefits and loans

Section 220 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 Internal Revenue Code) is nondischargeable, 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 220 of the House bill and the Senate amendment.

SUBTITLE C—OTHER CONSUMER PROTECTIONS

Sec. 221. Amendments to discourage abusive bankruptcy filings

Section 221 of the conference report is substantively identical to section 221 of the House bill and the Senate amendment. It makes a series of amendments to section 110 of the Bankruptcy Code. First, section 221 clarifies that the definition of a bankruptcy petition preparer does not include an attorney for a debtor or an employee of an attorney under the direct supervision of such attorney. Second, it amends subsections (b) and (c) of section 110 to provide that if a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the preparer must sign certain documents filed in connection with the bankruptcy case as well as state the person's name and address on such documents. Third, it requires a bankruptcy petition preparer to give the debtor written notice (as prescribed by the Judicial Conference of the United States) explaining that the preparer is not an attorney and may not practice law or give legal advice. The notice may include examples of legal advice that a preparer may not provide. Such notice must be signed by the preparer under penalty of perjury and the debtor and be filed with any document for filing. Fourth, the petition preparer is prohibited from giving legal advice, including with respect to certain specified items. Fifth, it permits the Supreme Court to promulgate rules or the Judicial Conference of the United States to issue guidelines for setting the maximum fees that a bankruptcy petition preparer may charge for services. Sixth, section 221 requires the preparer to notify the debtor of such maximum fees. Seventh, it specifies that the bankruptcy petition preparer must certify that it complied with this notification requirement. Eighth, it requires the court to order the turnover of any fees in excess of the value of the services rendered by the preparer within the 12–month period preceding the bankruptcy filing. Ninth, section 221 provides that all fees charged by a preparer may be forfeited if the preparer fails to comply with certain requirements specified in Bankruptcy Code section 110, as amended by this provision. Tenth, it allows a debtor to exempt fees recovered under this provision pursuant to Bankruptcy Code section 522(b). Eleventh, it specifically authorizes the court to enjoin a bankruptcy petition preparer who has violated a court order issued under section 110. Twelfth, it generally revises section 110's penalty provisions and specifies that such penalties are to be paid to a special fund of the United States trustee for the purpose of funding the enforcement of section 110 on a national basis. With respect to Bankruptcy Administrator districts, the funds are to be deposited as offsetting receipts pursuant to section 1931 of title 28 of the United States Code.

Sec. 222. Sense of Congress

Section 222 of the conference report expresses the sense of Congress that the states 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 507(a) of the Bankruptcy Code to accord a tenth-level priority to claims for death or personal injuries resulting from the debtor's operation of a motor vehicle or vessel while intoxicated. This provision is substantively identical to section 223 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 224 of the House bill and the Senate amendment. Subsection (a) amends section 522 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(a) of the Internal Revenue Code and that have received a favorable determination pursuant to Internal Revenue Code section 7805 that is in effect as of the date of the commencement of the case. If the retirement monies are in a retirement fund that has not received a favorable determination, those monies are exempt if the debtor demonstrates that no prior unfavorable determination has been made by a court or the Internal Revenue Service, and the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code. If the retirement fund fails to be in substantial compliance with applicable requirements of the Internal Revenue Code, the debtor may claim the retirement funds as exempt if he or she is not materially responsible for such failure. This section also applies to certain direct transfers and rollover distributions. In addition, this provision ensures that the specified retirement funds are exempt under state as well as federal law.

Section 224(b) amends section 362(b) of the Bankruptcy Code to except from the automatic stay the withholding of income from a debtor's wages pursuant to an agreement authorizing such withholding for the benefit of a pension, profit-sharing, stock bonus, or other employer-sponsored plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) to the extent that the amounts withheld are used solely to repay a loan from a plan as authorized by section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(b) further provides that this exception may not be used to cause 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 to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

Section 224(c) amends Bankruptcy Code section 523(a) to except from discharge any amount owed by the debtor to a pension, profit-sharing, stock bonus, or other plan established under Internal Revenue Code section 401, 403, 408, 408A, 414, 457, or 501(c) under a loan authorized under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or subject to Internal Revenue Code section 72(p) or with respect to a loan from certain thrift savings plans. Section 224(c) further provides that this exception to discharge may not be used to cause 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 to be construed to be a claim or debt within the meaning of the Bankruptcy Code.

Section 224(d) amends Bankruptcy Code section 1322 to provide that a chapter 13 plan may not materially alter the terms of a loan described in section 362(b)(19) and that any amounts required to repay such loan shall not constitute ''disposable income'' under section 1325 of the Bankruptcy Code.

Section 224(e) amends section 522 of the Bankruptcy Code to impose a $1 million cap (periodically adjusted pursuant to section 104 of the Bankruptcy Code to reflect changes in the Consumer Price Index) on the value of the debtor's interest in an individual retirement account established under either section 408 or 408A of the Internal Revenue Code (other than a simplified employee pension account under section 408(k) or a simple retirement account under section 408(p) of the Internal Revenue Code) that a debtor may claim as exempt property. This limit applies without regard to amounts attributable to rollover contributions made pursuant to section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), or 403(b)(8) of the Internal Revenue Code and earnings thereon. The cap may be increased if required in the interest of justice.

Sec. 225. Protection of education savings in Bankruptcy

Section 225 of the conference report is substantively identical to section 225 of the House bill and the Senate amendment. Subsection (a) amends section 541 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 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 stepgrandchild of the debtor for the taxable year 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 4973(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 $5,000. Similar criteria apply with respect to funds used to purchase a tuition credit or certificate or to funds contributed to a qualified state tuition plan 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 certain 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 sold or otherwise provided with the express or implied purpose of giving information, advice, or counsel; preparing documents for filing; or attending a meeting of creditors pursuant to section 341; appearing 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 ''debt relief agency'' 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 exemption from taxation under section 501(c)(3) of the Internal Revenue Code. Second, it is inapplicable to a creditor who assisted such person to the extent the assistance pertained to the restructuring 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), as well as any affiliate or subsidiary of such depository institution or credit union. 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(B)(1) of the Bankruptcy Code to permit 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 creates a new provision in the Bankruptcy Code intended to proscribe certain activities of a debt relief agency. It prohibits such agency 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 case, should 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 bankruptcy; and (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 assisted person of the protections 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 that does not comply with these provisions is 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 and recover actual damages. Third, section 227 provides that the United States district court has concurrent jurisdiction of certain actions under section 526. Fourth, section 227 provides that sections 526, 527 and 528 preempt inconsistent state law. In addition, it provides that these provisions do not limit or curtail the authority of a federal court, a state, or a subdivision or instrumentality of a state, to determine and enforce qualifications for the practice of law before the federal court or under the laws of that state.

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 the assisted person provides in connection with the case must be complete, accurate and truthful; (2) all assets and liabilities must be completely and accurately disclosed in the documents filed to commence the case, including the replacement value of each asset (if required) after reasonable inquiry to establish such value; (3) current monthly income, monthly expenses and, in a chapter 13 case, disposable income, must be stated after reasonable inquiry; and (4) the information an assisted person provides may be audited and that the failure to provide such information may result in dismissal of the case or other sanction including, in some instances, criminal sanctions. In addition, the agency must supply certain specified advisories and explanations regarding the bankruptcy process. Further, this provision requires the agency to advise an assisted person (to the extent permitted under nonbankruptcy law) concerning asset valuation, the calculation of disposable income, and the determination of exempt property. Section 228 of the conference report is substantively identical to section 228 of the House bill and the Senate amendment.

Sec. 229. Requirements for debt relief agencies

Section 229 adds a new provision to the Bankruptcy Code requiring 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 (but prior to such assisted person's bankruptcy petition being filed)—to execute a written contract with the assisted person. The contract must specify clearly and conspicuously the services 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 bankruptcy assistance services or regarding the benefits of bankruptcy that is directed to the general public whether through the general media, seminars, specific mailings, telephonic or electronic messages, or otherwise. Section 229 of the conference report is substantively identical to section 229 of the House bill and the Senate amendment.

Sec. 230. GAO study

Section 230 of the conference report directs the Comptroller General of the United States to study and prepare a report on the feasibility, efficacy and cost of requiring trustees to supply certain specified information about a debtor's bankruptcy case to the Office of Child Support Enforcement for the purpose of determining whether a debtor has outstanding child support obligations. This provision is substantively identical to section 230 of the House bill and the Senate amendment.

Sec. 231. Protection of personally identifiable information

Section 231 of the conference report largely reflects section 231 of the Senate amendment. It differs from its Senate antecedent in that it clarifies that it applies to personally identifiable information and does not preempt applicable nonbankruptcy law. In addition, the provision specifies that court approval must be preceded by the appointment of a privacy ombudsman to effectuate the intent of this provision. There is no counterpart to Section 231 in the House bill.

Subsection (a) amends Bankruptcy Code section 363(b)(1) to provide that if a debtor, in connection with offering a product or service, discloses to an individual a policy prohibiting the transfer of personally identifiable information to persons unaffiliated with the debtor, and the policy is in effect at the time of the bankruptcy filing, then the trustee may not sell or lease such information unless either of the following conditions is satisfied: (1) the sale is consistent with such policy; or (2) the court, after appointment of a consumer privacy ombudsman (pursuant to section 332 of the Bankruptcy Code, as amended) and notice and hearing, the court approves the sale or lease upon due consideration of the facts, circumstances, and conditions of the sale or lease.

Section 231(b) amends Bankruptcy Code section 101 to add a definition of ''personally identifiable information.'' The term applies to information provided by an individual to the debtor 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 last name (whether given at birth or adoption or legally changed); (2) physical home address; (3) electronic address, including an e-mail address; (4) home telephone number; (5) Social Security number; or (vi) credit card account number. The term also includes information if it is identified in connection with the above items: (1) an individual's birth date, birth or adoption certificate number, or place of birth; or (2) any other information concerning an identified individual that, if disclosed, will result in the physical or electronic contacting or identification of that person.

Sec. 232. Consumer privacy ombudsman

Section 232 implements the preceding provision of the conference report with respect to the appointment and responsibilities of a consumer privacy ombudsman. It provides that if a hearing is required under section 363(b)(1)(B) (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 appear and be heard at such hearing. The ombudsman must provide the court with information to assist its consideration of the facts, circumstances and conditions of the proposed sale or lease of personally identifiable information. The information may include a presentation of the debtor's privacy policy, potential losses or gains of privacy to consumers if the sale or lease is approved, potential costs or benefits to consumers if the sale or lease is approved, and possible alternatives that would mitigate potential privacy losses or costs to consumers. Section 232 prohibits the ombudsman from disclosing any personally identifiable information obtained in the case by such individual. In addition, the provision amends Bankruptcy Code section 330(a)(1) to permit an ombudsman to be compensated.

This provision largely reflects section 232 of the Senate amendment. There is no counterpart to section 232 in the House bill. The conference report redrafts the Senate provision to be an amendment to the Bankruptcy Code rather than freestanding text, deletes the 30–day provision as being deemed to be unnecessary; restructures the provision to better integrate its components; and clarifies that the court must direct the United States trustee to appoint the ombudsman, rather than the court making such appointment itself.

Sec. 233. Prohibition on disclosure of name of minor children

Section 233 of the conference report adds a new provision to the Bankruptcy Code (section 112) specifying that a debtor may be required to provide information regarding his or her minor child in connection with the

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 nonpublic 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 auditor from disclosing such minor child's name. Section 233 of the conference report generally reflects section 233 of the Senate amendment. The conference report clarifies 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 provision giving the court, United States trustee, trustee or audit access to the proscribed information.

TITLE III—DISCOURAGING BANKRUPTCY ABUSE

Sec. 301. Reinforcement of the fresh start

Section 301 of the conference report makes a clarifying amendment to section 523(a)(17) of the Bankruptcy Code concerning the dischargeability of court fees incurred by prisoners. Section 523(a)(17) was added to the Bankruptcy Code by the Omnibus Consolidated Rescissions and Appropriations Act of 1996[1] to except from discharge the filing fees and related costs and expenses assessed by 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 by those who are prisoners. The amendment eliminates this ambiguity and makes other conforming changes to narrow its application in accordance with its 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

Section 302 of the conference report amends 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 continue the automatic stay 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 as to the creditors who are 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 year 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 (if a chapter 7 case) or confirmation (if a chapter 11 or 13 case). In addition, section 302 provides that a case is presumptively deemed not to be filed in good faith as to any creditor who obtained relief 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 similar presumption applies if two or more bankruptcy cases were pending in the one-year 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(d) to add a new ground for relief 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: (i) 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 affecting the real property. If recorded 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 binding in any other 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) further provides that any federal, state or local governmental unit that accepts a notice of interest or a lien in real property, must accept a certified copy of an order entered under this provision.

Section 303(b) amends Bankruptcy Code section 362(b) to except 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 other good cause shown after notice and a hearing. Section 303(b) also provides that the automatic stay does not apply in a case where the debtor: (1) is ineligible to be a debtor in a bankruptcy case pursuant to section 109(g) of the Bankruptcy Code; or (2) filed the bankruptcy case in violation of an order issued in a prior bankruptcy case prohibiting the debtor from being a debtor in a subsequent bankruptcy case.

Sec. 304. Debtor retention of personal property security

Section 304 is substantively identical to section 304 of the House bill and Senate amendment. Section 304(1) of the conference report amends section 521(a) of the Bankruptcy Code to provide that an individual who is a chapter 7 debtor may not retain possession of personal property securing, in whole or in part, a purchase money security interest unless the debtor, within 45 days after the first meeting of creditors, enters into a reaffirmation agreement with the creditor, or redeems the property. If the debtor fails to so act within the prescribed period, the property is not subject to the automatic stay and is no longer property of the estate. An exception applies if the court: (1) determines on motion of the trustee filed before the expiration of the 45–day period that the property has consequential value or would benefit the bankruptcy estate; (2) orders adequate protection of the creditor's interest; and (iii) directs the debtor to deliver any collateral in the debtor's possession. Section 304(2) amends section 722 to clarify that a chapter 7 debtor must pay the redemption value in full at the time of redemption.

Sec. 305. Relief from the automatic stay when the debtor does not complete intended surrender of consumer debt collateral

Section 305 of the conference report is substantively identical to section 305 of the House bill and the Senate amendment. Subsection (1) amends Bankruptcy Code section 362 to terminate the automatic stay with respect to personal property of the estate or of the debtor in a chapter 7, 11, or 13 case (where the debtor is an individual) that secures a claim (in whole or in part) or is subject to an unexpired lease if the debtor fails to: (1) file timely a statement of intention as required by section 521(a)(2) of the Bankruptcy Code with respect to such property; or (2) indicate in such statement whether the property will be surrendered or retained, and if retained, 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 and the creditor refuses to enter into the reaffirmation agreement on the original contract terms. In addition to terminating the automatic stay, this provision renders such property no longer property of the estate. An exception pertains where the court determines, on the motion of the trustee made prior to the expiration of the applicable time period under section 521(a)(2), and 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 directs the debtor to deliver any collateral in the debtor's possession.

Section 305(2) amends section 521 of the Bankruptcy Code to make the requirement 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 that a lessor or bailor 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 by reason of the debtor's bankruptcy or insolvency.

Sec. 306. Giving secured creditors fair treatment in chapter 13

Section 306 of the conference report is substantively identical to section 306 of the House bill and Senate amendment, except as noted below. Subsection (a) amends Bankruptcy Code section 1325(a)(5)(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.

Section 306(b) adds a new paragraph to section 1325(a) of the Bankruptcy Code specifying that Bankruptcy Code section 506 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 a purchase money security interest in a motor vehicle acquired for the personal use of the debtor. Where the collateral consists

[1] Pub. L. No. 104–134, Section 804(b)(1996).

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 filing of the bankruptcy case. The 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(b) 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 with a principal residence in the area where the real property is located. The term includes all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, and insurance proceeds. Further, the term encompasses all replacements and additions.

Sec. 307. Domiciliary requirements for exemptions

Section 307 of the conference report is substantively identical to section 307 of the House bill and the Senate amendment. This provision amends section 522(b)(2)(A) of the Bankruptcy Code to extend the time that a debtor must be domiciled in a state from 180 days to 730 days before he or she may claim that state's exemptions. If the debtor's domicile has not been located in a single state for the 730–day period, then the state where the debtor was domiciled in the 180–day period preceding the 730–day period (or the longer portion of such 180–day period) controls. If the effect of this provision is to render the debtor ineligible for any exemption, the debtor may elect to exempt property of the kind described in the federal exemption notwithstanding state opt out.

Sec. 308. Reduction of homestead exemption for fraud

Section 308 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: (i) real or personal property that the debtor or a dependent of the debtor uses as a residence, (ii) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence, (iii) a burial plot, or (iv) real or personal property that the debtor or dependent of the debtor claims as a homestead. Where nonexempt property is converted to the above-specified exempt property within the ten-year period preceding the filing of the bankruptcy case, the exemption must be reduced to the extent such value was acquired with the intent to hinder, delay or defraud a creditor. Section 308 represents a compromise between the House and Senate positions on the issue of homestead exemptions. In section 308 of the House bill, the reachback period is seven years. Section 308 of the Senate amendment imposes a flat $125,000 homestead cap, which does not apply to an exemption claimed by a family farmer for the farmer's principal residence.

Sec. 309. Protecting secured creditors in chapter 13 cases

Section 309 of the conference report is substantively identical to section 309 of the House bill and the Senate amendment. Section 309(a) 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 subsequently converted to one under chapter 11 or 12. If the chapter 13 case is converted to one under chapter 7, then the creditor holding security as of the petition date shall continue to be secured unless its claim was paid in full as of the conversion date. In addition, unless a prebankruptcy default has been fully cured at the time of conversion, then the default in any bankruptcy proceeding shall have the effect given under applicable nonbankruptcy law.

Section 309(b) 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, such property is no longer property of the estate and the automatic stay under section 362 with respect to such property is terminated. With regard to a chapter 7 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 contract. If within 30 days after such notice the debtor gives written notice to the lessor that the lease is assumed, the debtor (not the bankruptcy estate) assumes the liability under the lease. Section 309(b) provides that the automatic stay of section 362 and the discharge injunction of section 524 are not violated if the creditor notifies the debtor and negotiates a cure under section 365(p)(2) (as amended). In a chapter 11 or 13 case where the debtor is an individual lessee with respect to a personal property lease and the lease is not assumed in the confirmed plan, the lease is deemed rejected as of the conclusion of the confirmation hearing. If the lease is rejected, the automatic stay under section 362 as well as the chapter 13 codebtor stay under section 1301 are automatically terminated with respect to such property.

Section 309(c)(1) amends Bankruptcy Code section 1325(a)(5)(B) to require that periodic payments pursuant to a chapter 13 plan with respect to a secured claim be made in equal monthly installments. Where the claim is secured by personal property, the amount of such payments shall not be less than the amount sufficient to provide adequate protection to the holder of such claim. Section 309(c)(2) amends section 1326(a) of the Bankruptcy Code to require a chapter 13 debtor to commence making payments within 30 days after the filing of the plan or the order for relief, whichever is earlier. The amount of such payment must be the amount which is proposed in the plan, scheduled in a personal property lease for that portion of the obligation that becomes due postpetition (which amount shall reduce the payment required to be made to such lessor pursuant to the plan), and which 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 (which amount shall reduce the payment required to be made to such secured creditor pursuant to the plan). Payments made pursuant to a plan must be retained by the chapter 13 trustee until confirmation or denial of confirmation. Section 309(c)(2) provides that if the plan is confirmed, the trustee must distribute payments received from the debtor as soon as practicable in accordance with the plan. If the plan is not confirmed, the trustee must return to the debtor payments not yet due and owing to creditors. Pending confirmation and subject to section 363, the court, after notice and a hearing, may modify the payments required under this provision. Section 309(c)(2) requires the debtor, within 60 days following the filing of the bankruptcy case, to provide reasonable 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, a purchase money security interest.

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, in the aggregate, exceed $1,075 for luxury goods or services incurred within 60 days before the commencement of the case are presumed to be nondischargeable. As amended, the presumption applies if the aggregate amount of consumer debts for luxury goods or services is more than $500 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 $1,075 that are extensions of consumer credit under an open-end credit plan obtained by an individual debtor within 60 days before the case is filed are presumed to be nondischargeable. As amended, section 523(a)(2)(C) presumes that cash advances aggregating more than $750 and that are incurred within 70 days are nondischargeable. The term, ''luxury goods or services,'' 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 fixed for luxury goods and services under this provision, section 310 of the conference report reflects a compromise between the House bill, which has a $250 threshold, and the Senate amendment, which has a $750 threshold.

Sec. 311. Automatic stay

Section 311 of the conference report amends section 362(b) of the Bankruptcy Code to except from the automatic stay a judgment of eviction with respect to a residential leasehold. It represents a compromise between House and Senate conferees.

The House bill excepts the following proceedings from the automatic stay: (1) the continuation 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 under a rental agreement; (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 under a rental agreement that has terminated pursuant to the lease agreement or applicable State law; and (3) an eviction action based on endangerment to property or person, or the use of illegal drugs. With respect to granting relief from the automatic stay to residential leaseholds, the Senate provision permits an eviction proceeding to continue or to be commenced if: (1) the debtor failed to make a rental payment that first becomes due under the unexpired term of a rental agreement or lease or a tenancy under applicable state or local rent control law, after the bankruptcy case was filed or during the ten-day period preceding the date of the filing of the petition, providing the lessor files with the court a certification that the debtor has not made the rent payment; or (2) the debtor has a month-to-month tenancy (or a shorter term) other than under applicable state or local rent control law where timely payments are made pursuant to

clause (1) if the lessor files with the court a certification that the requirements of this clause have been met. In addition, the Senate provision permits the commencement or continuation of any eviction, unlawful detainer action or similar proceeding by a lessor if during the two-year period preceding the date of the filing of the petition, the lessee-debtor or another occupant of the premises: (1) filed a bankruptcy case during this period; and (2) failed to make any rental payment that first became due under applicable nonbankruptcy law after the filing of the prior case. Further, the Senate amendment permits an eviction action to proceed to the extent the proceeding seeks possession based on endangerment of property or the illegal use of controlled substances on that property, if the lessor files with the court a certification that such an eviction has been filed or the debtor has endangered the property 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 requirements with respect to certain of these proceedings.

It is the intent of section 311 of the conference report to create an exception to the automatic stay of section 362(a)(3) to permit the recovery of possession by rental housing providers of their property in certain circumstances where a judgment for possession has been obtained against a debtor/resident before the filing of the petition for bankruptcy. At the same time, the section provides tenants a reasonable amount of time after filing the petition to cure the default giving rise to the judgment for possession as long as there are circumstances in which applicable non-bankruptcy law allows a default to be cured after a judgment has been obtained. It is also the intent of this section to permit eviction actions based on illegal use of controlled substances or endangering property to continue or to be commenced after the filing of the petition, in certain circumstances.

Where non-bankruptcy law applicable in the jurisdiction does not permit a tenant to cure a monetary default after the judgment for possession has been obtained, the automatic stay of section 362(a)(3) does not operate to limit action by a rental housing provider to proceed with, or a marshal, sheriff, or similar local officer to execute, the judgment for possession. Where the debtor claims that applicable law permits a tenant to cure after the judgment for possession has been obtained, the automatic stay operates only where the debtor files a certification with the bankruptcy petition asserting that applicable law permits such action and that the debtor or an adult dependent of the debtor has paid to the court all rent that will come due during the 30 days following the filing of the petition. If, within thirty days following the filing of the petition, the debtor or an adult dependent of the debtor certifies that the entire monetary default that gave rise to the judgment for possession has been cured, the automatic stay remains in effect.

If a lessor has filed or wishes to file an eviction action based on the use of illegal controlled substances or property endangerment, the section allows the lessor in certain cases to file a certification of such circumstance with the court and obtain an exception to the stay.

For both the judgment based on monetary default and the controlled substance or endangerment exceptions, the section provides an opportunity for challenge by either the lessor or the tenant to certifications filed by the other party and a timely hearing for the court to resolve any disputed facts and rule on the factual or legal sufficiency of the certifications. Where the court finds for the lessor, the clerk shall immediately serve upon the parties a copy of the court's order confirming that an exception to the automatic stay is applicable. Where the court finds for the tenant, the stay shall remain in effect. It is the intent of this section that the clerk's certified copy of the docket or order shall be sufficient evidence that the exception under paragraph 22 or paragraph 23 is applicable for a marshal, sheriff, or similar local officer to proceed immediately to execute the judgment for possession if applicable law otherwise permits such action, or for an eviction action for use of illegal controlled substances or property endangerment to proceed. This section does not provide any new right to either landlords or tenants relating to evictions or defenses to eviction under otherwise applicable law.

Sec. 312. Extension of period between bankruptcy discharges

Section 312 of the conference report amends section 727(a)(8) of the Bankruptcy Code to extend the period before which a chapter 7 debtor may receive 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 chapter 13 case if the debtor received a discharge in a prior chapter 7, 11, or 12 case within four years preceding the filing of the subsequent chapter 13 case. This represents a compromise between the House bill, which sets forth a five-year period with respect to any case, and the Senate amendment, which sets forth a three-year period with respect to a prior chapter 7, 11, or 12 case. With respect to the extension of the time period between subsequent chapter 13 discharges, the conference report adopts the two-year period set forth in section 312 of the Senate amendment, but excludes the provision permitting the court to shorten this period if the debtor demonstrates extreme hardship.

Sec. 313. Definition of household goods and antiques

Section 313 represents a compromise among the House and Senate conferees. This provision is substantively similar to section 313 of the House bill and the 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, nonpurchase money lien in such property. It also specifies various items that are expressly not household goods. Section 313(b) requires the Director of the Executive Office for United States Trustees to prepare a report containing findings with respect to the use of this definition. The report may include recommendations for amendments to the definition of ''household goods'' as codified in section 522(f)(4). Section 313 of the conference report differs from its counterparts in the House bill and Senate amendment in three respects: (1) it specifies a monetary threshold for the exclusions pertaining to electronic entertainment equipment, antiques, and jewelry; (2) it eliminates the restriction in the House bill and Senate amendment pertaining to a personal computer; and (3) and specifies that works of art are not household goods, unless by or of the debtor or by any relative of the debtor.

Sec. 314. Debt incurred to pay nondischargeable debts

Section 314 is substantively identical to section 314 of the House bill and Senate amendment. Subsection (a) amends section 523(a) of the Bankruptcy Code to make a debt incurred to pay a nondischargeable tax owed to a governmental unit (other than a tax owed to the United States) nondischargeable. Section 314(b) amends section 1328(a) of the Bankruptcy Code to make the following additional debts nondischargeable in a chapter 13 case: (1) debts for money, property, services, or extensions of credit obtained through fraud or by a false statement in writing under section 523(a)(2)(A) and (B) of the Bankruptcy Code; (2) consumer debts owed to a single creditor that aggregate to more than $500 for luxury goods or services incurred by an individual debtor within 90 days before the filing of the bankruptcy case, and cash advances aggregating more than $750 that are extensions of consumer credit obtained by a debtor under an open-end credit plan within 70 days before the order for relief under section 523(a)(2)(C) (as amended); (3) pursuant to section 523(a)(3) of the Bankruptcy Code, debts that require timely request for a dischargeability determination, if the creditor lacks notice or does not have actual knowledge of the case in time to make such request; (4) debts resulting from fraud or defalcation by the debtor acting as a fiduciary under section 523(a)(4) of the Bankruptcy Code; and (5) debts for restitution or damages, awarded in a civil action against the debtor as a result of willful or malicious conduct by the debtor that caused personal injury to an individual or the death of an individual.

Sec. 315. Giving creditors fair notice in chapters 7 and 13 cases

Section 315 of the conference report amends several provisions of the Bankruptcy Code. Subsection (a) amends Bankruptcy Code section 342(c) to delete the provision specifying that the failure of a notice to include certain information required to be given by a debtor to a creditor does not invalidate the notice's legal effect. It adds a provision requiring a debtor to send any notice he or she must provide under the Bankruptcy Code to the address stated by the creditor and to include in such notice the current account number, if within 90 days prior to the date that the debtor filed for bankruptcy relief the creditor in at least two communications sent to the debtor set forth such address and account number. If the creditor would be in violation of applicable nonbankruptcy law by sending any such communication during this time period, then the debtor must send the notice to the address provided by the creditor stated in the last two communications containing the creditor's address and such notice shall include the current account number. Section 315(a) also permits a creditor in a chapter 7 or 13 case (where the debtor is an individual) to file with the court and serve on the debtor the address to be used to notify such creditor in that case. Five days after receipt of such notice, the court and the debtor, respectively, must use the address so specified to provide notice to such creditor. In addition, section 315(a) 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 specified by such entity. 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. Notice given other than as provided in section 342 is not effective until it has been brought to the creditor's attention. If the creditor has designated a person or organizational subdivision to be responsible for receiving notices concerning bankruptcy cases and has established reasonable procedures so that these notices will be delivered to such person or subdivision, a notice will not be deemed to have been received by the creditor until it has been received by such person or subdivision. This provision also prohibits the imposition of any monetary 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 is substantively identical to section 315(a) of the House bill and Senate amendment.

Section 315(b) amends section 521 to specify additional duties of a debtor. This provision requires the debtor to 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 counsel and did not use the services of a bankruptcy petition preparer, then the debtor must sign a certificate stating that he or she obtained and read such notice. In addition, the debtor must file: (1) copies of all payment advices or other evidence of payment, if any, from any employer within 60 days preceding the bankruptcy filing; (2) a statement of the amount of monthly net income, itemized to show how such amount is calculated; and (3) a statement disclosing any reasonably anticipated increase in income or expenditures in the 12–month period following the date of filing. Upon request of a creditor, section 315(b) of the conference report requires the court to make the petition, schedules, and statement of financial affairs of an individual who is a chapter 7 or 13 debtor available to such creditor.

In addition, section 315(b) requires such debtor to provide the trustee not later than seven days before the date first set for the meeting of creditors a copy of his or her Federal income tax return or transcript (at the election of the debtor) for the latest taxable period ending prior to the filing of the bankruptcy case for which a tax return was filed. Should the debtor fail to comply with this requirement, the case must be dismissed unless the debtor demonstrates that such failure was due to circumstances beyond the debtor's control. In addition, the debtor must file copies of any amendments to such tax returns. Upon request, the debtor must provide a copy of the tax return or transcript to the requesting creditor at the time the debtor supplies the return or transcript to the trustee. Should the debtor fail to comply with this requirement, the case must be dismissed unless the debtor demonstrates that such failure is due to circumstances beyond the debtor's control. A creditor in a chapter 13 case may, at any time, file a notice with the court requesting a copy of the plan. The court must supply a copy of the chapter 13 plan at a reasonable cost not later than 5 days after such request. This provision represents a compromise between section 315(b) of the House bill and the Senate amendment. The House bill was not limited to Federal tax returns and did not consistently include transcripts as an alternative. In addition, the conference report clarifies that this provision applies to Federal income tax returns.

During the pendency of a chapter 7, 11 or 13 case, the debtor must file with the court, at the request of the judge, United States trustee, or any party in interest, at the time filed with the taxing authority, copies of any Federal income tax returns (or transcripts thereof) that were not filed for the three-year period preceding the date on which the order for relief was entered. In addition, the debtor must file copies of any amendments to such tax returns.

In a chapter 13 case, the debtor must file a statement, under penalty of perjury, of income and expenditures in the preceding tax year and monthly income showing how the amounts were calculated. The statement must be filed on the date that is the later of 90 days after the close of the debtor's tax year or one year after the order for relief, unless a plan has been confirmed. Thereafter, the statement must be filed on or before the date that is 45 days before the anniversary date of the plan's confirmation, until the case is closed. The statement must disclose the amount and sources of the debtor's income, the identity of any persons responsible with the debtor for the support of the debtor's dependents, the identity of any persons who contributed to the debtor's household expenses, and the amount of any such contributions.

Section 315(b)(2) mandates that the tax returns, amendments thereto, and the statement of income and expenditures of an individual who is a chapter 7 or chapter 13 debtor be made available to the United States trustee or bankruptcy administrator, the trustee, and any party in interest for inspection and copying, subject to procedures established by the Director of the Administrative Office for United States Courts within 180 days from the date of enactment of this Act. The procedures must safeguard the confidentiality of any tax information required under this provision and include restrictions on creditor access to such information. In addition, the Director must, within 540 days from the Act's enactment date, prepare and submit to Congress a report that assesses the effectiveness of such procedures and, if appropriate, includes recommendations for legislation to further protect the confidentiality of such tax information and to impose penalties for its improper use. If requested by the United States trustee or trustee, the debtor must provide a document establishing the debtor's identity, which may include a driver's license, passport, or other document containing a photograph of the debtor, and such other personal identifying information relating to the debtor. Section 315(b) is substantively similar to section 315(b) of the House bill and the Senate amendment. 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(a)(1) within 45 days of the date on which the case is filed, the case must be automatically dismissed, effective on the 46th day. The 45–day period may be extended for an additional 45–day period providing the debtor requests such extension prior to the expiration of the original 45–day period and the court finds justification for such extension. Upon request of a party in interest, the court must enter an order of dismissal within 5 days of such request. Section 316 of the conference report, unlike its House and Senate antecedents, provides that a court may decline to dismiss the case if: (1) the trustee files a motion before the stated time periods; (2) the court finds, after notice and a hearing, that the debtor in good faith attempted to file all the information required under section 521(a)(1)(B)(iv); and (3) the court finds that the best interests of creditors would be served by continued administration of the case.

Sec. 317. Adequate time to prepare for hearing on confirmation of the plan

Section 317 of the conference report is similar to section 317 of the House bill and the Senate amendment. This provision amends section 1324 of the Bankruptcy Code to require the chapter 13 confirmation hearing to be held not earlier than 20 days following the first date set for the meeting of creditors and not later than 45 days from this date, unless 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 date. The House and Senate antecedents to section 317 of the conference report do not include this exception.

Sec. 318. Chapter 13 plans to have a 5-year duration in certain cases

Section 318 of the conference report is substantially identical to section 318 of the House bill and the Senate amendment. Subsection (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 may not be longer than three years, unless the court, for cause, approves a longer period up to five years. The applicable commitment period may be less if the plan provides for payment in full of all allowed unsecured claims over a shorter period. Section 318(2), (3), and (4) make conforming amendments to sections 1325(b) and 1329(c) of the Bankruptcy Code.

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 or the trustee by a debtor may be submitted only after the debtor or the debtor's attorney has made reasonable inquiry to verify that the information contained in such documents is well-grounded in fact and warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law. Section 319 of the conference report is substantially identical to section 319 of the House bill and the Senate amendment.

Sec. 320. Prompt relief from stay in individual cases

Section 320 of the conference report is substantively identical to section 320 of the House bill and the Senate amendment. This provision amends section 362(e) of the Bankruptcy Code to terminate the automatic stay in a chapter 7, 11, or 13 case of an individual debtor within 60 days following a request for relief from the stay, unless the bankruptcy court renders a final decision prior to the expiration of the 60-day time period, such period is extended pursuant to agreement of all parties in interest, or a specific extension of time is required for good cause as described in findings made by the court.

Sec. 321. Chapter 11 cases filed by individuals

Section 321(a) of the conference report creates a new provision under chapter 11 of the Bankruptcy Code specifying that property of the estate of an individual debtor includes, in addition to that identified in section 541 of the Bankruptcy Code, all property of the kind described in section 541 that the debtor acquires after 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). In addition, it includes earnings from services performed by the debtor after commencement of the case, but before the case is closed, dismissed or converted to a case under chapter 7, 12, or 13. Except as provided in section 1104 of the Bankruptcy Code or the order confirming a chapter 11 plan, section 321(a) provides that

the debtor remains in possession of all property of the estate. Section 321(a) is substantively identical to section 321(a) of the House bill and the Senate amendment.

Section 321(b) amends Bankruptcy Code section 1123 to require the chapter 11 plan of an individual debtor to provide for the payment to creditors of all or such portion of the debtor's earnings from personal services performed after commencement of the case or other future income that is necessary for the plan's execution. This provision is substantively identical to section 321(b) of the House bill and the Senate amendment.

Section 321(c) amends Bankruptcy Code section 1129(a) to include an additional requirement for confirmation in a chapter 11 case of an individual debtor upon objection to confirmation by a holder of an allowed unsecured claim. In such instance, the value of property to be distributed under the plan (1) on account of such claim, as of the plan's effective date, must not be less than the amount of such claim; or (2) is not less than the debtor's projected disposable income (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan or during the plan's term, whichever is longer. Section 321(c) also amends section 1129(b)(2)(B)(ii) of the Bankruptcy Code to provide that an individual chapter 11 debtor may retain property included in the estate under section 1115 (as added by the Act), subject to section 1129(a)(14). This provision is substantively identical to section 321(c) of the House bill and the Senate amendment.

Section 321(d)(1) of the conference report reflects the Senate position represented in section 321(d) of the Senate amendment, which amends Bankruptcy Code section 1141(d) to provide that a discharge under chapter 11 does not discharge a debtor who is an individual from any debt excepted from discharge under Bankruptcy Code section 523. The House bill provides that a chapter 11 debtor, including a corporation, is not discharged from any debt excepted from discharge under section 523.

Section 321(d)(2) of the conference report provides that in a chapter 11 individual debtor is not discharged until all plan payments have been made. The court may grant a hardship discharge if the value of property actually distributed under the plan—as of the plan's effective date—is not less than the amount that would have been available for distribution if the case was liquidated under chapter 7 on such date, and modification of the plan is not practicable. This provision is substantively identical to its counterparts in the House bill and Senate amendment.

Section 321(e) of the conference report amends section 1127 to permit a plan in a chapter 11 case of an individual debtor to be modified postconfirmation for the purpose of increasing or reducing the amount of payments, extending or reducing the time period for such payments, or altering the amount of distribution to a creditor whose claim is provided for by the plan. Such modification may be made at any time on request of the debtor, trustee, United States trustee, or holder of an allowed unsecured claim, if the plan has not been substantially consummated.

Section 321(f) specifies that sections 1121 through 1129 apply to such modification. In addition, it provides that the modified plan shall become the confirmed plan only if: (a) there has been disclosure pursuant to section 1125 (as the court directs); (b) notice and a hearing; and (c) such modification is approved. Subsections (e) and (f) of section 321 of the conference report are substantively identical to their counterparts in the House bill and the Senate amendment.

Sec. 322. Limitations on homestead exemption

Section 322(a) amends section 522 of the Bankruptcy Code to impose an aggregate monetary limitation of $125,000, subject to Bankruptcy Code sections 544 and 548, on the value of property that the debtor may claim as exempt under State or local law pursuant to section 522(b)(3)(A) under certain circumstances. The monetary cap applies if the debtor acquired such property within the 1215-day period preceding the filing of the petition and the property consists of any of the following: (a) real or personal property of the debtor or that a dependent of the debtor uses as a residence; (b) an interest in a cooperative that owns property, which the debtor or the debtor's dependent uses as a residence; (c) a burial plot for the debtor or the debtor's dependent; or (d) real or personal property that the debtor or dependent of the debtor claims as a homestead. This limitation does not apply to a principal residence claimed as exempt by a family farmer. In addition, the limitation does not apply to any interest transferred from a debtor's principal residence (which was acquired prior to the beginning of the specified time period) to the debtor's current principal residence, if both the previous and current residences are located in the same State.

Section 322(a) further amends section 522 to add a provision that does not allow a debtor to exempt any amount of an interest in property described in the preceding paragraph in excess of $125,000 if any of the following applies:

(a) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of the Bankruptcy Code; or

(b) the debtor owes a debt arising from:

(A) any violation of the federal securities laws defined in section 3(a)(47) of the Securities and Exchange Act of 1934, any state securities laws, or any regulation or order issued under Federal securities laws or state securities laws;

(B) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934, or under section 6 of the Securities Act of 1933;

(C) any civil remedy under section 1964 of title 18 of the United States Code; or

(D) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding five years.

The conferees intend that the language in section 522(q)(1) be liberally construed to encompass misconduct that rises above mere negligence under applicable state law. An exception to the monetary limit applies to the extent the value of the homestead property is reasonably necessary for the support of the debtor and any dependent of the debtor.

Section 322(b) makes the monetary limitation set forth in section 322(a) subject to automatic adjustment pursuant to section 104 of the Bankruptcy Code.

This provision is substantively different from its House and Senate counterparts. Section 322 of the House bill imposes an aggregate $100,000 homestead cap, which applies if the debtor acquired such property within the two-year period preceding the filing of the petition and the property consists. As with section 322 of the conference report, the House provision includes the exception for a family farmer and the transfer of an interest in a principal residence of the debtor from a prior principal residence of the debtor acquired prior to the beginning of the two-year period. Section 308 of the Senate amendment, on the other hand, imposes a flat $125,000 cap on a homestead exemption.

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 322 of the Senate amendment. It amends section 541(b) of the Bankruptcy Code to exclude as property of the estate funds withheld or received by an employer from its employees' wages for payment as contributions to specified employee retirement plans, deferred compensation plans, and tax-deferred annuities. Such contributions do not constitute disposable income as defined in section 1325(b)(2) of the Bankruptcy Code. Section 323 also excludes as property of the estate funds withheld 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 involving 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 323 of the Senate amendment.

Sec. 325. United States trustee program filing fee increase

Section 325 of the conference report is substantively identical to section 325 of the House bill and section 324 of the Senate amendment. Section 325(a) amends section 1930(a) of title 28 of the United States Code to increase the filing fees for chapter 7 and chapter 13 cases respectively to $160 and $150. Subsections 325(b) and (c) amend section 589a of title 28 of the United States Code and section 406(b) of the Judiciary Appropriations Act of 1990 to increase the percentage of the fees collected under section 1930 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 allows the sharing of compensation with bona fide public service attorney referral programs that operate in accordance with non-federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals. This provision is substantively identical to section 326 of the House bill and section 325 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 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, 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 its value is determined. This provision is identical to section 327 of the House bill and section 326 of the Senate amendment.

Sec. 328. Defaults based on nonmonetary obligations

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 arising from any failure to perform a nonmonetary obligation under an unexpired lease of real property, if it is impossible for the trustee to cure the default by performing such nonmonetary act at and after the time of assumption. 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(b)(1). In addition, section 328(a)(1) amends section 365(b)(2)(D) to clarify that it applies to penalty provisions. Section 328(a)(2) through (4) make technical revisions to section 365(c), (d) and (f) by deleting language that is no longer effective pursuant to the Rail Safety Enforcement and Review Act.[2]

Section 328(b) amends section 1124(2)(A) 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 perform a nonmonetary obligation (other than a default arising 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.

Sec. 329. Clarification of postpetition wages and benefits

Section 329 amends Bankruptcy Code section 503(b)(1)(A) to accord administrative expense status to certain back pay awards. This provision applies to a back pay award attributable to any period of time occurring postpetition as a result of a violation of Federal or state law by the debtor pursuant to an action brought in a court or before the National Labor Relations Board, providing the bankruptcy court determines that the award will not substantially increase the probability of layoff or termination of current employees or of nonpayment of domestic support obligations. Section 329 of the conference report substantively reflects the Senate position as represented in section 329 of the Senate amendment. The conference report clarifies the provision with respect to the timing of the unlawful conduct. There is no counterpart to this provision in the House bill.

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) to prohibit the discharge of a debt 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 or 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 of the United States Code, 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 class of persons from obtaining or providing lawful goods or services;

(ii) by force of 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 provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship; or

(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 lawful goods or services if such violation—

(i) is intentional or knowing; or

(ii) occurs after a court has found that the debtor previously violated such court order or injunction, or any other court order or injunction that protects access to the same facility or the same person.

The provision specifies that it shall not 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.

Section 330(b) amends section 523(a)(13) of the Bankruptcy Code to make a debt for a criminal restitution order entered pursuant to state criminal law nondischargeable.

Sec. 331. Delay of discharge during pendency of certain proceedings

Section 330 amends section 727(a) of the Bankruptcy Code to require the court to withhold the entry of a debtor's discharge order if the court, after notice and a hearing, finds that there is reasonable cause to believe that there is pending a proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1) or liable for a debt of the kind described in section 522(q)(2). There is no counterpart to this provision in either the House bill or Senate amendment.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

SUBTITLE A—GENERAL BUSINESS BANKRUPTCY PROVISIONS

Sec. 401. Adequate protection for investors

Section 401 is substantively identical to Section 401 of the House bill and Senate amendment. SubSection (a) amends section 101 of the Bankruptcy Code to define ''securities self regulatory organization'' as a Securities association or national securities exchange registered with the Securities and Exchange Commission. Section 401(b) amends section 362 of the Bankruptcy Code to except from the automatic stay certain enforcement actions by a Securities self regulatory organization.

Sec. 402. Meetings of creditors and equity security holders

Section 402 amends Section 341 of the Bankruptcy Code to permit a court, on request of a party in interest and after notice and a hearing, to order the United States trustee not to convene a meeting of creditors or equity Security holders if a debtor has filed a plan for which the debtor solicited acceptances prior to the commencement of the case. This provision is substantively identical to Section 402 of the House bill and the Senate amendment.

Sec. 403. Protection of refinance of security interest

Section 403 amends Section 547(e)(2) of the Bankruptcy Code to increase the perfection period from ten to 30 days for the purpose of determining whether a transfer is an avoidable preference. This provision is substantively identical to Section 403 of the House bill and the Senate amendment.

Sec. 404. Executory contracts and unexpired leases

Section 404 is identical to Section 404 of the House bill and the Senate amendment. SubSection (a) amends Section 365(d)(4) of the Bankruptcy Code to establish a firm, bright line deadline by which an unexpired lease of nonresidential real property must be assumed or rejected. If such lease is not assumed or rejected by such deadline, then such lease shall be deemed rejected, and the trustee shall immediately surrender such property to the lessor. Section 404(a) permits a bankruptcy trustee to assume or reject a lease on a date which is the earlier of the date of confirmation of a plan or the date which is 120 days after the date of the order for relief. A further extension of time may be granted, within the 120 day period, for an additional 90 days, for cause, upon motion of the trustee or lessor. Any subsequent extension can only be granted by the judge upon the prior written consent of the lessor: either by the lessor's motion for an extension, or by a motion of the trustee, provided that the trustee has the prior written approval of the lessor. This provision is designed to remove the bankruptcy judge's discretion to grant extensions of the time for the retail debtor to decide whether to assume or reject a lease after a maximum possible period of 210 days from the time of entry of the order of relief. Beyond that maximum period, there is no authority in the judge to grant further time unless the lessor has agreed in writing to the extension.

Section 404(b) amends Section 365(f)(1) to assure that Section 365(f) does not override any part of Section 365(b). Thus, Section 404(b) makes a trustee's authority to assign an executory contract or unexpired lease subject not only to Section 365(c), but also to Section 365(b), which is given full effect. Therefore, for example, assumption or assignment of a lease of real property in a shopping center must be subject to the provisions of the lease, such as use clauses.

Sec. 405. Creditors and equity security holders committees

Section 405 is substantively identical to Section 405 of the House bill and the Senate amendment. SubSection (a) amends Section 1102(a)(2) of the Bankruptcy Code to permit, after notice and a hearing, a court, on its own motion or on motion of a party in interest, to order a change in a committee's membership to ensure adequate representation of creditors or equity Security holders in a chapter 11 case. It specifies that the court may direct the United States trustee to increase the membership of a committee for the purpose of including a small business concern if the court determines that such creditor's claim is of the kind represented by the committee and that, in the aggregate, is disproportionately large when compared to the creditor's annual gross revenue. Section 405(b) requires the committee to give creditors having claims of the kind represented by the committee access to information. In addition, the committee must solicit and receive comments from these creditors and, pursuant to court order, make additional reports or disclosures available to them.

Sec. 406. Amendment to section 546 of title 11, United States Code

Section 406 reflects the Senate position as represented in Section 406 of the Senate amendment. The provision corrects an erroneous subsection designation in section 546 of the Bankruptcy Code. It redesignates the

[2] Pub. L. No. 102–365, 106 Stat. 972 (1992).

second subsection (g) as subsection (i). In addition, section 406 amends section 546(i) (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 other costs incidental to the storage and handling of goods. It specifies that this prohibition must be applied in a manner consistent with any applicable state statute that is similar to Section 7–209 of the Uniform Commercial Code.

Sec. 407. Amendments to section 330(a) of title 11, United States Code

Section 407 amends Section 330(a)(3) of the Bankruptcy Code to clarify that this provision applies to examiners, chapter 11 trustees, and professional persons. This section also amends section 330(a) to add a provision that requires a court, in determining the amount of reasonable compensation to award to a trustee, to treat such compensation as a commission pursuant to section 326 of the Bankruptcy Code. Section 407 is substantively identical to section 407 of the House bill and the Senate amendment.

Sec. 408. Postpetition disclosure and solicitation

Section 408 amends section 1125 of the Bankruptcy Code to permit an acceptance or rejection of a chapter 11 plan to be solicited from the holder of a claim or interest if the holder was solicited before the commencement of the case in a manner that complied with applicable nonbankruptcy law. Section 408 is substantively identical to section 408 of the House bill and the Senate amendment.

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 in payment of a debt incurred by the debtor 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 and the transferee's financial affairs or business; 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 not primarily consumer debts, Section 409 provides that a transfer may not be avoided if the aggregate amount of all property constituting or affected by the transfer is less than $5,000. This provision is substantively identical to Section 409 of the House bill and the Senate amendment.

Sec. 410. Venue of certain proceedings

Section 410 amends Section 1409(b) of title 28 of the United States Code to provide that a preferential transfer action in the amount of $10,000 or less pertaining to a nonconsumer debt against a noninsider defendant must be filed in the district where such defendant resides. This amount is presently fixed at $1,000. This provision is substantively identical to Section 410 of the House bill and the Senate amendment.

Sec. 411. Period for filing plan under chapter 11

Section 411 amends Section 1121(d) of the Bankruptcy Code to mandate that a chapter 11 debtor's exclusive period for filing a plan may not be extended beyond a date that is 18 months after the order for relief. In addition, it provides that the debtor's exclusive period for obtaining acceptances of the plan may not be extended beyond 20 months after the order for relief. This provision is substantively identical to Section 411 of the House bill and the Senate amendment.

Sec. 412. Fees arising from certain ownership interests

Section 412 amends Section 523(a)(16) of the Bankruptcy Code to broaden the protections accorded to community associations with respect to fees or assessments arising from the debtor's interest in a condominium, cooperative, or homeowners' association. Irrespective of whether or not the debtor physically occupies such property, fees or assessments that accrue during the period the debtor or the trustee has a legal, equitable, or possessory ownership interest in such property are nondischargeable. This provision is substantively identical to Section 412 of the House bill and the Senate amendment.

Sec. 413. Creditor representation at first meeting of creditors

Section 413 amends Section 341(c) of the Bankruptcy Code to permit a creditor holding a consumer debt or any representative of such creditor, notwithstanding any local court rule, provision of a State constitution, or any other Federal or state nonbankruptcy law, to appear and participate at the meeting of creditors in chapter 7 and chapter 13 cases either alone or in conjunction with an attorney. In addition, the provision clarifies that it cannot be construed to require a creditor to be represented by counsel at any meeting of creditors. This provision is substantively identical to Section 413 of the House bill and the Senate amendment.

Sec. 414. Definition of disinterested person

Section 414 amends Section 101(14) of the Bankruptcy Code to eliminate the requirement that an investment banker be a disinterested person. This provision is substantively identical to Section 414 of the House bill and the Senate amendment.

Sec. 415. Factors for compensation of professional persons

Section 415 amends Section 330(a)(3) of the Bankruptcy Code to permit the court to consider, in awarding compensation to a professional person, whether such person is board certified or otherwise has demonstrated skill and experience in the practice of bankruptcy law. This provision is substantively identical to Section 415 of the House bill and the Senate amendment.

Sec. 416. Appointment of elected trustee

Section 416 of the conference report is substantively identical to Section 416 of the House bill and the Senate amendment. This provision amends Section 1104(b) of the Bankruptcy Code to clarify the procedure for the election of a trustee in a chapter 11 case. Section 1104(b) permits creditors to elect an eligible, disinterested person to serve as the trustee in the case, provided certain conditions are met. Section 416 amends this provision to require the United States trustee to file a report certifying the election of a chapter 11 trustee. Upon the filing of the report, the elected trustee is deemed to be selected and appointed for purposes of Section 1104 and the service of any prior trustee appointed in the case is terminated. Section 416 also clarifies that the court shall resolve any dispute arising out of a chapter 11 trustee election.

Sec. 417. Utility service

Section 417 amends Section 366 of the Bankruptcy Code to provide that assurance of payment, for purposes of this provision, includes a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other form of Security that is mutually agreed upon by the debtor or trustee and the utility. It also specifies that an administrative expense priority does not constitute an assurance of payment. With respect to chapter 11 cases, Section 417 permits a utility to alter, refuse or discontinue service if it does not receive adequate assurance of payment that is satisfactory to the utility within 30 days of the filing of the petition. The court, upon request of a party in interest, may modify the amount of this payment after notice and a hearing. In determining the adequacy of such payment, a court may not consider: (i) the absence of Security before the case was filed; (ii) the debtor's timely payment of utility service charges before the case was filed; or (iii) the availability of an administrative expense priority. Notwithstanding any other provision of law, Section 417 permits a utility to recover or set off against a Security deposit provided prepetition by the debtor to the utility without notice or court order. This provision is substantively identical to Section 417 of the House bill and the Senate amendment.

Sec. 418. Bankruptcy fees

Section 418 of the conference report amends Section 1930 of title 28 of the United States Code to permit a district court or a bankruptcy court, pursuant to procedures prescribed by the Judicial Conference of the United States, to waive the chapter 7 filing fee for an individual and certain other fees under subSections (b) and (c) of Section 1930 if such individual's income is less than 150 percent of the official poverty level (as defined by the Office of Management and Budget) and the individual is unable to pay such fee in installments. Section 418 also clarifies that Section 1930, as amended, does not prevent a district or bankruptcy court from waiving other fees for creditors and debtors, if in accordance with Judicial Conference policy. This provision is substantively identical to Section 418 of the House bill and the Senate amendment.

Sec. 419. More complete information regarding assets of the estate

Section 419 of the conference report is substantively identical to Section 419 of the House bill and the Senate amendment. This provision requires the Advisory Committee on Bankruptcy Rules, after consideration of the views of the Director of the Executive Office for United States Trustees, to propose official rules and forms directing chapter 11 debtors to disclose information concerning the value, operations, and profitability of any closely held corporation, partnership, 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 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 substantively 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 bankruptcy court, in determining whether a disclosure statement 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(f) to permit the 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 on standard forms approved by the court or adopted under Section 2075 of title 28 of the United States Code.

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

Section 432 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 incidental thereto) having aggregate noncontingent, liquidated secured and unsecured debts of not more than $2 million (excluding debts owed to affiliates or insiders of the debtor) 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 $3 million definitional 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 affiliated debtors that has aggregate noncontingent, liquidated secured and unsecured debts in excess of $2 million (excluding debts owed to one or more affiliates or insiders). The 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 for adoption standard form disclosure statements and reorganization plans for small business debtors. The provision directs that the forms be designed to achieve a practical balance between the needs of the court, case administrators, and other parties in interest to have reasonably complete information as well as the debtor's need for economy and simplicity. This provision is substantively identical to section 433 of the House bill and the Senate amendment.

Sec. 434. Uniform national reporting requirements

Section 434 of the conference report is substantively identical to section 434 of the House bill and the Senate amendment. Sub-Section (a) adds a new provision to the Bankruptcy Code mandating additional reporting requirements for small business debtors. It requires a small business debtor to file periodic financial reports and other documents containing the following information with respect to the debtor's business operations: (i) profitability; (ii) reasonable approximations of projected cash receipts and disbursements; (iii) comparisons of actual cash receipts and disbursements with projections in prior reports; (iv) whether the debtor is complying with postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure; (v) whether the debtor is timely filing tax returns and other government filings; and (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 any postpetition requirements pursuant to the Bankruptcy Code and Federal Rules of Bankruptcy Procedure, or is not filing tax returns or other required governmental filings, paying taxes and other administrative expenses when due, the debtor must report: (a) what the failures are, (b) how they will be cured; (c) the cost of their cure; and (d) when they will be cured. Section 434(b) specifies that the effective date of this provision is 60 days after the date on which the rules required under this provision are promulgated.

Sec. 435. Uniform reporting rules and forms for small business cases

Section 435 of the conference report is substantively identical to Section 435 of the House bill and the Senate amendment. Subsection (a) mandates that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States propose official rules and forms with respect to the periodic financial reports and other information that a small business debtor must file concerning its profitability, cash receipts and disbursements, filing of its tax returns, and payment of its taxes and other administrative expenses.

Section 435(b) requires the rules and forms to achieve a practical balance between the need for reasonably complete information by the bankruptcy court, United States trustee, creditors and other parties in interest, and the small business debtor's interest in having such forms be easy and inexpensive to complete. The forms should also be designed 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:

(1) file with a voluntary petition (or in an involuntary case, within seven days from the date of the order for relief) the debtor's most recent financial statements (including a balance sheet, statement of operations, cash flow statement, and Federal income tax return) or a statement explaining why such information is not available;

(2) attend, through its senior management personnel and counsel, meetings scheduled by the bankruptcy court or the United States trustee (including the initial debtor interview and meeting of creditors pursuant to section 341 of the Bankruptcy Code), unless the court waives this requirement after notice and a hearing upon a finding of extraordinary and compelling circumstances;

(3) timely file all requisite schedules and the statement of financial affairs, unless the court, after notice and a hearing, grants an extension of up to 30 days from the order of relief, absent extraordinary and compelling circumstances;

(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

(5) maintain insurance that is customary and appropriate for the industry, subject to section 363(c)(2);

(6) timely file tax returns and other required government filings;

(7) timely pay all administrative expense taxes (except for certain contested claims), subject to section 363(c)(2); and

(8) permit the United States trustee to inspect the debtor's business premises, books, and records at reasonable hours after appropriate prior written notice, unless notice is waived by the debtor.

Sec. 437. Plan filing and confirmation deadlines

Section 437 of the conference report amends section 1121(e) of the Bankruptcy Code with respect to the period of time within which a small business debtor must file and confirm a plan of reorganization. This provision is substantively identical to section 437 of the House bill and the Senate amendment. It provides that a small business debtor's exclusive period to file a plan is 180 days from the date of the order for relief, unless the period is extended after notice and a hearing, or the court, for cause, orders otherwise. It further provides that a small business debtor must file a plan and any disclosure statement not later than 300 days after the order for relief. These time periods and the time fixed in section 1129(e) may be extended only if (a) the debtor, after providing notice to parties in interest, demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time; (b) a new deadline is imposed at the time the extension is granted; and (c) the order granting such extension is signed before the expiration of the existing 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 45 days after it is filed if the plan complies with the applicable provisions of the Bankruptcy Code, unless this period is extended pursuant to section 1121(e)(3). This provision is a compromise between section 438 of the House bill and the Senate amendment. The conference report clarifies that the plan must otherwise comply with applicable provisions of the Bankruptcy Code and includes a cross-reference to section 1121(e)(3), as added by section 437 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 amendment requires the plan to be confirmed within 45 days from the date on which a plan is filed, subject to extension pursuant to certain specified criteria.

Sec. 439. Duties of the United States trustee

Section 439 of the conference report is substantively identical to section 439 of the House bill and the Senate amendment. This provision amends section 586(a) of title 28 of the United States Code to require the United States trustee to perform the following additional duties with respect to small business debtors:

(1) conduct an initial debtor interview before the meeting of creditors for the purpose of (a) investigating the debtor's viability, (b) inquiring about the debtor's business plan, (c) explaining the debtor's obligation to file monthly operating reports, (d) attempting to obtain an agreed scheduling order setting various time frames (such as the date for filing a plan and effecting confirmation), and (e) informing the debtor of other obligations;

(2) if determined to be appropriate and advisable, inspect the debtor's business premises for the purpose of reviewing the debtor's books and records and verifying that the debtor has filed its tax returns;

(3) review and monitor diligently the debtor's activities to determine as promptly as possible whether the debtor will be unable to confirm a plan; and

(4) promptly apply to the court for relief in any case in which the United States trustee finds material grounds for dismissal or conversion of the case.

Sec. 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 further the expeditious and economical resolution of a bankruptcy case. This provision is identical to section 440 of the House bill and the Senate amendment.

Sec. 441. Serial filer provisions

Section 441 of the 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 a court may award only actual damages for a violation of the automatic stay committed by an entity in the good faith belief that subsection (h) of section 362 (as added by this Act) applies 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 a plan was confirmed in the two-year period ending 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 the petitioning creditors. Also, it does not apply if the debtor 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 (but not a liquidating plan) within a reasonable time.

Sec. 442. Expanded grounds for dismissal or conversion and appointment of trustee

Section 442 largely reflects the Senate position as represented in section 442 of the Senate amendment. Subsection (a) amends section 1112(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 provision'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 within the time period set forth in section 1121(e) and 1129(e), or if these provisions are inapplicable, within a reasonable period of time; (2) the grounds for granting such relief include an act or omission of the debtor for which there exists a reasonable justification for such act or omission; and (3) such act or omission will be cured within a reasonable period of time.

The court must commence the hearing on a section 1112(b) motion within 30 days of its filing and decide the motion not later than 15 days after commencement of the hearing unless the movant expressly consents to a continuance for a specified period of time or compelling circumstances prevent the court from meeting these time limits. Section 442 provides that the term ''cause'' under section 1112(b), as amended by this provision, includes the following:

(1) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

(2) gross mismanagement of the estate;

(3) failure to maintain appropriate insurance that poses a material risk to the estate or the public;

(4) unauthorized use of cash collateral that is harmful to one or more creditors;

(5) failure to comply with a court order;

(6) unexcused failure to timely satisfy any filing or reporting requirement under the Bankruptcy Code or applicable rule;

(7) failure to attend the section 341 meeting of creditors or an examination pursuant to Rule 2004 of the Federal Rules of Bankruptcy Procedure, without good cause shown by the debtor;

(8) failure to timely provide information or to attend meetings reasonably requested by the United States trustee or bankruptcy administrator;

(9) failure to timely pay taxes owed after the order for relief or to file tax returns due postpetition;

(10) failure to file a disclosure statement or to confirm a plan within the time fixed by the Bankruptcy Code or pursuant to court order;

(11) failure to pay any requisite fees or charges under chapter 123 of title 28 of the United States Code;

(12) revocation of a confirmation order;

(13) inability to effectuate substantial consummation of a confirmed plan;

(14) material default by the debtor with respect to a confirmed plan;

(15) termination of a plan by reason of the occurrence of a condition specified in the plan; and

(16) the debtor's failure to pay any domestic support obligation that first becomes payable postpetition

This definition of the term ''cause'' represents a compromise between the House and Senate conferees.

Section 442(b) creates additional grounds for the appointment of a chapter 11 trustee under section 1104(a). It provides that should the bankruptcy court determine cause exists to convert or dismiss a chapter 11 case, it may appoint a trustee or examiner if in the best interests of creditors and the bankruptcy estate. Section 442 of the conference report represents a compromise between the House and Senate conferees. Under the House version of this provision, the standard for the exception is a plan with a reasonable possibility of being confirmed will be filed within a reasonable period of time. The standard under the Senate amendment is reasonable likelihood that a plan will be confirmed within specified time frames established in sections 1121(e) and 1129(e), or within a reasonable period of time in those cases where sections 1121(e) or 1129(e) do not apply.

Sec. 443. Study of operation of title 11, United States Code, with respect to small businesses

Section 443 of the conference report is substantively identical to section 443 of the House bill and the Senate amendment. This provision directs the Administrator of the Small Business Administration, 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, to conduct a study to determine: (i) the internal and external factors that cause small businesses (particularly sole proprietorships) to seek bankruptcy relief and the factors that cause small businesses to successfully complete their chapter 11 cases; and (ii) how the bankruptcy laws may be made more effective and efficient in assisting small business to remain viable.

Sec. 444. Payment of interest

Section 444 of the conference report is substantively identical to section 444 of the House bill and the Senate amendment. Subsection (1) amends section 362(d)(3) of the Bankruptcy Code to require a court to grant relief from the automatic stay within 30 days after it determines that a single asset real estate debtor is subject to this provision. Section 444(2) amends section 362(d)(3)(B) to specify that relief from the automatic stay shall be granted unless the single asset real estate debtor has commenced making monthly payments to each creditor secured by the debtor's real property (other than a claim secured by a judgment lien or unmatured statutory lien) in an amount equal to the interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate. It allows a debtor in its sole discretion to make the requisite interest payments out of rents or other proceeds generated by the real property, notwithstanding section 363(c)(2).

Sec. 445. Priority for administrative expenses

Section 445 of the conference report is substantively identical to section 445 of the House bill and the Senate amendment. The provision amends section 503(b) of the Bankruptcy Code to add a new administrative expense priority for a nonresidential real property lease that is assumed under section 365 and then subsequently rejected. The amount of the priority is the sum of all monetary obligations due under the lease (excluding penalties and obligations arising from or relating to a failure to operate) for the two-year period following the rejection date or actual turnover of the premises (whichever is later), without reduction or setoff for any reason, except for sums actually received or to be received from a nondebtor. Any remaining sums due for the balance of the term of the lease are treated as a claim under section 502(b)(6) of the Bankruptcy Code.

Sec. 446. Duties with respect to a debtor who is a plan administrator of an employee benefit plan

Section 446 of the conference report reflects the Senate position as represented in section 420 of the Senate amendment. There is no counterpart to this provision in the House bill. Subsection (a) amends Bankruptcy Code section 521(a) to require a debtor, unless a trustee is serving in the case, to serve as the administrator (as defined in the Employee Retirement Income Security Act) of an employee benefit plan if the debtor served in such capacity at the time the case was filed. Section 446(b) amends Bankruptcy Code section 704 to require the chapter 7 trustee to perform the obligations of such administrator in a case where the debtor was required to perform such obligations. Section 446(c) amends Bankruptcy Code section 1106(a) to require a chapter 11 trustee to perform these obligations.

Sec. 447. Appointment of committee of retired employees

This provision amends section 1114(d) of the Bankruptcy Code to clarify that it is the responsibility of the United States trustee to appoint members to a committee of retired employees. There is no antecedent to this provision in either the House bill or the Senate amendment.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

Sec. 501. Petition and proceedings related to petition

Section 501 amends sections 921(d) and 301 of the Bankruptcy Code to clarify that the court must enter the order for relief 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 502 of the House bill and the Senate amendment. This provision amends section 901 of the Bankruptcy Code to make the following sections applicable to chapter 9 cases:

(1) section 555 (contractual right to liquidate, terminate or accelerate a securities contract);

(2) section 556 (contractual right to liquidate, terminate or accelerate a commodities or forward contract);

(3) section 559 (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); and

(6) section 562 (damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreement).

TITLE VI—BANKRUPTCY DATA

Sec. 601. Improved bankruptcy statistics

Section 601 of the conference report is substantively similar to section 601 of the House bill and the Senate amendment. In recognition of the delayed effective date of this Act, section 601 extends the date by which the report described herein must be submitted.

This provision amends chapter 6 of title 28 of the United States Code to require the clerk 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 and to make this information available to the public. Not later than June 1, 2005, the Director must submit a report to Congress concerning the statistical information 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 debtors who are individuals with primarily consumer debts under chapters 7, 11 and 13 by category;

(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 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;

(6) for chapter 13 cases, information on the number of (a) orders determining the value of secured property in an amount less than the amount of the secured claim, (b) final orders that determined the value of property securing a claim, (c) cases dismissed, (d) cases dismissed for failure to make payments under the plan, (e) cases refiled after dismissal, (f) cases in which the plan was completed (separately itemized with respect to the number of modifications made before completion of the plan, and (g) cases in which the debtor had previously sought bankruptcy relief within the six years preceding the filing of the present case;

(7) the number of cases in which creditors were fined for misconduct and the amount of any punitive damages awarded for creditor misconduct; and

(8) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against a debtor's counsel and the damages awarded under this rule.

Section 601 provides that the amendments in this provision take effect 18 months after the date of enactment of this Act.

Sec. 602. Uniform rules for the collection of bankruptcy data

Section 602 of the conference report is substantively identical to section 602 of the House bill and the Senate amendment. It amends chapter 39 of title 28 of the United States Code to add a provision requiring the Attorney General to promulgate rules mandating the establishment of uniform forms for final reports in chapter 7, 12 and 13 cases and periodic reports in chapter 11 cases. This provision also specifies that these reports be designed to facilitate compilation of data and to provide maximum public access by physical inspection at one or more central filing locations and by electronic access through the Internet or other appropriate media. The information should enable an evaluation of the efficiency and practicality of the Federal bankruptcy system. In issuing rules, the Attorney General must consider: (1) the reasonable needs of the public for information about the Federal bankruptcy system; (2) the economy, simplicity, and lack of undue burden on persons obligated to file the reports; and (3) appropriate privacy concerns and safeguards. Section 602 provides that final reports by trustees in chapter 7, 12, and 13 cases include the following information: (1) the length of time the case was pending; (2) assets abandoned; (3) assets exempted; (4) receipts and disbursements of the estate; (5) administrative expenses, including those associated with section 707(b) of the Bankruptcy Code, and the actual costs of administering chapter 13 cases; (6) claims asserted; (7) claims allowed; and (8) distributions to claimants and claims discharged without payment. With regard to chapter 11 cases, section 602 provides that periodic reports include the following information regarding:

(1) the standard industry classification for businesses conducted by the debtor, as published by the Department of Commerce;

(2) the length of time that the case was pending;

(3) the number of full-time employees as of the date of the order for relief and at the end of each reporting period;

(4) cash receipts, cash disbursements, and profitability of the debtor for the most recent period and cumulatively from the date of the order for relief;

(5) the debtor's compliance with the Bankruptcy Code, including whether tax returns have been filed and taxes have been paid;

(6) professional fees approved by the court for the most recent period and cumulatively from the date of the order for relief; and

(7) plans filed and confirmed, including the aggregate recoveries of holders by class and as a percentage of total claims of an allowed class.

Sec. 603. Audit procedures

Section 603 is substantively identical to section 603 of the House bill and the Senate amendment. Subsection (a)(1) requires the Attorney General (for judicial districts served by United States trustees) and the Judicial Conference of the United States (for judicial districts served by bankruptcy administrators) to establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules and other information filed by debtors pursuant to sections 111, 521 and 1322 of the Bankruptcy Code. Section 603(a)(1) requires the audits 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 that a minimum of at least one case out of every 250 cases be selected for audit; (3) require audits in cases where the schedules of income and expenses reflect greater than average variances from the statistical norm for the district if they occur by reason of higher income or higher expenses than the statistical norm in which the schedules were filed; and (4) require the aggregate results of such audits, 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 require the United States trustee to submit reports as directed by the Attorney General, including 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 provide notice of such misstatement to creditors and the United States trustee must report it to the United States Attorney, if appropriate, for possible criminal prosecution. If advisable, 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 add, as a ground 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 pursuant to this provision; or (b) make available for inspection all necessary documents or property belonging to the debtor that are requested in connection with such audit. Section 603(e) provides that 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 relates to public records pursuant to section 107 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 a uniform bankruptcy data system should be established that uses a single set of data definitions and forms to collect such data and that data for any particular bankruptcy case should be aggregated in electronic format. This provision is substantively identical to section 604 of the House bill and the Senate amendment.

TITLE VII—BANKRUPTCY TAX PROVISIONS

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 (a) makes several amendments to section 724 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 the holders of these tax liens from, among other things, erosion of their claims' status by expenses incurred under chapter 11 of the Bankruptcy Code. Pursuant to section 701(a), subordination of ad valorem tax liens is still possible under section 724(b), but limited to the payment of: (1) claims incurred under chapter 7 for wages, salaries, or commissions (but not expenses incurred under chapter 11); (2) claims for wages, salaries, and commissions entitled to priority under section 507(a)(4); and (3) claims for contributions to employee benefit plans entitled to priority under section 507(a)(5). Before a tax lien on real or personal property may be subordinated pursuant to section 724, the chapter 7 trustee must exhaust all other unencumbered estate assets and, consistent with section 506, recover reasonably necessary costs and expenses of preserving or disposing of such property. Section 701(b) amends section 505(a)(2) of the Bankruptcy Code to prevent a bankruptcy court from determining the amount or legality of an ad valorem tax on real or personal property if the applicable period for contesting or redetermining the amount of the claim under nonbankruptcy law has expired.

Sec. 702. Treatment of fuel tax claims

Section 702 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 designated ''base 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.

Sec. 703. Notice of request for a determination of taxes

Under current law, a trustee or debtor in possession may request a governmental unit to determine administrative tax liabilities in order to receive a discharge of those liabilities. There are no requirements as to the content or form of such notice to the government. Section 703 of the conference report amends section 505(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 505 requests. In addition, the list may also include information concerning filing requirements specified by such governmental units. If a governmental entity does not designate an address and provide that address to the bankruptcy court clerk, any request made under section 505(b) of the Bankruptcy Code may be served at the address of the appropriate taxing authority of that governmental unit. This provision is substantively identical to section 703 of the House bill and the Senate amendment.

Sec. 704. 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 the applicable rate. Section 704 of the conference report amends the Bankruptcy Code to add section 511 for the purpose of simplifying the interest rate calculation. It provides that for all tax claims (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.

Sec. 705. Priority of tax claims

Under current law, a tax claim is entitled to be treated as a priority claim if it arises within certain specified time periods. In the case of income taxes, a priority arises, among other time periods, 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. 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 the 3–year and 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 prohibited 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, the priority is tolled, plus 90 days. Also, during any time in which 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 705 of the House bill and the Senate amendment.

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 in many state and local statutes and has 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.

Sec. 707. No discharge of fraudulent taxes in chapter 13

Under current law, a debtor's ability to discharge tax debts varies depending on whether the debtor is in chapter 7 or chapter 13. In a chapter 7 case, taxes from a return due within 3 years of the petition date, taxes assessed within 240 days, or taxes related to an unfiled return or false return are not dischargeable. Chapter 13, on the other hand, allows these obligations to be discharged. Section 707 of the conference report amends Bankruptcy Code section 1328(a)(2) to prohibit the discharge of tax claims described in section 523(a)(1)(B) and (C) as well as claims for a tax required to be collected or withheld and for which the debtor is liable in whatever capacity pursuant to section 507(a)(8)(C). This provision is substantively identical to section 707 of the House bill and the Senate amendment.

Sec. 708. No discharge of fraudulent taxes in chapter 11

Section 708 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 1141(d) of the Bankruptcy Code to except from discharge in corporate chapter 11 case a debt specified in subsections 523(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 III of chapter 37 of title 31 of the United States Code or any similar state statute. In contrast, the House renders any debt under section 523(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 tax or customs duty with respect to which the debtor made a fraudulent tax return or willfully attempted in any manner to evade or defeat such tax.

Sec. 709. 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 specify that the automatic stay is limited to an individual debtor's prepetition taxes (taxes incurred before entering bankruptcy). The amendment clarifies that the automatic stay does not apply to an individual debtor's postpetition taxes. In addition, section 709 allows the bankruptcy court to determine whether the automatic stay applies to the postpetition tax liabilities of a corporate debtor. This provision is substantively identical to section 709 of the House bill and the Senate amendment.

Sec. 710. 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 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 claims under section 1122(b). In addition, it requires the same payment treatment to be accorded to secured section 507(a)(8) claims of a governmental unit. This provision is substantively identical to section 710 of the House bill and the Senate amendment.

[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 545(2) of the Bankruptcy Code to prevent that provision's special protections from being used to avoid an otherwise valid lien. Specifically, it prevents the avoidance of unperfected liens against a bona fide purchaser, if the purchaser qualifies as such under section 6323 of the Internal Revenue 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 554 within a reasonable time after 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 trustee or if the court, prior to 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 503(b)(1)(B)(i) of the Bankruptcy Code to clarify that this provision applies to secured as well as unsecured tax claims, including property taxes based on liability that is in rem, in personam or both. Section 712(c) amends section 503(b)(1) to exempt a governmental unit from the requirement to file a request for payment of an administrative expense. Section 712(d)(1) amends 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, or charges provided for 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 claim under section 507 that is not timely filed pursuant to section 501 to be entitled to a distribution if such claim is filed the earlier of 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 prepared by tax 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 523(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 Secretary obtains through testimony or otherwise does not constitute filing a return (and the debt cannot be discharged).

Sec. 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. If the government does not make a determination or request an extension of time to audit, then the trustee or debtor in possession's determination of taxes will be final. Several court cases have held that while this protects the debtor and the trustee, it does not necessarily protect the estate. Section 715 of the conference report amends section 505(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 government does not make a determination of postpetition tax liabilities or request extension of time to audit, then the estate's liability for unpaid taxes is discharged. This provision 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 responds to this problem. This provision is substantively identical to section 716 of the House bill and the Senate amendment. Subsection (a) amends section 1325(a) of the Bankruptcy Code to require a chapter 13 debtor file all applicable Federal, state, and local tax returns as a condition of confirmation as required by section 1308 (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 reasonable period of time to allow the debtor to file any unfiled returns. The additional period of time may not extend beyond 120 days after the date of the meeting of the creditors or beyond the date on which the return is due under the last automatic extension of time for filing. The debtor, however, may obtain an extension of time from the court if the debtor demonstrates by a preponderance of the evidence that the failure to file was attributable to circumstances beyond the debtor's control.

Section 716(c) amends section 1307 of the Bankruptcy Code to provide that if a chapter 13 debtor fails to file a tax return as 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 creditors and the estate) on request of a party in interest or the United States trustee after notice and a hearing.

Section 716(d) amends 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 1308 shall be deemed to be timely filed if the claim is filed within 60 days from the date on which such return is filed. Section 716(e) states the sense of the Congress that the Advisory Committee on Bankruptcy Rules of the Judicial Conference of the United States should propose for adoption official rules with respect an objection by a governmental unit to confirmation of a chapter 13 plan when such claim pertains to a tax return filed pursuant to section 1308.

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 statement that provides adequate information to holders of claims and interests so 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 debtor's reorganization prospects, section 717 amends section 1125(a) of the Bankruptcy Code to require that a chapter 11 disclosure statement discuss the plan's potential material Federal tax consequences to the debtor, any successor to the debtor, and to a hypothetical investor that is representative of the claimants and interest holders 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 bankruptcy petition automatically stays the setoff of a prepetition tax refund against a prepetition tax obligation unless the bankruptcy court approves the setoff. Interest and penalties that may continue to accrue may also be nondischargeable pursuant to section 523(a)(1) of the Bankruptcy Code and cause individual debtors undue hardship. Section 718 of the conference report amends section 362(b) of the Bankruptcy Code to create an exception to the automatic stay whereby such setoff could occur without court order unless it would not be permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of the tax liability. In that circumstance, the governmental authority may hold the refund pending resolution of the action, unless the court, on motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection 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 treatment 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 bankruptcy petitioner filing on March 5 has two tax years—January 1 to March 4, and March 5 to December 31. Under the Bankruptcy Code, however, state and local tax years are divided differently—January 1 to March 5, and March 6 to December 31. Section 719 requires the states to follow the federal convention. It conforms state and local tax administration to the Internal Revenue Code in the following areas: division of tax liabilities and responsibilities between the estate and the debtor, tax consequences with respect to partnerships and transfers of property, and the taxable period of a debtor. Section 719 does not conform state and local tax rates to federal tax rates.

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 returns for taxes incurred postpetition. Section 720 of the conference report amends section 521 of the Bankruptcy Code to allow a taxing authority to request that the court dismiss or convert a bankruptcy 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 the extension within 90 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 transnational insolvency cases. 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 insolvencies, 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.[4] Cases brought under chapter 15 are intended to be ancillary to cases brought in a debtor's home country, unless 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.[5] If the full case is not dismissed, it will be subject to the provisions 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 (subsection (1)) with its article 1 (subsections (2) and (3)).[6] It largely tracks the language of the Model Law with appropriate United States references. However, it adds in subsection (3) an exclusion of certain natural persons who may be considered ordinary consumers. Although the consumer exclusion is not in the text of the Model Law, the discussions 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.[7]

The reference to section 109(e) essentially defines ''consumer debtors'' for purposes of the exclusion by incorporating the debt 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 exclusion 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.[8] 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 to them.

The reference to section 109(b) interpolates into chapter 15 the entities governed by specialized 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 of foreign insurance companies are eligible for recognition and relief under chapter 15 as they had been under section 304. However, section 1501(d) has the effect of leaving to State regulation any deposit, escrow, trust fund or the like posted by a foreign insurer under State law.

Sec. 1502. Definitions

''Debtor'' is given a special definition for this chapter. This definition 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 various legal entities, thus matching the intended breadth of the term ''person'' in the Model Law. The exceptions include contexts in which a natural person is intended and those in which the Model Law language already refers to both persons and entities other than persons. The definition of ''trustee'' for this chapter ensures that debtors in possession and debtors, as well as trustees, are included in the term.[9]

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 property outside its territorial limits under appropriate circumstances. Thus a limiting phrase is useful where the Model Law and this chapter intend to refer only to property within the territory of 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 been amended consistent with Model Law article 2.[10] The definitions of ''establishment,'' ''foreign court,'' ''foreign main proceeding,'' and ''foreign non-main proceeding'' have been taken from Model Law article 2, with only minor language variations necessary to comport with United States terminology. Additionally, defined terms have been placed in alphabetical order.[11] In order to be recognized as a foreign non-main proceeding, the debtor must at least have an establishment in that foreign country.[12]

Sec. 1503. International obligations of the United States

This section is taken exactly from the Model Law with only minor adaptations of terminology.[13] Although this section makes an international obligation prevail over chapter 15, the courts will attempt to read the Model Law and the international obligation so as not to conflict, especially if the international obligation addresses a 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 under the Model Law. In United States law, section 1334(a) of title 28 gives exclusive jurisdiction to the district courts in a ''case'' under this title.[14] Therefore, since the competent court has been determined in title 28, this section instead provides that a petition for recognition commences a ''case,'' an approach that also invokes a number of other useful procedural provisions. In addition, a new subsection (P) to section 157 of title 28 makes cases under this chapter part of the core jurisdiction of bankruptcy courts if referred by the district courts, thus completing the designation of the competent court. Finally, the particular bankruptcy court that will rule on the petition is determined pursuant to a revised section 1410 of title 28 governing venue and transfer.[15]

The title ''ancillary'' in this section and in the title of this chapter emphasizes the United States policy in favor of a general rule that countries other 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 1528 and 1529). 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 language in the last sentence is meant to emphasize that the identification of the trustee or other entity entitled to act is 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.[16]

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.

[4] The text of the Model Law and the Report of UNCITRAL on its adoption are found at U.N. G.A., 52d Sess., Supp. No. 17 (A/52/17) (''Report''). That Report and the Guide to Enactment of the UNCITRAL Model Law on Cross-Border Insolvency, U.N. Gen. Ass., UNCITRAL 30th Sess. U.N. Doc. A/CN.9/442 (1997) (''Guide''), which was discussed in the negotiations leading to the Model Law and published by UNCITRAL as an aid to enacting countries, should be consulted for guidance as to the meaning and purpose of its provisions. The development of the provisions in the negotiations at UNCITRAL, in which the United States was an active participant, is recounted in the interim reports of the Working Group that are cited in the Report.

[5] See section 1529 and commentary.

[6] Guide at 16–19.

[7] See id. at 18, ¶60; 19 ¶66.

[8] Id. at 17.

[9] See section 1505.

[10] Guide at 19–21, ¶¶67–68.

[11] See Guide at 19, (Model Law) 21 ¶75 (concerning establishment); 21 ¶74 (concerning foreign court); 21 ¶¶72, 73 and 75 (concerning foreign main and non-main proceedings).

[12] See id. at 21, ¶75.

[13] See id. at 22, Art. 3.

[14] See id. at 23, Art. 4.

[15] New section 1410 of title 28 provides as follows:

A case under chapter 15 of title 11 may be commenced in the district court 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 or enforcement of judgment in a Federal or State court; or

(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 by the foreign representative.

[16] See Guide at 24.

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 requirement is a change from the language of the Model Law, but one that is purely internal to United States law.[17] Its main purpose is to ensure that the court has knowledge and control of possibly expensive 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 and supervision. This requirement means that the first-day 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 the estate in one or more 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 where the foreign court would be more comfortable with a designated person than with an entity like a debtor in possession. Either are to be recognized under the Model Law.[18]

Sec. 1506. Public policy exception

This provision follows the Model Law article 5 exactly, is standard in UNCITRAL texts, and has been narrowly interpreted on a consistent basis in courts around the world. The word ''manifestly'' in international usage restricts the public policy exception to the most fundamental policies of the United States.[19]

Sec. 1507. Additional assistance

Subsection (1) follows the language of Model Law article 7.[20] Subsection (2) makes the authority for additional relief (beyond that permitted under sections 1519–1521, below) subject to the conditions for relief heretofore specified in United States law under section 304, which is repealed. This section is intended to permit the further development of international cooperation begun under section 304, but is not to be the basis for denying or limiting relief otherwise available under this chapter. The additional assistance is made conditional upon the court's consideration of the factors set forth in the current subsection 304(c) in a context of a reasonable balancing of interests following current case law. The references to ''estate'' in section 304 have been changed to refer to the debtor's property, because many foreign systems do not create an estate in insolvency proceedings of the sort recognized under this chapter. Although the case law construing section 304 makes it clear that comity is the central consideration, its physical placement as one of six factors in subsection (c) of section 304 is misleading, since those factors are essentially elements of the grounds for granting comity. Therefore, in subsection (2) of this section, comity is raised to the introductory language to make it clear that it is the central concept to be addressed.[21]

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.[22] Interpretation of this chapter on a uniform basis will be aided 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 receives reports from national reporters all over the world concerning court decisions interpreting treaties, model laws, and other text promulgated by UNCITRAL. Not only are these sources persuasive, but they advance the crucial goal of uniformity of interpretation. To the extent that the United States courts rely on these sources, their decisions will more likely be regarded as persuasive elsewhere.

Sec. 1509. 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 the 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) make it clear that chapter 15 is 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 debtor or the debtor's property. This section, therefore, completes for the United States the work of article 4 of the Model Law (''competent court'') as well as article 9.[23]

Although a petition under current section 304 is the proper method for achieving deference by a United States court to a foreign insolvency 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 a section 304 petition or even referring to the requirements of that section. Even if the result is correct in a particular case, the procedure is undesirable, because there is room for abuse of comity. Parties would be free to avoid the requirements of this chapter and the expert scrutiny of the bankruptcy court by applying directly to a state or federal court unfamiliar with the statutory requirements. Such an application could be made after denial of a petition under this chapter. This section concentrates the recognition and deference process in one United States court, ensures against abuse, and empowers a court that will be fully informed of the current status of all foreign proceedings involving the debtor.[24]

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 activities in the United States by a foreign representative subject to applicable United States law, just as 28 U.S.C. section 959 does for a domestic trustee in bankruptcy.[25] Subsection (f) provides a limited exception to the prior recognition requirement so that collection of a claim which is property of the debtor, for example an account receivable, by a foreign representative may proceed without commencement of a case or recognition under this chapter.

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 conditional relief in section 306 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 related actions 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.[26] Article 11 does not distinguish between voluntary and involuntary proceedings, but seems to have implicitly assumed an involuntary proceeding.[27] Subsection 1(a)(2) goes farther and permits a voluntary filing, with its much simpler requirements, if the foreign proceeding that has been recognized is a main proceeding.

Sec. 1512. Participation of a foreign representative in a case under this title

This section tracks article 12 of the Model Law with a slight alteration to tie into United States procedural terminology.[28] The effect of this section is to make the recognized foreign representative a party in interest in any pending or later commenced United States bankruptcy case.[29] Throughout this chapter, the word ''case'' has been substituted for the word ''proceeding'' in the Model Law when referring to cases under the United States Bankruptcy Code, to conform to United States usage.

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 article 13, but the language required alteration to fit into the Bankruptcy Code.[30] The law as to priority for foreign claims that fit within a class given priority treatment under section 507 (for example, foreign employees or spouses) is unsettled. This section permits the continued development of case law on that subject and its general principle of national treatment 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 priority, unless they are in a class of claims in which domestic creditors would also be subordinated.[31] The Model Law allows for an exception to the policy of nondiscrimination as to foreign revenue and other public law claims.[32] Such claims (such as tax and Social Security claims) have been traditionally denied enforcement in the United States, inside and outside of bankruptcy. The Bankruptcy Code

[17] See id. at 24, Art. 5.
[18] See id. at 23–24, ¶82.
[19] See id. at 25.
[20] Id. at 26.
[21] Id.
[22] Id. at 26, ¶91.
[23] See id. at 23, Art. 4, ¶¶79–83; 27 Art. 9, ¶93.
[24] See id. at 27, Art. 9; 34–35, Art. 15 and ¶¶116–119; 39–40, Art. 18, ¶¶133–134; see also sections 1515(3), 1518.
[25] Id. at 27, ¶93.
[26] See id. at 28, Art. 11.
[27] Id. at 38, ¶¶97–99.
[28] Id. at 29, Art. 12.
[29] Id. at 29, ¶¶10–102.
[30] Id. at 30, ¶103.
[31] See id. at 30, ¶104.
[32] See id. at 31, ¶105.

is silent on this point, so the rule is purely a matter of traditional case law. It is not clear if this policy should be maintained or modified, so this section leaves this question to developing case law. It also allows the Department of the Treasury to negotiate reciprocal arrangements with our tax treaty partners in this regard, although it does not mandate any restriction of the evolution of case law pending such negotiations.

Sec. 1514. Notification of foreign creditors concerning a case under title 11

This section ensures that foreign creditors receive proper notice of cases in the United States.[33] 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 must be asserted, because in many countries such claims are not affected by an insolvency proceeding and need not be filed.[34] If a foreign creditor has made an appropriate request for notice, it will receive notices in every instance where notices would be sent to other creditors who have made such requests. Subsection (d) replaces the reference to ''a reasonable time period'' in Model Law article 14(3)(a).[35] It makes clear that the Rules, local rules, and court orders must make appropriate adjustments in time periods and bar dates so that foreign creditors have a reasonable time within which to receive notice or take an action.

Sec. 1515. Application for recognition of a foreign proceeding

This section follows article 15 of the Model Law with minor changes.[36] 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 the petition for recognition, and to require filing of lists of creditors and other interested persons who should receive notices. Throughout the Model Law, the question of notice procedure is left to the law of the enacting state.[37]

Sec. 1516. Presumptions concerning recognition

This section follows article 16 of the Model Law with minor changes.[38] Although sections 1515 and 1516 are designed to make recognition as simple and expedient as possible, the court may hear proof on any element stated. The ultimate burden as to each element is on the foreign representative, although the court is entitled to shift the burden to the extent indicated in section 1516. The word ''proof'' in subsection (3) has been changed to ''evidence'' to make it clearer using United States terminology that the ultimate burden is on the foreign representative.[39] ''Registered office'' is the term used in the Model Law to refer to the place of incorporation or the equivalent for an entity that is not a natural person.[40] The presumption that the place of the registered office is also the center of the debtor's main interest is included for speed and convenience of proof where there is no serious controversy.

Sec. 1517. Order granting recognition

This section closely tracks article 17 of the Model Law, with a few exceptions.[41] The decision to grant recognition is not dependent upon any findings about the nature of the foreign proceedings of the sort previously mandated by section 304(c) of the Bankruptcy Code. The requirements of this section, which incorporates the definitions in section 1502 and sections 101(23) and (24), are all that must be fulfilled to attain recognition. Reciprocity was specifically suggested as a requirement for recognition on more than one occasion in the negotiations that resulted in the Model Law. It was rejected by overwhelming consensus each time. The United States was one of the leading countries opposing the inclusion of a reciprocity requirement.[42] In this regard, the Model Law conforms to section 304, which has no such requirement.

The drafters of the Model Law understood that only a main proceeding or a non-main proceeding meeting the standards of section 1502 (that is, one brought where the debtor has an establishment) were entitled to recognition under this section. The Model Law has been slightly modified to make this point clear by referring to the section 1502 definition of main and non-main proceedings, as well as to the general definition of a foreign proceeding in section 101(23). A petition under section 1515 must show that proceeding is a main or a qualifying non-main proceeding in order to obtain recognition under this section.

Consistent with the position of various civil law representatives in the drafting of the Model Law, recognition creates a status with the effects set forth in section 1520, so those effects are not viewed as orders to be modified, as are orders granting relief under sections 1519 and 1521. Subsection (4) states the grounds for modifying or terminating recognition. On the other hand, the effects of recognition (found in section 1520 and including an automatic stay) are subject to modification under section 362(d), made applicable by section 1520(2), which permits relief from the automatic stay of section 1520 for cause.

Paragraph 1(d) of section 17 of the Model Law has been omitted as an unnecessary requirement for United States purposes, because a petition submitted to the wrong court will be dismissed or transferred under other provisions of United States law.[43] The reference to section 350 refers to the routine closing of a case that has been completed and will invoke requirements including a final report from the foreign representative in such form as the Rules may provide or a court may order.[44]

Sec. 1518. Subsequent information

This section follows the Model Law, except to eliminate the word ''same'', which is rendered unnecessary by the definition of ''debtor'' in section 1502, and to provide for a formal document to be filed with the court.[45] Judges in several jurisdictions, including the United States, have reported a need for a requirement of complete and candid reports to the court of all proceedings, worldwide, involving the debtor. This section will ensure that such information is provided to the court on a timely basis. Any failure to comply with this section will be subject to the sanctions available to the court for violations of the statute. The section leaves to the Rules the form of the required notice and related questions of notice to parties in interest, the time for filing, and the like.

Sec. 1519. Relief may be granted upon petition for recognition of a foreign proceeding

This section generally follows article 19 of the Model Law.[46] The bankruptcy court will have jurisdiction to grant emergency relief under Rule 7065 pending a hearing on the petition for recognition. This section does not expand or reduce the scope of section 105 as determined by cases under section 105 nor does it modify the sweep of sections 555 to 560. Subsection (d) precludes injunctive relief against police and regulatory action under section 1519, leaving section 105 as the only avenue for such relief. Subsection (e) makes clear that this section contemplates injunctive relief and that such relief is subject to specific rules and a body of jurisprudence. Subsection (f) was added to complement amendments to the Bankruptcy Code provisions dealing with financial contracts.

Sec. 1520. Effects of recognition of a foreign main proceeding

In general, this chapter sets forth all the relief that is available as a matter of right based upon recognition hereunder, although additional assistance may be provided under section 1507 and this chapter have no effect on any relief currently available under section 105. The stay created by article 20 of the Model Law is imported to chapter 15 from existing provisions of the Code. Subsection (a)(1) combines subsections 1(a) and (b) of article 20 of the Model Law, because section 362 imposes the restrictions required by those two subsections as well as additional restrictions.[47]

Subsections (a)(2) and (4) apply the Bankruptcy Code sections that impose the restrictions called for by subsection 1(c) of the Model Law. In both cases, the provisions are broader and more complete than those contemplated by the Model Law, but include all the restraints the Model Law provisions would impose.[48] As the foreign proceeding may or may not create an ''estate'' similar to that created in cases under this title, the restraints are applicable to actions against the debtor under section 362(a) and with respect to the property of the debtor under the remaining sections. The only property covered by this section is property within the territorial jurisdiction of the United States as defined in section 1502. To achieve effects on property of the debtor which is not within the territorial jurisdiction of the United States, the foreign representative would have to commence a case under another chapter of this title.

By applying sections 361 and 362, subsection (a) makes applicable the United States exceptions and limitations to the restraints imposed on creditors, debtors, and other in a case under this title, as stated in article 20(2) of the Model Law.[49] It also introduces the concept of adequate protection provided in sections 362 and 363. These exceptions and limitations include those set forth in sections 362(b), (c) and (d). As a result, the court has the power to terminate the stay pursuant to section 362(d), for cause, including a failure of adequate protection.[50]

Subsection (a)(2), by its reference to sections 363 and 552 adds to the powers of a foreign representative of a foreign main proceeding an automatic right to operate the debtor's business and exercise the power of a

[33] See Model Law, Art. 14; Guide at 31–32, ¶¶106–109.
[34] Guide at 33, ¶111.
[35] Id. at 31, Art. 14(3)(a).
[36] Id. at 33.
[37] See id. at 36, ¶121.
[38] Id. at 36
[39] Id. at 36, Art. 16(3).
[40] Id.
[41] Id. at 37.
[42] Report of the working group on Insolvency Law on the work of its Twentieth Session (Vienna, 7–18 October 1996), at 6, ¶¶16–20.
[43] Guide at 37, Art. 17(1)(d).
[44] Id.
[45] Id. at 39–40, ¶¶133, 134.
[46] Id. at 40.
[47] Id. at 42, Art. 20 1(a), (b).
[48] Id. at 42, 45.
[49] Id. at 42, Art. 20(2); 44, ¶¶ 148, 150.
[50] Id. at 42, Art. 20(3); 44–45, ¶¶ 151 152.

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 granting that 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 order granting recognition.

Two special exceptions to the automatic stay are embodied in subsections (b) and (c). To preserve a claim in certain foreign countries, it may be necessary to commence an action. Subsection (b) permits the commencement of such an action, but would not allow for 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 through which any entity, including the foreign representative, can flee 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 20(3), so no exception is necessary for claims that might be extinguished under United States law.[51]

Sec. 1521. Relief that may be granted upon recognition of a foreign proceeding

This section follows article 21 of the Model Law, with detailed changes to conform to United States law.[52] The exceptions in subsection (a)(7) relate to avoiding powers. The foreign representative's status as to such powers is governed by section 1523 below. 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, articles 21(2) and 22(1), 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, ''adequate protection.''[53] Subsection (c) is designed to limit relief to assets having some direct connection with a non-main proceeding, for example where they were part of an operating division in the jurisdiction of the non-main proceeding when they were fraudulently conveyed and then brought to the United States.[54] Subsections (d), (e) and (f) are identical to those same subsections of section 1519. This section does not expand or reduce the scope of relief currently available in ancillary cases under sections 105 and 304 nor does it modify the sweep of sections 555 through 560.

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.[55] It gives the bankruptcy court broad latitude to mold relief to meet specific circumstances, including 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 ''sufficiently'' 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 wording to fit it within procedure under this title.[56] It confers standing on a recognized foreign representative to assert an avoidance action but only in a pending case under another chapter of this title. The Model Law is not clear about whether it would grant standing in a recognized foreign proceeding if no full case were pending. This limitation reflects concerns raised by the United States delegation during the UNCITRAL debates that a simple grant of standing to bring avoidance actions neglects to address very difficult choice 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 any 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 the court and 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 such communications 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. Subsection (3) is not taken from the Model Law but is added so that any examiner appointed under this chapter will be designated by the United States Trustee and will be bonded.

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 here, but they now have explicit statutory authorization for acts like the approval of protocols of the sort used in cases.[62]

Sec. 1528. Commencement of a case under title 11 after recognition of a foreign main proceeding

This section follows the Model Law, with specifics 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 subject to the jurisdiction of another recognized proceeding.[63] In a full bankruptcy case, the United States bankruptcy court generally has jurisdiction over assets outside the United States. 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.[64] 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.[65] It ensures that a foreign main proceeding will be given primacy 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.[66] Where 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 does not arise for any purpose outside this section.

Sec. 1532. Rule of payment in concurrent proceeding

This section follows the Model Law exactly and is very similar to prior section 508(a), which is repealed. The Model Law language is somewhat clearer and broader than the equivalent language of prior section 508(a).[67]

Sec. 802. Other amendments to titles 11 and 28, United States Code

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

[51] Id.
[52] Id. at 45–46, Art. 21.
[53] Id. at 46, Art. 21(2); 47, Art. 22(1).
[54] See id. at 46–47, ¶¶158, 160.
[55] Id. at 47.
[56] Id. at 48–49
[57] See id. at 49, ¶166.
[58] Id. at 49.
[59] Id. at 50.
[60] Id. at 51.
[61] Guide at 51, 53.
[62] See e.g., In re Maxwell Communication Corp., 93 F.2d 1036 (2d Cir. 1996).
[63] Guide at 54–55.
[64] Id. at 55–56.
[65] Id. at 57.
[66] Id. at 58.
[67] Id. at 59.

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 nearly identical to those contained in the Model Law but add to the phrase ''under a law relating to insolvency'' the words ''or debt adjustment.'' This addition emphasizes that the scope of the Model Law and chapter 15 is not limited to proceedings involving only debtors which are technically insolvent, but broadly includes all proceedings involving debtors in severe financial distress, so long as those proceedings also meet the other criteria of section 101(24).[68]

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 chapter 15 and section 305, the situation is different in a case commenced under chapter 15. There the United States is acting solely in an ancillary position, so jurisdiction over property is limited to that stated in chapter 15.

Section 802(d) amends section 109 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 304 is repealed and replaced by chapter 15, access to the jurisprudence which developed under section 304 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 former section 304. The venue provisions 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 any. 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.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

Sec. 901. Treatment of certain agreements by conservators or receivers of insured depository institutions

Subsections (a) through (f) of section 901 of the conference report 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, such as novation, that have an effect similar to a guarantee. The reference to a ''loan'' of a security in the definition is intended to apply to loans of securities, whether or not for a ''permitted purpose'' under margin regulations. The reference to ''repurchase and reverse repurchase transactions'' is intended to eliminate any inquiry under the qualified financial contract 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, corporate bonds and 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 contract 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. The House version of 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 guarantee or reimbursement obligation.

Section 901(c) amends the definition of ''commodity contract'' in section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act. It reflects the Senate position as represented in section 901(c) of the Senate amendment, which includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation. Section 901(d) amends section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act with respect to its definition of a ''forward contract''. It reflects the Senate position as represented in section 901(d) of the Senate amendment, which includes the Senate amendment's clarification of the reference to guarantee or reimbursement obligation.

Subsection (e) amends the definition of ''repurchase agreement'' to codify the substance of the FDIC's 1995 regulation defining repurchase agreement to include those on qualified foreign government securities.[69] The term ''qualified foreign government securities'' is 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 markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending arrangements with the International Monetary Fund associated with the Fund's General Arrangements to Borrow.

Subsection (e) also amends the definition of ''repurchase agreement'' to include those on mortgage-related securities, mortgage loans and interests therein, and expressly 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 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 the qualified financial contract 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, even if not a ''repurchase agreement'' as defined in the FDIA. Similarly, an agreement for the sale and repurchase of a commodity, even though not a ''repurchase agreement'' as defined in the FDIA, would continue to be a forward contract for purposes of the FDIA.

Subsection (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 a ''repurchase agreement.'' A repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain one year or less after such transfer, however, would constitute a ''repurchase agreement'' as well as a ''securities contract''. Section 901(e) reflects the Senate position as represented in section 901(e) of the Senate amendment. The House version of 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 guarantee or reimbursement obligation.

Section 901(f) of the conference report amends the definition of ''swap agreement'' to include an ''interest rate swap, option, 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, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option.'' As amended, the definition of ''swap agreement'' will update the statutory definition and achieve

[68] Id. at 51–52, 71.

[69] See 12 C.F.R. §360.5.

contractual netting across economically similar transactions.

The definition of ''swap agreement'' originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase ''or any other similar agreement'' was included in the definition. (The phrase ''or any similar agreement'' has been added to the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' and ''securities contract'' for the same reason.) To clarify this, subsection (f) expands the definition of ''swap agreement'' to include ''any agreement or transaction that is similar to any other agreement or transaction referred to in [section 11(e)(8)(D)(vi) of the FDIA] and is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets . . . and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value.''

The definition of ''swap agreement,'' however, should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as ''swaps'' under either the FDIA or the Bankruptcy Code simply because the parties purport to document or label the transactions as ''swap agreements.'' In addition, these definitions apply only for purposes of the FDIA and the Bankruptcy Code. These definitions, and the characterization of a certain transaction as a ''swap agreement,'' are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f). Similarly, Section 17 and a new paragraph of Section 11(e) of the FDIA provide that the definitions of ''securities contract,'' ''repurchase agreement,'' ''forward contract,'' and ''commodity contract,'' and the characterization of certain transactions as such a contract or agreement, are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (f).

The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the FDIA and the Bankruptcy Code. Similar changes are made in the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' and ''securities contract.''

The use of the term ''forward'' in the definition of ''swap agreement'' is not intended to refer only to transactions that fall within the definition of ''forward contract.'' Instead, a ''forward'' transaction could be a ''swap agreement'' even if not a ''forward contract.''

Section 901(f) reflects the Senate position as reflected in section 901(f) of the Senate amendment. The Senate amendment clarifies that the definition pertains to an agreement or transaction is ''of a type that'' has been, presently, or in the future becomes, the subject of recurrent dealings in the swap markets. The House version did not include this clarification. Section 901(f) also eliminates the reference in the House provision to regulations promulgated by the Securities and Exchange Commission (SEC) or the Commodity Futures Trading Commission (CFTC).

Section 901(g) of the conference report is substantively identical to section 901(g) of the House bill and the Senate amendment. It amends the FDIA by adding a definition for ''transfer,'' which is a key term used in the FDIA, to ensure that it is broadly construed to encompass dispositions of property or interests in property. The definition tracks that in section 101 of the Bankruptcy Code.

Section 901(h) makes clarifying technical changes to conform the receivership and conservatorship provisions of the FDIA. It also clarifies that the FDIA expressly protects rights under security agreements, arrangements or other credit enhancements related to one or more qualified financial contracts (QFCs). An example of a security arrangement is a right of setoff, and examples of other credit enhancements are letters of credit, guarantees, reimbursement obligations and other similar agreements. Section 901(h) is substantively identical to section 901(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 preferential or fraudulent transfers (including the anti-preference provision of the National Bank Act) can be invoked to avoid a transfer made in connection with any QFC of an insured depository institution in conservatorship or receivership, absent actual fraudulent intent on the part of the transferee. Section 901(i) is substantively identical to section 901(i) of the House bill and Senate amendment.

Sec. 902. Authority of the corporation with respect to failed and failing institutions

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 to repudiate any QFC in accordance with its powers under the FDIA. As discussed below, there has been some uncertainty regarding whether or not FDICIA limits the authority of the FDIC to transfer or to repudiate QFCs of an insolvent financial institution. Section 902, 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 denies enforcement to ''walkaway'' clauses in QFCs. A walkaway clause is defined as a provision that, after calculation of a value of a party's position or an amount due to or from one of the parties upon termination, liquidation or acceleration of the QFC, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a non-defaulting party. Section 902 is substantively identical to section 902 of the House bill and Senate amendment.

Sec. 903. Amendments relating to transfers of qualified financial contracts

Section 903 of the conference report amends the FDIA to expand the transfer authority of the FDIC to permit transfers of QFCs to ''financial institutions'' as defined in FDICIA or in regulations. This provision is substantively identical to section 903(a) of the House bill and the 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 cleared on or subject to the rules of a particular clearing organization, the transfer will not require the clearing organization to accept the transferee as a member of the organization. This provision gives the FDIC flexibility in resolving QFCs cleared on or subject to the rules of a clearing organization, while preserving the ability of such organizations to enforce appropriate risk reducing membership requirements. The amendment does not require the clearing organization to accept for clearing any QFCs from the transferee, except on the terms and conditions applicable to other parties permitted to clear through that clearing organization. ''Clearing organization'' is defined to mean a ''clearing organization'' within the meaning of FDICIA (as amended both by the CFMA and by Section 906 of the Act).

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. person or a U.S. financial institution that is not an FDIC-insured institution if, following the transfer, the contractual rights of the parties 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 there were an impending change of law that would impair 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 to a transferred QFC of such transfer 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 by the FDIC acting as a conservator. This amendment is consistent with the policy statement on QFCs issued by the FDIC on December 12, 1989. Section 903(b) is substantively identical to section 903(b) of the House bill and the Senate amendment.

Section 903(c) amends the FDIA to clarify the relationship between the FDIA and FDICIA. It is substantively identical to section 903(c) of the House bill and the Senate amendment. There has been some uncertainty whether FDICIA permits counterparties to terminate or liquidate a QFC before the expiration of the time period provided by the FDIA during which 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 appointment of the receiver or after the person has received notice of a transfer under FDIA section 11(d)(9), or based solely on the appointment of the FDIC as conservator, notwithstanding the provisions of FDICIA. This provides the FDIC with an opportunity to undertake an orderly resolution of the insured depository institution.

Section 903(c) also prohibits the enforcement of rights of termination or liquidation that arise solely because of the insolvency of the institution or are based on the ''financial condition'' of the depository institution in receivership or conservatorship. For example, termination based on a cross-default provision in a QFC that is triggered upon a default under another contract could be rendered ineffective if such other default was caused by an acceleration of amounts due under that other contract, and such acceleration was based solely on the appointment of a conservator or receiver for that depository institution. Similarly, a provision in a

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 putting in question the enforceability of the agreement, will not be deemed to be based solely on financial condition for purposes of this provision. The amendment is not intended to prevent counterparties from taking all actions permitted and recovering all damages authorized upon repudiation 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 organized by the FDIC for which a conservator is appointed either (i) immediately upon the organization of such institution or (ii) at the time of a purchase and assumption transaction between the FDIC and the institution. This provision clarifies that such institutions are not to be considered financial institutions that are ineligible to receive such transfers under FDIA section 11(e)(9). This is consistent with the existing policy statement on QFCs issued by the FDIC on December 12, 1989.

Sec. 904. Amendments relating to disaffirmance or repudiation of qualified financial contracts

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 depository institution in default and a person or any affiliate of such person. The FDIC has announced that its policy is not to repudiate or disaffirm QFCs selectively. This unified treatment is fundamental to the reduction of systemic risk. Section 904 reflects the Senate position as represented in section 904 of the Senate amendment. The House version of section 904 did not include the savings clause provision.

Sec. 905. Clarifying amendment relating to master agreements

Section 905 of the conference report specifies that a master agreement for one or more securities contracts, commodity contracts, forward contracts, repurchase agreements or swap agreements will be treated as a single QFC under the FDIA (but only to the extent the underlying agreements are themselves QFCs). This provision ensures that cross-product netting pursuant to a master agreement, or pursuant to an umbrella agreement for separate master agreements between the same parties, each of which is used to document one or more qualified financial contracts, will be enforceable under the FDIA. Cross-product netting permits a wide variety of financial transactions between two parties to be netted, thereby maximizing the present and potential future risk-reducing benefits of the netting arrangement between the parties. Express recognition of the enforceability of such cross-product master agreements furthers the policy of increasing legal certainty and reducing systemic risks in the case of an insolvency of a large financial participant. Section 905 is substantively identical to section 905 of the House bill and the Senate amendment.

Sec. 906. federal deposit insurance corporation improvement act of 1991

Section 906(a) of the conference report is substantively identical to section 906(a) of the House bill and the Senate amendment. Subsection (a)(1) amends the definition of ''clearing organization'' to include clearinghouses that are subject to exemptions pursuant to orders of the Securities and Exchange Commission or the Commodity Futures Trading Commission and to include multilateral clearing organizations (the definition of which was added to FDICIA by the CFMA).

FDICIA provides that a netting arrangement will be enforced pursuant to its terms, notwithstanding the failure of a party to the agreement. The current netting provisions of FDICIA, however, limit this protection to ''financial institutions,'' which include depository institutions. Section 906(a)(2) amends the FDICIA definition of covered institutions to include (i) uninsured national and State member banks, irrespective of their eligibility for deposit insurance and (ii) foreign banks (including the foreign bank and its branches or agencies as a combined group, or only the foreign bank parent of a branch or agency). The latter change will extend the protections of FDICIA to ensure that U.S. financial organizations participating in netting agreements with foreign banks are covered by the Act, thereby enhancing the safety and soundness of these arrangements. It is intended that a non-defaulting foreign bank and its branches and agencies be considered to be a single financial institution for purposes of the bilateral netting provisions of FDICIA (except to the extent that the non-defaulting foreign bank and its branches and agencies on the one hand, and the defaulting financial institution, on the other, have entered into agreements that clearly evidence an intention that the non-defaulting foreign bank and its branches and agencies be treated as separate financial institutions for purposes of the bilateral netting provisions of FDICIA).

Subsection (a)(3) amends the FDICIA to provide that, for purposes of FDICIA, two or more clearing organizations that enter into a netting contract are considered ''members'' of each other. This assures the enforceability of netting arrangements involving two or more clearing organizations and a member common to all such organizations, thus reducing systemic risk in the event of the failure of such a member. Under the current FDICIA provisions, the enforceability of such arrangements depends on a case-by-case determination that clearing organizations could be regarded as members of each other for purposes of FDICIA.

Section 906(a)(4) of the conference report amends the FDICIA definition of netting contract and the general rules applicable to netting contracts. The current FDICIA provisions require that the netting agreement must be governed by the law of the United States or a State to receive the protections of FDICIA. Many of these agreements, however, particularly netting arrangements covering positions taken in foreign exchange dealings, are governed by the laws of a foreign country. This subsection broadens the definition of ''netting contract'' to include those agreements governed by foreign law, and preserves the FDICIA requirement that a netting contract not be invalid under, or precluded by, Federal law.

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 establish two exceptions to FDICIA's protection of the enforceability of the provisions of netting contracts between financial institutions and among clearing organization members. First, the termination provisions of netting contracts will not be enforceable based solely on (i) the appointment of a conservator for an insolvent depository institution under the FDIA 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 gives notice of a transfer by 5:00 p.m. 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.

The second exception provides that FDICIA does not override a stay order under SIPA with respect to foreclosure on securities (but not cash) collateral of a debtor (section 911 of the conference report makes a conforming change to SIPA). There is also an exception relating to insolvent commodity brokers. Subsections (b) and (c) also clarify that a security agreement or other credit enhancement related to a netting contract is enforceable to the same extent as the underlying netting contract.

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, uninsured Federal branches or agencies, or Edge Act corporations, or uninsured State member banks that operate, or operate as, a multilateral clearing organization and that are placed in receivership or conservatorship will be treated in the same manner as if the contract were with an insured national bank or insured Federal branch for which a receiver or conservator was appointed. This provision will ensure that parties to QFCs with these institutions will have the same rights and obligations as parties entering into the same agreements with insured depository institutions. The new section also specifically limits the powers of a receiver or conservator for such an institution 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.

Section 906(d) reflects the Senate position in Section 906(d) of the Senate amendment. It does not include the reference in the House provision concerning a receiver of an uninsured national bank, or Federal branch or agency. The conference report also eliminates the reference to the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act.

Sec. 907. Bankruptcy law amendments

Section 907 of the conference report makes a series of amendments to the Bankruptcy Code. Subsection (a)(1) amends the Bankruptcy Code definitions of ''repurchase

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,'' the term ''qualified foreign government securities'' is defined to include securities that are direct obligations of, or fully guaranteed by, central governments of members of the Organization for Economic Cooperation and Development (OECD). This language reflects developments in the repurchase agreement markets, which increasingly use foreign government securities as the underlying asset. The securities are limited to those issued by or guaranteed by full members of the OECD, as well as countries that have concluded special lending 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 and Exchange Commission in 1999 to engage in 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 expressly 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 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 security would continue to be a securities contract as defined in the Bankruptcy Code and thus also would be subject to the Bankruptcy Code provisions pertaining to securities contracts, 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 subject to the Bankruptcy Code provisions pertaining to forward contracts.

Subsection (a)(1) 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 a ''repurchase agreement.'' However, a repurchase agreement involving the transfer of participations in commercial mortgage loans with a simultaneous agreement to repurchase the participation on demand or at a date certain one year or less after such transfer would constitute a ''repurchase agreement'' (as well as a ''securities contract'').

The definition of ''swap agreement'' is amended to include an ''interest rate swap, option, 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, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option.'' As amended, the definition of ''swap agreement'' will update the statutory definition and achieve contractual netting across economically similar transactions.

The definition of ''swap agreement'' originally was intended to provide sufficient flexibility to avoid the need to amend the definition as the nature and uses of swap transactions matured. To that end, the phrase ''or any other similar agreement'' was included in the definition. (The phrase ''or any similar agreement'' has been added to the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement,'' and ''securities contract'' for the same reason.) To clarify this, subsection (a)(1) expands the definition of ''swap agreement'' to include ''any agreement or transaction that is similar to any other agreement or transaction referred to in [Section 101(53B) of the Bankruptcy Code] and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets? and [that] is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value.''

The definition of ''swap agreement'' in this subsection should not be interpreted to permit parties to document non-swaps as swap transactions. Traditional commercial arrangements, such as supply agreements, or other non-financial market transactions, such as commercial, residential or consumer loans, cannot be treated as ''swaps'' under either the FDIA or the Bankruptcy Code because the parties purport to document or label the transactions as ''swap agreements.'' These definitions, and the characterization of a certain transaction as a ''swap agreement,'' are not intended to affect the characterization, definition, or treatment of any instruments under any other statute, regulation, or rule including, but not limited to, the statutes, regulations or rules enumerated in subsection (a)(1)(C). The definition also includes any security agreement or arrangement, or other credit enhancement, related to a swap agreement, including any guarantee or reimbursement obligation related to a swap agreement. This ensures that any such agreement, arrangement or enhancement is itself deemed to be a swap agreement, and therefore eligible for treatment as such for purposes of termination, liquidation, acceleration, offset and netting under the Bankruptcy Code and the FDIA. Similar changes are made in the definitions of ''forward contract,'' ''commodity contract,'' ''repurchase agreement,'' and ''securities contract.'' An example of a security arrangement is a right of setoff; examples of other credit enhancements are letters of credit and other similar agreements. A security agreement or arrangement or guarantee or reimbursement obligation related to a ''swap agreement,'' ''forward contract,'' ''commodity contract,'' ''repurchase agreement'' or ''securities contract'' will be such an agreement or contract only to the extent of the damages in connection with such agreement measured in accordance with Section 562 of the Bankruptcy Code (added by the Act). This limitation does not affect, however, the other provisions of the Bankruptcy Code (including Section 362(b)) relating to security arrangements in connection with agreements or contracts that otherwise qualify as ''swap agreements,'' ''forward contracts,'' ''commodity contracts,'' ''repurchase agreements'' or ''securities contracts.''

The use of the term ''forward'' in the definition of ''swap agreement'' is not intended to refer only to transactions that fall within the definition of ''forward contract.'' Instead, a ''forward'' transaction could be a ''swap agreement'' even if not a ''forward contract.''

Subsections (a)(2) and (a)(3) amend the Bankruptcy Code definitions of ''securities contract'' and ''commodity contract,'' respectively, to conform them to the definitions in the FDIA.

Subsection (a)(2), like the amendments to the FDIA, 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 a ''securities clearing agency'' is intended to cover other arrangements, such as novation, that have an effect similar to a guarantee. The reference to a ''loan'' of a security in the definition is intended to apply to loans of securities, whether or not for a ''permitted purpose'' under margin regulations. The reference to ''repurchase and reverse repurchase transactions'' is intended to eliminate any inquiry under section 555 and related provisions 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 Bankruptcy Code. Repurchase and reverse repurchase transactions on all securities (including, for example, equity securities, asset-backed securities, corporate bonds and commercial paper) are included under the definition of ''securities contract''. A repurchase or reverse repurchase transaction which is a ''securities contract'' but not a ''repurchase agreement'' would thus be subject to the ''counterparty limitations'' contained in section 555 of the Bankruptcy Code (i.e., only stockbrokers, financial institutions, securities clearing agencies and financial participants can avail themselves of section 555 and related provisions).

Subsection (a)(2) 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.''

Section 907(a) reflects the Senate position as represented in section 907(a) of the Senate amendment. The House version of 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 guarantee or reimbursement obligation.

Section 907(b) amends the Bankruptcy Code definitions of ''financial institution'' and ''forward contract merchant.'' It is substantively identical to section 907(b) of the House bill and the Senate amendment. The

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 market participants. This definition 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 creditor could not qualify 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 counterparty 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 (aggregated across counterparties) in one or more agreements or transactions on any day during the previous 15–month period, sections 362(b)(6), 555 and 556 and corresponding amendments would permit it to exercise netting and related rights irrespective of its inability otherwise to satisfy those counterparty limitations. This change 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 15–month period 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 FDICIA (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 in other Sections of the Act to include ''financial participants'' as counterparties eligible for the protections in respect of ''swap agreements'' and ''repurchase agreements'', take into account 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 ''securities contracts,'' ''forward contracts,'' ''commodity 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,'' ''repo participant,'' ''forward contract merchant,'' ''commodity broker,'' ''stockbroker,'' ''securities clearing agency'' and/or ''financial institution.''

Section 907(c) of the conference report adds to the Bankruptcy Code new definitions for the terms ''master netting agreement'' and ''master netting agreement participant.'' The definition of ''master netting agreement'' is designed to protect the termination and close-out netting provisions of cross-product master agreements between parties. Such an agreement may be used (i) to document 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 discrete type of transaction. The definition includes security agreements or arrangements or other credit enhancements related to one or more such agreements and clarifies that a master netting agreement will be treated as such even if it documents transactions that are not within the enumerated categories of qualifying transactions (but the provisions of the Bankruptcy Code relating to master netting agreements and the other categories of transactions will not apply to such other transactions). A ''master netting agreement participant'' is any entity that is a party to an outstanding master netting agreement with a debtor before the filing of a bankruptcy petition. Section 907(c) is substantively identical to section 907(c) of the House bill and the Senate amendment.

Subsection (d) amends section 362(b) of the Bankruptcy Code to protect enforcement, free from the automatic stay, of setoff or netting provisions in swap agreements and in master netting agreements and security agreements or arrangements related to one or more swap agreements or master netting agreements. This provision parallels the other provisions of the Bankruptcy Code that protect netting provisions of securities contracts, commodity contracts, forward contracts, and repurchase agreements. Because the relevant definitions include related security agreements, the references to ''setoff'' in these provisions, as well as in section 362(b)(6) and (7) of the Bankruptcy Code, are intended to refer also to rights to foreclose on, and to set off against obligations to return, collateral securing swap agreements, master netting agreements, repurchase agreements, securities contracts, commodity contracts, or forward contracts. Collateral may be pledged to cover the cost of replacing the defaulted transactions in the relevant market, as well as other costs and expenses incurred or estimated to be incurred for the purpose of hedging or reducing the risks arising out of such termination. Enforcement of these agreements and arrangements free from the automatic stay is consistent with the policy goal of minimizing systemic risk.

Subsection (d) also clarifies that the provisions protecting setoff and foreclosure in relation to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, and master netting agreements free from the automatic stay apply to collateral pledged by the debtor but that cannot technically be ''held by'' the creditor, such as receivables and book-entry securities, and to collateral that has been repledged by the creditor and securities re-sold pursuant to repurchase agreements. Section 907(d) is substantively identical to section 907(d) of the House bill and the Senate amendment.

Subsections (e) and (f) of section 907 of the conference report amend sections 546 and 548(d) of the Bankruptcy Code to provide that transfers made under or in connection with a master netting agreement may not be avoided by a trustee except where such transfer is made with actual intent to hinder, delay or defraud and not taken in good faith. This amendment provides the same protections for a transfer made under, or in connection with, a master netting agreement as currently is provided for margin payments, settlement payments and other transfers received by commodity brokers, forward contract merchants, stockbrokers, financial institutions, securities clearing agencies, repo participants, and swap participants under sections 546 and 548(d), except to the extent the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement. Subsections (e) and (f) are substantively identical to section 907(f) of the House bill and the Senate amendment.

Subsections (g), (h), (i), and (j) of section 907 clarify that the provisions of the Bankruptcy Code that protect (i) rights of liquidation under securities contracts, commodity contracts, forward contracts and repurchase agreements also protect rights of termination or acceleration under such contracts, and (ii) rights to terminate under swap agreements also protect rights of liquidation and acceleration. These provisions are substantively similar to their counterparts in section 907 of the House bill and Senate amendment.

Section 907(k) of the conference report represents the Senate position as reflected in section 907(k) of the Senate amendment. It adds a new section 561 to the Bankruptcy Code to protect the contractual right of a master netting agreement participant to enforce any rights of termination, liquidation, acceleration, offset or netting under a master netting agreement. Such rights include rights arising (i) from the rules of a derivatives clearing organization, multilateral clearing organization, securities clearing agency, securities exchange, securities association, contract market, derivatives transaction execution facility or board of trade, (ii) under common law, law merchant or (iii) by reason of normal business practice. This reflects the enactment of the CFMA and the current treatment of rights under swap agreements under section 560 of the Bankruptcy Code. Similar changes to reflect the enactment of the CFMA have been made to the definition of ''contractual right'' for purposes of Sections 555, 556, 559 and 560 of the Bankruptcy Code.

Subsections (b)(2)(A) and (b)(2)(B) of new Section 561 limit the exercise of contractual rights to net or to offset obligations where the debtor is a commodity broker and one leg of the obligations sought to be netted relates to commodity contracts traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act. Under subsection (b)(2)(A) netting or offsetting is not permitted in these circumstances if the party seeking to net or to offset has no positive net equity in the commodity accounts at the debtor. Subsection (b)(2)(B) applies only if the debtor is a commodity broker, acting on behalf of its own customer, and is in turn a customer of another commodity broker. In that case, the latter commodity broker may not net or offset obligations under such commodity contracts with other claims against its customer, the debtor. Subsections (b)(2)(A) and (b)(2)(B) limit the depletion of assets available for distribution to customers of commodity brokers. Subsection (b)(2)(C) provides an exception to subsections (b)(2)(A) and (b)(2)(B) for cross-margining and other similar arrangements approved by, or submitted to and not rendered ineffective by, the Commodity Futures Trading Commission, as well as certain other netting arrangements.

For the purposes of Bankruptcy Code sections 555, 556, 559, 560 and 561, it is intended that the normal business practice in the event of a default of a party based on bankruptcy or insolvency is to terminate, liquidate or accelerate securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements and master netting agreements with the bankrupt or insolvent party. The protection of netting and offset rights in sections 560 and 561 is in addition to the protections afforded

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 participant are subject to limitations contained in other provisions of the Bankruptcy Code relating to securities contracts and repurchase agreements. In particular, if a securities contract or repurchase 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 of a party to a master netting agreement would be subject to any contractual terms between the parties limiting or waiving netting or set off rights. Similarly, a waiver by a bank or a counterparty of 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 (l) and (m) of section 907 of the conference report clarify that the exercise of termination and netting rights will not otherwise affect the priority of the creditor's claim after the exercise of netting, foreclosure and related rights. These provisions are substantively identical to there 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 creditor of setoff rights in connection 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, 559, 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 represented in Section 907(n) 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 relating to securities, 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)(8) 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 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 position in section 908 of the Senate amendment, which includes clarifying references to insured depository institution and institutions in troubled condition.

Sec. 909. Exemptions from contemporaneous execution requirement

Section 909 of the conference report amends FDIA section 13(e)(2) to provide that an agreement for the collateralization of governmental deposits, bankruptcy estate funds, Federal Reserve Bank or 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 pledges, delivery or substitution of the collateral made in accordance with such agreement.

The amendment codifies 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 QFCs often are subject to collateral and other security arrangements that may require posting and return of collateral on an ongoing basis based on the mark-to-market values of the collateralized transactions. The codification of only portions of the existing FDIC policy statements on these and related issues should not give rise to any negative implication regarding the continued validity 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 or dates 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 562 provides an exception to the rules in (i) and (ii) if there are no commercially reasonable determinants of value as of such date or dates, in which case damages are to be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value. Although it is expected that in most circumstances damages would be measured as of the date or dates of either rejection or liquidation, termination or acceleration, in certain unusual circumstances, such as dysfunctional markets or liquidation of very large portfolios, there may be no commercially reasonable determinants of value for liquidating any such agreements or contracts or for liquidating all such agreements and contracts in a large portfolio on a single day.

The party determining damages is given limited discretion to determine the dates as of which damages are to be measured. Its actions are circumscribed unless there are no ''commercially reasonable'' determinants of value for it to measure damages on the date or dates of either rejection or liquidation, termination or acceleration. The references to ''commercially reasonable'' are 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 measured as of either the date of rejection or the date or dates 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. Also, 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 provisions of the FDIA relating to timing of damages in respect of QFCs or other contracts.

Sec. 911. SIPC stay

Section 911 of the conference report amends SIPA to provide that an order or decree issued pursuant to SIPA shall not operate as a stay of any right of liquidation, termination, acceleration, offset or netting under one or more securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements or master netting agreements (as defined in the Bankruptcy Code and including rights of foreclosure on collateral), except that such order or decree may stay any right to foreclose on or dispose of securities (but not cash) collateral pledged by the debtor or sold by the debtor under a repurchase agreement or lent by the debtor under a securities lending agreement. A corresponding amendment to FDICIA is made by section 906. A creditor that was stayed in exercising rights against such securities would be entitled to post-insolvency interest to the extent of the value of such securities. Section 911 is substantively identical to section 911 of the House bill and the Senate amendment.

TITLE X—PROTECTION OF FAMILY FARMERS

Sec. 1001. Permanent reenactment of chapter 12

Chapter 12 is a specialized form of bankruptcy relief available only to a ''family farmer with regular annual income,''[70] a defined term.[71] This form of bankruptcy relief permits eligible family farmers, under the supervision of a bankruptcy trustee,[72] to reorganize their debts pursuant to a repayment plan.[73] The special attributes of chapter 12 make it better suited to meet the particularized needs of family farmers in financial distress than other forms of bankruptcy relief, such as chapter 11[74] and chapter 13.[75]

Chapter 12 was enacted on a temporary seven-year basis as part of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986[76] in response to the farm financial crisis of the early- to mid–1980's.[77] It was subsequently reenacted and extended on several occasions. The most recent extension, authorized as part of the Farm Security and Rural Investment Act of 2002, provides that chapter remains in effect until December 31, 2002.[78]

Section 1001(a) of the conference report reenacts chapter 12 of the Bankruptcy Code and provides that such reenactment takes effect as of the date of enactment. Section

[70] 11 U.S.C. §109(f).

[71] 11 U.S.C. §101(19).

[72] 11 U.S.C. §1202.

[73] 11 U.S.C. §1222.

[74] For example, chapter 12 is typically less complex and expensive than chapter 11, a form of bankruptcy relief generally utilized to effectuate large corporate reorganizations.

[75] Chapter 13, a form of bankruptcy relief for individuals seeking to reorganize their debts, limits its eligibility to debtors with debts in lower amounts than permitted for eligibility purposes under chapter 12. Cf. 11 U.S.C. §§109(e), 101(18).

[76] Pub. L. No. 99–554, §255, 100 Stat. 3088, 3105 (1986).

[77] See U.S. Dept. of Agriculture, Info. Bull. No. 724–09, Issues in Agricultural and Rural Finance: Do Farmers Need a Separate Chapter in the Bankruptcy Code? (Oct. 1997). As one of the principal proponents of this legislation explained:

''I doubt there will be anything that we do that will have such an immediate impact in the grassroots of our country with respect to the situation that exists in most of the heartland, and that is in the agricultural sector * * *

''You know, William Jennings Bryan in his famous speech, the Cross of Gold, almost 60 years ago [sic], stated these words: ''Destroy our cities and they will spring up again as if by magic; but destroy our farms, and the grass will grow in every city in our country.''

''This legislation will hopefully stem the tide that we have seen so recently in the massive bankruptcies in the family farm area.''

132 Cong. Rec. 28,147 (1986) (statement of Rep. Mike Synar (D-Okla.)).

[78] Pub. L. No. 107–171, §10814 (2002).

1001(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, chapter 12 becomes a permanent form of relief under the Bankruptcy Code. Section 1001 is substantively identical to section 1001 of the House bill and the Senate amendment.

Sec. 1002. Debt limit increase

Section 1002 of the conference report amends section 104(b) of the Bankruptcy Code to provide for periodic adjustments for inflation of the debt eligibility limit for family farmers. This provision represents a compromise between section 1002 of the House bill and the Senate amendment. The Senate version required the adjustment to become effective as of April 1, 2001 or 60 days after the date of enactment of this Act. The House provision allows for a prospective effective date of April 1, 2004.

Sec. 1003. Certain claims owed to governmental units

Section 1003 of the conference report is substantively identical to section 1003 of the House bill and the Senate amendment. Subsection (a) amends section 1222(a) of the Bankruptcy Code to add an exception with respect to payments to a governmental unit for a debt entitled to priority under section 507 if such debt arises from the sale, transfer, exchange, or other disposition of an asset used in the debtor's farming operation, but only if the debtor receives a discharge. Section 1003(b) amends section 1231(b) of the Bankruptcy Code to have it apply to any governmental unit. Subsection (c) provides that section 1003 becomes effective on the date of enactment of this Act and applies to cases commenced after such effective date.

Sec. 1004. Definition of family farmer

Section 1004 of the conference report amends the definition of ''family farmer'' in section 101(18) of the Bankruptcy Code to increase the debt eligibility limit from $1,500,000 to $3,237,000. It also reduces the percentage of the farmer's liabilities that must arise out of the debtor's farming operation for eligibility purposes from 80 percent to 50 percent. Section 1004 represents a compromise. It takes into consideration the adjustment that went into effect on April 1, 2001 pursuant to Bankruptcy Code section 104. There is no counterpart to this provision in the House bill.

Sec. 1005. Elimination of requirement that family farmer and spouse receive over 50 percent of income from farming operation in year prior to bankruptcy

Section 1005 of the conference report amends the Bankruptcy Code's definition of ''family farmer'' with respect to the determination of the farmer's income. Current law provides that a debtor, in order to be eligible to be a family farmer, must derive a specified percentage of his or her income from farming activities for the taxable year preceding the commencement of the bankruptcy case. Section 1005 adjusts the threshold percentage to be met during either: (1) the taxable year preceding the filing of the bankruptcy case; or (2) the taxable year in the second and third taxable years preceding the filing of the bankruptcy case. Section 1005 represents a compromise between the House bill and Senate amendment. The Senate provision sets the determination period as at least one of the three years preceding the filing of the bankruptcy case. There is no counterpart to this provision in the House bill.

Sec. 1006. Prohibition of retroactive assessment of disposable income

Section 1006 of the conference report amends 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 equals or exceeds the debtor's projected disposable income for that period, providing the plan otherwise satisfies the requirements for confirmation. Section 1006(b) amends Bankruptcy Code section 1229 to restrict the bases for modifying a confirmed chapter 12 plan. Specifically, Section 1006(b) to provide that a confirmed chapter 12 plan may not be modified to increase the amount of payments due 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, the plan 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 month, unless the debtor proposes such a modification. Section 1006(b) further provides that a modification of a plan shall not require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed, unless the debtor proposes such a modification. Section 1006 of the conference report reflects the Senate position as represented in section 1006 of the Senate amendment. There is no counterpart to this provision in the House bill.

Sec. 1007. Family fishermen

Section 1007 of the conference report is a compromise between the House and Senate. Subsection (a) of the conference report amends Bankruptcy Code section 101 to add definitions of ''commercial fishing operation,'' ''commercial fishing vessel,'' ''family fisherman'' and ''family fisherman with regular annual income''. The definition of ''commercial fishing operation'' includes the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products. The term ''commercial fishing vessel'' is defined as a vessel used by a fisher to ''carry out a commercial fishing operation''. The term ''family fisherman'' is defined as an individual engaged in a commercial fishing operation, with an aggregate debt limit of $1.5 million. The definition specifies that at least 80 percent of those debts must be derived from a commercial fishing operation. The percentage of income that must be derived from such operation is specified to be more than 50 percent of the individual's gross income for the taxable year preceding the taxable year in which the case was filed. Similar provisions are included for corporations and partnerships. The term ''family fisherman with regular annual income'' is defined as a family fisherman whose annual income is sufficiently stable and regular to enable such person to make payments under a chapter 12 plan. Section 1007(b) amends Bankruptcy Code section 109 to provide that a family fisherman is eligible to be a debtor under chapter 12.

Section 1007(c) amends the heading of chapter 12 to include a reference to family fisherman and makes conforming revisions to Sections 1203 and 1206. The conference report does not include a provision in the Senate amendment, which requires certain maritime liens to be treated as unsecured claims. It also does not include provisions in the Senate amendment concerning the codebtor stay.

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

Sec. 1101. Definitions

Section 1101 of the conference report is substantively identical to section 1101 of the House bill and the Senate amendment. Subsection (a) amends section 101 of the Bankruptcy Code to add a definition of ''health care business''. The definition includes any public or private entity (without regard to whether that entity is for or not for profit) that is primarily engaged in offering to the general public facilities and services for diagnosis or treatment of injury, deformity or disease; and surgical, drug treatment, psychiatric or obstetric care. It also includes the following entities: (1) a general or specialized hospital; (2) an ancillary ambulatory, emergency, or surgical treatment facility; (3) a hospice; (d) a home health agency; (e) other health care institution that is similar to an entity referred to in (a) through (d); and other long-term care facility. These include a skilled nursing facility, intermediate care facility; assisted living facility, home for the aged, domiciliary care facility, and health care institution that is related to an aforementioned facility. Section 1101(b) amends Bankruptcy Code section 101 to add a definition of ''patient''. The term means any person who obtains or receives services from a health care business. Section 1101(c) amends section 101 of the Bankruptcy Code to add a definition of ''patient records''. The term means any written document relating to a patient or record recorded in a magnetic, optical, or other form of electronic medium. Section 1101(d) specifies that the amendments effected by new section 101(27A) do not affect the interpretation of section 109(b).

Sec. 1102. Disposal of patient records

Section 1102 of the conference report is substantively identical to section 1102 of the House bill and the Senate amendment. It adds a provision to the Bankruptcy Code specifying requirements for the disposal of patient records in a chapter 7, 9, or 11 case of a health care business where the trustee lacks sufficient funds to pay for the storage of such records in accordance with applicable Federal or state law. The requirements chiefly consist of providing notice to the affected patients and specifying the method of disposal for unclaimed records. They are intended to protect the privacy and confidentiality of a patient's medical records when they are in the custody of a health care business in bankruptcy. The provision specifies the following requirements:

(1) The trustee shall: (a) publish notice in one or more appropriate newspapers stating that if the records are not claimed by the patient or an insurance provider (if permitted under applicable law) within 90 days of the date of such notice, then the trustee will destroy such records; and (b) during such 90-day period, attempt to directly notify by mail each patient and appropriate insurance carrier of the claiming or disposing of such records.

(2) If after providing such notice patient records are not claimed within the specified period, the trustee shall, upon the expiration of such period, send a request by certified mail to each appropriate federal agency to request permission from such agency to deposit the records with the agency.

(3) If after providing the notice under 1 and 2 above, patient records are not claimed, the trustee shall destroy such records as follows: (a) by shredding or burning, if the records are written; or (b) by destroying the records so that their information cannot be retrieved, if the records are magnetic, optical or electronic.

It is anticipated that if the estate of the debtor lacks the funds to pay for the costs and expenses related to the above, the trustee may recover such costs and expenses under section 506(c) of the Bankruptcy Code.

Sec. 1103. Administrative expense claim for costs of closing a health care business and other administrative expenses

Section 1103 of the conference report is substantively identical to section 1103 of the

House bill and the Senate amendment. It amends section 503(b) of the Bankruptcy Code to provide that the actual, necessary costs and expenses of closing a health care business (including the disposal of patient records or transferral of patients) incurred by a trustee, Federal agency, or a department or agency of a State are allowed administrative expenses. The conference report does not include a duplicative and unrelated provision in the House bill and Senate amendment pertaining to nonresidential real property leases.

Sec. 1104. Appointment of ombudsman to act as patient advocate

Section 1104 of the conference report adds a provision to the Bankruptcy Code requiring the court to order the appointment of an ombudsman to monitor the quality of patient care within 30 days after commencement of a chapter 7, 9, or 11 health care business bankruptcy case, unless the court finds that such appointment is not necessary for the protection of patients under the specific facts of the case. The ombudsman must be a disinterested person. If the health care business is a long-term care facility, a person who is serving as a State Long-Term Care Ombudsman of the Older Americans Act of 1965 may be appointed as the ombudsman in such case. The ombudsman must: (1) monitor the quality of patient care to the extent necessary under the circumstances, including interviewing patients and physicians; (2) report to the court, not less than 60 days from the date of appointment and then every 60 days thereafter, at a hearing or in writing regarding the quality of patient care at the health care business involved; and (3) notify the court by motion or written report (with notice to appropriate parties in interest) if the ombudsman determines that the quality of patient care is declining significantly or is otherwise being materially compromised. The provision requires the ombudsman to maintain any information obtained that relates to patients (including patient records) as confidential. Section 1104(b) amends section 330(a)(1) of the Bankruptcy Code to authorize the payment of reasonable compensation to an ombudsman. Section 1104 reflects the Senate position as represented in section 1104 of the Senate amendment. The conference report includes the Senate's provision with respect to a case where the United States trustee does not appoint a State Long-Term Care Ombudsman. The House bill did not include this provision.

Sec. 1105. Debtor in possession; duty of trustee to transfer patients

Section 1105 of the conference report is identical to section 1105 of the House bill and the Senate amendment. This provision amends section 704(a) of the Bankruptcy Code to require a chapter 7 trustee, chapter 11 trustee, and chapter 11 debtor in possession to use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business. The transferee health care business should be in the vicinity of the transferor health care business, provide the patient with services that are substantially similar to those provided by the transferor health care business, and maintain a reasonable quality of care.

Sec. 1106. Exclusion from program participation not subject to automatic stay

Section 1106 amends section 362(b) of the Bankruptcy Code to except from the automatic stay the exclusion by the Secretary of Health and Human Services of a debtor from participation in the medicare program or other specified Federal health care programs. This provision is substantively identical to section 1106 of the House bill and the Senate amendment.

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 the 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 definition into a sentence (thereby facilitating future amendments to the separate paragraphs) and to redesignate the definitions in correct and completely numerical sequence. Paragraph (3) of section 1101 makes necessary and conforming amendments to cross references to the newly redesignated definitions.

Paragraph (5) of section 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, a single asset real estate debtor resorts to filing for bankruptcy relief for the sole purpose of staying an impending foreclosure proceeding or sale commenced by the secured lender. Foreclosure actions are 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 only nominal claims against the 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 few, 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 debtors. It defined this type of debtor as a bankruptcy 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 debtor that conducts substantial business on the property beyond that relating to its operation is excluded from this definition. In addition, the definition fixed a monetary cap. To qualify as a single asset real estate debtor, the debtor could not 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 from this definition. Paragraph (5)(B) amends section 101(51B) of the Bankruptcy Code to eliminate the $4 million debt limitation on single asset real estate. The present $4 million cap prevents the use of the expedited relief procedure in many commercial property reorganizations, and effectively provides an opportunity for a number of debtors to abusively file for bankruptcy in order to obtain the protection of the automatic stay against their creditors. As a result of this amendment, creditors in more cases will be able to obtain the expedited relief from the automatic stay which is made available under section 362(d)(3) of the Bankruptcy Code.

Paragraph (6) of section 1201, together with section 1214, respond to a 1997 Ninth Circuit case, in which two purchase money lenders (without knowledge that the debtor had recently filed an undisclosed chapter 11 case that was subsequently converted to chapter 7), funded the debtor's acquisition of an apartment complex and recorded their purchase-money deed of trust immediately following recordation of the deed to the debtors. Specifically, it amends the definition of ''transfer'' in section 101(54) of the Bankruptcy Code to include the ''creation of a lien.'' This amendment gives expression to a widely held understanding since the enactment of the Bankruptcy Reform Act of 1978, that is, a transfer includes the creation of a lien.

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 corrects an omission in section 104(b) of the Bankruptcy Code to include a reference to section 522(f)(3).

Sec. 1203. Extension of time

Section 1203 of the conference report makes a technical amendment to correct a reference error described in amendment notes 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 257(b)(2)(B) of Public Law 99–554 could not be executed as stated. This provision is substantively identical to section 1203 of the House 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 ''product'' with ''products''). Section 1204 is substantively identical to section 1204 of the House bill and the Senate amendment.

Sec. 1205. Penalty for persons who negligently or fraudulently prepare bankruptcy petitions

Section 1205 of the conference report amends section 110(j)(4) of the Bankruptcy Code to change the reference to attorneys from the singular possessive to the plural possessive. 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 328(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 on a retainer, on an hourly basis, or on a contingent fee basis. Section 1206 of the conference report amends section 328(a) to include compensation ''on a fixed or percentage fee 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(f)(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)(4) 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 substantively identical to section 1208 of the House bill and the Senate amendment.

Sec. 1209. Exceptions to discharge

Section 1209 of the conference report is substantively identical to section 1209 of the House bill and the Senate amendment. This provision amends section 523(a) of the Bankruptcy Code to correct a technical error in the placement of paragraph (15), which was added to section 523 by section 304(e)(1) of the Bankruptcy Reform Act of 1994. Section 1209 also amends section 523(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 523(a)(9) and each is intended to comprise unpowered as well as motor-powered craft. Congress previously made the policy judgment that the equities of persons injured by drunk drivers outweigh the responsible debtor's interest in a fresh start, and here clarifies that the policy applies not only on land but also on the water and in the air. Viewed from a practical standpoint, this provision closes a loophole that gives intoxicated watercraft and aircraft operators preferred treatment over intoxicated motor vehicle drivers and denies victims of alcohol and drug related boat and plane accidents the same rights accorded to automobile accident victims under current law. Finally, this section corrects a grammatical error in section 523(e).

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.[79] 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 bill and the Senate amendment. This provision conforms 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 denied because 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)(ii) of the Bankruptcy Code, added by the Bankruptcy Reform Act of provided they could be included only by virtue of section 542 of the Bankruptcy Code, which relates generally to the obligation of those holding property which belongs in the estate to turn it over to the trustee. Section 1212 of the conference report adds to this proviso a reference to section 365 of the Bankruptcy Code, which authorizes the trustee to assume or reject an executory contract or unexpired lease. It thereby clarifies the original Congressional intent to generally exclude production payments from the debtor's estate. This provision is substantively identical to section 1212 of the House bill and the Senate amendment.

Sec. 1213. Preferences

Section 547 of the Bankruptcy Code authorizes a trustee to avoid a preferential payment made to a creditor by a debtor within 90 days of filing, whether the creditor is an insider or an outsider. To address the concern that a corporate insider (such as an officer or director who is a creditor of his or her own corporation has an unfair advantage over outside creditors, section 547 also authorizes a trustee to avoid a preferential payment made to an insider creditor between 90 days and one year before filing. Several recent cases, including *DePrizio*,[80] allowed the trustee to ''reach-back'' and avoid a transfer to a noninsider creditor which fell within the 90-day to one-year time frame if an insider benefitted from the transfer in some way. This had the effect of discouraging lenders from obtaining loan guarantees, lest transfers to the lender be vulnerable to recapture by reason of the debtor's insider relationship with the loan guarantor. Section 202 of the Bankruptcy Reform Act of 1994 addressed the *DePrizio* problem by inserting a new section 550(c) into the Bankruptcy Code to prevent avoidance or recovery from a noninsider creditor during the 90-day to one-year period even though the transfer to the noninsider benefitted an insider creditor. The 1994 amendments, however, failed to make a corresponding amendment to section 547, which deals with the avoidance of preferential transfers. As a result, a trustee could still utilize section 547 to avoid a preferential lien given to a noninsider bank, more than 90 days but less than one year before bankruptcy, if the transfer benefitted an insider guarantor of the debtor's debt. Accordingly, section 1213 of the conference report makes a perfecting amendment to section 547 to provide that if the trustee avoids a transfer given by the debtor to a noninsider for the benefit of an insider creditor between 90 days and one year before filing, that avoidance is valid only with respect to the insider creditor. Thus both the previous amendment to section 550 and the perfecting amendment to section 547 protect the noninsider from the avoiding powers of the trustee exercised with respect to transfers made during the 90-day to one year pre-filing period. This provision is intended to apply to any case, including any adversary proceeding, that is pending or commenced on or after the date of enactment of this Act. Section 1213 is substantively identical to section 1213 of the House bill and the Senate amendment.

Sec. 1214. Postpetition transactions

Section 1214 of the conference report amends section 549(c) of the Bankruptcy Code to clarify its application to an interest in real property. This amendment should be construed in conjunction with section 1201 of the Act. This provision is substantively identical to section 1214 of the House bill and the Senate amendment.

Sec. 1215. Disposition of property of the estate

Section 1215 of the conference report amends section 726(b) of the Bankruptcy Code to strike an erroneous reference. This provision is substantively identical to section 1215 of the House bill and the Senate amendment.

Sec. 1216. General provisions

Section 1216 of the conference report amends section 901(a) of the Bankruptcy Code to correct an omission in a list of sections applicable to cases under chapter 9 of title 11 of the United States Code. This provision is substantively identical to section 1216 of the House bill and the Senate amendment.

Sec. 1217. Abandonment of railroad line

Section 1217 of the conference report amends section 1170(e)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104–88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code. This provision is substantively identical to section 1217 of the House bill and the Senate amendment.

Sec. 1218. Contents of plan

Section 1218 of the conference report amends section 1172(c)(1) of the Bankruptcy Code to reflect the fact that section 11347 of title 49 of the United States Code was repealed by section 102(a) of Public Law 104–88 and that provisions comparable to section 11347 appear in section 11326(a) of title 49 of the United States Code. This provision is substantively identical to section 1218 of the House bill and the Senate amendment.

Sec. 1219. Bankruptcy cases and proceedings

Section 1219 of the conference report amends section 1334(d) of title 28 of the United States Code to make clarifying references.[81] This provision is substantively identical to section 1220 of the House bill and section 1219 of the Senate amendment.

Sec. 1220. Knowing disregard of bankruptcy law or rule

Section 1220 of the conference report amends section 156(a) of title 18 of the United States Code to make stylistic changes and correct a reference to the Bankruptcy Code. This provision is substantively identical to section 1221 of the House bill and section 1220 of the Senate amendment.

Sec. 1221. Transfers made by nonprofit charitable corporations

Section 1221 of the conference report amends section 363(d) of the Bankruptcy Code to restrict the authority of a trustee to use, sale, or lease property by a nonprofit corporation or trust. First, the use, sell or lease must be in accordance with applicable nonbankruptcy law and to the extent it is not inconsistent with any relief granted under certain specified provisions of section 362 of the Bankruptcy Code concerning the applicability of the automatic stay. Second, section 1221 imposes similar restrictions with regard to plan confirmation requirements for chapter 11 cases. Third, it amends section 541 of the Bankruptcy Code to provide that any property of a bankruptcy estate in which the debtor is a nonprofit corporation (as described in certain provisions

[79] For a description of these errors, see the appropriate footnote and amendment notes in the United States Code.

[80] Levit v. Ingersoll Rand Fin. Corp., 874 F.2d 1186 (7th Cir. 1989); see, e.g., Ray v. City Bank and Trust Co. (In re C–L Cartage Co.), 899 F.2d 1490 (6th Cir. 1990); Manufacturers Hanover Leasing Corp. v. Lowrey (In re Robinson Bros. Drilling, Inc.), 892 F.2d 850 (10th Cir. 1989).

[81] For a description of the errors, see the appropriate footnote and amendment notes in the United States Code.

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. The amendments 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 without considering whether this provision would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor postpetition. Nothing in this provision 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 other court for the 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 1223 of the House bill and section 1222 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, the House responded to this need by passing 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 the Senate amendment's 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 Tennessee, and the Districts of Delaware and Puerto Rico begin from the date of enactment of this Act. The conference report authorizes two judgeships for the District of Delaware in addition to the two provided for in the House bill and the Senate amendment for a total of four judgeships for that District.

Sec. 1224. Compensating trustees

Section 1224 of the conference report amends section 1326 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 707(b) and some portion of that compensation remains unpaid, the amount of any such unpaid compensation must be repaid in the debtor's 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 may not exceed the greater of $25 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.

Sec. 1225. Amendment to section 362 of title 11, 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 or perfection of a statutory lien for 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 1226 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, including the needs-based reforms under section 707(b) (as amended by this Act) and amendments pertaining to reaffirmation agreements. This provision is substantively identical to section 1227 of the House bill and section 1226 of the Senate amendment.

Sec. 1227. Reclamation

Section 1227 of the conference report amends section 546(c) of the Bankruptcy Code to provide that the rights of a trustee under sections 544(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) written 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 the case, if the 45-day 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 503(b) to provide that the value of any goods received by a debtor not later than within 20 days prior to the commencement of a bankruptcy case in which the goods have been sold 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. Subsection (a) 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) similarly 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. 1229. Encouraging creditworthiness

Section 1229 of the conference report is substantively identical to section 1230 of the House bill and section 1229 of the Senate amendment. Subsection (a) expresses the sense of the Congress that lenders may sometimes offer credit to consumers indiscriminately and that resulting consumer debt may be a major contributing factor leading to consumer insolvency. Section 1229(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 specified practices involve the solicitation and extension of credit on an indiscriminate basis that encourages consumers to accumulate additional debt and where the lender fails to ensure that the consumer borrower is capable of repaying the debt. Section 1229(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 permits it to undertake any other 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 of the debtor in tangible personal property (other than securities, or written or printed evidences of indebtedness or title) that the debtor pledged or sold as collateral for a loan or advance of money given by a person licensed under law to make such loan or advance is not property of the estate. Subject to subchapter III of chapter 5 of the Bankruptcy Code, the provision applies where (a) the property is in the possession of the pledgee or transferee; (b) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and (c) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law in a timely manner as provided under State law and section 108(b) of the Bankruptcy Code.

Sec. 1231. Trustees

Section 1231 of the conference report is substantively 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 and chapter 13 trustees concerning final agency decisions relating to trustee appointments and future case assignments. Section 1231(a) amends section 586(d) 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 remedy. The provision requires the Attorney General to promulgate procedures to implement this provision. It further provides that the agency's decision must 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 13 trustee to obtain judicial review of certain final agency actions relating to claims for actual, necessary expenses under section 586(e). The trustee may commence an action in the United States district court where the trustee resides. The agency's decision must be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before

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 substantively identical to section 1233 of the House bill and section 1232 of the Senate amendment. This provision amends section 2075 of title 28 of the United States Code to require the bankruptcy rules promulgated under this provision to prescribe a form for the statement specified under section 707(b)(2)(C) of the Bankruptcy Code and to provide general rules on the content of such statement.

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 appeals of certain decisions, judgments, 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 of certain 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 establish clear binding precedent at the court of appeals level, where the matter is one of public importance, 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 1233 reflects a compromise between the House and Senate conferees. The House provision amends section 158(d) of title 28 of the United States Code to deem a judgment, decision, order, or decree of a bankruptcy judge to be a judgment, decision, order, or decree of the district court entered 31 days after an appeal of such judgment, decision, order or decree is filed with the district court, unless: (1) the district court issues a decision on the appeal within 30 days after such appeal is filed or enters an order extending the 30-day period for cause upon motion 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 order only if the bankruptcy court, district court, bankruptcy appellate panel, or the parties jointly certify: (1) the appeal concerns a substantial question of law, 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 or proceeding. It further provides 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 commencing an involuntary bankruptcy case. Current law renders a creditor ineligible if its claim is contingent as to liability or the subject of 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 was the subject of a bona fide dispute as to liability or amount. It further provides that the claims needed to meet the monetary threshold must be undisputed. The provision makes a conforming revision to section 303(h)(1). Section 1234 becomes effective on the date of enactment of this Act and applies to cases commenced after such date. This provision represents the Senate position as reflected in section 1235 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 1236 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 substantively identical to section 1301 of the House bill and Senate amendment. Subsection (a) amends section 127(b) of the Truth in Lending Act to mandate 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 time it would take to repay a stated balance at a specified interest rate. In addition, they must warn the borrower that making only the minimum payment will increase the amount of interest that must be paid and the time it takes to repay the balance. Further, a toll-free telephone number must be provided where the borrower can obtain an estimate of the time it would take to repay the balance if only minimum payments are made. With respect to a creditor whose compliance with title 15 of the United States Code is enforced by the Federal Trade Commission (FTC), the billing statement must advise the borrower to contact the FTC at a toll-free telephone number to obtain an estimate of the time it would take to repay the borrower's balance. Section 1301(a) permits the creditor to substitute an example based on a higher interest rate. As necessary, the provision requires the Board of Governors of the Federal Reserve System (''Board''), to periodically recalculate by rule the interest rate and repayment periods specified in Section 1301(a). With respect to the toll-free telephone number, section 1301(a) permits a third party to establish and maintain it. Under certain circumstances, the toll-free number may connect callers to an automated device.

For a period not to exceed 24 months from the effective date of the Act, the Board is required to establish and maintain 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 or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250 million. Not later than six months prior to the expiration of the 24-month period, the Board must submit a report on this program to the Committee on Banking, Housing, and Urban Affairs of the Senate, and the Committee on Banking and Financial Services of the House of Representatives. In addition, section 1301(a) requires the Board to establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made. The table should reflect a significant number of different annual percentage rates, and account balances, minimum payment amounts. The Board must also promulgate regulations providing instructional guidance regarding the manner in which the information contained in the tables should be used to respond to a request by an obligor under this provision. Section 1301(a) provides that the disclosure requirements of this provision are inapplicable to any charge card account where the primary purpose of which is to require payment of charges in full each month.

Section 1301(b)(1) requires the Federal Reserve Board to promulgate regulations implementing section 1301(a)'s amendments to section 127. Section 1301(b)(2) specifies that the effective date of the amendments under subsection (a) and the regulations required under this provision shall not take effect until the later of 18 months after the date of enactment of this Act or 12 months after the publication of final regulations by the Board.

Section 1301(c) authorizes the Federal Reserve Board to conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default. The provision specifies the factors that should be considered. The study's findings must be submitted to Congress and include recommendations for legislative initiatives, based on the Board's findings.

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)(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 the fair market value of a dwelling specifying that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes. Section 1302(a)(2) amends section 147(b) of the Truth in Lending Act to require an advertisement relating to an extension of credit that may exceed the fair market value of a dwelling and such advertisement is disseminated in paper form to the public or

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 is greater than the fair market value of the dwelling 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.

With respect to non-open end credit extensions, section 1302(b)(1) amends section 128 of the Truth in Lending Act to require that a consumer receive a specified statement at the time he or she applies for credit with respect to a consumer credit transaction secured by the consumer's principal dwelling and where the credit extension may exceed the fair market value of the dwelling must contain 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 advertisements disseminated in paper form to the public or through the Internet that relate to a consumer credit transaction secured by a consumer's principal dwelling where the extension of credit may exceed the dwelling's fair market value to contain specified statements. These statements advise that the interest on the portion of the credit extension that is greater than the fair market value of the dwelling 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(c)(1) requires the Federal Reserve Board to promulgate regulations implementing the amendments effectuated by this provision. Section 1302(c)(2) provides that these regulations shall not take effect until the later of 12 months following the Act's enactment date or 12 months after the date of publication of such final regulations by the Board.

Sec. 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) amends 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 127(c)(1). With respect to an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation involving an ''introductory rate'' offer, such materials must do the following if they offer a temporary annual percentage rate of interest:

(16) the term ''introductory'' in immediate proximity to each listing of the temporary annual percentage interest rate applicable to such account;

(17) if the annual percentage interest rate that will apply after the end of the temporary rate period will be a fixed rate, the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate;

(18) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect 60 days before the date of mailing of the application or solicitation must be clearly and conspicuously stated in a prominent location closely proximate to the first listing of the temporary annual percentage rate.

The second and third provisions described above do not apply to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed. With respect to an application or solicitation to open a credit card account for which disclosure is required pursuant to section 127(c)(1) of the Truth in Lending Act, section 1303(a) specifies that certain statements be made if the rate of interest is revocable under any circumstance or upon any event. The statements must clearly and conspicuously appear in a prominent manner on or with the application or solicitation. The disclosures include a general description of the circumstances that may result in the revocation of the temporary annual percentage rate and an explanation of the type of interest rate that will apply upon revocation of the temporary rate.

To implement this provision, section 1303(b) amends section 127(c) of the Truth in Lending Act to define various relevant terms and requires the Board to promulgate regulations. The provision does not become effective until the earlier of 12 months after the Act's enactment date or 12 months after the date of publication of such final regulations.

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) amends section 127(c) of the Truth in Lending Act to require any solicitation to open a credit card account for an open end consumer credit plan through the Internet or other interactive computer service to clearly and conspicuously include the disclosures required under section 127(c)(1)(A) and (B). It also specifies that the disclosure required pursuant to section 127(c)(1)(A) be readily accessible to consumers in close proximity to the solicitation and be updated regularly to reflect current policies, terms, and fee amounts applicable to the credit card account. Section 1304(a) defines terms relevant to the Internet.

Section 1304(b) requires the Federal Reserve Board to promulgate regulations implementing this provision. It also provides that the amendments effectuated by section 1304 do 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 regulations.

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) amends section 127(b) of the Truth in Lending Act to provide that if a late payment fee is to be 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.

Section 1305(b) requires the Federal Reserve Board to promulgate regulations implementing this provision. The amendments effectuated by this provision and the regulations promulgated thereunder 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 the regulations.

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 prevent the creditor from terminating such account for inactivity for three or more consecutive months.

Section 1306(b) requires the Federal Reserve Board to promulgate regulations implementing the amendments effectuated by section 1306(a) and provides that they do 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 liability of consumers for 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 protection afforded consumers in connection 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

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 to study the impact that the extension of credit to dependents (defined under the Internal Revenue Code of 1986) who are enrolled in postsecondary educational institutions has on the rate of bankruptcy cases filed. The report must be submitted to the Senate and House of Representatives no later than one year from the Act's enactment date.

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) requires the Board (in consultation with other Federal banking agencies, the National Credit Union Administration Board, and the Federal Trade Commission) to promulgate regulations not later than six months after the Act's enactment date to provide guidance on the meaning of the term ''clear and conspicuous'' as it is used in section 127(b)(11)(A), (B) and (C) and section 127(c)(6)(A)(ii) and (iii) of the Truth in Lending Act.

Section 1309(b) provides that regulations promulgated under section 1309(a) shall include examples of clear and conspicuous model disclosures for the purpose of disclosures required under the Truth in Lending Act provisions set forth therein.

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,
HENRY J. HYDE,
GEORGE W. GEKAS,
LAMAR SMITH,
STEVE CHABOT,
BOB BARR,
RICK BOUCHER,

From the Committee on Financial Services, for consideration of secs. 901–906, 907A–909, 911, and 1301–1309 of the House bill, and secs. 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 sec. 1403 of the Senate amendment, and modifications committed to conference:

JOHN BOEHNER,
MICHAEL N. CASTLE,
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.

□ 0821

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. 107–618) 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.

EXTENSION OF REMARKS

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

Ms. WATSON of California and to include extraneous material, notwithstanding the fact that it exceeds two pages of the record and is estimated by the Public Printer to cost $1,560.

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

Mr. HORN, and to include therein extraneous material, notwithstanding the fact that it exceeds 2 pages and is estimated by the Public Printer to cost $910.

SENATE BILLS REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 434. An act to provide equitable compensation to the Yankton Sioux Tribe of South Dakota and the Santee Sioux Tribe of Nebraska for the loss of vale of certain lands; to the Committee on Resources.

ENROLLED BILL SIGNED

Mr. Trandahl, Clerk of the House, reported and found truly an enrolled bill of the House of the following title, which was thereupon signed by the Speaker:

H.R. 3763. An act to protect investors by improving the accuracy and reliability of corporate disclosures made pursuant to the securities laws, and for other purposes.

SENATE ENROLLED BILL SIGNED

The SPEAKER announced his signature to enrolled bill of the Senate of the following title:

S.J. Res. 13. Joint resolution conferring honorary citizenship of the United States posthumously on Marie Joseph Paul Yves Roche Gilbert du Motier, the Marquis de Lafayette.

ADJOURNMENT

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

The motion was agreed to; accordingly (at 8 o'clock and 24 minutes p.m.), the House adjourned until today, Friday, July 26, 2002, at 9 a.m.

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-2002-0093; FRL-7185-4] received July 15, 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, Bensulide, Diphenamid, Imazalil, 6-Methyl-1, 3-dithiolo [4,5-b] quinoxalin-2-one, Phosphamidon S-Propyl dipropylthiocarbamate, and Trimethacarb; Tolerance Revocations [OPP-

2002-0085; FRL-7182-5] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8232. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Benomyl; Tolerance Revocations [OPP-2002-0068; FRL-7177-7] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8233. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Clethodim; Pesticide Tolerance [OPP-2002-0129; FRL-7185-7] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8234. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Indoxacarb; Pesticide Tolerance [OPP-2002-0105; FRL-7186-2] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8235. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Methoxychlor; Tolerance Revocations [OPP-2002-0118; FRL-7184-4] (RIN: 2070-AB78) received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

8236. A letter from the Assistant Secretary of Defense, Department of Defense, transmitting notification that M. L. ''Buzz'' Hefti, who is now servingas Principal Deputy Assistant Secretary of Defense for Legislative Affairs will be leaving on July 1, 2002; to the Committee on Armed Services.

8237. A letter from the Under Secretary, Department of Defense, transmitting a report on Funds for Information Technology and Software Used to Support Department of Defense Weapons Systems, May 2002; to the Committee on Armed Services.

8238. 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 African Development Fund''; to the Committee on Financial Services.

8239. 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.

8240. A letter from the Chairman, Federal Trade Commission, transmitting the Twenty-Fourth Annual Report to Congress on the Fair Debt Collection Practices Act, pursuant to 15 U.S.C. 1692m; to the Committee on Financial Services.

8241. A letter from the Director, Office of Management and Budget, transmitting a draft bill to authorize the President to agree to amendments to the Agreement between the Government of the United States of America and the Government of the United Mexican States Concerning the Establishment of a Border Environment Cooperation Commission and a North American Development Bank; to the Committee on Financial Services.

8242. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Ventura County Air Pollution Control District [CA 264-0350a; FRL-7231-8] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8243. A letter from the Principal Deputy Associate Administrator, Environmental Protection Agency, transmitting the Agency's final rule — Revisions to the California State Implementation Plan, Monterey Bay Unified Air Pollution Control District and South Coast Air Quality Management District [CA 247-0347a; FRL-7220-6] received July 15, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

8244. A letter from the Acting Director, Defense Security Cooperation Agency, transmitting notification concerning the Department of the Air Force's Proposed Letter(s) of Offer and Acceptance (LOA) to Egypt for defense articles and services (Transmittal No. 02-35), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

8245. 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 Lithuania for defense articles and services (Transmittal No. 02-33), pursuant to 22 U.S.C. 2776(b); to the Committee on International Relations.

8246. A letter from the Administrator, Department of Energy, transmitting a report required by Section 3157 of the National Defense Authorization Act for Fiscal Year 1998 entitled, ''Accelerated Strategic Computer Initiative Participant Computer Sales to Tier III Countries in Calendar Year 2001''; to the Committee on International Relations.

8247. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-429, ''Free Clinic Assistance Program Extension Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8248. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-428, ''Government Reports Electronic Publication Requirement Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8249. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-431, ''Business Improvement Districts Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8250. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-432, ''Civil Commitment of Citizens with Mental Retardation Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8251. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-434, ''Contract No. DCFRA 00-C-030B (Capital Improvements and Renovations to Various Metropolitan Police Department Facilities) Exemption Temporary Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8252. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-435, ''Square 456 Payment in Lieu of Taxes Extension Temporary Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8253. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-436, ''Disability Compensation Program Transfer Temporary Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8254. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-439, ''Department of Human Services Mental Retardation and Developmental Disabilities Administration Funding Authorization Temporary Act of 2002'' received July 25,2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8255. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-438, ''Lead-Based Paint Abatement and Control Temporary Amendment Act of 2002'' received July 25,2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8256. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-437, ''Abandoned and Vacant Properties Community Development Disposition, and Disapproval of Disposition of Certain Scattered Vacant and Abandoned Properties Temporary Act of 2002'' received July 25,2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8257. A letter from the Chairman, Council of the District of Columbia, transmitting a copy of D.C. ACT 14-430, ''Education and Examination Exemption for Respiratory Care Practitioners Amendment Act of 2002'' received July 25, 2002, pursuant to D.C. Code section 1—233(c)(1); to the Committee on Government Reform.

8258. A letter from the Commissioner, Department of the Treasury, transmitting notification on the Department's progress in eliminating ''the appearance of Social Security account numbers on or through unopened mailings of checks or other drafts issued on public money in the Treasury''; to the Committee on Government Reform.

8259. A letter from the Solicitor, Federal Labor Relations Authority, transmitting a report pursuant to the Federal Vacancies Reform Act of 1998; to the Committee on Government Reform.

8260. A letter from the Chairman, Postal Rate Commission, transmitting the FY 2001 annual report on International Mail Volumes, Costs, and Revenues; to the Committee on Government Reform.

8261. A letter from the Secretary, Department of Defense, transmitting the Sixteenth Report of the Federal Voting Assistance Program; to the Committee on House Administration.

8262. A letter from the Assistant Administrator for Fisheries, NOAA and Director of U.S. Fish and Wildlife Service, Departments of Commerce and the Interior, transmitting a report entitled, ''Atlantic Striped Bass Studies 2001 Biennial Report to Congress,'' pursuant to 16 U.S.C. 1851 nt.; to the Committee on Resources.

8263. 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.

8264. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Drawbridge Operation Regulations: Passaic River, NJ [CGD01-02-060](RIN: 2115-AE47) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8265. A letter from the Chief, Regulations and Administrative Law, USCG, Department

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.

8266. 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 1074.0 at Hallandale Beach, Broward County, FL [CGD07-02-070] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8267. 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.

8268. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Right to Appeal; Director, Great Lakes Pilotage [USCG 2001-8894] (RIN: 2115-AG11) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8269. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Temporary Requirements for Notification of Arrival in U.S. Ports [USCG-2001-10689] (RIN: 2115-AG24) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8270. 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-AA97) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8271. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Security Zone; Lake Erie, Perry, Ohio [CGD09-01-130] (RIN: 2115-AA97) received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8272. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Transportation, transmitting the Department's final rule — Navigation and Navigable Waters — Technical Amendments, Organizational Changes Miscellaneous Editorial Changes and Conforming Amendments [USCG-2002-12471] received July 11, 2002, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

8273. A letter from the Chairman, U.S. International Trade Commission, transmitting the Commission's report entitled, ''The Year in Trade 2001: Operation of the Trade Agreements Program''; to the Committee on Ways and Means.

8274. 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 in the ''Counter-Terrorism and Defense Against Weapons of Mass Destruction'' account to be transferred, a supplemental report will be submitted when a decision is made regarding the remaining funds; jointly to the Committees on Armed Services and Appropriations.

8275. A letter from the Chief of Staff, Trade and Development Agency, transmitting notification of prospective funding obligations requiring special notification under Section 520 of the Kenneth M. Ludden 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 reference 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 act to authorize the addition of lands to Pu'uhonua o Honaunau National Historical Park in the State of Hawaii, and for other purposes (Rept. 107–614). Referred to the Committee of the Whole House on the State of the Union.

Ms. PRYCE of Ohio: Committee on Rules. House Resolution 502. Resolution providing for consideration of the bill (H.R. 5005) to establish the Department of Homeland Security, and for other purposes (Rept. 107–615). Referred to the House Calendar.

Mr. TAUZIN: Committee on Energy and Commerce. H.R. 1784. A bill to establish 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.

[Filed on July 26 (legislative day of July 25), 2002]

Mr. SENSENBRENNER: Committee of Conference. Conference report on H.R. 333. A bill to amend title 11, United States Code, and for other purposes (Rept. 107–617). Ordered to be printed.

Mr. SESSIONS: Committee on Rules. House Resolution 506. Resolution 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 (Rept. 107–618). Referred to the House Calendar.

Mr. REYNOLDS: Committee on Rules. House Resolution 507. Resolution waiving a requirement of clause 6(a) of rule XIII with respect to consideration of certain resolutions reported from the Committee on Rules (Rept. 107–619). Referred to the House Calendar.

Mr. GOSS: Committee on Rules. House Resolution 508. Resolution providing for consideration of motions to suspend the rules (Rept. 107–620). Referred to the House Calendar.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. BERMAN (for himself, Mr. COBLE, Mr. SMITH of Texas, and Mr. WEXLER):

H.R. 5211. A bill to amend title 17, United States Code, to limit the liability of copyright owners for protecting their works on peer-to-peer networks; to the Committee on the Judiciary.

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. LATOURETTE, Mr. SHAYS, Mr. DELAHUNT, Mr. LEWIS of Georgia, and Mr. TIERNEY):

H.R. 5213. A bill to redesignate the Federal building located at 935 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. PETERSON of Pennsylvania, Mr. YOUNG of Alaska, Mr. GOODLATTE, Mr. HERGER, Mr. SIMPSON, Mr. OTTER, Mr. CANNON, Mr. JONES of North Carolina, Mr. DOOLITTLE, Mr. DUNCAN, Mr. GIBBONS, Mr. RADANOVICH, Mr. TANCREDO, Mr. TAUZIN, Mr. GUTKNECHT, Mr. GOODE, Mrs. EMERSON, Mr. SCHAFFER, Mr. SESSIONS, Mrs. CUBIN, Mr. FLAKE, Mr. GALLEGLY, Mr. HAYWORTH, and Mr. HASTINGS of Washington):

H.R. 5214. 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 the Committee on Resources, 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. 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 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.

By Ms. CARSON of Indiana (for herself, Mr. MCNULTY, Mr. LUCAS of Kentucky, Mr. MORAN of Virginia, Mr. FROST, Mr. SANDERS, Mr. LYNCH, Mr. PAYNE, Mrs. CHRISTENSEN, Ms. JACKSON-LEE of Texas, Mr. CUMMINGS, Mrs. JONES of Ohio, Ms. WATSON, Mr. DAVIS of Illinois, Mr. POMEROY, Mr. WATT of North Carolina, Mr. EVANS, Mr. SERRANO, Mr. MCINTYRE, Mr. BOSWELL, Ms. 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.

By Mr. BROWN of Ohio (for himself, Mr. ALLEN, Mr. BERRY, Mr. PALLONE, and Mr. STRICKLAND):

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 through the Internet, and for other purposes; to the Committee on Energy and Commerce.

By Mr. CAPUANO:

H.R. 5218. A bill to amend title XVIII of the Social Security Act to provide for payment under the prospective payment system for hospital outpatient department services under the Medicare Program for new drugs administered in such departments as soon as the drug is approved for marketing by the

Commissioner of Food and Drugs; 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. CARDIN (for himself, Mrs. MORELLA, and Ms. HOOLEY of Oregon):

H.R. 5219. A bill to amend part B of title XVIII of the Social Security Act to provide for a chronic disease prescription drug benefit and for coverage of disease management services under the Medicare Program; 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. COLLINS (for himself and Mr. DELAY):

H.R. 5220. 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. DELAHUNT:

H.R. 5221. A bill to protect employees and retirees from corporate practices that deprive them of their earnings and retirement savings when a business files for bankruptcy under title 11, United States Code; to the Committee on the Judiciary.

By Mr. DOOLITTLE (for himself and Mr. MCKEON):

H.R. 5222. A bill to remove certain restrictions on the Mammoth Community Water District's ability to use certain property acquired by that District from the United States; to the Committee on Resources.

By Mr. GEKAS:

H.R. 5223. A bill to amend title 31, United States Code, to provide for continuing appropriations in the absence of regular appropriations; to the Committee on Appropriations.

By Mr. GREENWOOD (for himself, Mr. FROST, Mr. MCGOVERN, Mrs. CHRISTENSEN, and Mr. DAN MILLER of Florida):

H.R. 5224. A bill to authorize the Secretary of Health and Human Services to carry out demonstration projects to increase the supply of organs donated for human transplantation; to the Committee on Energy and Commerce.

By Mr. GUTIERREZ:

H.R. 5225. A bill to amend title XIX of the Social Security Act to provide for coverage under the Medicaid Program of organ transplant procedures as an emergency medical procedure for certain alien children; to the Committee on Energy and Commerce.

By Mr. GEORGE MILLER of California:

H.R. 5226. A bill to amend the Lacey Act Amendments of 1981 to further the conservation of certain wildlife species; to the Committee on Resources.

By Mr. MORAN of Kansas (for himself, Mr. THUNE, Mr. OSBORNE, and Mrs. CUBIN):

H.R. 5227. A bill to amend the Internal Revenue Code of 1986 to provide involuntary conversion tax relief for producers forced to sell livestock due to weather-related conditions or Federal land management agency policy or action, and for other purposes; to the Committee on Ways and Means.

By Mr. PLATTS (for himself and Mr. MCHUGH):

H.R. 5228. A bill to amend the Internal Revenue Code of 1986 to allow a full deduction for meals and lodging in connection with medical care; to the Committee on Ways and Means.

By Mr. PLATTS (for himself and Mr. MCHUGH):

H.R. 5229. 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. DEGETTE):

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 provide for improved public health and food safety through enhanced enforcement, and for other purposes; to the Committee on Agriculture, and in addition to the Committee 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. SCHAFFER:

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. SCHIFF (for himself, Mr. HORN, Ms. ESHOO, Ms. HARMAN, Mr. GEORGE MILLER of California, Mr. BERMAN, Mr. SANDLIN, Mr. MATSUI, Mrs. TAUSCHER, Mr. THOMPSON of California, Mr. MCDERMOTT, Ms. WOOLSEY, Ms. LEE, Mr. SHERMAN, Mr. HONDA, Mrs. NAPOLITANO, Mr. BECERRA, Mr. DOGGETT, Ms. ROYBAL-ALLARD, Mr. FARR 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. BURR of North Carolina):

H.R. 5234. A bill to amend title XVIII of the Social Security Act to provide for fair payments under the Medicare hospital outpatient department prospective payment system; 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. COX, and Mr. SENSENBRENNER):

H.R. 5235. A bill to amend title 38, United States Code, to provide special compensation for 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, and 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 archeological 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 establish 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. THUNE, Mr. BRADY of Texas, and Mr. OXLEY):

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. ARMEY (for himself and Mr. GEPHARDT):

H. Con. Res. 448. Concurrent resolution 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; considered and agreed to.

By Mr. ARMEY (for himself, Mr. GEPHARDT, 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. LARSON of Connecticut, and Mr. HUNTER):

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 and secondary schools, and for other purposes; to the Committee on Education and the Workforce.

By Mr. HASTINGS of Florida:

H. Res. 503. 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. 504. 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. NEY (for himself and Mr. GUTKNECHT):

H. Res. 505. 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. BACHUS.
H.R. 189: Mr. MANZULLO.
H.R. 267: Mr. HASTINGS of Florida, and Mr. Coyne.
H.R. 292: Mr. SHERMAN.
H.R. 632: 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. 1035: Ms. KILPATRICK.
H.R. 1090: 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. SKEEN, 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. 1935: Mr. HALL of Ohio and Mr. LAMPSON.
H.R. 2012: Mr. COOKSEY.
H.R. 2014: Mr. HOEKSTRA and Mrs. MYRICK.
H.R. 2035: Mr. HOEFFEL, Mr. BORSKI, and Mrs. NAPOLITANO.
H.R. 2117: Ms. HOOLEY of Oregon.
H.R. 2219: Ms. KILPATRICK.
H.R. 2220: Mr. HOEFFEL.
H.R. 2316: Mr. HOEKSTRA.
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. KOLBE.
H.R. 3464: Ms. BALDWIN.
H.R. 3498: Mr. YOUNG of Florida.
H.R. 3552: Mr. NADLER, Ms. SOLIS, Mr. LEACH, Ms. BERKLEY, and Mr. BERMAN.
H.R. 3686: Mr. LUCAS of Oklahoma.
H.R. 3710: Mrs. THURMAN and Mr. DIAZ-BALART.
H.R. 3726: Mr. SOUDER.
H.R. 3782: Mr. FOLEY, Mr. THOMPSON of Mississippi, Mr. PHELPS, Mr. SHIMKUS, Mr. CHAMBLISS, and Mr. MATHESON.
H.R. 3794: Mr. BOOZMAN.
H.R. 3834: Mr. RILEY.
H.R. 3884: Mr. KENNEDY of Rhode Island, Mr. ROSS, Mrs. CLAYTON, and Mrs. JONES of Ohio.
H.R. 3895: Mr. GOODLATTE and Mr. SULLIVAN.
H.R. 3956: Mr. UDALL of Colorado.
H.R. 3974: Mr. BLUMENAUER and Ms. JACKSON-LEE of Texas.
H.R. 3992: Mrs. WILSON of New Mexico.
H.R. 4030: Mr. UPTON.
H.R. 4089: Mr. MENENDEZ, Mr. CROWLEY, Mrs. CHRISTENSEN, and Mr. OWENS.
H.R. 4091: Mr. MENENDEZ, Mr. CROWLEY, Mrs. CHRISTENSEN, and Mr. OWENS.
H.R. 4483: 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. 4582: Mr. BLUMENAUER.
H.R. 4614: Mr. CLEMENT.
H.R. 4643: Mr. SANDERS.
H.R. 4668: Mr. HERGER and Mr. GEORGE MILLER of California.
H.R. 4669: Mr. BLUMENAUER.
H.R. 4724: Mr. ABERCROMBIE.
H.R. 4738: Mr. WALDEN of Oregon.
H.R. 4785: Mr. COOKSEY and Mr. CLAY.
H.R. 4798: Mr. BOSWELL.
H.R. 4804: Mr. CANNON and Mr. UPTON.
H.R. 4811: Mr. HOEKSTRA.
H.R. 4837: Mr. GREEN of Texas.
H.R. 4843: Mr. KERNS, 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. HOYER, Mr. HOEFFEL, Mr. DEUTSCH, Mr. CROWLEY, and Mr. SCHAFFER.
H.R. 5085: Mr. SIMPSON, Mr. PHELPS, Mr. MCHUGH, Mr. BALDACCI, 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. CLAYTON, Mr. CONYERS, Mr. DOGGETT, Mr. GONZALEZ, Ms. HARMAN, Ms. HOOLEY 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. BLUMENAUER.
H.R. 5157: Mr. BOEHNER.
H.R. 5158: Mr. GILCHREST.
H.R. 5164: Ms. NORTON, Mr. UNDERWOOD, Mr. MCGOVERN, Mr. ISRAEL, and Mr. TOWNS.
H.R. 5166: Mr. SULLIVAN and Mr. GREEN of Wisconsin.
H.R. 5175: Mr. BORSKI, Mr. HOEFFEL, Mr. WELDON of Pennsylvania, Mr. MURTHA, Mr. MASCARA, Mr. HOLDEN, and Mr. GREENWOOD.
H.R. 5185: Mr. HUNTER.
H.R. 5189: Mr. SCHAFFER.
H.R. 5190: Mr. ANDREWS.
H.R. 5191: Mrs. JONES of Ohio, Ms. WOOLSEY, Ms. BALDWIN, and Ms. EDDIE BERNICE JOHNSON of Texas.
H.R. 5193: Mr. WELDON of Florida, Mr. CANTOR, and Mr. PETRI.
H. Con. Res. 164: Mr. SKEEN.
H. Con. Res. 351: Ms. DELAURO.
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.