The House met at 12:30 p.m. and was called to order by the Speaker pro tempore (MRS. DRAKE).

DESIGNATION OF SPEAKER PRO TEMPORE
The SPEAKER pro tempore laid before the House the following communica-
tion from the Speaker:
WASHINGTON, DC,
May 9, 2006.
I hereby appoint the Honorable T HELMA D. DRAKE to act as Speaker pro tempore on this day.

J. DENNIS HASTERT
Speaker of the House of Representatives.

MORNING HOUR DEBATES
The SPEAKER pro tempore. Pursuant to the order of the House of Janu-
ary 31, 2006, the Chair will now recognize Members from lists submitted by the majority and minority leaders for morning hour debates. The Chair will alternate recognition between the parties, with each party limited to not to exceed 30 minutes, and each Member, except the majority leader, the minority leader, or the minority whip, limited to not to exceed 5 minutes.
The Chair recognizes the gentleman from California (Mr. DANIEL E. LUN-
GREN) for 5 minutes.

IMMIGRATION
Mr. DANIEL E. LUNGREN of California. Madam Speaker, in assessing the effectiveness of immigration policy, it is helpful to look at both the push factors and the pull factors which contribute to the phenomenon of illegal immigration.
In assessing the push factors, we must not overlook the role of the govern-
ment of Mexico. On a human level, it is a sad fact that people are moti-
vated to make what is often a dangerous trek north to the United States because of the absence of economic opportunity in Mexico itself. Yet this flow of illegal immigration into the United States acts as a pressure relief valve by allowing the Mexican government to escape political accountability to those it has failed.
Ironically, the Mexican government’s laissez faire attitude towards immigra-
tion out of Mexico is not reflected in its policy concerning its own southern border. When you hear the President of Mexico or other Mexican politicians rail against the House-passed border control bill, please keep in mind that when it comes to their own border policies, all of the rhetoric concerning the right to migration is suddenly nowhere to be found. In the end, the Mexican government’s policy will prove to be shortsighted and will ultimately cause serious damage to their own country.
Imagine the long-term effects of a nation losing millions of its hardest working younger people. The future of Mexico is sending its government a clear and unmistakable message of shortsightedness. To his credit, the same AP story quoted President Fox as acknowledging that his government must “generate opportunities here in Mexico.” However, it is the responsibility of the United States Government to control our own borders and to take action to reduce the pull factors which draw people to the United States. We must de-
magnetize the attraction of illegal employment in the U.S. Unfortunately, our track record here reflects a failure of government policy on our side of the border.
The Immigration Reform and Control Act of 1986, IRCA, or Simpson-Mazzoli, for the first time imposed sanctions on employers for the hiring of those inelig-
ible to work in the United States. Yet since the passage of that bill, administra-
tions of both political parties have failed to enforce the law. The fact that there were only three cases last year, three, of a notice to file a prosecution for the unlawful hiring of illegal aliens is utterly indefensible. There must be a will to enforce the law.
I wish to recount what in retrospect was the death knell to an effective re-
gime of employer sanctions. An amend-
ment to Simpson-Mazzoli was accepted which completely undermined the em-
ployment verification system. In its place, a series of documents required to be submitted with the I-9 employment eligibility verification form was sub-
stituted. The end result was the cre-
ation of a new cottage industry for the production of false documentation. I would like to emphasize once again that it was the negation of an effective employer verification system, which in combination with the lack of enforce-
ment, undermined the usefulness of employer sanctions as an immigration enforcement tool.
It was for this reason that the basic pilot project was created in 1996 by this Congress. The system allows employers to voluntarily check the names and Social Security numbers of its employees.
against the records maintained by the Social Security Administration and the Department of Homeland Security. Building on this project, H.R. 4437, the House-passed bill, would create a national-wide mandatory program. Unlike the watered-down language in the 1986 bill, the legislation would require that the information from the biometric identity verification and biographic information in the House-passed bill offers a genuine prospect for effective employer sanctions necessary to demagnetize the attraction of unlawful employment in the U.S.

An effective employer sanctions regime, coupled with the need to fully fund the additional 2,000 Border Patrol positions authorized this year and in the out years, is essential if we are going to control illegal immigration. At the same time if we are to maximize the cooperation of employers with the implementation of an effective system of employer sanctions, it is necessary to ensure that in those cases where U.S. workers are unavailable, employers have the option of employing temporary foreign workers. Let me suggest that regulating the stream of workers which have crossed back and forth our southern border since the 1870s will facilitate the job of a larger Border Patrol and demonstrate an effective system of employer sanctions.

By definition however, in a temporary worker program, the workers should be temporary. Along the lines of an amendment I offered unsuccessfully in 1986, workers could work in the United States for up to 2 years in a year. During that time a portion of their wages could be withheld. The money would be placed in an escrow account and would only be returned to the workers upon their return to their home country—in most cases—Mexico. The proposal has a built in incentive for the temporary workers to return home to work their own small farms and to reunite with their families. In fact, Mexico and Canada have entered into a temporary agricultural worker program along these lines, which by all accounts has operated quite successfully.

The SPEAKER pro tempore. Pursuant to the order of the House of Jan. 31, 2006, the gentleman from California (Mr. GEORGE MILLER) is recognized during morning hour debates for 5 minutes.

Mr. GEORGE MILLER of California. Speaker, Members of the House, as Americans are paying over $3 a gallon for gasoline and have been doing so for a couple of months, we see the Bush administration and Congressional Republicans running away from their record of supporting the oil and gas industry since the day when I got elected to this House. Fortunately, the Republican leadership in the House called the idea stupid and it seems to have waned.

What the American public really wants is a comprehensive energy policy that gives them choices about their transportation, gives them choices in the heating of their homes and the cooling of their homes, gives them choices in energy conservation. That is what they are looking for, but that is not what the Republicans have delivered over the last 6 years.

Why? Because 6 years ago, Vice President CHENEY sat down with the executives of the oil companies and made a decision that they would put the oil companies in charge of America’s energy policy. They would put the oil companies in charge of whether or not we would have innovation, whether or not we would have new technologies, whether or not we would have alternative sources of energy, biofuels and all the rest of that. And the oil companies basically decided we would keep doing business on our energy policy as we have since the 1950s and 1960s, that is, we would just let the oil companies deliver.

That meeting with Mr. CHENEY made it very, very profitable for the oil companies because since that time the Congress has done nothing but lavish tax breaks on the oil and gas industry. The policy seems to have worked because check at the end of the summer. Fortunately, they are running the agenda for this Congress.

The Democrats have a better idea. We believe that working together across all of the talents of America, that we can provide energy independence within 10 years. But to do so you would have to dramatically encourage new technologies, alternative forms of transportation, of mass transportation, the use of solar, the use of biofuels, the use of these kinds of conservation efforts combined with new fuels and new technologies to let America be independent, to make choices about its energy future.

Today, the President of the United States walks hand in hand with the Sheik from Saudi Arabia and that is our energy policy: Don’t do anything to upset the Sheiks.

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consumers, to bring alternative fuel sources online at a more affordable price, to break our dependency on Middle East oil. As our leader said over the weekend on Meet the Press, we want to send our money to the middle west to develop biofuels, to develop syn fuels, to develop ethanol. That is what we want to do, instead of sending our money to the Middle East where it is being used for very dubious purposes in terms of the interests of this country.

But this administration to date has not broken its alliance with the oil sheiks in the Middle East and has not broken its alliance with the oil industry in this country. And Americans today continue to drive to work paying over $3 a gallon for gas with no respite in the future because of the absence, the abandonment of this country by this administration for an energy policy that works to the benefit of America’s consumers.

WORKING TOGETHER TO ADDRESS RISING ENERGY PRICES

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Virginia (Mr. WOLF) is recognized during morning hour debates for 5 minutes.

Mr. WOLF. Madam Speaker, I rise today because we must find ways to effectively address the rising gas prices the citizens of the Nation are paying at the pump.

Last week the House passed new legislation to address price gouging at the pump and set Federal penalties for price manipulation. The major oil companies say there are many factors in gas pricing, including basic economics of supply and demand, the switch to ethanol from MTBE as a clean fuel additive, and lack of refining capacity, among others, and that they have no control over the spiking gas prices.

But my constituents, especially working people raising families and those on fixed incomes whose wallets are being pinched tighter and tighter, tell me they are not satisfied with those answers.

Madam Speaker, it is time for the President to use the bully pulpit to get to the bottom of this issue the way that Teddy Roosevelt did. He should call to the Oval Office every chief executive of the major oil companies and let them explain to the American people why the average price for a gallon of unleaded gasoline in the United States today is nearly $3, and in some areas at least a dime over that.

There is another area of the energy market that also needs attention. Recent news accounts have theorized that the commodity futures trading market could be partly responsible for the rapid jumps in gasoline prices over the past couple of months. This past weekend, investigative reports pointed to the energy trading industry as an area in need of investigation to see if fraud or manipulation is occurring. I learned yesterday that bipartisan legislation was introduced in the Senate on this matter. Senators Fein-stein and Snowe have a bill that would increase transparency and accountability in the energy markets.

Madam Speaker, according to our colleagues, energy trades are often made using an electronic trading platform where no records are kept, so there is no audit trail for the Government to monitor. Most energy exchanges occur on the New York Mercantile Exchange or on electronic exchanges such as the InterContinental Exchange. I was surprised to learn that while the New York Mercantile Exchange and the Commodity futures Trading Commission, the electronic exchanges like the InterContinental Exchange are largely unregulated, even though it is estimated that up to 80 percent of our energy commodities are traded on the InterContinental Exchange. Under CFTC regulations, traders using the New York Mercantile Exchange must keep records for 5 years and report large trading positions to the commission. But traders using the New York exchange are subject to other Federal regulations, like limits on how much of a given commodity can be traded in one day. Traders using the InterContinental Exchange are not.

Where is the transparency? Where is the accountability? Who are these speculators? The American people need to know their government is leaving no stone unturned in investigating this issue. After Hurricane Katrina, we saw prices jump. Many Americans certainly understood Katrina’s wrath, but there were questions raised then about the almost overnight jump of gasoline prices. To find out if indeed there was gouging at the pump, this Congress or-dered an investigation in last year’s commerce spending bill. The FTC will report on May 22.

Can markets really be manipulated? Think back to the electricity market manipulation by Enron. As a result, last year’s energy bill gave more authority to the Federal Energy Regulatory Commission in the regulation of natural gas and electricity markets including more transparency.

In closing, there is no similar process for the Commodity Futures Trading Commission in the unregulated energy markets. Who is to say whether investment firms, commercial bankers or hedge funds could actually be driving up oil prices through futures trading?

Madam Speaker, as I mentioned at the beginning, a good place to start is to require banks to have an Oval Office chat with the big oil executives. It would also be important to have the heads of the Securities and Exchange Commission, Chris Cox, our former colleague who is running the New York Mercantile Exchange, and the Commodity Futures Trading Commission in that meeting.

We owe it to our constituents to find the answers, to bring everybody together. And so I urge the administration to do exactly what Teddy Roo- sevelt would have done, bring all the parties together to hammer this out, look at all of the trading to show and demonstrate we are doing everything we can to get to the bottom of this to begin to reduce these prices.

ON NATURAL DISASTERS AND GLOBAL WARMING

The SPEAKER pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Oregon (Mr. Blumenauer) is recognized during morning hour debates for 5 minutes.

Mr. BLUMENAUER. Madam Speaker, beyond the day’s headlines of crimes, scandal and foreign affairs, there are still stories of flooding, fire, hurricanes, tornadoes and mudslides still in the minds of the American public. After years in local government and in Congress, I share their concerns about these threats that we face from natural dis- asters, how we make these threats less likely, and what we can learn from our past.

For years before Katrina, I had been discussing on this floor what was likely to happen in New Orleans when the ‘‘big one’’ hit. My concerns became more urgent as I witnessed firsthand the devastation in Asia from the tsunami. It is not like we don’t know what to do to protect our constituents. After the floods in the upper Mississippi River, FEMA in the Clinton Administration, and under the leadership of James Lee Witt, took a coordinated approach with the natural environment, forming partnerships with private companies, landowners and local governments to dramatically reduce the dam- age in subsequent floods. We took similar actions in Portland, Oregon. We know what works.

After years of struggle, Congress is finally reforming the flood insurance program to stop encouraging people to live in harm’s way, to reduce the dama- ge by building smarter, or moving families to safer, higher ground. For years we have been sponsoring round table discussions with experts on co-ordinated policy responses. In all of these elements, from fire and earthquake to flooding. People are ready to support legislation introduced before Katrina, to provide resources for communities to plan to avoid disaster.

The federal government and local visionaries ready to develop a comprehensive response to Katrina throughout the gulf region so that we are ready for the next inevitable round of hurricanes. But what will it take for people to act on the discussion, the plans, the legis- lation, to get real action?

What about the Federal Government? Will it take the next disaster season to
force Congress and the administration to respond thoughtfully with simple changes? After 25 years, will we update the hopelessly outdated operating principles and guidelines of the Corps of Engineers? Can we eliminate the perverse budget rules that make it actually cheaper to spend millions of dollars on emergency flood relief than a few million on prevention? Can we see past the next sensational headlines so that the Federal Government can exercise its responsibility on its own and in order to prevent development from sprawling into forested areas near cities, putting more people at risk and sending the costs of fire-fighting spiraling upward exponentially? Can we avoid another example like Los Alamos, where the Federal Government incredulously put sensitive, dangerous and expensive nuclear facilities in the middle of an area that has burned repeatedly from wildfires every few years for centuries?

Will we ever learn from past disasters and be prepared to respond thoughtfully with simple changes that are cheaper for Congress to spend billions? Since 9/11, we have already defrosted and eroded ever larger portions of Alaska. Will scientists at NASA and NOAA at last be able to speak freely about global warming?

These questions are not beyond our capacity. Simple, cost-effective solutions are at hand that can be understood by the public who will end up paying the bill. I think progress is possible because this is not a Red State or a Blue State issue, not liberal or conservative, not big government versus small government. Exercising common sense, bipartisan cooperation and a tiny bit of leadership will save lives and money.

I had hoped that the devastation caused by Hurricane Katrina would have already spurred us toward some meaningful, comprehensive action. Instead, our response to Katrina has stalled and people are trickling back into harm’s way without a real plan or a vision, and the protections against future storms more intense? With global warming, which will make all of these problems more intense? With global warming, it is not just the damage to New Orleans from hurricanes but risks to coastal communities from New York’s Long Island to the Rio Grande Valley in Texas. Rising temperatures have already defrosted and eroded ever larger portions of Alaska. Will scientists at NASA and NOAA at last be able to speak freely about global warming?

In today’s Times, Gilbert Reyes, one of these smugglers, or successful local businessmen, describes the situation of these immigrants: “They want to get into the United States, and they are willing to do almost anything, even walk for miles after mile after mile, to think they can go into America and get a pay to stay permanently. Maybe they can. Maybe they can’t.”

His assertion about the immigrants’ belief rings true as we look at the facts on immigration. In 1996, the Immigration Reform and Control Act granted amnesty to 2.7 million illegal immigrants, and now today we have 11 to 12 million illegal immigrants seeking amnesty. Two years ago, President Bush first announced his guest worker program, and illegal immigrant numbers have risen steadily since. A survey conducted by the Border Patrol in 2004 revealed that of those illegal aliens in custody of the Border Patrol, 45 percent were from Central America, 38 percent from South America, 21 percent from Asia, 14 percent from Mexico and 11 percent from Europe. In addition, the Border Patrol has 18,000 miles to guard and 16,000 miles of international border to patrol. The Border Patrol is tasked with preventing terrorists from entering the United States.

My colleagues, let us be clear on the nature of these smugglers. There are not generous humanitarians aiding their fellow man. Many of these illegal immigrants are beaten, robbed and even raped before they even reach the Mexico-U.S. border. By the time they are guided on their 3-day journey across the desert into their ideal of a promised land, the United States.

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Mr. STEARNS. La Ladrillera, a brickyard in Sasabe, Mexico, is the last gathering place where coyotes deliver final words of advice before smuggling their human cargo across the border into the United States. Each illegal immigrant pays anywhere from $1,500 to $8,000 to the coyotes. The coyotes guide them through the desert and across the border under the cover of darkness. They arrive into the United States by the promise of amnesty. The immigration bill we passed in the House directly strengthened legal recourse against these coyotes and focused on securing our borders, increasing the number of Border Patrol agents, and enforcing the immigration laws that we currently have. These are essential steps that must be taken before any form of immigration reform has a hope of succeeding. And the polling evidence is clear. A recent Zogby poll, 64 percent of respondents preferred the House bill’s approach of enforcement first and only 30 percent preferred the Senate’s approach of amnesty. Additionally, 73 percent of respondents had little or no confidence in the ability of our government to screen out terrorists or criminals if there is a mass amnesty for those 12 million illegals already in this country.

And yet the pressure is mounting in favor of the unpopular and impractical provisions. True as we look at the realistic drug enforcement and anti-terrorism groups that have even begun to object to the use of the word “illegal” when referring to these immigrants. We are supposed to refer to these individuals as, quote, undocumented or even the other extreme proposal, to call them economic refugees. But calling breaking the law by any other name does not make it less of a crime. According to the Immigration and Nationality Act, it is illegal to enter the United States illegally. It is illegal to smuggle human beings into the United States for a price. And it is illegal to knowingly hire and aid a person you know entered our country illegally.

The other central issue with immigration reform is to ensure that those waiting and hoping to enter this country will be treated fairly. Many of them have undergone grueling ordeals to be able to enter the United States. I have heard from one couple in my district that had to undergo multiple in-depth interviews at the embassy before getting their permits. The embassy was a 3-hour commute away for them. As they had no transportation, they had to walk. But they were happy to do so for the simple chance to come into the United States. Many legal immigrants have to wait 5, 10, sometimes 15 years before they get their final approval to immigrate. To allow those who bypassed all the rules and snuck into the U.S. amnesty and a path to citizenship is an egregious slap in the face to all those immigrants who sacrificed to respect our laws and enter legally.

My colleagues, we are a nation of immigrants. Immigrants have vitalized our society, brought new life to our democracy and strengthened our communities simply by their contributions. However, we are also a nation of laws, and those whose first action is to willfully break them should be held accountable, not given preferential treatment.

The Speaker pro tempore. Pursuant to the order of the House of January 31, 2006, the gentleman from Oregon (Mr. DeFazio) is recognized during morning hour debates for 5 minutes.

Mr. DeFAZIO. Well, it is going to be a big week for America and a big week for Republicans in the House. The long-delayed budget is going to be adopted. It is estimated that if this budget is adopted, the deficit will be about $500 billion next year. That means they are going to borrow more than $1.4 billion a day to run the government. But don’t worry, some of it is off the books. They are borrowing all of the Social Security surplus, $193 billion, which is supposed to go to pay for future benefits in the trust fund but they are going to borrow and spend that. So they are going to really say, oh, the deficit is only $300 billion, that’s all we’re borrowing from China and Japan and other foreign countries. They are also borrowing and spending all the Social Security trust fund. So a $500 billion, half a trillion dollar deficit, borrowing
$1.4 billion a day, the party of fiscal responsibility and small government.

In the meantime, they are cutting programs important to the middle class. Student financial aid. Hey, those kids have got to pay higher interest on their loans. Their parents, too, because we’re in trouble financially. At the same time, this week they are going to pass a $70 billion extension of tax cuts which favor investors over workers.

Why do the Republicans hate people who work for wages and salaries so much? That is a question that begs answering around here. Because investors who can clip coupons off their stocks pay a lower rate of taxes to the Federal Government than a policeman, a fireman or a teacher. And that is the way the Republicans say it should be. Those who are lucky enough to inherit or otherwise able to invest for a living, they shouldn’t pay taxes like those suckers who work for salary and wages.

What a contempt they are showing for the people of America. They are not only cutting the programs essential to them, borrowing in their name, handling the bill, now they are borrowing money to give to rich investors which the middle class will have to pay for, because in the Republicans’ world only the middle class pays taxes.

The tax cuts they are proposing this week to extend will give an average cut of $30 to the middle fifth of taxpayers, those who average $36,000 a year. But for the lucky winners, the top 1 percent, average income $5.3 million, they will save $82,415. Or if you could put it another way, the person who earns $36,000 will be obligated and their kids will be obligated to borrow $82,415 to give to that wealthy investor because we don’t have a surplus to give taxes away to those folks. They say, Oh, don’t worry. These tax cuts pay for themselves.

Oh, okay. If that is true, why on page 121, buried almost indecipherably in their budget, 151 pages long, page 121, the Republicans for the fifth time in 5 years are increasing the debt limit of the United States without discussion on the floor of the House or a vote? They are going to increase it by $653 billion.

Let’s see. If the tax cuts pay for themselves, why would they have to increase the debt limit of the United States in 5 years? Is there stealth fashion like this? That is underhanded.

When President Bush took office, we had a borrowing limit of $5.95 trillion, $6 trillion. When their budget passes this week, it is going to be $9.62 trillion. Not bad. Up 60 percent in 5 years. The party of small government and fiscal responsibility has indebted the United States, increased the debt by more than 60 percent in 5 short years. They have amassed more foreign debt than all the administrations that preceded them since the beginning of the Republic. So we are not only borrowing against our future, borrowing against Social Security, handing a bill to the middle class, we are also indebting the country to foreign holders of debt, particularly China, Japan and others.

What a great vision they have for America. The wealthy will live on their estates in beach houses with private security. They will send their kids to private schools in private limousines, they will ride their private jets to private resorts, and then the rest of us can mow their lawns and carry their golf clubs and wait on their tables. And there won’t be much left for the rest of us.

They can’t afford a decent bill for homeland security. They can’t afford money for cops, police, fire, public education, but we can afford more tax cuts for the wealthiest among us because the investors are the important people to the Republicans. They are also their big contributors.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until 2 p.m. today.

Accordingly (at 1 o’clock and 6 minutes p.m.), the House stood in recess until 2 p.m.

PRAYER

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

Lord God, we invite the Nation to pray for the Members of Congress today with heartfelt compassion. They are in need of Your wisdom and our understanding.

The making of law is never an easy task. It requires dedicated attention, arduous work, personal integrity and responsibility to be truly effective. Because of the multiple issues facing the Nation and the complexity of every problem, intelligent minds and enlightened convictions are necessary for each Member of this legislative body to supply answers, to seek healing and build peaceful unity.

In a democracy as ours, laws can be crafted by diverse minds representing a variety of interests. But in the end, every law and every policy of government must seek the consent of the governed and ultimately Your almighty judgment of justice.

In You alone, Lord God, do we find the fulfillment of the law both now and forever. Amen.

THE JOURNAL

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

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

MESSAGE FROM THE SENATE

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

H.R. 4939. An act making emergency supplemental appropriations for the fiscal year ending September 30, 2006, and for other purposes.

The message also announced that the Senate insists upon its amendment to the bill (H.R. 4939) “An Act making emergency supplemental appropriations for the fiscal year ending September 30, 2006, and for other purposes,” requests a conference with the House on the disagreeing votes of the two Houses, thereon, and appoints Mr. DRISCOLL, Mr. SCHATZ, Mr. STEWART, Mr. DOMENICI, Mr. BOND, Mr. MCCONNELL, Mr. BURNS, Mr. SHELBY, Mr. GREGG, Mr. BENNETT, Mr. CRAIG, Mrs. HUTCHISON, Mr. DEWINE, Mr. BROWNBACK, Mr. ALLARD, Mr. BYRD, Mr. INOUYE, Mr. LEARY, Mr. HARKEN, Ms. MIKULSKI, Mr. REID, Mr. KOHL, Mrs. MURRAY, Mr. DORGAN, Mrs. FEINSTEIN, Mr. DURBAN, Mr. JOHNSON, and Ms. LANDREU, to be the conferees on the part of the Senate.

ASSOCIATION HEALTH PLANS

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

Mr. KELLER. Mr. Speaker, I rise today to urge the Senate to help small businesses with the skyrocketing costs of health insurance by passing Association Health Plans. Of the 45 million Americans without health insurance, 60 percent are small business employees and their families. By joining together, small businesses in central Florida will have the same bargaining power to negotiate lower health insurance rates as big companies, like Disney World and Darden. This will help lower their health insurance premiums by up to 30 percent, and expand access to millions of people without health insurance.

On April 27, 2005, the House of Representatives passed my Small Business Bill of Rights which created a blueprint for this Congress to follow to help
small business create additional jobs. On the top of the list was passage of Association Health Plans.

Three months later, on July 26, 2005, the House passed Association Health Plans with a wide margin of 263–153. I applaud the Senate for taking up this important debate today and urge them to act now to pass Association Health Plans.

MEDICARE PART D ENROLLMENT DEADLINE

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

Mrs. CAPPS. Mr. Speaker, the May 15 Medicare part D enrollment deadline is now 6 days away; but a significant number of eligible beneficiaries do not even know that. The enrollment deadline is 6 days away, and eligible beneficiaries don’t know about the penalty fee they would incur for the rest of their lives.

Mr. Speaker, the enrollment deadline is 6 days away, but call centers are still giving eligible beneficiaries inaccurate or incomplete information. This Sunday, sons and daughters should be spending time with their mothers taking them to brunch or showering them with gifts, not trying to navigate a complex Web site or holding onto the phone.

The administration’s insistence on this deadline is offensive to millions of Medicare beneficiaries. Many of them are telling me just that, and many are the most vulnerable in our society.

I urge my colleagues to press for extending the deadline for part D enrollment. We owe it to the unenrolled seniors and seniors who are disabled, who need more time to figure out this complex program. We owe it to all beneficiaries so that we can continue fixing the many flaws of the Medicare prescription drug plan.

THE HERO ACT

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

Ms. FOXX. Mr. Speaker, I rise today in strong support of H.R. 1499, the Heroes Earned Retirement Opportunities Act. This bill, if passed, would allow our current Tax Code prohibits many of our men and women serving in combat zones from taking advantage of individual retirement accounts.

Most of our troops serving in these combat zones are paid in wages designated as military hazard pay. These wages are not taxed, nor should they be. However, since this compensation is nontaxable, the wages are not eligible for IRA contributions. IRAs are an excellent tool for responsible retirement savings.

Our troops defending America in harm’s way should not be excluded from full participation in this important investment opportunity because of a glitch in our Tax Code. The HERO Act will correct this glitch by designating combat hazard pay earned by members of the Armed Forces as eligible for contribution to retirement accounts. This bill has been endorsed by the Reserve Officers Association and the MOAA.

I encourage my colleagues to support this important bill this afternoon and give our troops the opportunity they deserve to save for their future.

MEDICARE PART D DEADLINE

(Ms. EDDIE BERNICE JOHNSON of Texas asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I want to call attention to the May 15 deadline for seniors to enroll in the Medicare part D prescription drug plan. The fact is, seniors who are eligible for Medicare part D who do not sign up by May 15 will face a higher monthly premium if they enroll at a later time. This puts a lot of pressure on the seniors.

I had a town hall meeting and lots of seniors came. Most of them knew nothing about how to do it or did not understand it.

But, seniors, as hard as we have tried, we cannot extend this deadline beyond May 15. There are nearly 48,000 seniors aged 65 and older in Dallas, Texas. Not that many came to the town hall, but quite a few. I am concerned that they are not getting the message.

Missing May 15 may have expensive consequences. We would like to have a bit more compassion. America’s health is about more than just numbers on an insurance company’s roll book.

SIX DAYS AWAY

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

Mr. PRICE of Georgia. Mr. Speaker, 6 days. In just 6 days, that is when the deadline for the Medicare prescription drug program is: May 15.

Thirty million Americans have already signed up. However, there remain other seniors who would benefit from this assistance, these folks they should take these next few days to see if Medicare part D is right for them.

To help facilitate the enrollment process in my district, I have held Medicare seminars to educate seniors on the options available, including two just last Friday. Many have said they are happy with the choices they have, and they are grateful for the time we took to sit down and explain this new program.

Yesterday I also had the chance to visit two pharmacies in my district and speak with the pharmacists and their staffs. This offered a great, behind-the-scenes look at the process these pharmacists have used to help local seniors understand and utilize this new prescription drug plan.

The general sense is that the kinks have been worked out and most seniors are truly gaining great benefit, better health.

Over the next 6 days, I urge all of my colleagues in Congress to do all that we can to provide seniors whatever assistance they may require to sign up for and navigate their new plan.

MEDICARE PART D AND THE LATINO COMMUNITY

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

Ms. SOLIS. Mr. Speaker, I rise today because the Medicare part D plan, as written, in my opinion is bad for Latino seniors. Latinos are less likely to have strong health insurance contracts with employer-provided pension plans, tend to work at a lower-paying job resulting in less accumulated savings and smaller Social Security checks. And 62 percent have incomes below 150 percent of the Federal poverty level.

Yet more than 1 million Latino seniors have not yet even enrolled in this program because of cultural, language and economic barriers. That is more than 30 percent of all eligible Latino seniors who lack coverage.

The lack of detailed, easy-to-understand culturally competent information makes it even more difficult for community organizations to focus resources on this vulnerable population. Our Latino seniors and all seniors need our help.

I urge my colleagues to pass legislation to extend the enrollment deadline, take away the fear of penalty, and give Medicare beneficiaries more time to check their facts, know their options, and make informed decisions about part D.

EMERGENCY SUPPLEMENTAL RESTRAINT

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

Mr. WILSON of South Carolina. Mr. Speaker, Webster’s dictionary defines restraint as “the act of controlling a person’s behavior or emotions.” Mr. Speaker, Webster’s dictionary defines emergency supplemental restraint as “the act of spending money that has been thoughtfully set aside for unforeseen circumstances that happen unexpectedly and demand immediate attention.”

As Congress considers this year’s emergency supplemental spending bill, I hope all of my colleagues will remember the definition of an emergency and support Majority Leader BOEHNER’s strong efforts to ensure that we spend taxpayer money on America’s most urgent needs.

Last week I was proud when he clearly articulated that the House will not take up an emergency supplemental bill that spends $1 more than the President’s budget request. By declaring that Congress will use this funding for
troops' efforts in the global war on terrorism and rebuilding communities throughout the gulf coast, Majority Leader BOEHNER is leading House Republicans to rein in the Federal budget and spend taxpayer dollars wisely.

As the budget process continues, I am confident that Majority Leader BOEHNER will continue to define the difference between irresponsible wishes and American emergencies.

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

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

Mr. WOLF. Mr. Speaker, I rise to welcome the news of the signing of the Darfur peace agreement. It is important to recognize the hard work that our international partners and the administration have done on this issue. Specifically, President Bush has done an outstanding job, as have Secretary Rice, Deputy Secretary Zoellick and Roger Winter; and there should be special gratitude expressed to Secretary Zoellick who went out there and spent 5 days to bring this to fruition.

Their efforts have moved the parties to an agreement, and the United States now must remain steadfast in this effort. It is my hope this agreement will be a stepping stone toward achieving lasting peace and security for the people of Darfur.

The international community and the American people now have an opportunity to take meaningful steps to improve the lives of the people of Darfur.

Most of the food in Darfur where I visited is coming from the United States Government and from the American people as a result of what the Bush administration has done. However, we must remember that women and children are still dying in the camps. Men are still being killed, and the genocide is still taking place. We must build on that momentum. But the efforts of the administration are to be commended. And although the road ahead is long, this administration and Bob Zoellick have done an outstanding job. And the people who rallied on the Mall last week ought to be congratulated, too.

STAR-SPANGLED BANNER SUNG IN ENGLISH
(Mr. DREIER asked and was given permission to address the House for 1 minute and to revise and extend his remarks.)

Mr. DREIER. Mr. Speaker, Americans hail from many different backgrounds, but we are united by our freedom, our democratic government, and our common-sense understanding that the Star-Spangled Banner should be sung in English. This Spanish-language anthem is nothing but a cynical attempt to divide our country during the debate on this most vigorous and divisive issue of immigration and illegal immigration.

It will not distract from the critical tasks at hand, securing our borders. I am committed to enforcing our immigration laws and effectively reforming our immigration system without providing amnesty, and I believe that all of our colleagues should join in cosponsoring the legislation offered by our colleagues from Kansas (Mr. RYAN) H. Res. 793, which parlays the fact that the Star Spangled Banner should be sung in English.

URGING A CONFERENCE ON CHILDREN'S SAFETY ACT
(Ms. GINNY BROWN-WAITE of Florida asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Ms. GINNY BROWN-WAITE of Florida, Mr. Speaker, despite the fact of having a bit of laryngitis, I rise today on a very important issue. I want to commend the Senate for passing Senate 1086, the Sex Offender Registration and Notification Act.

Now that the Senate has joined the House in passing legislation to protect our children, I urge the appointment of a conference committee so that we can see this actually enacted into law this year.

Nine-year-old Jessica Lunsford lost her life at the hands of a convicted sex offender more than a year ago. This monster assaulted her, buried her in a plastic garbage bag, and killed her just across the street from her home and her family.

We cannot let one more minute go by without closing the loophole in the law that her tragic death revealed. I can't go back to my district and tell Jessica's father that Congress's schedule was too busy and that we will pass something into law next year. The time to act is now.

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

Mr. GINGREY. Mr. Speaker, this Sunday is Mother's Day. I know there must be people out there, who, like me, are looking for a last minute gift for their mothers, and I have a great suggestion.

If your mother or father, and Father's Day is coming up soon too, if either of them is a senior, you can give them the gift of health by helping them enroll in a Medicare prescription drug plan.

The initial enrollment period for Medicare part D ends next Monday, May 15, the day after Mother's Day. That means less than a week remaining to enroll in a plan and be guaranteed the lowest premiums and the most savings.

Already, more than 30 million seniors have enrolled, and those seniors are saving an average of $1,100 a year on their medications. A recent survey showed that 90 percent of seniors say their plan is convenient to use, and 85 percent say their plan is affordable and covers the medications they need.

As a physician, I know if seniors can't afford their medication, they will go without to the detriment of their health.

After years of promises, Mr. Speaker, President Bush and this Republican Congress have finally delivered on prescription drug coverage under Medicare. Now, in this final week, I encourage all seniors to sign up and start saving.

RESPECT FOR AMERICA'S FALLEN HEROES ACT
(Mrs. BLACKBURN asked and was given permission to address the House for 1 minute and to revise and extend her remarks.)

Mrs. BLACKBURN. Mr. Speaker, today I rise to draw to the attention of the House H.R. 5037, the Respect For America’s Fallen Heroes Act, and I would like to encourage each Member of this body to join me and my colleagues in this act. What it is going to do is to put in place criteria that will prohibit a person from carrying out demonstrations at the funeral of one of our fallen heroes.

We are going to have a press conference, Mr. Speaker, at 2:30 today to talk more about this, and I want to commend my colleagues, Representative Rogers from Michigan, our Veterans Affairs’ Committee Chairman, Mr. BUYER of Indiana, Mr. CHABOT of Ohio, Mr. WILSON of South Carolina, Mr. CARTER of Texas, and Mr. GARRETT of New Jersey for joining with me on this piece of legislation and for joining to honor the members of the Patriot Guard Riders, who stand with our families to honor our fallen heroes.

COMMUNICATION FROM HON. NANCY PELOSI, DEMOCRATIC LEADER
The SPEAKER pro tempore laid before the House the following communication from Nancy Pelosi, Democratic Leader:

HOUSE OF REPRESENTATIVES,
OFFICE OF THE DEMOCRATIC LEADER,
Washington, DC, May 9, 2006.

Hon. J. DENNIS Hastert,
Speaker, United States House of Representatives
Washington, DC.

Dear Mr. Speaker: Pursuant to clause 5(a)(4)(A) of rule X of the Rules of the House of Representatives, I designate the following Members to be available for service on an investigative subcommittee of the Committee on Standards of Official Conduct: Mr. Becerra of California, Mr. Capuano of Massachusetts, Mr. Chandler of Kentucky, Mr. Delahunt of Massachusetts, Mr. Scott of Virginia, Ms. Solis of California, Mr. Stupak of Michigan, Ms.
H2188

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Tauscher of California, and Mr. Van Hollen of Maryland. Sincerely,

NANCY PELOSI, Democratic Leader.

COMMUNICATION FROM THE CLERK OF THE HOUSE

The SPEAKER pro tempore laid before the House the following communication from the Clerk of the House of Representatives:

OFFICE OF THE CLERK,
U.S. HOUSE OF REPRESENTATIVES,
Washington, DC, May 9, 2006.
HON. J. DENNIS HASTERT,
Speaker, U.S. House of Representatives, Washington, D.C.

DEAR MR. SPEAKER: Pursuant to the permission granted in Clause 2(b) of Rule II of the Rules of the U.S. House of Representatives, I have the honor to transmit a sealed envelope received from the White House on May 8, 2006, at 4:43 p.m. and said to contain a message from the President whereby he notifies the Congress he has extended the national emergency with respect to Syria.

With best wishes, I am

Sincerely,

KAREN L. HAAS, Clerk of the House.

CONTINUATION OF NATIONAL EMERGENCY WITH RESPECT TO SYRIA

MESSAGE FROM THE PRESIDENT OF THE UNITED STATES (H. DOC. NO. 109–109)

The SPEAKER pro tempore laid before the House the following message from the President of the United States; which was read and, together with the accompanying papers, without objection, referred to the Committee on International Relations and ordered to be printed:

To the Congress of the United States:

Section 202(d) of the National Emergencies Act (30 U.S.C. 1622(d)) provides for the automatic termination of a national emergency unless, prior to the anniversary date of its declaration, the President publishes in the Federal Register and transmits to the Congress a notice stating that the emergency is to continue in effect beyond the anniversary date. In accordance with this provision, I have sent to the Federal Register for publication the enclosed notice, stating that the national emergency declared in Executive Order 13338 of May 11, 2004, and expanded in scope in Executive Order 13399 of April 25, 2006, authorizing the blocking of property and prohibiting the exportation and reexportation of certain goods to Syria, is to continue in effect beyond May 11, 2006. The most recent notice continuing this emergency was published in the Federal Register on May 10, 2005 (70 FR 24697).

The actions of the Government of Syria in supporting terrorism, interfering in Lebanon, pursuing weapons of mass destruction and missile programs, and undermining United States and international efforts with respect to the stabilization and reconstruction of Iraq, pose a continuing unusual and extraordinary threat to the national security, foreign policy, and economy of the United States. For these reasons, I have determined that it is necessary to continue in effect the national emergency authorizing the blocking of property of certain persons and prohibiting the exportation and reexportation of certain goods to Syria and to maintain in force the sanctions to respond to this threat.

GEORGE W. BUSH.


COMMUNICATION FROM DEPUTY CHIEF OF STAFF OF HON. WILLIAM J. JEFFERSON, MEMBER OF CONGRESS

The SPEAKER pro tempore laid before the House the following communication from Roberta Y. Hopkins, Deputy Chief of Staff of the Honorable William J. Jefferson, Member of Congress:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, May 9, 2006.
Hon. J. Dennis Hastert,
Speaker, U.S. House of Representatives, Washington, DC.

DEAR MR. SPEAKER: This is to notify you formally pursuant to Rule VIII of the Rules of the House of Representatives, that I have been served with a grand jury subpoena for testimony issued by the U.S. District Court for the Eastern District of Virginia. After consultation with the Office of General Counsel, I have determined that compliance with the subpoena is consistent with the precedents and privileges of the House.

Sincerely,

ROBERTA Y. HOPKINS,
Deputy Chief of Staff.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX, the Chair will postpone further proceedings today on motions to suspend the rules on which a recorded vote or the yeas and nays are ordered, or on which the vote is objected to under clause 6 of rule XX. Record votes on postponed questions will be taken after 6:30 p.m. today.

AMERICAN RIVER PUMP STATION PROJECT TRANSFER ACT OF 2006

Mr. RADANOVICH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4204) to direct the Secretary of the Interior to transfer ownership of the American River Pump Station Project, and for other purposes, as amended.

The Clerk read as follows:

H.R. 4204
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled.

SECTION 1. SHORT TITLE.
This Act may be cited as the “American River Pump Station Project Transfer Act of 2006”.

SEC. 2. AUTHORITY TO TRANSFER.
The Secretary of the Interior (hereafter in this Act referred to as the “Secretary”) shall transfer ownership of the American River Pump Station Project located at Auburn, California, which includes the Pumping Plant, associated facilities, and easements necessary for permanent operation of the facilities, to the Placer County Water Agency, in accordance with the terms of Contract No. 02-LC-20-7790 between the United States and Placer County Water Agency for the terms and conditions established in this Act.

SEC. 3. FEDERAL COSTS NONREIMBURSABLE.
Federal costs associated with construction of the American River Pump Station Project located at Auburn, California, are non-reimbursable.

SEC. 4. GRANT OF REAL PROPERTY INTEREST.
The Secretary is authorized to grant title to the Placer County Water Agency for the terms and conditions established in this Act.

SEC. 5. COMPLIANCE WITH ENVIRONMENTAL LAWS.
(a) IN GENERAL.—Before conveying land and facilities pursuant to this Act, the Secretary shall comply with all applicable requirements under—
(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.);
(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.); and
(3) any other law applicable to the land and facilities.
(b) EFFECT.—Nothing in this Act modifies or alters any obligations under—
(1) the National Environmental Policy Act of 1969 (42 U.S.C. 4321 et seq.); or
(2) the Endangered Species Act of 1973 (16 U.S.C. 1531 et seq.).

SEC. 6. RELEASE FROM LIABILITY.
Effective on the date of transfer to the Placer County Water Agency of any land or facility under this Act, the United States shall not be liable for damages arising out of any act, omission, or occurrence relating to the land and facilities, consistent with Article 9 of Contract No. 02-LC-20-7790 between the United States and Placer County Water Agency.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from California (Mr. RADANOVICH) and the gentlewoman from the Virgin Islands (Mrs. CHRISTENSEN) each will control 20 minutes.

The Chair recognizes the gentleman from California.

Mr. RADANOVICH. Mr. Speaker, I ask unanimous consent that all Members may be given 5 legislative days to revise and extend their remarks and include extraneous material on the bill under consideration.

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

There was no objection.

Mr. RADANOVICH. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, H.R. 4204, introduced by our distinguished colleague, JOHN DOOLITTLE, directs the Secretary of the Interior to transfer ownership of the American River Pump Station Project to the Placer County Water Agency in northern California.

To facilitate construction of the Auburn Dam nearly 40 years ago, the Federal Government removed a locally
owed pump station located at the dam site. The dam was never built, and now the Federal Government is building a permanent pump station to replace the one it removed years earlier. Under an agreement, the Federal Government must transfer the pump station to the local water users once construction is complete. Before transfer can take place, congressional authorization is needed, and this legislation achieves that objective. I urge my colleagues to support this commonsense bill.

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

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

We on this side of the aisle have reviewed the legislation and have no objection to the passage of H.R. 4204. The bill would fulfill the legal commitment of the United States Government to replace the water supply for the Placer County Water Agency. The majority has already correctly characterized and explained the bill.

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

Mr. RADANOVICH. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by Mr. RADANOVICH. That the House suspend the rules and pass the bill, H.R. 4204, as amended.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill, as amended, was passed.

A motion to reconsider was laid on the table.

UPPER HOUSATONIC VALLEY NATIONAL HERITAGE AREA ACT

Mr. RADANOVICH. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5311) to establish the Upper Housatonic Valley National Heritage Area.

The Clerk read as follows:

H.R. 5311

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

SECTION 1. SHORT TITLE.

This Act may be cited as the "Upper Housatonic Valley National Heritage Area Act".

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) The upper Housatonic Valley, encompassing towns in the hilly territory of western Massachusetts and northwestern Connecticut, is a singular geographical and cultural region that has made significant national contributions through its literary, artistic, musical, and architectural achievements, its iron, paper, and electrical equipment industries, and its scenic beautification and environmental conservation efforts.

(2) The upper Housatonic Valley has 139 properties and historic districts listed on the National Register of Historic Places, including—

(A) five National Historic Landmarks—

(1) Edith Wharton's home, The Mount, Lenox, Massachusetts;

(2) Herman Melville's home, Arrowhead, Pittsfield, Massachusetts;

(3) W.E.B. DuBois' family-owned Boyhood Homestead, Great Barrington, Massachusetts;

(4) Mission House, Stockbridge, Massachusetts; and

(5) Crane Company Old Stone Mill Rag Room, Dalton, Massachusetts; and

(b) BOUNDARIES.

The term "Upper Housatonic Valley National Heritage Area" means the Upper Housatonic Valley National Heritage Area, as established by section 4.

(c) PURPOSES.—The purposes of this Act are as follows:

(1) To establish the Upper Housatonic Valley National Heritage Area in the State of Connecticut and the Commonwealth of Massachusetts.

(2) To implement the national heritage area alternative as described in the document entitled "Upper Housatonic Valley National Heritage Area Feasibility Study, 2003".

(3) To provide a management framework to foster a close working relationship with all levels of government, the private sector, and the local communities in the upper Housatonic Valley region to conserve the region's heritage while continuing to pursue compatible economic opportunities.

(4) To assist communities, organizations, and citizens in the State of Connecticut and the Commonwealth of Massachusetts in identifying, preserving, interpreting, and developing the historical, cultural, scenic, and natural resources of the region for the educational and inspirational benefit of current and future generations.

SEC. 3. DEFINITIONS.

In this Act:

(1) HERITAGE AREA.—The term "Heritage Area" means the Upper Housatonic Valley National Heritage Area, established in section 4.

(2) MANAGEMENT ENTITY.—The term "Management Entity" means the management entity for the Heritage Area designated by section 4(d).
(2) conduct meetings open to the public at least semi-annually regarding the development and implementation of the management plan;

(3) submit an annual report to the Secretary for any fiscal year in which the management entity receives Federal funds under this Act, setting forth its accomplishments, expenditures, including grants to any other entities during the year for which the report is made;

(4) make available for audit for any fiscal year in which it receives Federal funds under this Act, all information pertaining to the expenditure of such funds and any matching funds, and require in all agreements authorizing the use of Federal funds by other organizations, that the receiving organizations make available for such audit all records and other information pertaining to the expenditure of such funds; and

(5) encourage by appropriate means economic development that is consistent with the purposes of the Heritage Area.

(b) Authorities.—The management entity may, for the purposes of preparing and implementing the management plan for the Heritage Area, use Federal funds made available to such entity to—

(1) make grants to the State of Connecticut and the Commonwealth of Massachusetts, their political subdivisions, nonprofit organizations, and other interested parties; and

(2) enter into cooperative agreements with or provide technical assistance to the State of Connecticut and the Commonwealth of Massachusetts, their political subdivisions, nonprofit organizations, and other interested parties; and

(3) hire and compensate staff, which shall include individuals with expertise in natural, cultural, and historic resources protection, and heritage programming;

(4) obtain money or services from any source including any that are provided under any other program or grant provided or authorized under this Act to acquire real property, but may use any other source of funding, including other Federal funds by other Federal agencies, or other Federal funds by other Federal entities, to acquire real property; and

(5) contract for goods or services; and

(6) undertake to be a catalyst for any other activity that furthers the purposes of the Heritage Area and is consistent with the approved management plan.

(c) Prohibitions on the Acquisition of Real Property.—The management entity may not use Federal funds received under this Act to acquire real property, but may use any other source of funding, including other Federal funds by other Federal agencies, or other Federal funds by other Federal entities, to acquire real property.

SEC. 6. MANAGEMENT PLAN.

(a) In General.—The management plan for the Heritage Area shall—

(1) include comprehensive policies, strategies and recommendations for conservation, funding, management and development of the Heritage Area;

(2) take into consideration existing State, county, and local plans in the development of the management plan and its implementation;

(3) include a description of actions that governments, private organizations, and individuals are taking to protect the natural, historical and cultural resources of the Heritage Area;

(4) specify the existing and potential sources of funding to protect, manage, and develop the Heritage Area in the first 5 years of implementation;

(5) include an inventory of the natural, historical, cultural, educational, scenic, and recreational resources of the Heritage Area related to the boundaries of the Heritage Area that should be preserved, restored, managed, developed, or maintained;

(6) describe a program of implementation for the plan including resource protection, restoration, construction, and specific commitments for implementation that have been made by the management entity or any government, organization, or individual for the first 5 years of implementation; and

(7) include an interpretive plan for the Heritage Area.

(b) Deadline and Termination of Funding.—

(1) Deadline.—The management entity shall submit the management plan to the Secretary for approval within 3 years after funds are made available for this Act.

(2) Termination of Funding.—If the management plan is not submitted to the Secretary in accordance with this subsection, the management entity shall have no authority for Federal funding under this Act until such time as the management plan is submitted to the Secretary.

SEC. 7. DUTIES AND AUTHORITIES OF THE SECRETARY.

(a) Technical and Financial Assistance.—The Secretary may, upon the request of the management entity, provide technical assistance and financial assistance to the Heritage Area to develop and implement the approved management plan.

(b) Approval and Disapproval of Management Plan.

(1) In General.—The Secretary shall—

(A) approve or disapprove the management plan no later than 90 days after receiving the management plan;

(B) provide written notice to the management entity in writing of the reasons therefore; and

(C) the Secretary disapproves the management plan, the Secretary shall give priority to actions that in general assist in—

(i) conserving the significant natural, historical, cultural, and scenic resources of the Heritage Area; and

(ii) providing educational, interpretive, and recreational opportunities consistent with the purposes of the Heritage Area.

(2) Criteria for Approval.—In determining the approval of the management plan, the Secretary shall consider whether—

(A) the management entity is representative of the diverse interests of the Heritage Area, including governments, natural and historic resource protection organizations, educational institutions, businesses, and recreational organizations;

(B) the management entity has a sufficient workforce to carry out the management plan, and

(C) the resources and protection and interpretation strategies are contained in the management plan.

(3) Action Following Disapproval.—If the Secretary disapproves the management plan, the Secretary shall advise the management entity in writing of the reasons therefore and shall make recommendations for revisions to the management plan. The Secretary shall approve or disapprove a proposed revision within 60 days after the date it is submitted.

SEC. 8. DUTIES OF OTHER FEDERAL AGENCIES.

Any Federal agency conducting or supporting activities directly affecting the Heritage Area shall consult with the Secretary and the management entity with respect to such activities.

SEC. 9. REQUIREMENTS FOR INCLUSION OF PRIVATE PROPERTY.

(a) Notification and Consent of Property Owners Required.—No privately owned property shall be preserved, conserved, or promoted by the management plan for the Heritage Area until the owner of that private property has notified in writing the management entity and has given written consent for such preservation, conservation, or promotion to the management entity.

(b) Landowner Withdraw.—Any owner of private property included within the boundary of the Heritage Area shall have the immediate right to withdraw from the boundary by submitting a written request to the management entity.

SEC. 10. PRIVATE PROPERTY PROTECTION.

(a) Access to Private Property.—Nothing in this Act shall be construed to—

(1) require any private property owner to allow public access (including Federal, State, or local government access) to such private property;

(2) violate any other Federal, State, or local law with respect to public access to other private property or property of the management entity.

(b) Liability.—Designation of the Heritage Area shall not be considered to create any liability, or to have any effect on any liability under any other law, of any private property owner with respect to any persons injured on such private property.

(c) Recognition of Authority to Control Land Use.—Nothing in this Act shall be construed to modify the authority of Federal, State, or local governments to regulate land use.

(d) Participation of Private Property Owners in Heritage Area.—Nothing in this Act shall be construed to require the owner of any private property located within the boundary of the Heritage Area to participate in or be associated with the Heritage Area.

(e) Effect of Establishment.—The boundaries designated for the Heritage Area represent the area within which Federal funds appropriated for the purpose of this Act may be expended. The establishment of the Heritage Area and its boundaries shall not be construed to provide any nonexisting regulatory authority on land use within the Heritage Area or to be viewed by the National Park Service, or the management entity.

SEC. 11. AUTHORIZATION OF APPROPRIATIONS.

(a) In General.—There is authorized to be appropriated for the purposes of this Act not more than $1,000,000 for any fiscal year. Not more than a total of $10,000,000 may be appropriated for the Heritage Area under this Act.

(b) Matching Funds.—Federal funding provided under this Act may not exceed 50 percent of the total cost of any assistance or grant provided or authorized under this Act.

SEC. 12. SUNSET.

The authority of the Secretary to provide assistance under this Act shall terminate on
Mr. RADANOVICH. Mr. Speaker, I yield myself as much time as I may consume.

Mr. Speaker, H.R. 5311 is introduced by Mrs. JOHNSON of Connecticut and would establish the Upper Housatonic Valley National Heritage Area in Connecticut and Massachusetts. The valley is recognized for its cultural achievements through such authors as Herman Melville, Nathaniel Hawthorne and W.E.B. DuBois, and was the site of countless significant events in American history. Proponents of the bill hope to preserve, recognize, and enhance the area’s contributions in literature, art, music, architecture, iron, paper, and its electrical equipment industries.

I would note that the text of the bill passed this House in the 108th Congress and in the previous session of the 109th Congress. I urge adoption of the bill.

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

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

Mrs. CHRISTENSEN asked and was given permission to revise and extend her remarks.

Mrs. CHRISTENSEN. The majority has described the variety of historic and natural resources that will be preserved and interpreted in the proposed National Heritage Area, and we do not oppose this legislation.

We would note, however, that the majority’s approach to heritage area legislation has been widely inconsistent. The Republican leadership has gone from opposing heritage areas to approving them in large packages to now approving some of the same ones over again as stand-alone bills.

This inconsistency is particularly frustrating to those of us, like myself, with heritage area proposals of our own which have been caught up in this needless legislative red tape and sometimes for several years and several Congresses. It is my hope that once we have approved H.R. 5311, the majority will provide all remaining meritorious heritage area proposals similar consideration.

Mr. Speaker, I yield back the balance of my time.
The Clerk read as follows:

8. 1932

Be it enacted by the Senate and House of Representa-

tives of the United States of America in Con-

gress assembled,

SECTION 1. PUYALLUP INDIAN TRIBE LAND

CLAIMS SETTLEMENT.

(a) In General.—The Secretary of the In-

terior shall:

(1) accept the conveyance of the parcels of

land within the Puyallup Reservation de-

scribed in subsection (b); and

(2) hold the land in trust for the benefit of

the Puyallup Indian tribe.

(b) Land Description.—The parcels of land re-

ferred to in subsection (a) are as follows:

(i) Lots 3 and 4, Pierce County Short Plat

No. 9908020012, as depicted on the map

dated August 15, 1995, held in the records of

the Pierce County Auditor, situated in the

city of Fife, county of Pierce, State of Wash-

ington.

(ii) Chicago Title Insurance Company

Engineer’s Station AL 26 5+80.0 P.O.T. on

the AL 26 line survey of SR 5, Tacoma to King

County line.

(iii) Thence S89°54’30” E., along the north

line of said lot 1 a distance of 95 feet to the

ttrue point of beginning.

(iv) Thence S01°05’30” W., 74 feet.

(iv) Thence westerly to a point opposite

Highway Engineer’s Station AL 26 5+50.6

P.O.T. on said AL 26 line survey and 75 feet

easterly therefrom.

(V) Thence northerly parallel with said

line survey and the north line of said lot 1.

(VI) Thence S88°54’30” E., to the true point

of beginning.

(ii) Chicago Title Insurance Company

Ordinance No. 425, the boundary line adjust-

ment recorded under Ordinance No. 950150496,
as depicted on the map dated August 15,
1995, held in the records of the Pierce

County Auditor.

(B) Exclusion.—Excluded from Parcel B

shall be that portion of lot 4 conveyed to the

State of Washington by deed recorded under

recording number 9308100165 and more par-

icularly described as follows:

(i) Commencing at the northeast corner

of said lot 4.

(ii) Thence N89°53’30” W., along the north

line of said lot 4 a distance of 147.44 feet to

the true point of beginning and a point of

curvature.

(iii) Thence southwesterly along a curve to

the left, the center of which bears 80°06’30”
W., 55.00 feet distance, through a central

angle of 80°01’00”, an arc distance of 85.45 feet.

(iv) Thence W., 59.43 feet.

(v) Thence N88°54’30” E., 20.00 feet to a

point on the westerly line of said lot 4.

(vi) Thence N0°57’10” E., along said westerly

line 135 feet to the northwest corner of

said lot 4.

(vii) Thence S89°53’30” east along said north

line, a distance of 74.31 feet to the true point

of beginning.

(3) Additional Lots.—Any lots acquired by

the Puyallup Indian tribe located in block

7846, 7850, 7945, 7946, 7949, 7950, 8045, or 8049 in

the Indian Addition to the city of Tacoma, State

of Washington.

The SPEAKER pro tempore. Pursuant

to the rule, the gentleman from California

(Mr. RADANOVICH) and the

gentlewoman from the Virgin Islands

(Mrs. CHRISTENSEN) each will control 20

minutes.

The Chair recognizes the gentleman

from California.

Mr. RADANOVICH. Mr. Speaker, I

ask unanimous consent that all Mem-

bers may have 5 legislative days to re-

vise and extend their remarks and in-

clude extraneous material on the bill

under consideration.

The SPEAKER pro tempore. Is there

objection to the request of the gentle-

man from California?

There was no objection.

Mr. RADANOVICH. Mr. Speaker, I

yield myself as much time as I may

consume.

Mr. Speaker, S. 1382 will expedite the

approval process for relocating a casino

owned by the Puyallup Indian tribe of

Washington. This casino, which is

affected by the planned expansion of

the Port of Tacoma. On November 16, 2004

the Port of Tacoma, State of Wash-

ington, the tribe and the cities of Fife

and Tacoma signed an agreement to

pursue a major expansion of terminal

facilities at that time Port of Tacoma.

The agreement allows the tribe to

move its Emerald Queen Casino, which

is an expansion of the construction of

the new Port of Tacoma terminal

facility, to a new location within the bound-

aries of the tribe’s reservation. The

agreement will create nearly 4,000 jobs

for the local area and increase the
cargo capacity of the Port of Tacoma,

already the seventh busiest waterborne

freight gateway in the United States.

S. 1382 will expedite theiliation of

the Washington State delegation, and I

look forward to the support of this

House.

Mr. Speaker, I reserve the balance of

my time.

Mrs. CHRISTENSEN. Mr. Speaker, I

yield myself such time as I may

consume.

(Mrs. CHRISTENSEN asked and was

given permission to revise and extend

her remarks.

Mrs. CHRISTENSEN. I rise in strong

support of this legislation and to con-

gratulate the gentleman from Wash-

ington, Norm Dicks, who is the author

of the House companion bill.

Mr. Dicks has worked tirelessly over

the last several months to bring this

bill before us today. This provision

would enable the Puyallup Indian tribe
to continue its ability to provide need-
ed services to its members and to pre-

serve a significant number of jobs held

by both Indians and non-Indians.

The port and other State and local

entities support the tribe’s effort to

have this land placed into trust. Once

enacted, this legislation will assist the

tribe in its business ventures.

I would again pay tribute to Con-

gressman Dicks for his tenacity in get-

ting this bill moved through the House.

This provision has already passed the

Senate and has the support of State

and local government.

I urge all of our colleagues to support

the passage of S. 1382.

Mr. Speaker, I would like to yield

such time as he might consume to the

sponsor of the bill, Mr. Dicks.

Mr. DICKS. Mr. Speaker, I appreciate

the distinguished gentlewoman from

the Virgin Islands for recognizing me. I

want to thank the chairman and the

others who presented the bill.

I rise in strong support of this bill, S.

1382, which would require that reserva-

tion land be put into trust on behalf of

the Puyallup Indians. I introduced similar legislation in the House, which

was approved by the Resources Com-

mittee in March.

Passage of the Senate bill today will

clear the legislation for the President’s

signature. I want to thank Resources

Chairman Pombo for his support of

this legislation and the action of the Re-

sources Committee took to move the

bill forward. I also want to extend my

grateful gratitude to ranking Democratic

Member Rahall for his assistance. The

staff of both of these Members have

been very helpful.

The legislation is consistent with

previous actions that Congress has

taken on behalf of the Puyallup tribe.

After many years of negotiations, the

tribe and the local community came
together to settle a longstanding

land claims that affected a large

portion of what is now the Port of

Tacoma.

When the settlement agreement

was reached in 1986, Congress approved spe-

cific legislation authorizing the terms of

this landmark settlement, which has

now led to robust development in the

Port of Tacoma. The creation of a sub-

stantial number of new jobs in shipping

and trade-related businesses and to the
devolution of major enterprises that will

support the current and next generation of Puyallup tribe

members really was a win-win situa-

tion for the tribe, the Port of Tacoma,

the city of Tacoma, the city of Fife and

for Pierce County.

With the support of Congress, it has

resulted in a very productive working

relationship between all of those par-

ties. A prime example of this improved

relationship is the mutually beneficial

settlement that led to the legislation we

are considering today.

A few years ago, the Port of Tacoma

was presented with the opportunity to

build a large new container terminal

that would lead to the creation of

many new family wage jobs if it could

build on tribal-owned land in the port.

After some negotiation, the tribe

agreed to relocate a casino that was

situated on this land in order to allow

for the type of cargo-handling develop-

ment to occur at the waterfront, con-

sistent with the goals of the settlement

agreement.

This is another case in which every-

one wins. The State of Washington and

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all local governments have recognized the tribe’s cooperative spirit and have actively supported this relocation. Thus, this legislation would simply allow for the alternate parcel of reservation land in Fife to be put into trust status in order to meet the requirements of Water Code 4, Tukwila.

Again, I want to thank the chairman, the ranking member and the Resources Committee for their assistance in moving this piece of legislation that will result in further job creation and economic development in the Port of Tacoma, not only helping the tribe in the local community, but positively affecting our Nation’s balance of trade.

Mrs. CHRISTENSEN. I yield back the balance of my time.

Mr. RADANOVIĆ. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from California (Mr. RADANOVIĆ) that the House suspend the rules and pass the Senate bill, S. 1382.

The motion was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the Senate bill was passed.

A motion to reconsider was laid on the table.

PROVIDING FOR CONCURRENCE BY HOUSE WITH AMENDMENT IN SENATE AMENDMENT TO H.R. 1499, HEROESEarned Retirement Opportunities Act

Mr. SAM JOHNSON of Texas. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 803) providing for the concurrence by the House with amendment in the amendment of the Senate to H.R. 1499.

The Clerk read as follows:

H. RES. 803

Resolved, That upon the adoption of this resolution the bill (H.R. 1499) entitled “An Act to amend the Internal Revenue Code of 1986 to allow members of the Armed Forces serving in a combat zone to make contributions to their individual retirement plans even if the compensation on which such contribution is based is excluded from gross income, and for other purposes”, with the Senate amendment thereto, shall be considered to have been taken from the Speaker’s table to the end that the Senate amendment thereto be, and the same is hereby, agreed to with an amendment as follows:

Add at the end of the Senate amendment the following:

Page 3, after line 3, insert the following new subsection:

(c) Contributions for Taxable Years Ending Before Enactment.—

(1) IN GENERAL.—In the case of any taxpayer with respect to whom compensation was excluded from gross income under section 112 of the Internal Revenue Code of 1986 for any taxable year beginning after December 31, 2003, and ending before the date of the enactment of this Act, any contribution to an individual retirement plan made on account of such taxable year and not later than the last day of the 3-year period beginning on the date of the enactment of this Act shall be considered, for purposes of such Code, as having been made on the last day of such taxable year.

(2) WAIVER OF LIMITATIONS.—

(A) CREDIT OR REFUND.—If the credit or refund of any overpayment of tax resulting from a contribution to which paragraph (1) applies is determined by the operation of any law or rule of law (including reg. judicata), such credit or refund may nevertheless be allowed or made if the claim therefor is filed before the close of the 1-year period beginning on the date that such contribution is made (determined without regard to paragraph (1)).

(B) ASSESSMENT DEFICIENCY.—The period for assessing a deficiency attributable to a contribution to which paragraph (1) applies shall not expire before the close of the 3-year period beginning on the date that such contribution is made. Such deficiency may be assessed before the expiration of such 3-year period notwithstanding the provisions of any other law or rule of law which would otherwise prevent such assessment.

(3) INDIVIDUAL RETIREMENT PLAN DEFINED.—For purposes of this subsection, the term “individual retirement plan” has the meaning given such term by section 7701(a)(37) of such Code.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Texas (Mr. SAM JOHNSON) and the gentleman from Michigan (Mr. LEVIN) each will control 20 minutes.

The Chair recognizes the gentleman from Texas.

Mr. SAM JOHNSON of Texas. Mr. Speaker, this is an important bill that will allow our troops serving in combat zones to contribute some of their tax-exempt combat pay to retirement savings. Because combat pay is exempt from tax, it does not qualify as earned income that is normally allowed in an individual retirement plan. Mr. Speaker, I would now like to yield as much time as she may consume to the Representative from North Carolina (Ms. FOXX).

Ms. FOXX. Mr. Speaker, I am truly honored to be here today. I am honored because the mere consideration of this bill recognizes the greatness of our Republican democracy. At this time 2 years ago, I dreamed of coming before this House and working for the people of the Fifth Congressional District of North Carolina. Here I am today promoting a bill I wrote to help those very constituents who deserve it the most.

Just over a year ago, the family of Army Specialist Michael Hensley from my district in Clemmons, North Carolina, contacted me with a problem that struck me to the core because the mere consideration of this bill recognizes the greatness of our Republican democracy. At this time 2 years ago, I dreamed of coming before this House and working for the people of the Fifth Congressional District of North Carolina. Here I am today promoting a bill I wrote to help those very constituents who deserve it the most.

Just over a year ago, the family of Army Specialist Michael Hensley from my district in Clemmons, North Carolina, contacted me with a problem that struck me to the core. Specialist Hensley wanted to do the responsible thing by making the maximum allowable contribution to his individual retirement account, but found himself unable to do so because of the nature of his wages, which would not be able to contribute to his nest egg this year. Thanks to the Republican leadership of this House, we stand here today to solve this problem.

Mr. Speaker, our current Tax Code wrongfully prohibits many of our brave men and women serving in combat zones from taking advantage of individual retirement accounts, or IRAs. Most soldiers serving in these combat zones are paid in wages designated as military hazard pay. As deployment times have grown longer and longer, many soldiers now serve entire calendar years overseas, making their yearly compensation consist of hazard pay that is not taxable, nor should they be. However, since this compensation is nontaxable, the wages are not eligible for IRA contributions. That is entirely unfair.

As we all know, IRAs are an excellent tool for responsible retirement savings, and responsible retirement savings should be encouraged for everyone, but especially for those who take up arms in war zones and fight for our freedom.

The men and women defending America in harm’s way overseas should not be excluded from fully participating in the important retirement investment opportunity that IRAs provide because of a glitch in our Tax Code. H.R. 1499, the HEROs Earned Retirement Opportunities, or HERO Act, will correct this serious injustice. The HERO Act simply designates combat hazard pay earned by a member of the Armed Forces as eligible for contributions to retirement accounts. This legislation, which is endorsed by the Reserve Officers Association and the Military Officers Association of America, would not actually tax these wages. It would merely allow them to be included in the same retirement accounts available to all Americans.

To quote the Military Officers Association of America in their letter of support for the bill: “This change makes perfect sense in view of all we are asking our servicemembers to do in the war on terror in Iraq, Afghanistan and elsewhere.” I could not have said it better myself.

Mr. Speaker, our heroes defending America overseas certainly deserve the same access to retirement savings that we receive. In fact, we should be encouraging and even facilitating retirement savings whenever possible. Americans need to take responsibility for and control of their retirement. Those responsible enough to save their hard-earned wages should be rewarded, not burdened with taxes and regulations.

I would like to thank our Republican majority leader, JOHN BOEHNER, as well as Chairman BILL THOMAS, for recognizing the importance of this bill, sponsoring the legislation, and expeditiously bringing it to the floor of this House. I would also like to thank Chairman DUNCAN HUNTER for his service to our Nation in Vietnam, for his excellent leadership on the House Armed Services Committee and for sponsoring and supporting this great bill. His commitment to our troops is to be applauded.

Lastly, I would like to thank Congressman SAM JOHNSON for his 29 years of service to our Nation and for his co-sponsorship of this bill and his assistance in the Ways and Means Committee to bring the bill to the floor of the House. Congressman JOHNSON is a
true hero, having served as a prisoner of war. It is an honor to have him as a cosponsor and to have had his strong support throughout the effort to get this bill passed. I urge all my colleagues to help right this fundamental wrong by voting for this straightforward, commonsense legislation.

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

Mr. Speaker, I stand today in support of H.R. 1499. This bill is actively supported by my Democratic colleagues. On May 23, 2005, this bill passed the House under suspension of the rules by voice vote. The bill was referred to the Senate and was a Trosky, and an amendment to change the effective date. Because of the later effective date as passed by the Senate, the bill is before us again today merely to incorporate a technical change. This change would prevent from making curtailments to the men and women who can make eligible contributions for previous tax years, 2004 and 2005, for which the deadline has passed, but years for which they were eligible to make these contributions.

We lose the useful service of our military personnel who continue to perform so ably for our Nation. We honor their bravery and their sacrifice. Therefore, it goes without saying that we support and expect the Congress to make it possible for these men and women to take advantage of every tax benefit that is available to them, including saving for their retirement.

H.R. 1499, as my colleague and friend, the gentlewoman from Texas, Ms. FOXX, has said, would allow our service men and women to treat their compensation received while serving in combat as taxable income in order to help them meet the income eligibility requirement for making contributions to an individual retirement account.

At a recent hearing of our committee, two of our five witnesses highlighted the large shortfall in retirement savings many of our workers in this country face. I am sure that many members of the military fall within this group. This bill is a small step in the right direction of closing that gap.

Other larger steps need to be taken. For example, Democratic Members of this Congress are hopeful that we can work with our Republican colleagues to preserve another tax benefit that may be of even greater help to many military families. A provision in current law would permit military families to treat combat pay as taxable compensation for purposes of claiming the Earned Income Tax Credit. This provision, though, is set to expire at the end of this year.

The EITC is a refundable credit many low- and middle-income taxpayers can claim when they file their Federal tax returns. Eligible families may claim a portion of their credit ratably during the year. The EITC helps to relieve the Federal tax burden on many families who are working full-time, yet find themselves at or below the poverty level.

We had hoped that this provision could be included as part of the bill before us today to further help military families. However, we were assured that this provision will be taken up later in the year, and we will continue to press for the extension of this provision before it expires. Also let me finish by expressing my hope and the hope of so many on my side of the aisle that this Congress and the administration will meet their responsibilities to our veterans on health, on re-employment, and on so many other major needs of those in the military and the veterans of this country.

Mr. Speaker, I would say to my friend, Mr. JOHNSON, therefore anticipating your remarks, and your remarks indeed reflect your service to this country, I yield back the balance of my time.

Mr. SAM JOHNSON of Texas. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, as Mr. LEVIN pointed out, we passed this legislation before. Our colleagues in the Senate then passed the bill by unanimous consent back in October, but made a change regarding the effective date.

The HERO Act will help our combat troops save for their retirement, as Mr. LEVIN pointed out, or for first-time home purchases or for education by saving in a Roth IRA. This cap on annual contributions will increase to $5,000 in 2008. Right now our combat troops are not able to contribute to IRAs because that combat pay does not fit the definition of taxable earned income.

As Mr. LEVIN pointed out, our combat troops are putting their lives on the line in a very dangerous situation, and to recognize this service, their pay is not subject to tax. This bill is not only a way for Congress and the American people to say thank you every payday.

There are a lot of young servicemembers who are single who come home at the end of a tour in a combat zone with a nice little nest egg. Once we get this bill signed into law, it will be great for these young men and women to put some of that money into a Roth IRA for the purchase of a home, to send on school, or just for long-term retirement. While there are plenty of other tantalizing things for these young people to spend their money on, we need to at least give them the opportunity to save some of it in the same way that all other Americans can save.

I am one of the conferees working out the differences between the House and Senate on the pension bill. I look forward to getting that bill completed soon so we can increase the opportunity of all Americans to save and to make their pension plans safer. However, currently, they are prohibited from even contributing combat pay to an IRA, and we need to remedy this situation right now.

According to the Joint Committee on Taxation, the bill would provide $70 million of tax benefits to military families over the next decade. We will pass the HERO Act with no controversy, and I hope our colleagues in the other body follow suit in the near future.

Mr. Speaker, thank you for your work on this bill. I appreciate Ms. FOXX introducing the bill. It is the right thing to do.

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

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. SAM JOHNSON) that the House suspend the rules and agree to the resolution, H. Res. 803.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair’s prior announcement, further proceedings on this question will be postponed.

RURAL HEALTH CARE CAPITAL ACCESS ACT OF 2006

Mr. RENZI. Mr. Speaker, I move to suspend the rules and pass the bill (H. R. 4912) to amend section 242 of the National Housing Act to extend the exemption for critical access hospitals under the FHA program for mortgage insurance for hospitals.

The Clerk read as follows:

H.R. 4912
Be it enacted by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. SHORT TITLE.
This Act may be cited as the “Rural Health Care Capital Access Act of 2006”.

SEC. 2. EXTENSION.
Paragraph (1) of section 242(i) of the National Housing Act (12 U.S.C. 1715z-7A(i)(1)) is amended by striking “July 31, 2006” and inserting “July 31, 2011”.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Arizona (Mr. RENZI) and the gentleman from California (Mr. BACA) each will control 20 minutes.

The Chair recognizes the gentleman from Arizona.

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

Mr. Speaker, I rise in support of H.R. 4912, the Rural Health Care Capital Access Act of 2006. This piece of legislation would extend the exemption of the current law that allows small rural hospitals to remain eligible for Federal Housing Administration mortgage insurance.

Recent health care statistics show a huge backlog of capital improvement needs for the majority of hospitals in the United States, and rural hospitals face even fewer opportunities to make
such needed repairs, achieve reasonable terms for refinancing or build replacement facilities. The FHA Section 242 Hospital Mortgage Insurance Program has been a valuable tool for many hospitals seeking to rebuild or make improvements.

Recently the program became available to critical access hospitals. Critical access hospitals are facilities certified to receive cost-based reimbursement for Medicare. This cost-based reimbursement is intended to improve their financial performance and thereby reduce hospital closures.

Despite the efforts of FHA, some challenges have remained for these rural hospitals to gain access to the critical access program. One of these was a statutory requirement in section 242 that at least 50 percent of the hospital’s adjusted net patient days must be used for acute medical care. While this requirement may be useful in urban areas, rural isolated communities served by critical access hospitals often cannot sustain separate independent hospitals which provide acute care and nursing facilities.

It is common for rural hospitals and nursing homes to operate as a single unit in order to take advantage of savings related to cost-sharing of some services and staff.

To deny critical-access hospitals access to FHA mortgage insurance on these grounds unfairly disadvantages these facilities that are desperately in need of capital improvements.

H.R. 659, the Hospital Mortgage Insurance Act of 2003 amended section 242 of the National Housing Act and included an exemption that eliminated the so-called Patient Day Test for critical-access hospitals, which allowed these rural hospitals to be eligible for FHA mortgage insurance. The exemption expires on July 31, 2006. H.R. 4912 would simply extend this vital exemption for 5 years, which would give FHA and the Department of Housing and Urban Development time to review the program’s impact and recommend to the Congress whether it should be made permanent.

I am a proud cosponsor of this important legislation, which will benefit 11 hospitals in my district: Page Memorial Hospital in Page, Arizona, Sage Memorial Hospital in Ganado, located on the Navajo Nation, and Winslow Memorial Hospital located in the town of Winslow, Arizona.

I would like to thank the Housing Subcommittee chairman, Congressmanney, Ranking Member Waters, full committee Chairman Oxley, Ranking Member Frank and all of those who worked hard to pull this together for their support of this legislation.

Mr. Speaker, I urge my colleagues to support this bipartisan piece of legislation that would allow more opportunities for critical-access hospitals to improve the quality of health care in rural America.

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

Mr. BACA. Mr. Speaker, I yield myself such time as I might consume.

Mr. Speaker. I rise today to express my strong support for H.R. 4912, the Rural Health Care Capital Access Act of 2006, along with Mr. Frank who is one of the cosponsors of this important legislation.

This bill extends and exempts under the Hospital Mortgage Insurance Act of 2003 small, rural critical-access hospitals. This allows them to qualify for the Department of Housing and Urban Development section 242 mortgage insurance program.

This section 242 program is an important program which provides mortgage insurance for loans made for construction, renovation and equipment of acute-care hospitals. To be eligible for this section 242 program, a hospital’s net patient days qualify as acute care, which is referred to as a Patient’s Day Test.

Small, rural hospitals sometimes have a hard time meeting these requirements. This is because rural communities often have hospitals and nursing homes combined in order to achieve savings by sharing facilities and services such as pharmacy and food services.

The Hospital Mortgage Insurance Act of 2003 eliminated the so-called Patient Day Test for critical-access hospital, but limited the exemption to 3 years. The exemption expires on July 31, 2006.

Today only one hospital sought approval under this exemption. This is not surprising considering the length of time required for applying to the program, particularly for small hospitals with limited staff and resources to devote to such complicated processes.

As we all know, there are many small hospitals throughout the Nation that need this kind of help. It is very complicated, applying for this kind of a process. Nevertheless, this exemption is necessary for small hospitals to have access, and I state, to have access to section 242 programs. And it is important that they do have the access.

H.R. 4912, the Rural Health Care Capital Access Act of 2006, would extend the exemption for an additional 5 years. At this time, HUD and FHA can review the impact and recommend to Congress whether the exemption should be made permanent.

Again, Mr. Speaker, I express my strong support for this bill.

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

Mr. RENZI. Mr. Speaker, I have no additional speakers, and reserve the balance of my time.

Mr. WATERS. Mr. Speaker, I rise in strong support of H.R. 4912, the “Rural Health Care Capital Access Act of 2006”, of which I am an original sponsor. The Committee on Financial Services marked-up H.R. 4912 on March 13, 2006, so I am delighted that this important measure has reached the floor today.

Mr. Ney, the Chairman of the Subcommittee on Housing and Community Affairs, is to be applauded for his efforts on behalf of rural communities.

The bill would allow hospitals located in rural areas access to the Federal Housing Administration (FHA) mortgage insurance program for hospitals, under Section 242 of the National Housing Act. These hospitals are located in rural areas of the country, and are not always able to meet the bed capacity requirements for critical care facilities. Thus, the bill would extend the exemption for another 5 years, enabling rural hospitals to be exempted from critical bed requirements.

The bill addresses the mortgage insurance needs of Critical Access Hospitals. These hospitals are rural hospitals with a maximum of 25 beds and must be 35 miles from the nearest hospital. Another requirement is related to the so-called “patient day” requirement. Under Section 242, not more than 50 percent of a hospital’s adjusted net patient days could be “assignable to the categories of chronic conditions, which are: congestive heart failure, respiratory, diabetes, dementia, mental illness, mental retardation, Alzheimer’s, multiple sclerosis, and tuberculosis…” These are onerous requirements for small rural hospitals to meet. When we passed the Hospital Insurance Mortgage Act of 2003, it eliminated the patient day requirement, but it expires on July 31, 2006.

By supporting H.R. 4912 to extend the exemption for another 5 years, we will be addressing an issue of major concern in rural areas. Hospitals are far and few apart. Within many of our rural communities hospitals double up with nursing homes to meet these bed requirements, as well as to share in cost savings, to qualify for Section 242 mortgage insurance. H.R. 4912 removes another barrier to health care in rural communities, and therefore, I urge support of the measure.

Mr. BACA. Mr. Speaker, I have no additional speakers. I appreciate the gentleman from Arizona’s leadership in taking up this legislation along with the cosponsor, Mr. Frank, who feels this is important for a lot of the hospitals in rural communities, and I yield back the balance of my time.

Mr. RENZI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore (Mr. Price of Georgia). The question is on the motion offered by the gentleman from Arizona (Mr. RENZI) that the House suspend the rules and pass the bill, H.R. 4912.

The question was taken; and two-thirds having voted in favor thereof the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

BYRON NELSON CONGRESSIONAL GOLD MEDAL ACT

Mr. RENZI. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 4902) to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

The Clerk read as follows:
Byron Nelson was one of the first golf analysts on network television where his unadulterated commentary has provided daily home delivery of hot lunch for the frail, elderly and chronically ill residents of Texas.

Mr. Speaker, Byron Nelson is a legend in the game of golf, much noted for his unprecedented 11 consecutive victories in 1945, his five victories at major tournaments, and his overall 54 career victories that make him worthy of receiving this medal. The time has come for Congress to bestow on this gentleman an honor worthy of his lifelong accomplishments and what he has put forth to improve the lives of those who are less privileged.

Therefore, Mr. Speaker, I urge my colleagues to support this legislation.

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

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

Mr. Speaker, I stand in strong support of H.R. 4902, the Byron Nelson Congressional Gold Medal Act. We are honoring Byron Nelson for his accomplishments in golf. He truly has set a legacy, not only for those of us who have watched golf, but have participated in golf and have seen him during this period of time.

He is a true champion. He is a teacher, he is a course designer, and he is a commentator. But most of all, he is a golfer who has given his time, his talent and his treasure to make this world a better place. Through the EDS Byron Nelson Championship, Mr. Nelson has helped raise more than $36 million for the Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services for more than 2,700 children and their families throughout the Nation.

Additional, the Byron and Louise Nelson Golf Endowment Fund has provided more than $1.5 million in endowment funding to Abilene Christian University in Abilene, Texas. Further, since 1992, Mr. Nelson has been the honorary chairman of the Metropolitan Meals on Wheels which provides daily home delivery of hot lunches for the frail, elderly and chronically ill residents of Texas.

Mr. Speaker, Byron Nelson is a legend in the game of golf, much noted for his unprecedented 11 consecutive victories in 1945, his five victories at major tournaments, and his overall 54 career victories that make him worthy of receiving this medal. The time has come for Congress to bestow on this gentleman an honor worthy of his lifelong accomplishments and what he has put forth to improve the lives of those who are less privileged.

Therefore, Mr. Speaker, I urge my colleagues to support this legislation.

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

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

Mr. Speaker, I stand in strong support of H.R. 4902, the Byron Nelson Congressional Gold Medal Act. We are honoring Byron Nelson for his accomplishments in golf. He truly has set a legacy, not only for those of us who have watched golf, but have participated in golf and have seen him during this period of time.

He is a true champion. He is a teacher, he is a course designer, and he is a commentator. But most of all, he
brought integrity to the game of golf. For those of us that play the game, we aspire to be like him. Some of us would love to shoot the rounds that he has. And some of us will probably never do that. But at least we have those dreams and the hopes that one day we can achieve what he has achieved.

I know that for many youth he has been a positive role model and he has set a good example. In addition, he has given back to the community by supporting nonprofit agencies in the greater Dallas area.

Byron Nelson was also a top player in the sport of golf during the World War II era. He grew up near Ft. Worth, Texas, and first got involved in golf as a caddy. And that is inspiration when we see many of the movies that have occurred where caddies ultimately became, then, professional golfers.

And when you see someone, and someone is caddying, you also learn how to hit the ball, pick up the club, give directions, and learn just the course management and the integrity of the game itself.

He did this at a local club at Glen Garden Country Club. In fact, among the other caddies that were there was Ben Hogan, another individual that we admire very much, who also became a champion golfer. But in 1927, Byron Nelson competed against Ben Hogan in a champion golf tournament and he, Byron Nelson, won that match.

In 1942, he won seven tournaments, averaging 69.67 strokes for 85 rounds. Can you imagine what that is like? And the average is 72 per course. That means three strokes under, that he accomplished during that period of time.

And like I said, I only shoot a round once in a while of 68, but never on a consistent basis, and for someone to do it on a consistent basis for 85 rounds is very difficult. He was named Male Athlete of the Year, but he would be even better than that.

In 1945 Byron Nelson had what is still considered today the best season ever by a male golfer. He won 18 different tournaments that year, including a remarkable 11 in a row at one point. And that is something that you do not even see in a lot of the eras that are here today.

That season he averaged 68.33 strokes per round for 31 tournaments. Again, imagine, 31 tournaments going under 72.

At the Seattle Open in 1945, he shot a record of 62, and that is something that I dream about. I probably will never accomplish in my life, but one day, in my dreams I will shoot a 62 and under for 18 holes, and a 259 and a 29 shots under for 72 holes.

In 1945, the AP again named him Male Athlete of the Year. Only two golfers have received that honor twice. He was selected for the Ryder Cup four times, in 1937, 1939, 1947, and again in 1965, where he led the American team to victory over the Britons.

Byron Nelson won five majors, including the Masters twice, 1937 and 1942; the Professional Golf Association PGA, that really stands for posture, grip and alignment, Championship twice, in 1940 and 1945; and the U.S. Open once in 1939.

He won a total of 54 victories during his short career. He shed from full-time competition in golf at the age of 34 to buy a ranch in his native Texas. Can you imagine what he would have done on the Senior Tour if he would have continued to golf, and if it was available for him to have participation in tournaments? He would have probably added additional tournaments on the Senior Tour, as well, but he decided to retire at the young age of 34.

After his playing days were over, Byron Nelson continued to contribute to golf. He served as a coach, as a mentor to other players, including Tom Watson, and as a role model for many individuals. He has also shared his knowledge of the sport as a television analyst.

Byron Nelson also was a pioneer in the golf business, helping to develop golf shoes and umbrellas used today. Of course, I bought a couple of his golf shoes, a couple of his umbrellas that I still use on rainy days.

He has helped design world class golf courses. Byron Nelson also helped to develop the Tournament Players Course, TPC, Four Seasons at Las Colinas in Texas into a world-class facility. That course is the home of the Byron Nelson Classic, and Byron Nelson’s Golf School.

The Byron Nelson Classic is the only PGA tour event named in honor of a professional golfer, and traditionally attracts the strongest players in sports.

The Byron Nelson Classic has raised a total of $82 million for the Salesmanship Club Youth and Family Centers, a nonprofit agency that provides education and mental health services for almost 3,000 children and their families in the greater Dallas area.

So we are honored, not only to have a great golfer but a good man and a man whose legacy will live on because he has contributed an awful lot to the sport of golf and contributed as a role model, too.

In the spirit of celebration, I have also introduced a separate piece of legislation that will honor the achievements of Arnold Palmer and Tiger Woods. Byron Nelson was a true charter member in golf and has contributed to the public through significant charitable work, and both have served as role models and inspiration to many others.

Arnold Palmer once commented, “Byron Nelson’s accomplishment is a thing on the pro tour that will never be seen and will never be approached again”. So it is with pride that we stand in honor of one of the true great heroes of golf. And his legacy will live on forever; that is Byron Nelson.

Again, Mr. Speaker, I express my strong support for this bill.

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

Mr. RENZI. Mr. Speaker, I thank the gentleman from California for that tribute, and I yield to the author of the bill for as much time as he may consume, the gentleman from Texas (Mr. BURGESS).

Mr. BURGESS. Mr. Speaker, I thank the gentleman from Arizona for bringing this bill to the floor. I thank the gentleman from California for his recollection of the deeds and the triumphs of Byron Nelson.

Back in Texas, we know Byron Nelson by many terms: gifted athlete, philanthropist, and today, thanks to their efforts, we are going to know him by what he really is, a national treasure.

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He is a philanthropist. He is a gentleman who just happens to be an excellent golfer. In fact, it is Byron Nelson who provided the marriage between unparalleled athleticism and unparalleled philanthropy.

I first became aware of Byron Nelson as a child growing up in north Texas. I admired the golfer, not just the golfer. I only pretended to be, but my mother was. My mother was a fan of “Lord Byron” back in the 1950s. And so much of it was not because he was a famous golfer, but because of the gentleman that Mr. Nelson was.

As I grew older, I continued to hear of the wonderful giving nature of Mr. Nelson. He continually seeks to help his fellow man. Over the decades, he did not promote the game of golf; he embodied a life of service. He was and is today the most humble of men. Some of you may not know of all the great humanitarian efforts he has championed, but that is because the man himself shuns recognition for his heroism. And the story of the gentlemen from California and the gentleman from Arizona referenced that the Salesmanship Club sponsors down in Texas, I have visited that school. It not only serves the children there, but it serves as a template, a model for other schools around the Nation. It is a living research laboratory for the right way to teach children.

Mr. Nelson has never limited giving of himself and encouraging others to do the same when it comes to helping others. He founded the Byron Nelson Foundation and the Salesmanship Club of Dallas, the Metroto Wheels on Wheels, and the creation of an endowment scholarship fund are but a few of his leadership roles.

This is the putting green where the national scene in the 1930s and 1940s for his golf prowess. Mr. Nelson took a sport and helped to move it into the philanthropic giant that it is today. Since 1938, the PGA tour tournaments have provided over $1 billion for their local charities.

The Byron Nelson Championship, which is played this week in Irving, Texas, is the only PGA tour that is named for a specific player. The EDS

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Byron Nelson Championship has raised over $88 million for the Salesmanship Club of Dallas since 1968, and I believe with the ticket sales this year are going to be very close to the $100 million mark.

So why is Byron Nelson the only golfer to have a tournament named after him? Because Mr. Nelson represents the adage, “sportsmanship then victory.” He understood that helping others was the only way to true victory in life.

Mr. Speaker, we lost my mother a couple of years ago; but in her library I found a book, a book that Mr. Nelson wrote and published in 1995. In it he describes many different facets and philosophies that have influenced him over the years, and I would like to take a moment to highlight a passage that I believe depicts the true character of Byron Nelson, a character that is infused with his kindness, generosity and his humility. He borrows a philosophy from his days playing golf and applies it to life.

Under the chapter called “Sportsmanship” from the golf tournament in 1941 says: “Perhaps more than any other sport, golf remains a game of etiquette and sportsmanship. Golfers are expected to abide by a traditional set of rules and that sometimes means either accepting a strange ruling that works against you or calling a penalty on yourself, even when no one else has witnessed the indiscretion. That’s why they say golf is truly a game of character.”

Byron understands that it is not what people see you do that truly matters, but that you know your worth and you have done what you can do to help others in this world. You are worth what you give back to the world.

Most Members of Congress come here not to be show horses, but to make a difference in society. Byron was not a leader by example; rather, he has raised millions for families for the glory. Far from it. He shied away from acknowledgment of his work; but I believe, and so do over 300 Members of this House, that the time has come to recognize the true giving nature of Byron Nelson by nominating him for the Congressional Gold Medal.

This generous man has been giving back to America for over 90 years; and in recognition of these efforts, I am honored to bring forth H.R. 4902, to award Byron Nelson, my constituent, the Congressional Gold Medal.

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

Mr. Speaker, I would like to add that not only did he touch the lives of many individuals, as I stated before as a positive role model, but he gave of himself and he gave of himself to the community; and that is important when someone plays the game with integrity and character that sets positive examples for many.

And if you look at Byron Nelson’s contribution on the golf course and off the golf course, he truly is an example that all of us should follow. His integrity and his legacy will live forever. I urge everyone to support this bill.

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

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

Mr. Speaker, I thank the gentleman from California. Mr. Speaker, I have a good friend in Flagstaff, Arizona, a guy named Joe Galli who is a terrific golfer himself and kind enough just to inform me that my neighbor in Flagstaff is PGA pro Ted Purdy. He was the 2005 Byron Nelson Classic champion last year. He defends that title this year. So from Flagstaff, Arizona, I want to thank you for allowing me to manage this bill today.

It is certainly exemplary of the fine spirit, that generosity, that philanthropic endeavor that this gentleman has given to our Nation. So I congratulate the Nelson family.

Mr. OXLEY. Mr. Speaker, I rise in strong support of this legislation, authored by the gentleman from Texas.

It’s no secret that I enjoy the game of golf, and it’s no secret that I admire the achievements of the greats of the game, and Byron Nelson certainly is one of those greats. In fact, he’s something of a legend of the game.

Much noted for his unprecedented winning streak in 1945, for his five victories at major tournaments, and for his overall 54 career victories, it is not an overstatement to call Byron Nelson one of the greatest players the game has ever seen. He was twice named “Male Athlete of the Year” by the Associated Press, a feat only accomplished by one other golfer, Tiger Woods. Additionally, Byron Nelson was selected for the Ryder Cup four times, leading the United States team as Captain to victory over Great Britain in 1945.

He is also the only PGA professional golfer to have a PGA tour named in his honor: the EDS Byron Nelson Charity. Byron Nelson’s accomplishments as a professional golfer are as impressive as his golf swing, and an inspiration to us all.

Just as impressive are his achievements off the links. They already have been well-detailed here, but suffice it to say that Byron Nelson is the perfect example of the selfless sports hero, the sort of hero that I and a lot of others wish there were more of, in every sport.

With that, Mr. Speaker, let me just say that I support this legislation, and that I urge its immediate passage.

Mr. GENÉ. Mr. Speaker, I rise today to honor a man who is a living legend to golf, Byron Nelson.

Throughout his career, this Native Texan has exhibited sportsmanship and a competitive drive unparalleled by most athletes. In 1945, Byron Nelson posted 11 simultaneous wins—a record that stands today.

He has won the Masters twice, the U.S. Open and the PGA Championship. He was also the first winner of the Shell Houston Open in 1946.

Mr. Speaker, I rise today to honor a man who is a living legend to golf, Byron Nelson.

Throughout his career, this Native Texan has exhibited sportsmanship and a competitive drive unparalleled by most athletes. In 1945, Byron Nelson posted 11 simultaneous wins—a record that stands today.

He has won the Masters twice, the U.S. Open and the PGA Championship. He was also the first winner of the Shell Houston Open in 1946.

He has been named “Male Athlete of the Year” twice by the Associated Press, and led the U.S. to defeat Great Britain to win the Ryder Cup in 1965.

While these accomplishments are impressive, Byron Nelson is also known as a great philanthropist.

The Byron Nelson golf tournament has raised well over $88 million to provide educational and mental health services to thousands of children and their families.

In addition, he has been involved as an honorary chairperson of Meals on Wheels for the Dallas Metroplex area.

I believe Byron Nelson exhibits the qualities worthy of a Congressional Gold Medal.

His accomplishments on the golf course are impressive, but his commitment to improving and helping his community over several decades speaks to his character.

I urge my colleagues to support this resolution and grant Byron Nelson the Congressional Gold Medal.

Mr. RENZI. Mr. Speaker, I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Arizona (Mr. RENZI) that the House suspend the rules and pass the bill, H.R. 4902.

The question was taken; and (two-thirds having voted in favor thereof) the rules were suspended and the bill was passed.

A motion to reconsider was laid on the table.

CONGRATULATING CHRIS CARPENTER ON BEING NAMED THE CY YOUNG AWARD WINNER FOR THE NATIONAL LEAGUE FOR THE 2005 MAJOR LEAGUE BASEBALL SEASON

Mrs. MILLER of Michigan. Mr. Speaker, I move to suspend the rules and agree to the resolution (H. Res. 627) congratulating Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season.

The Clerk read as follows:

H. Res. 627

Whereas Chris Carpenter of the St. Louis Cardinals was named the Cy Young Award winner for being the best pitcher in the National League during the 2005 Major League Baseball season;

Whereas during the 2005 season Chris Carpenter posted a record of 21 wins and 5 losses and an outstanding winning percentage of .808;

Whereas in 2005 Chris Carpenter had an earned run average of 2.83, one of the best in Major League Baseball; and

Whereas Chris Carpenter has demonstrated an outstanding ability to overcome injury and adversity and won the Players’ Choice National League Comeback Player of the Year award in 2004; Now, therefore, be it
Resolved, That the House of Representatives congratulates Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season.

The SPEAKER pro tempore, Pursuant to the rule, the gentlewoman from Michigan (Mrs. MILLER) and the gentleman from Missouri (Mr. CARNAHAN) each will control 20 minutes.

The Chair recognizes the gentlewoman from Michigan.

General Leave

Mrs. MILLER of Michigan. Mr. Speaker, I ask unanimous consent that all Members have 5 legislative days in which to revise and extend their remarks and to include extraneous material on the resolution under consideration.

The SPEAKER pro tempore. Is there objection to the request of the gentlewoman from Michigan?

There was no objection.

Mrs. MILLER of Michigan. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I rise in support of H. Res. 627 offered by the distinguished gentleman from Missouri (Mr. CARNAHAN).

This resolution would congratulate Chris Carpenter on being named the Cy Young Award winner for the National League in 2005.

After missing the 2003 season while rehabilitating his injured shoulder, Chris Carpenter made a miraculous recovery to win the 2005 Cy Young Award. He went 21-5 with a 2.83 ERA for the St. Louis Cardinals, receiving 19 of 32 first place votes and finishing with 132 points in balloting by the Baseball Writers Association of America.

Carpenter began his career with Toronto. After compiling a 49-50 record in his first six seasons, Carpenter had surgery in September of 2002 to repair a tear in his pitching shoulder and the Blue Jays contemplated sending him to the minors. He refused the assignment and chose to become a free agent before signing with St. Louis.

Finally healthy in 2004, Carpenter went 15-5 with a 3.45 ERA to earn National League’s comeback player of the year honors from his peers. In 2005, Carpenter won 13 straight decisions from June 14 through September 8, helping the Cardinals to the best record at 100 wins and 52 losses. He struck out 213 batters and got the best of several aces around the league.

I would urge all Members to come together and honor the perseverance and dedication of Chris Carpenter, the winner of one of Major League Baseball’s most prestigious awards, by adopting House Resolution 627.

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

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

Mr. Speaker, this has been a real pleasure to cosponsor this with several Members from around the country and on both sides of the aisle. I want to offer House Resolution 627, congratulating Chris Carpenter of the St. Louis Cardinals on winning the Cy Young Award for the 2005 Major League Baseball season.

Chris is a 1992 graduate from Trinity High School in Manchester, New Hampshire, where he earned the athlete of the year honors as a senior. He was selected to the All State Team for 3 years in both baseball and hockey, and All American at Trinity High School as a Senior. He captained the Trinity High School basketball team as a Senior.

He played American Legion, Babe Ruth, and Little League Baseball. Chris and his wife have two children, and they make their off-season home in Bedford, Massachusetts. We are proud that he is one of the star players, not just in the league but for the St. Louis Cardinals.

After missing the 2003 season recovering from shoulder surgery, many wondered how Chris Carpenter would respond. He responded in 2004 with a 15-win season and an earned run average of 3.46. Through his hard work, perseverance and skill, he improved upon those lofty numbers and turned in a spectacular 21-win season with a 2.83 earned run average in the 2005 season.

He was a major factor in the Cardinals’ 100 wins last year and earned a place among the most elite pitchers in baseball. For his feats, Carpenter was recognized with the Cy Young Award as the best pitcher in the National League.

As a lifelong Cardinals fan, it is an absolute joy to watch a thrilling player like Chris Carpenter. I look forward to watching his continued success.

In addition, I would like to mention Chris’s teammate, Albert Pujols, who won the National League MVP last year. This marks the first time since 1968 that the Cardinals have had both the MVP and the Cy Young Award winner the same year.

I have cosponsored a companion resolution in the Senate. Others in this House, congratulating Albert Pujols, and I hope the House will have an opportunity to take that up in the near future.

Once again, I wish my heartiest congratulations to Chris Carpenter and all that he has accomplished and wish him the best in the future.

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

Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5037) to amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, and for other purposes.

A motion to reconsider was laid on the table.

Mr. BUYER. Mr. Speaker, I move to suspend the rules and pass the bill (H.R. 5037) to amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, for other purposes.

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Respect for America’s Fallen Heroes Act”.

SEC. 2. PROHIBITION ON CERTAIN DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.

(a) PROHIBITION.—Chapter 24 of title 38, United States Code, is amended by adding at the end the following new section:

“2413. Prohibition on certain demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery

“(a) Prohibition.—No person may carry out—

“(1) a demonstration on the property of a cemetery under the control of the National Cemetery Administration or on the property of Arlington National Cemetery, unless the demonstration has been approved by the cemetery superintendent or the director of the property on which the cemetery is located;

“(2) with respect to such a cemetery at which a funeral or memorial service or ceremony is to be held, a demonstration within 500 feet of that cemetery that—

“(A) is conducted during the period beginning 60 minutes before and ending 60 minutes after the funeral or memorial service or ceremony is held; and

“(B) includes, as a part of such demonstration, any individual willfully making or assisting in the making of any noise or disturbing any demonstration that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.

“(b) Demonstration.—For purposes of this section, the term ‘demonstration’ includes the following:

“(1) Any picketing or similar conduct.

“(2) Any oration, speech, use of sound amplification equipment or device, or similar conduct before an assembled group of people that is not part of a funeral or memorial service or ceremony.

“(3) The display of any placard, banner, flag, or similar device, unless such a display is part of a funeral or memorial service or ceremony.

“(4) The distribution of any handbill, pamphlet, leaflet, or other written or printed matter other than a program distributed as part of a funeral or memorial service or ceremony.

“(5) Any action that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.”

(b) Clerical Amendment.—The table of sections at the beginning of such chapter is amended by adding at the end the following new item:

“2413. Prohibition on demonstrations at cemeteries under control of National Cemetery Administration and at Arlington National Cemetery.”
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SEC. 3. PENALTY FOR VIOLATION OF PROHIBITION ON UNAPPROVED DEMONSTRATIONS AT CEMETERIES UNDER THE CONTROL OF THE NATIONAL CEMETERY ADMINISTRATION AND AT ARLINGTON NATIONAL CEMETERY.
(a) Penalties. Section 2413 of title 38, United States Code, is amended by adding at the end the following new section:
SEC. 1387. Demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery—
Whoever violates section 2413 of title 38 shall be fined under this title, imprisoned for not more than one year, or both.
(b) Completing an Amendment.—The table of sections at the beginning of this chapter is amended by adding at the end the following new item:
1387. Demonstrations at cemeteries under the control of National Cemetery Administration and at Arlington National Cemetery.

SEC. 4. SENSE OF CONGRESS ON STATE RESTRICTION OF DEMONSTRATIONS NEAR MILITARY FUNERALS.
It is the sense of Congress that each State should enact legislation to restrict demonstrations near military funerals.

The SPEAKER pro tempore. Pursuant to the rule, the gentleman from Indiana (Mr. BUYER) and the gentleman from Texas (Mr. REYES) each will control 20 minutes.

The Chair recognizes the gentleman from Indiana.

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

Mr. BUYER asked and was given permission to revise and extend his remarks.

Mr. BUYER. Mr. Speaker, I rise today in support of well-considered legislation that will protect the sanctity of military funerals at national cemeteries and will protect the privacy of grieving families as they bury their precious loved ones who died in the service of our country.

The first to rise, however, were the principal organizers in an organization called the Patriot Guard Riders, members of which are in Washington today. The Patriot Riders have two goals: to show respect for fallen heroes, their families and their communities; and to protect the mourning family and friends from interruptions created by any protested or group of protestors. We owe them our deep sense of thanks and gratitude.

Mr. Speaker, this bill was jointly referred to the Committees on Judiciary, who waived consideration of the bill, and I will insert my letter requesting the waiver and Chairman SENSENBBRENNER’s letter in the CONGRESSIONAL RECORD at this point.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON VETERANS’ AFFAIRS,
To the House of Representatives:

DEAR CHAIRMAN SENSENBBRENNER: In order to expedite consideration of H.R. 5037, the “Respect for America’s Fallen Heroes Act,” the Committee on Veterans’ Affairs requests that the Committee on the Judiciary waive consideration of the bill. As you know, H.R. 5037 was referred to the Committee on the Judiciary in addition to the Committee on Veterans’ Affairs. The Committee on Veterans’ Affairs acknowledges the jurisdiction in the Committee on the Judiciary over portions of this legislation, particularly section 3, which provides for criminal penalties under title 18 of the United States Code.

The Committee on Veterans’ Affairs would not construe a waiver of consideration as a waiver of jurisdiction by the Committee on the Judiciary over the subject matter contained in this or similar legislation and, the Committee on Veterans’ Affairs would fully support any request by you seeking an appointment to any House-Senate conference on this legislation. I enclose a copy of your reply letter in the CONGRESSIONAL RECORD during consideration of the bill on the House floor. I very much appreciate the cooperation you and your staff in this matter.

Sincerely,

STEVE BUYER,
Chairman.

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
WASHINGTON, DC, April 25, 2006.
Hon. STEVE BUYER,
Chairman, Committee on Veterans’ Affairs,
House of Representatives, Washington, DC.

Dear Chairman:

In recognition of the desire to expedite consideration of H.R. 5037, the “Respect for America’s Fallen Heroes Act,” the Committee on the Judiciary hereby waives consideration of the bill. There are provisions contained in H.R. 5037 that implicate the rule X jurisdiction of the Committee on the Judiciary. Specifically, section 3 provides for an additional penalty under title 18 of the United States Code. This provision implicates the rule X(1)(k)(7) jurisdiction of the Committee over “criminal law enforcement.”

The Committee takes this action with the understanding that by forgoing consideration of H.R. 5037, the Committee on the Judiciary does not waive any jurisdiction over subject matter contained in this or similar legislation. The Committee also reserves the right to seek appointment to any House-Senate conference on this legislation and requests your support if such a request is made. Finally, I would appreciate your including this letter in the CONGRESSIONAL RECORD when H.R. 5037 on the House floor. Thank you for your attention to these matters.

Sincerely,

F. JAMES SENSENBBRENNER, Jr.,
Chairman.

Mr. Speaker, I would like to thank Chairman SENSENBBRENNER and his staff for working closely with us to craft this important legislation.

We have all seen the stories right now of the extremist protestors in their demonstrations that read, “Thank God for IEDs” and “Thank God our Soldiers are Dead,” and individuals such as Sergeant Ricky Jones in Indiana whose home had been egged twice and somebody put trash all over their yard and called his mother on the phone to tell them that they were thankful that their son had died.

On March 2, I stood here and described to my colleagues the perversions committed by this individual who claimed a first amendment right to disrupt the solemn rituals of a military funeral. They would manipulate the Constitution to justify harassing families who are mourning a lost family member. By the stunned silence in this Chamber and the gasp that ensued that moment, I knew that most all my colleagues shared a deep abhorrence to these outrageous acts and that we share equally a deep desire to prevent them.

Today, we bring for a vote a bill that will do just that. H.R. 5037, the Respect for America’s Fallen Heroes Act, will prohibit demonstrations within 500 feet of a national cemetery and Arlington National Cemetery 60 minutes before starting a funeral. This is a bipartisan effort with over 174 cosponsors.

We have worked closely with the Judiciary Committee. We have examined the issues of both constitutionality and the proportionality with regard to sentencing. The Federal Circuit court of appeals in Griffin v. Secretary of Veterans Affairs upheld the constitutional existing Department of Veterans Affairs regulations setting requirements for the decorum and decency while on property. H.R. 5037 essentially codifies the regulation.

The United States Supreme Court had addressed the “time, place or manner” standard in several cases, including Grayned v. City of Rockford. In that case, an anti-noise ordinance that prohibited activities adjacent to a school that “disturbs or tends to disturb the peace or good order of such school session or class thereof.”

H.R. 5037’s restrictions on “willfully making or assisting in the making of any noise or diversion that disturbs or tend to disturb the peace or good order of the funeral or memorial service or ceremony,” closely tracked the language approved in the Supreme Court opinion. Additional cases that address the time, place and manner standard include Ward v. Rock against Racism and Renton v. Playtime Theaters, Inc.

Mr. Speaker, H.R. 5037 does not unconstitutionally draw distinction on what demonstrations are or are not allowed based on the content of the speech. It would not prevent the Secretary of Veterans Affairs from promulgating or enforcing regulations that prohibit or restrict the VA property or other conduct that is not specifically referenced in this legislation.

Penalties associated with the violations of this legislation are fair and appropriate. Violating the prohibition on demonstrations would be a Class A misdemeanor under title 18, United States Code, resulting in fines up to $100,000 and imprisonment of not more than 1 year or both. The penalty balances the need for deterrence with the equally important requirement for proportionality.

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

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume. I would like to thank Congressman MIKE ROGERS specifically for his leadership in introducing H.R. 5037, the Respect for America’s Fallen...
Mr. Speaker, this bill is narrowly tailored to protect military families at the sacred time from verbal attacks, while protecting our freedom of speech at the same time. Furthermore, provisions in this legislation are in line with judicial precedents specific to time, place and manner.

In Griffin v. Secretary of Veterans Affairs, the United States Supreme Court upheld the constitutionality of existing regulations that prohibit demonstrations on property under the control of the National Cemetery Administration. The Supreme Court held: “All visitors are expected to observe proper standards of decorum and decency while on VA property. Toward this end, any service, ceremony, or demonstration except as authorized by the head of the facility or his designee, is prohibited.”

As mentioned earlier, our bill is limited to Federal land under the control of the Department of Veterans Affairs. I submit that theHonorable Representative from Texas, to participate in a Medicare prescription drug conference, which I helped to organize, so that our seniors would be provided the latest information about their benefits.

Mr. Speaker, while I would have liked to have been able to attend that conference, this issue is just as important, and I am proud to be here today and serve as the lead Democrat cosponsor of this bill, which has gained, by my good friend and colleague, SILVESTRE REYES, thank you for lending your leadership and your voice and assistance and counsel on this very important piece of legislation. Thank you for your service, not only for the military but the Border Patrol and now to the people of your district back home. I certainly appreciate it.

Mr. Chairman, this started for me when I attended the funeral of Sergeant Joshua Youmans, a very brave and great American who gave his life defending freedom. When I arrived to the funeral of Army’s Arlington National Cemetery.

Furthermore, Mr. Speaker, in Grayned v. City of Rockford, the Supreme Court held that the Secretary of Veterans Affairs maintains very broad discretion to implement regulations to prohibit demonstrations. The Court stated: “Because the judgment necessary to ensure that cemeteries remain ‘sacred to honor and memory of those interred or memorialized there’ may defy objective description and may vary with individual circumstances, we conclude that the discretion vested in VA administrators is reasonable in light of the characteristic nature and function of our national cemeteries.”

Mr. Speaker, this legislation is narrowly drawn to allow the families and friends of our fallen heroes to lay their loved ones to rest in peace and dignity. The restriction on freedom of speech is content neutral.

The restriction is limited in time, manner and place to balance the constitutionally protected rights of law-abiding speakers against the legitimate competing interests of unwilling listeners who would otherwise be distracted from an important social objective, the dignified burial of our honored dead.

So with that, Mr. Speaker, in a few weeks, our Nation will come together to remember and honor our servicemembers who made the ultimate sacrifice while in service to our country. I ask all my colleagues to join me, to join us, in honoring our fallen servicemembers by voting in favor of H.R. 5037.

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

Mr. BUYER. Mr. Speaker, I would like to inform the body that the Congressional Budget Office has determined that implementing H.R. 5037 would have no significant cost to the Federal Government, and it has no intergovernmental mandate as defined by Federal law.

Mr. Speaker, I yield 4 minutes to the gentleman from Michigan (Mr. ROGERS), a former captain in the United States Army and former FBI agent, who has worked closely with this legislation.

Mr. ROGERS of Michigan. Mr. Speaker, I want to thank Chairman BUYER for his counsel and his leadership working through this bill. I greatly appreciate it. I know certainly the families do as well.

A father once told me that at a service for a loved one, he knew that was the moment between sanity and insanity for him, and you can imagine that when people stop by and grieve and support and love and comfort these families, when America steps up to put their arms around these families to say that we love you, we support you and we respect you and we appreciate your sacrifice, it means the difference in that father returning to sanity after the burial of his son or, in this case, the burial of the husband.

It is so important that we stand by the men and women who sacrifice so much, and this bill does that. It protects the first amendment. They can...
Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America’s Fallen Heroes Act.

These are individuals who have sacrificed their lives for this country, men and women who have served us, and we must remember those who have sacrificed their lives because we are enjoying our lives, because they gave ultimately so we would enjoy the freedom and peace we have today.

So we have the same responsibility, and that is what this bill does to honor those individuals. As we commemorate Military Appreciation Month in May as well as Memorial Day on May 29, I urge my colleagues to support this bill. It seeks to provide every fallen soldier with a private and dignified burial for those who have given to this country, the men and women who have sacrificed a lot.

All around the country, grieving families of soldiers who were killed in service to our Nation are being harassed at funeral sites. These protestors show us with hurtful signs, adding undue stress to military families seeking to bury their loved ones with pride and dignity.

While we respect the right of free speech in this country, military families have a right to mourn the loss of their husbands, wives, and children in peace. H.R. 5037 would enforce the right by banning protests at VA national cemeteries, as well as Arlington National Cemetery, 60 minutes before and after a funeral.

This bill would also impose a 500-foot restriction on demonstrations at the site to give families privacy. Additionally, this bill would create a class A misdemeanor for violations with penalties up to $100,000 in fines or 1 year in prison.

Finally, H.R. 5037 expresses a sense of Congress that all States should enact similar laws.

Mr. Speaker, I ask Members to support this important bill.

Mr. BUYER. Mr. Speaker, I yield 3 minutes to the gentleman from Ohio (Mr. CHABOT), the chairman of the Subcommittee on the Constitution.

Mr. CHABOT. Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America’s Fallen Heroes Act, and I am very pleased to have been an original cosponsor and to have helped to authorize the bill, along with Chairman BAKER, Chairman MILLER and Representative ROGERS.

We are all aware of the recent trend of demonstrations and protests occurring near military funerals and national cemeteries. These protests have included signs saying “God Hates America” and “Thank God for IRDs,” which are those improvised explosive devices which are responsible for so many of the deaths of our honorable military soldiers in Iraq and Afghanistan. Such demonstrations are not compatible with respect due to our Nation’s fallen heroes and they should not be consistent with our Nation’s laws.

This act prohibits such demonstrations in a manner that is fully consistent with the Constitution while fully protecting the respect and dignity of funerals held on and near national cemeteries.

The first provision of H.R. 5037 prohibits demonstrations on national cemetery grounds unless such demonstration is approved by the cemetery director. It is common sense.

This provision is clearly constitutional under judicial precedents, most recently Griffin v. Secretary of Veterans Affairs. In that case, the Federal Circuit of Appeals, in a few years ago, upheld a constitutional an existing Federal regulation providing “any service, ceremony, or demonstration, except as authorized by the head of the facility or designee, is prohibited” on Veterans Affairs property. The first provision of H.R. 5037 simply codifies that principle in statute.

The second provision of H.R. 5037 prohibits any demonstration within 500 feet of national cemeteries within 60 minutes before or after the service, if the demonstration by individual willfully making or assisting in the making of any noise or diversion that disturbs or tends to disturb the peace or good order of the funeral or memorial service or ceremony.” This exact language has been upheld as constitutional by the Supreme Court in the case of Grayned v. City of Rockford.

At the same time, this language does not unconstitutionally draw distinctions regarding what demonstrations are allowed and are not allowed, based on the content of the speech. The Supreme Court, again in the Grayned case, upheld this precise language as constitutional because the language “contains no broad invitation to subjective or discriminatory enforcement.”

This is clearly important legislation, and I strongly urge its passage.

Let me say that all supporters of H.R. 5037 are asking is that the families and friends of our Nation’s fallen heroes be given a few hours of peace during which to honor their loved one’s greatest sacrifice, a few hours to pay respect to a selfless life devoted to protecting others. That is not unconstitutional. That is not even an imposition. That is the least we can do for those who fight to uphold the Constitution.

I urge all my colleagues to join in supporting this bill, which will give the families of those who died for us the comfort of knowing they will be able to pray in peace and thank the fallen on and near the sacred ground where they will rest forever. Some can live free today.

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

Mr. BUYER. Mr. Chairman, I yield 1 minute to the gentleman from Minnesota (Mr. KENNEDY).

Mr. KENNEDY of Minnesota. Mr. Speaker, just over 2 months ago, during the funeral of Navy Petty Officer Second Class Andrew Kemple, a Minnesotan who was killed while fighting for freedom, vile slogans like “God Hates America” and “God
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I think we need to pay tribute, of course, to the Patriot Guard riders who have been keeping these people away from the funeral sites until this legislation has its intended effect.

This bill to pass today is going to require 66 percent of this body. I think it will get 100 percent.

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

Mr. BUYER. Mr. Speaker, I yield 1½ minutes to the gentleman from Minnesota, Mr. GUTKNECHT.

Mr. GUTKNECHT. Mr. Speaker, I rise in strong support of H.R. 5037, the Respect for America’s Fallen Heroes Act.

I am a proud cosponsor of this act which will ban protests at military funerals at national cemeteries, including Arlington National Cemetery.

Burying a child, father, husband or wife is hard enough without having to see signs that say things like “God Hates You” or hearing hateful language shouted at your family during a funeral procession or graveside ceremony.

Mr. BUYER. Mr. Speaker, I yield 1 1⁄2 minutes to the gentleman from Maryland, Mr. MILLER.

Mr. MILLER. Mr. Speaker, I yield to the gentleman from Georgia, Mr. GINGREY.

Mr. GINGREY. Mr. Speaker, I thank Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank Chairman BUYER, Chairman CHABOT, Chairman MILLER, Mr. REYES, and all of the Members that have brought forth this bill, the Respect for America’s Fallen Heroes Act.

Mr. Speaker, it is unbelievable that we would need this kind of a bill, but we do know what is going on. You have heard that from the other Members that have spoken. It is unbelievable that people can trample on the families of these fallen soldiers during such a sensitive time.

In my district, Mr. Speaker, they showed up at the funeral of Justin Johnston or Paul Saylors or Lieutenant Tyler Crow, who was buried at Arlington. I am sure those families would have had a lot of difficulty restraining themselves, as would this Member.

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Loves IEDs” were chanted by protesters, and I use that term loosely, with a radical, hateful agenda.

Words like “reprehensible” and “disgusting” simply do not adequately describe the slogans or this stunt on such a solemn day. The men and women who have given what Lincoln called “the last full measure of devotion” deserve better than this.

I urge my colleagues to support the Respect for America’s Fallen Heroes Act.

Mr. REYES. Mr. Speaker, I yield myself such time as I may consume to read into the Record a statement from our minority leader, Ms. PELOSI.

“I urge all of my colleagues to vote today for H.R. 5037, the Respect for America’s Fallen Heroes Act. I am proud to be a cosponsor of this bipartisan legislation that will ensure grieving families are protected from protesters spewing a message of hatred. For our men and women in uniform who have made the ultimate sacrifice for our country, and for their families, we must act today to ensure that they receive the respect and the honor they deserve.

No Americans have stood stronger and braver for our Nation than those who have served in our Armed Forces. Our service and courage are answered when called, gone when ordered, and defended our Nation with great honor. Their noble service reminds us of one right infringes on another, we must appropriately limit that right, and that is what this bill does.

On March 3 of this year, 20-year-old Lance Corporal Matthew Snyder of Westminster, Maryland, was killed when his Humvee overturned on assignment in Iraq.

Before his deployment, Matthew explained that he volunteered for convoy escort security because, “There was a position that needs to be filled, and I am a Marine.”

Outside the church where Matthew’s family and friends gathered for his funeral, a group of six out-of-State protesters loudly chanted and carried signs, including, “Thank God for Dead Soldiers.”

I stand today joined in spirit by members of the American Legion and the For Our Troops Club of Hereford High School in support of this bill that will honor America’s fallen soldiers and respect the privacy of their families by protecting the dignity of their funerals.

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

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Georgia (Mr. GINGREY).

Mr. GINGREY. Mr. Speaker, I thank Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Speaker, when the unbridled expression of one right infringes on another, we appropriately limit that right, and that is what this bill does.

On March 3 of this year, 20-year-old Lance Corporal Matthew Snyder of Westminster, Maryland, was killed when his Humvee overturned on assignment in Iraq.

Before his deployment, Matthew explained that he volunteered for convoy escort security because, “There was a position that needs to be filled, and I am a Marine.”

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

Mr. BUYER. Mr. Speaker, I yield 1 minute to the gentleman from Maryland (Mr. BARTLETT).

Mr. BARTLETT of Maryland. Mr. Speaker, when the unbridled expression of one right infringes on another, we appropriately limit that right, and that is what this bill does.

This bill to pass today is going to require 66 percent of this body. I think it will get 100 percent.

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

Mr. BUYER. Mr. Speaker, I yield

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On February 23, 2006, the funeral of Army Corporal Andrew Kemple from Anoka, Minnesota, was disrupted by protestors who claimed that U.S. military deaths are divine retribution for the Nation’s tolerance for homosexuality. The protestors even went so far as to taunt Andrew’s mother as she entered the church for her son’s funeral service.

It is hard to think of a more shameful act than taunting a woman who just gave her son in service to our Nation.

All Americans are proud of the sacrifices made by our Nation’s brave Americans in uniform. We have seen their skill and their courage in the armored charges and midnight raids and in their lonely hours of faithful watch.

Recently, we have seen these heroes when they return home and felt the pain when one is lost.

No matter what one’s position may be on U.S. policy matters, we should all agree that demonstrating at the funeral of one of our fallen heroes is disgraceful and unacceptable. We must stand behind our Nation’s military families, especially on the day when caskets draped with the American flag are carried that last mile.

The Minnesota State Legislature passed a bill on Monday, May 1, to ban all protests at military funerals, burials, and memorial services. I encourage other States to follow Minnesota’s lead, and I urge the House of Representatives to pass the Respect For America’s Fallen Heroes Act today. Our Nation’s heroes deserve no less.

Mr. REYES. Mr. Speaker, I have no further requests for time, so I will now close and then yield back the time.

Mr. Speaker, this afternoon, all around the country they have seen Members of Congress come together to stand up for our men and women in uniform and for their families. I think
the message is clear that we want those that have made the ultimate sacri-
fice, and those that are laying them to rest, to have the opportunity to do so with peace and dignity. So I am proud to be here, and I am proud to work with my colleagues and thank them for their support in bringing this to the floor this afternoon.

Mr. BUYER. Mr. Speaker, will the gentleman yield?

Mr. REYES. I yield to the gentleman from Indiana.

Mr. BUYER. Mr. Speaker, and my colleagues, I want to thank the gentleman from Texas. It is a pleasure to have worked with you. We are colleagues on the Veterans’ Affairs Committee, and I appreciate your service over the years. But you and I haven’t had a chance specifically to work on a bill. And I have enjoyed my associations with you. And the cause is right. The opportunity is there for us to come together and set the standards of dignity, and you recognized that early on and championed this cause in a bipartisan fashion. And it says a lot about who you are. I think it is because you know who we are, and that makes this a pretty easy process. For that I want to thank the gentleman.

Mr. REYES. Thank you, Mr. Chairman. I really equally appreciate the opportunity to work with you because we know, as veterans, the sacrifices that men and women make on behalf of this country and their families, and so we know, as veterans, the sacrifices that they have made for a private time to grieve and to be at peace, especially for their loved ones who have just sacrificed everything for their country. Yesterday morning I had the opportunity to be with some of our military troops at Fort Bliss in my district. And I had several of them come to me and very privately, because, you know, our men and women in uniform are that way. They are top-notch, but they are also very private. And in a private way they thanked me and said, please convey to your colleagues in Congress our deep appreciation that we know that if something happens to any of our families will be taken care of, and specifically referred to this legislation and the peace of mind that they have, and they wanted us to convey that message.

Mr. BUYER. I am glad and pleased that you and Mr. Rogers took this initiative. But at the same time it is a sad commentary that we actually have to come to the House floor and create a law in title XVIII to do this. We shouldn’t have to be doing this. So when people say you are regulating speech again, well, nobody really wants to do that. We have such respect for the first amendment. But at the same time there is a significant government interest here and that deals with our decency and what you spoke of in setting those standards.

And also the case law that you cited. The Supreme Court has been very clear to give us that ability to do just that, as Mr. Chabot had also testified to before our committee.

But it is unfortunate we have to be here to do that. And we cannot permit the repugnant acts of a few to define the character of America.

Mr. REYES. I agree with you, Mr. Chairman.

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

Mr. BUYER. Mr. Speaker, when I rose in March to tell this body of the outrageous acts committed against one grieving family in Indiana, I said that the great virtue of the American character is our compassion. It is our compassion and human decency that represents the very best of our Nation.

I had a task to perform and that was very, very similar to the task that we have here and that is, when we get the word that someone from our congressional districts has died in the service of our country. So it is an easy call to make, and it is a difficult conversation to have.

And I remember calling the mother of Sergeant Ricky Jones in Kokomo, Indiana, and when I spoke with her and her family, I said that there was nothing that I can do for you or the family, she said, You can’t believe what this has been like. And I said, Well, I have two children. You are right. I can’t believe that. She said, No, no, you don’t understand, and then began to convey to me the message. And I thought you had died, I began receiving family and friends to the home. They would also call on the telephone. The phone rang. I thought it was going to be either family or friend, and she picked up the phone and the voice on the other end said, I am glad your son is dead. He deserved to die, and hung up the phone. She was shocked and appalled. And she recovered from that.

About an hour later the phone rings again. It is another voice on the other end of the phone that said, I am glad your son is coming home in a body bag. I am glad he is dead, and hangs up the phone.

Later, someone had dogged their families twice. And then they put trash all over their yard in the middle of the night. And all this was done while the body of Sergeant Ricky Jones was being transported back to Indiana.

I was pleased that the Deputy Secretary of Veterans Affairs, Gordon Mansfield, and the Under Secretary for Memorial Affairs, Bill Turk, came to Indiana to stand with this family, with myself, and also the Governor of Indiana was also present. But for Gordon Mansfield to have made that trip was very meaningful because Gordon Mansfield is a highly decorated combat veteran from Vietnam who is a paraplegic. He is in a wheelchair from his combat wounds. And for him to allow his being disturbed by that message for him to travel to Indiana to be with that family says so much about Gordon Mansfield and the leadership that he gives at the Department of Veterans Affairs.

I was pleased. It was the first time I had ever seen the Patriot Guard Riders. Hundreds of them were there. And that is why, Mr. REYES, that I spoke about their restraint, because when you see them, you are not sure what’s going to happen here. These are some pretty tough guys.

And one thing that I recall from that experience that was very intriguing was that many of them were also Vietnam veterans. Not all of them were Vietnam veterans, and not all of them were even veterans. Some of them were not. They are patriots.

And Sergeant Ricky Jones is the son of an Air Force Vietnam veteran; so these Vietnam era veterans, they know exactly what it was like when they came home.

Mr. Speaker, I ask unanimous consent for an additional 5 minutes.
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The SPEAKER pro tempore. Is there objection to the request of the gentleman from Indiana?

There was no objection.

Mr. BUYER. They know exactly what it was like when they came home, and they are personally going to permit this to occur to their son or daughter; but they were going to set those standards. And so for that reason, and many others, I am so proud of the Patriot Guard Riders.

We have before us an opportunity to make a clear expression of that compassion and decency on behalf of those who are passing their darkest hours and on behalf of all Americans who would give them peace during that difficult journey.

Mr. Speaker, I would like to thank the chief sponsors of this bill, Mr. Rogers of Michigan, Silvestre Reyes of Texas, and Jeff Miller of Florida. Together they have done their due diligence to ensure that the legislation will withstand any judicial scrutiny.

I would like to thank Kingstone Smith and Mary Ellen McCarthy, counsel of the Veterans’ Affairs Committee; Paige McManus of the Veterans’ Affairs Committee for their work on the bill; and Ray Kaiser of Congressman Rogers’ staff.

I would also like to thank, of the Judiciary Committee staff: Paul Taylor, Hillary Funk and Mike Volkov.

Mr. Speaker, I urge my colleagues to unanimously support H.R. 5037.

Mr. TIAHRT. Mr. Speaker, every so often a bill comes before this House that I wish was unnecessary. A bill that is so intrinsically rooted in basic human decency that no one could imagine a legislative remedy would be needed. H.R. 5037, Respect for America’s Fallen Heroes Act, is such a bill.

H.R. 5037 would prohibit protests at the funerals of our fallen military men and women. A small group of people are hurling insult onto tragedy for the family and friends of fallen heroes. It is inhumane, and my constituents, this blight on human decency is personal.

On November 29, 2005, Kansans Sergeant Jerry Mills and Sergeant Donald Hasse were patrolling Taji, Iraq. Their vehicle was hit by an improvised explosive device—tragically cutting their lives short. Their bodies were returned to Kansas for burial and everlasting respect of their grateful countrymen.

Sergeants Mills and Hasse were heroes. They gave their lives for this country. Both of these heroes deserved funerals befitting of their sacrifice. Regrettably, some wanted to turn a solemn event into a political statement.

Protestors arrived at Sergeant Hasse’s funeral in Wichita, Kansas. Fortunately, so did the Patriot Guard Riders, a group of motorcyclists dedicated to honoring fallen service members and veterans by protecting the funeral proceedings from protestors. The Patriot Guard Riders, invited by the Hasse family, kept the protestors at bay and protected Sergeant Hasse’s young son from having to witness such injustice.

Although the same protestors were due to also demonstrate at the funeral for Sergeant Mills in Arkansas City, Kansas, they never arrived. The Patriot Guard, invited by the Mills family, did attend to honor the memory of Sergeant Mills. An injustice was adverted.

No family should have to endure such a double tragedy of losing a loved one and then being battered by protestors. The Respect for America’s Fallen Heroes Act will keep protestors from grieving families and their friends—allowing these heroes to be mourned and honored with dignity and respect. I ask all my colleagues to join me in supporting this important piece of legislation that is unfortunately needed. I ask my fellow Americans to remember and honor these heroes, and their families, who have made the ultimate sacrifice defending freedom.

Mr. BAUZ. Mr. Speaker, I rise today in support of H.R. 5037, the “Respect for America’s Fallen Heroes Act.”

As we commemorate Military Appreciation Month in May, as well as Memorial Day on the 29th, I urge my colleagues to support a bill that seeks to provide every fallen American soldier with a private, dignified burial.

All around the country, grieving families of soldiers killed in our nation’s service are being harassed at funeral sites. These protestors show up with hurtful signs or messages, adding undue stress to military families seeking to bury their loved ones.

While we respect the right to free speech in this country, military families also have a right to privacy and peace for their loved ones; their husbands, wives, and children in peace. H.R. 5037 would enforce that right by banning protests at national cemeteries, as well as at Arlington Cemetery, 60 minutes before and after a funeral takes place. This bill would also impose a 500-foot restriction on demonstrations at these sites and create a Class A misdemeanor for violations with penalties up to $100,000 in fines or 1 year in prison.

Finally, H.R. 5037 would express the sense of Congress that all states should enact similar bans for both state-run and privately-owned cemeteries and funeral homes.

Mr. Speaker, this bill is constitutional and preserves the individual’s right to free speech, while giving our Armed Forces and their families due respect. It is the right thing to do and I ask my colleagues vote in support of this important piece of legislation.

Mr. DAVIS of Florida. Mr. Speaker, I rise in strong support of H.R. 5037, the Respect for America’s Fallen Heroes Act, which would ban all non-approved demonstrations 60 minutes prior to and after funerals taking place at VA national cemeteries or at Arlington National Cemetery, as well as impose a 500-foot restriction on demonstrations. Furthermore, the bill would allow for a Class A misdemeanor for violations with penalties up to $100,000 in fines or up to one year in prison.

As we have seen, a troubling public display has been taking place around the country perpetuated by groups who wish to call attention to a cause. This activity is not a case of free speech and should be stopped. There is a time and a place for protest in our Democracy, but it is wholly inappropriate to use a funeral as an opportunity to make statements about a personal belief, a political cause or federal policy.

Families and loved ones should be allowed to grieve in peace. For this reason, I am a co-sponsor of this legislation along with more than 170 of my colleagues.

Mr. Speaker, more than 2,500 brave men and women have given this country the ultimate sacrifice while serving their country in Iraq and Afghanistan. Their families and loved ones should be proud of their service to their country. The sadness of those left behind is bad enough without having to face screaming protestors with an agenda.

This bipartisan bill is consistent with the Constitution and is not a limitation of the freedom of speech that we enjoy in this country. I strongly support this legislation and stand with my colleagues. I hope that this legislation becomes law as soon as possible.

I urge my colleagues to vote “yes” on H.R. 5037.

Mr. PORTER. Mr. Speaker, over 2,400 brave men and women have paid the ultimate sacrifice fighting the War on Terror and the great State of Nevada has lost 19 heroic sons, 9 of which, are in my district. Just last week, on May 5, First Sergeant Carlos N. Saenz of Las Vegas died when an improvised explosive device detonated near his military vehicle.

As we continue to fight the War on Terror, it is imperative that we protect America’s fallen heroes by ensuring that their loved ones are treated with respect, while being laid to rest. As a member of Congress, and a parent, I understand the importance of ensuring that families are able to provide a meaningful and profound burial for their loved ones. I hope to protect the constitutional rights of those who disagree with the war, but I also support the rights of our fallen heroes and their families.

The Respect for America’s Fallen Heroes Act, which bans all demonstrations 60 minutes prior to and after funerals taking place at Department of Veterans Affairs’ national cemeteries or the Department of Army’s Arlington National Cemetery, seeks to protect the families right to grieve in peace.

The National Cemetery Administration’s (NCA) vision is to serve all veterans and their families with the utmost dignity, respect, and compassion and to ensure that every national cemetery will be a place that inspires visitors to understand and appreciate the service and sacrifice of our Nation’s veterans. In order to ensure the NCA and the Department of Veterans Affairs are able to keep their commitment to America’s veterans and their families, I am in full support of this important piece of legislation.

Mr. Speaker and my distinguished colleagues, I offer my full support for this important piece of legislation and I support your efforts to protect the rights of America’s fallen heroes and their families.

Mr. MILLER of Florida. Mr. Speaker, I rise today to offer my unwavering support for H.R. 5037, the Respect for America’s Fallen Heroes Act. I am proud to be an original cosponsor of this bill.

The rights of free speech and expression under the Constitution’s First Amendment are not absolute, and the Supreme Court decisions interpreting and explaining the right and its limits. As Chairman BUYER explained, there are several judicial precedents which make clear that H.R. 5037 is constitutional. On April 6, the Subcommittee on Disability Assistance and Memorial Affairs, the subcommittee I chair, took testimony on this bill.

Said David Forte, Professor of Law, Cleveland-Marshall College of Law, Cleveland State University, in written testimony submitted to the Subcommittee:

“There are thus two constitutional issues to be confronted: (1) Does the ban on ‘certain’ demonstrations meet the requirement
of First Amendment law as laid down in Supreme Court precedents, and (2) Is the discretion lodged in the bill within constitutional limits.

Mr. Speaker, at this time I ask unanimous consent that Mr. Forte’s statement be included in the CONGRESSIONAL RECORD.

I have visited the troops in Afghanistan and Iraq several times over the years. While always moving and inspiring experiences, one in particular stands out. It was September 2003 when we prepared to return to the States. After quite a wait, we were told that they were loading onto the plane the casket of Sergeant Trevor Blumberg, and we would be leaving Baghdad with his body. I have had few honors as great as that one. I am pleased to say that Mrs. Blumberg has since contacted Representative Rogers’ office to express her and her husband’s support for this bill.

Our Nation’s veterans have made the ultimate sacrifice, and it is appalling to see and hear their military service being derided. Unfortunately, throughout the country, that is indeed what is happening and it must stop.

I want to thank Mr. Rogers, Chairman Buyer, and Mr. Reyes for all their work in crafting this legislation and their continued dedication to the men and women of our armed forces.

I would also like to recognize Mr. Paul Taylor and Ms. Hilary Funk, staff on the Judiciary Committee’s Subcommittee on the Constitution, for working so closely with my staff and me.

Mr. Speaker, I urge all my colleagues to support this bill.

TESTIMONY OF DAVID F. FORTE, PROFESSOR OF LAW, CLEVELAND-MARSHALL COLLEGE OF LAW, CLEVELAND STATE UNIVERSITY, IN SUPPORT OF H.R. 5037 BEFORE THE HOUSE COMMITTEE ON VETERANS’ AFFAIRS, SUBCOMMITTEE ON DISABILITY ASSISTANCE AND MEMORIAL AFFAIRS, JEFF MILLER, CHAIRMAN, APRIL 18, 2006

I. INTRODUCTION

H.R. 5037, entitled the “Respect for America’s Fallen Heroes Act,” seeks to limit “certain demonstrations” in cemeteries under the control of national cemeteries, of memorial services or burials held in or within 500 feet of such cemeteries, but allows an exception for demonstrations on cemetery grounds if “approved by the cemetery superintendent.” There are thus two constitutional issues to be confronted: (1) Does the ban on “certain” demonstrations meet the requirements of First Amendment law as laid down in Supreme Court precedents, and (2) Is the discretion lodged in the cemetery superintendent to permit exceptions fall within an acceptable constitutional standard. The answer to both questions is in the affirmative and that the bill is well within constitutional limits.

II. THE BAN ON DEMONSTRATIONS


The Court has declared that both tests have similar standards. Clark v. Community for Creative Non-Violence, 486 U.S. 288 (1984).

Under the O’Brien test, “a governmental regulation is sufficiently justified if it is designed to serve a significant government interest and if the incidental restriction on alleged First Amendment freedoms is no greater than is essential to the furtherance of that interest.” 486 U.S. at 289.

In Grayned v. City of Rockford, 408 U.S. 104 (1972) is directly on point. In Grayned, the Supreme Court upheld an antinoise ordinance, which made it unlawful to display any sign that brought a foreign government into public odium or public disrepute within 500 feet of an embassy, and which banned “congregating” within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was “directed at a foreign embassy.” H.R. 5037 bans only those demonstrations that are intentionally disruptive of any ceremonial, or memorial service or ceremony that tracks the language approved by the Court in Grayned.

The language of H.R. 5037 finds support in the case of Boos v. Barry, 485 U.S. 312 (1988). In the case, the Supreme Court reviewed a District of Columbia law that made it unlawful to display any sign that brought a foreign government into public odium or public disrepute within 500 feet of an embassy, and which banned “congregating” within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was “directed at a foreign embassy.” H.R. 5037 bans only those demonstrations that are intentionally disruptive of any ceremonial, or memorial service or ceremony that tracks the language approved by the Court in Grayned.

Under H.R. 5037, a person who displays “any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony,” and such a display causes a “disturbance that tends to disturb the peace or good order of the funeral service or memorial service” shall be prohibited.

President Ronald Reagan said that one of the purposes of national cemeteries is to provide a place to honor our gallant dead. In that situation, the demonstration does not need judicial time, place, and manner scrutiny. The demonstration is directed at a foreign government and is clearly within the constitutional power of the United States, and is, in the terms of the Supreme Court, “an avowedly expressive conduct that is intentionally disruptive of a federal governmental activity.” Clark, 486 U.S. at 293.

It is clear from the text of H.R. 5037 that the purpose of the bill is to assure the dignity of funerals or memorial services held in honor of our fallen dead by preventing demonstrations that are disruptive of those ceremonies. To that end, the bill delineates what kind of demonstrations shall be prohibited, viz, a demonstration within five hundred feet of a cemetery in which a funeral or memorial service takes place within a time period from 60 minutes before until 60 minutes after the funeral or memorial service. Furthermore, the bill requires that demonstrations that are in which “a noise or diversion” is willfully made and “that disturbs or tends to disturb the peace or good order of the funeral service or memorial service or ceremony” shall be prohibited.

Maintaining cemeteries for veterans is clearly within the constitutional power of the United States, under 38 U.S.C. sect. 2403, the purpose of maintaining cemeteries “as a tribute to our gallant dead” is an important or substantial governmental interest. It is similarly evident from the text of the bill that its purpose is to prevent conduct that is intentionally disruptive of a funeral or memorial service without reference to the content of the expressive conduct. The text does not ban accidental noises present in our modern society near to many cemeteries, such as traffic or the sounds of children playing. Demonstrations that do not have a significant connection with a funeral or memorial service or ceremony, or that do not fit within the provisions of the bill that bring a foreign government into public odium or public disrepute within 500 feet of an embassy, and which banned “congregating” within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was “directed at a foreign embassy.” H.R. 5037 bans only those demonstrations that are intentionally disruptive of any ceremonial, or memorial service or ceremony that tracks the language approved by the Court in Grayned.

This prohibition is closely akin to the focused picketing ordinance upheld by the Supreme Court in Frisby v. Schultz, 484 U.S. 474 (1988). That ordinance banned picketing “before and about” any residence. Although in most public areas, people may picket and postulate even though others may object to the message, in certain areas the functioning of the forum takes precedence, provided there are alternative ways the protestor may express his message, and the picketing forum whose functioning may not be disturbed or diverted. Grayned, the home is another place. Justice O’Connor said, “The public forum could still march through the neighborhood to express their opposition to abortion and abortionists. They simply could not disrupt the ‘tranquility’ of a doctor’s home.”

In Grayned, the Supreme Court upheld an antinoise ordinance, which made it unlawful to display any sign that brought a foreign government into public odium or public disrepute within 500 feet of an embassy, and which banned “congregating” within 500 feet of an embassy. The Court struck down the ban on displaying a sign critical of a foreign government, but upheld the ban on congregating if, as construed by the lower courts, the congregation was “directed at a foreign government.” H.R. 5037 bans only those demonstrations that are intentionally disruptive of any ceremonial, or memorial service or ceremony that tracks the language approved by the Court in Grayned.

If, however, a person displays “any placard, banner, flag, or similar device, unless the display is part of a funeral or memorial service or ceremony,” and such a display causes a “disturbance that tends to disturb the peace or good order of the funeral service or memorial service” shall be prohibited.
Thus, under either the O'Brien test or under the time, place and manner test, the statute is drawn to be within Constitutional standards.

Nonetheless, I find one phrase in the bill puzzling. Under section (b)(2), a demonstration is defined as “Any oration, speech, use of sound amplification equipment or device, or similar activity by a group or assembly of people that is not a part of a funeral or memorial service or ceremony,” (emphasis added) It would seem that a single individual with a bullhorn, who disrupts a ceremony might not be covered under this section.

Thus, I do not see the use of the phrase “before an assembled group of people.” In any event, however, the restriction on expressive conduct is even less than would be justified if the statute were interpreted to mean that the discretion given by the administrator of the National Cemetery Fund, Inc. is prohibited.

It is a central canon of our First Amendment jurisprudence that permission to engage in expressive conduct cannot be left to the unbridled discretion of a governmental official. City of Lakewood v. Plain Dealer Publishing Co., 486 U.S. 750 (1988). Such a discretion carries with it the dangers of viewpoint discrimination. United States v. Kuhlmeier, 484 U.S. 260 (1988). Accordingly, under the First Amendment, the government may limit the content of expression in non-public forums, it may not extend that same limitation to public forums or in designated public forums. 288 F.3d at 1321.

We are thus left with the question of whether the discretionary power given to the cemetery superintendent is reasonable. The world will little note, nor long remember what we say here; but it can never be forgotten that the right of the people to该项 title and we should guarantee the fallen and their families a peaceful journey to their final resting place.

Mr. Speaker, our military cemeteries are hallowed grounds. During the Gettysburg Address, I believe President Abraham Lincoln said it best: “We are here gathered to dedicate a portion of that field as a final resting place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it with their lives, their service, and their sacrifice, the world will not forget it. But, if a in the charge of the National Cemetery System. Unfortunately, some of these servicemembers have lost their lives and their families must now grieve their loss. The families of our fallen servicemembers—our true heroes—should not be subjected to protests, hate-filled phone calls, and other obscenities.

Mr. Speaker, I rise today in strong support of H.R. 5037, the Respect for America’s Fallen Heroes Act.

The purpose of many non-public forums is normative and preserving the function of the forum may entail restricting opposing normative viewpoints. Schools, for example, are non-public forums where developing students’ character for participation as well-informed and well-developed citizens of our system of representative government. Dress, I believe President Abraham Lincoln said it best: “We are here gathered to dedicate a portion of that field as a final resting place for those who here gave their lives that the nation might live. It is altogether fitting and proper that we should do this.

But, in a larger sense, we can not dedicate—we can not consecrate—we can not hallow—this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note, nor long remember what we say here, but it can never forget what they did here.

For these reasons, I am greatly troubled that groups exploit the sacrifice of so many Americans. These groups trespass on the memories and hallowed ground of our heroes. Demonstrations at cemeteries disrespect those who have fallen and the loved ones they leave behind. As they held their lines of protest, I asked that all our States pass similar legislation to their own.

I urge the passage of this bill for we must support the families of our fallen and honor their sacrifice.

Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America’s Fallen Heroes Act. This is a much needed piece of legislation to curb the unfortunate actions of a small minority of people. Although I am glad to have this opportunity to support the servicemembers in my home state of Kansas and around the world, I am disappointed that we even need this bill.

Mr. Speaker, I rise today in support of H.R. 5037, the Respect for America’s Fallen Heroes Act.
Oklahoma, shall after the date of the enactment of this Act be known as the "Jack C. Montgomery Department of Veterans Affairs Medical Center".

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

Mr. Speaker, I would like to thank Chairman BUYER and Ranking Member EVANS for helping to bring this legislation to the floor.

Mr. BUYER. Mr. Speaker, I would also like to thank my colleagues in support of this legislation and urge my colleagues to do the same.

Mr. Speaker, I yield 5 minutes to the gentleman from Oklahoma, a gentleman who cares very dearly about veterans and a fellow Blue Dog, Congressman DAN BOREN.

Mr. BOREN. Mr. Speaker, I rise today in support of H.R. 3829. This bill will designate the Department of Veterans Affairs Medical Center in my home town of Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center. Mr. Speaker, I think of very few other Americans who deserve to have an honor such as this bestowed upon them, and I am proud to sponsor this bill.

Jack C. Montgomery is a true American hero. His story of service to his country begins while attending Bacone College in Muskogee. During this time, he answered the call to serve his country during World War II, and enlisted in the 45th Division Thunderbirds of the Oklahoma National Guard.

Shortly thereafter, Lieutenant Montgomery found himself with members of the 45th near Padiglione, Italy on February 22, 1944. On this day, Lieutenant Montgomery’s rifle platoon came under fire by three echelons of enemy forces when he single-handedly attacked three all positions, taking prisoners in the process. As a result of his valor, Lieutenant Montgomery’s actions demoralized the enemy and inspired his men to defeat the enemy forces.

In addition to being awarded the Medal of Honor, Lieutenant Montgomery was also awarded the Silver Star, the Bronze Star Medal and the Purple Heart with an Oak Leaf Cluster. On his release from the Army after World War II, Mr. Montgomery began a career with the Veterans Administration in Muskogee, Oklahoma, where he remained in service for most of his life.

It is appropriate that we name the VA Medical Center in Muskogee for this American hero who not only served his country in wartime, but also continued his service to this Nation through his work in the Veterans Administration.

Mr. Montgomery is survived by his wife, Joyce; and it is our hope to have this legislation passed by the Senate and signed by the President in a timely manner. This legislation is cosponsored and supported by the entire Oklahoma delegation and also has the support of the State’s major veterans service organizations.

Mr. Speaker, I particularly would like to thank my colleague, Mr. BOREN, who represents the Second Congressional District of Oklahoma, for introducing this most appropriate legislation.

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

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

Mr. Speaker, I would like to thank Congressman DAN BOREN, who represents the Second Congressional District of Oklahoma, for his leadership in introducing H.R. 3829. I would also like to thank Chairman BUYER and Ranking Member EVANS for helping to bring this legislation to the floor.

H.R. 3829 pays tribute to World War II hero Jack C. Montgomery by designating the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center.
Upon returning to the United States, a good Democrat, President Franklin D. Roosevelt, personally awarded Jack Montgomery the Medal of Honor, which is the highest honor for valor awarded to members of the Armed Forces.

Mr. Speaker, Jack Montgomery’s distinguished military career goes far beyond the Medal of Honor. He was also awarded the Silver Star, the Bronze Star and the Purple Heart with Cluster, to mention only a few of his distinctions. Following World War II, Jack Montgomery was honorably released from the Army.

However, I am proud to say that he chose to continue his service to his country and his fellow veterans by beginning a career with a VA administration in Muskogee, Oklahoma.

Even following his retirement from the Veterans Administration, Jack Montgomery chose to continue helping his fellow veterans by volunteering at the VA Medical Center, also located in Muskogee, Oklahoma, where he worked for more than 750 hours driving a shuttle to transport veterans from the parking lot to the hospital.

Mr. Speaker, this VA medical center where the Medal of Honor recipient, Lieutenant Jack Montgomery, gave his time helping his fellow veterans is the same facility that this bill seeks to name in his honor. I find it only fitting that we honor an individual like Jack Montgomery for his selflessness, both on the battlefield and here at home in the United States of America.

Mr. Speaker, I encourage my colleagues to join me in supporting H.R. 3829.

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

Mr. MICHAUD. Mr. Speaker, it is appropriate that we in Congress recognize the heroism of the men and women who have served our Nation in the Armed Forces and pay important and enduring symbolic tribute to name a VA medical center in honor of this World War II hero.

As we near Memorial Day and our thoughts turn to those who made the ultimate sacrifice, we in Congress must continue to pay tribute to our living veterans with both symbols and tangible benefits and services.

We have much work to do, and veterans and their families are counting on us to do so. I believe that we are united in this commitment to honor our veterans. I appreciate the hard work and look forward, as I have over the last 3½ years, to work with Chairman BUYER to make sure that we do all we can to help our veterans and continue to look forward to working with Chairman BUYER, Chairman BROWN and Ranking Member EVANS and other Veterans Affairs Committee members to pass needed health care and benefit legislation to meet this obligation.

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

Mr. BUYER. Mr. Speaker, I would like to thank the gentleman from Maine (Mr. MICHAUD). He serves as ranking member of the Subcommittee on Health for the House Veterans Affairs Committee. His heart is right, and he does his homework.

You have got the right demeanor. I appreciate your leadership. Mr. Speaker, I urge all Members to give favorable consideration to H.R. 3829, a bill to honor a true American hero.

I have no further requests for time, and I yield back the balance of my time.

The SPEAKER pro tempore. The question is on the motion offered by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 3829.

The question was taken.

The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

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

The yeas and nays were ordered. The SPEAKER pro tempore. Pursuant to clause 8 of rule XX and the Chair's prior announcement, further proceedings on this question will be postponed.

GENERAL LEAVE

Mr. BUYER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days in which to revise and extend their remarks and include extraneous matter on H.R. 3829.

The SPEAKER pro tempore. The yeas and nays were ordered. The SPEAKER pro tempore. In the opinion of the Chair, two-thirds of those present have voted in the affirmative.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. The Chair accepts the unanimous consent of the House and will use the Conference Report on H.R. 4297, Tax Increase Prevention and Reconciliation Act of 2005, and the following conference report and statement of the manager of the Senate amendment to the House amendment as the agreement of the House to the Senate amendment.

Mr. THOMAS submitted the following conference report and statement of the manager of the Senate amendment to the House amendment as the agreement of the House to the Senate amendment, having conference with a unanimous consent request of the gentleman from Indiana (Mr. BUYER), agree to the same with an amendment as follows:

SECTION 1. SHORT TITLE, ETC.

(a) SHORT TITLE.—This Act may be cited as the ‘‘Tax Increase Prevention and Reconciliation Act of 2005.’’

(b) AMENDMENT OF 1986 CODE.—Except as otherwise expressly provided, whenever in this Act an amendment or repeal is expressed in terms of an amendment to, or repeal of, a section or other provision, the reference shall be considered to be made to a section or other provision of the Internal Revenue Code of 1986.

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

Sec. 1. Short title, etc.

TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS

Sec. 101. Increased expensing for small business.

Sec. 102. Capital gains and dividends rates.

Sec. 103. Controlled foreign corporations.

TITLE II—OTHER PROVISIONS

Sec. 201. Clarification of taxation of certain settlers' funds.


Sec. 203. Veterans' mortgage bonds.

Sec. 204. Capital gains treatment for certain self-created musical works.

Sec. 205. Vessel tonnage limit.

Sec. 206. Modification of special arbitrage rule for certain funds.

Sec. 207. Amortization of expenses incurred in creating or acquiring music or music copyrights.

Sec. 208. Modification of effective date of disregard of certain corporate expenditures for purposes of qualified small issue bonds.

Sec. 209. Modification of treatment of loans to qualified continuing care facilities.

TITLE III—ALTERNATIVE MINIMUM TAX RELIEF

Sec. 301. Increase in alternative minimum tax exemption amount for 2006.

Sec. 302. Allowance of nonrefundable personal credits against regular and alternative minimum tax liability.

TITLE IV—CORPORATE TAX PROVISIONS

Sec. 401. Time for payment of corporate estimated taxes.

TITLE V—REVENUE OFFSET PROVISIONS

Sec. 501. Application of earnings stripping rules to partners which are corporations.

Sec. 502. Reporting of interest on tax-exempt bonds.

Sec. 503. 5-year amortization of geological and geophysical expenditures for certain major integrated oil companies.

Sec. 504. Application of FIRPTA to regulated investment companies.

Sec. 505. Treatment of distributions attributable to FIRPTA gains.

Sec. 506. Prevention of avoidance of tax on investments of foreign persons in United States real property through wash sale transactions.

Sec. 507. Section 335 not to apply to distributions involving disqualified investment companies.

Sec. 508. Loan and redemption requirements on pooled fund investment requirements.

Sec. 509. Partial payments required with submission of offers-in-compromise.

Sec. 510. Increase in age of minor children whose unearned income is taxed as if parent’s income.

Sec. 511. Imposition of withholding on certain payments made by government entities.

Sec. 512. Conversions to Roth IRAs.

Sec. 513. Repeal of FSC/ETI binding contract relief.

Sec. 514. Only wages attributable to domestic production taken into account in determining deduction for domestic production activities.

Sec. 515. Modification of exclusion for citizens living abroad.
TITLE I—EXTENSION AND MODIFICATION OF CERTAIN PROVISIONS

SEC. 101. INCREASED EXPENDING FOR SMALL BUSINESS.
Subsections (b)(1), (b)(2), (b)(5), (c)(2), and (d)(1)(A)(ii) of section 179 (relating to election to expense certain depreciable business assets) are each amended by striking "2008" and inserting "2010".

SEC. 102. CAPITAL GAINS AND DIVIDENDS RATES.
Section 303 of the Jobs and Growth Tax Relief Reconciliation Act of 2003 is amended by striking "December 31, 2008" and inserting "December 31, 2010".

SEC. 103. CONTROLLED FOREIGN CORPORATIONS.

(a) SUBPART F EXCEPTION FOR ACTIVE FINANCING.
(1) EXEMPT INSURANCE INCOME.—Paragraph (10) of section 954(e) (relating to application) is amended—
(A) by striking "January 1, 2007" and inserting "January 1, 2009", and
(B) by striking "December 31, 2006" and inserting "December 31, 2010".

(2) EXCEPTION TO TREATMENT AS FOREIGN PERSONAL HOLDING COMPANY INCOME.—Paragraph (9) of section 954(b) (relating to application) is amended by striking "January 1, 2007" and inserting "January 1, 2009".

(b) LOOK-THROUGH TREATMENT OF PAYMENTS BETWEEN RELATED CONTROLLED FOREIGN CORPORATIONS UNDER THE FOREIGN PERSONAL HOLDING COMPANY RULES.
(1) IN GENERAL.—Subsection (c) of section 954 (relating to foreign personal holding company income) is amended by adding at the end the following new paragraph:

"(6) LOOK-THROUGH RULE FOR RELATED CONTROLLED FOREIGN CORPORATIONS.—
(A) In the case of purposes of this subsection, dividends, interest, rents, and royalties received or accrued from a controlled foreign corporation which is a related person shall not be treated as foreign personal holding company income to the extent attributable or properly allocable (determined under rules similar to the rules of subparagraphs (C) and (D) of section 904(d)(3)) to income of the related person which is not subpart F income. For purposes of this subparagraph, interest shall include factoring income which is treated as income equivalent to interest (as determined under paragraph (1)(A)). The Secretary shall prescribe such regulations as may be appropriate to prevent the abuse of the purposes of this paragraph.
(B) In the case of purposes of subparagraph (A) shall apply to taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to taxable years of United States shareholders with or within which such taxable years of foreign corporations end.
(C) EFFECTIVE DATE.—The amendment made by this subsection shall apply to amounts in which such foreign personal holding company income for taxable years of foreign corporations ending after December 31, 2005, and taxable years of United States shareholders with or within which such taxable years of foreign corporations end.

TITLE II—OTHER PROVISIONS

SEC. 201. MODIFICATION OF ACTIVE BUSINESS DEFINITION UNDER SECTION 355.
Subsection (b) of section 355 (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

"(3) SPECIMEN RELATING TO ACTIVE BUSINESS REQUIREMENT.—
"(A) IN GENERAL.—In the case of any distribution made after the date of the enactment of this paragraph and on or before December 31, 2010, a corporation shall be treated as engaged in the active conduct of a trade or business if such corporation is engaged in the active conduct of a trade or business.
"(B) AFFILIATED GROUP RULE.—For purposes of subparagraph (A), all members of such corporation’s separate affiliated group shall be treated as engaged in the active conduct of a trade or business.
"(C) TRANSITION RULE.—Subparagraph (A) shall not apply to any distribution pursuant to a transaction which is—
"(i) made pursuant to an agreement which was binding on the date of the enactment of this paragraph and at all times thereafter;
"(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or
"(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

The preceding sentence shall not apply if the distributing corporation elects not to have such sentence apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

"(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under paragraph (2)(A) of distributions made on or before the date of the enactment of this paragraph as a result of a merger, acquisition, disposition, other restructuring after such date and on or before December 31, 2010, such distribution shall be treated as made on the date of such acquisition, disposition, or other restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph."

SEC. 202. MODIFICATION OF ACTIVE BUSINESS REQUIREMENT UNDER SECTION 355.

Subsection (b) of section 355 (defining active conduct of a trade or business) is amended by adding at the end the following new paragraph:

"(3) SPECIMEN RELATING TO ACTIVE BUSINESS REQUIREMENT.—
"(A) IN GENERAL.—In the case of any distribution made after the date of the enactment of this paragraph and on or before December 31, 2010, a corporation shall be treated as engaged in the active conduct of a trade or business if such corporation is engaged in the active conduct of a trade or business.
"(B) AFFILIATED GROUP RULE.—For purposes of subparagraph (A), all members of such corporation’s separate affiliated group shall be treated as engaged in the active conduct of a trade or business.
"(C) TRANSITION RULE.—Subparagraph (A) shall not apply to any distribution pursuant to a transaction which is—
"(i) made pursuant to an agreement which was binding on the date of the enactment of this paragraph and at all times thereafter;
"(ii) described in a ruling request submitted to the Internal Revenue Service on or before such date, or
"(iii) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

The preceding sentence shall not apply if the distributing corporation elects not to have such sentence apply to distributions of such corporation. Any such election, once made, shall be irrevocable.

"(D) SPECIAL RULE FOR CERTAIN PRE-ENACTMENT DISTRIBUTIONS.—For purposes of determining the continued qualification under paragraph (2)(A) of distributions made on or before the date of the enactment of this paragraph as a result of a merger, acquisition, disposition, or other restructuring after such date and on or before December 31, 2010, such distribution shall be treated as made on the date of such acquisition, disposition, or other restructuring for purposes of applying subparagraphs (A) through (C) of this paragraph."

SEC. 203. VETERANS’ MORTGAGE BONDS.
(a) EXPANSION OF DEFINITION OF VETERANS ELIGIBLE FOR STATE HOME LOAN PROGRAMS FUNDED BY QUALIFIED VETERANS’ MORTGAGE BONDS.
(1) IN GENERAL.—Paragraph (4) of section 143(f) (defining qualified veteran) is amended to read as follows:

"(4) QUALIFIED VETERAN.—For purposes of this subsection, the term ‘qualified veteran’ means—
"(A) in the case of the States of Alaska, Oregon, and Wisconsin, any veteran—
"(i) who served on active duty, and
"(ii) who applied for the financing before the date 25 years after the last date on which such veteran left active service, and
"(B) in the case of any other State, any veteran—
"(i) who served on active duty at some time before January 1, 1947, and
"(ii) who applied for the financing before the later of—
"(I) the date 30 years after the last date on which such veteran left active service, or

(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to loans issued on or before the date of the enactment of this Act.

(b) REVISION OF STATE VETERANS LIMIT.
(1) IN GENERAL.—Subparagraph (B) of section 143(f)(3) (relating to volume limitation) is amended—
(A) by redesignating clauses (i) and (ii) as subclauses (I) and (II), respectively, and moving such subclauses 2 ems to the left;
(B) by amending the matter preceding subclause (I), as designated by subparagraph (A), to read as follows:
"(I) $25,000,000 for the State of Alaska,
"(II) $25,000,000 for the State of Oregon, and
"(iii) $25,000,000 for the State of Wisconsin,
"(2) EFFECTIVE DATE.—The amendments made by this subsection shall apply to allocations of State volume limit after April 5, 2006.

SEC. 204. CAPITAL GAINS TREATMENT FOR CERTAIN SELF-CREATED MUSICAL WORKS.
(a) IN GENERAL.—Subsection (b) of section 1221 (relating to capital asset defined) is amended—
(B) by redesignating paragraph (3) as paragraph (4) and by inserting after paragraph (2) the following new paragraph:

"(3) SALE OR EXCHANGE OF SELF-CREATED MUSICAL WORKS.—At the election of the taxpayer, paragraphs (1) and (3) of subsection (a) shall not apply to musical compositions or copyrights in musical works sold on or exchanged before January 1, 2011, by a taxpayer described in subsection (a)(3)."

For Calendar Year:  

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SEC. 205. VESSEL TONNAGE LIMIT.

(a) In General.—Paragraph (4) of section 1353(a) (relating to qualifying vessel) is amended by inserting ‘‘(determined without regard to section 1221(b)(3))’’ after ‘‘long-term capital gain’’.

(b) Effective Date.—The amendments made by this section shall apply to sales and exchanges in taxable years beginning after the date of the enactment of this Act.

SEC. 206. MODIFICATION OF SPECIAL ARBITRAGE RULE FOR CERTAIN FUNDS.

In the case of bonds issued after the date of the enactment of this Act and before August 31, 2009—

(1) the requirement of paragraph (1) of section 648 of the Deficit Reduction Act of 1984 (98 Stat. 941) shall be treated as met with respect to the securities or obligations referred to in such section if such securities or obligations are held in a fund to which distributions from which cannot exceed 7 percent of the average fair market value of the assets held in such fund except to the extent distributions are necessary to pay debt service on the bond issue, and

(2) paragraph (3) of such section shall be applied by substituting ‘‘distributions from’’ for ‘‘the investment earnings of’’ both places it appears.

SEC. 207. AMORTIZATION OF EXPENSES INCURRED IN CREATING OR ACQUIRING MUSIC OR MUSIC COPYRIGHTS.

(a) In General.—Section 167(g) (relating to depreciation under income forecast method) is amended by adding at the end the following new paragraph:

‘‘(B) in the case of services rendered by a musical work or work copyright with respect to a musical composition, any accompanying words, or any copyright with respect to a musical composition, which is property to which this subsection applies without regard to this paragraph.’’

(b) Effective Date.—The amendments made by this section shall apply to services rendered after the date of the enactment of this Act.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 208. MODIFICATION OF EFFECTIVE DATE OF DETERMINATION OF CERTAIN CAPITAL EXPENDITURES FOR PURPOSES OF QUALIFIED SMALL ISSUE BONDS.

(a) In General.—Section 144A(d)(4)(G) is amended by striking ‘‘September 30, 2009’’ and inserting ‘‘December 31, 2009’’.

(b) Conforming Amendment.—Section 144A(d)(4)(F) is amended by striking ‘‘September 30, 2009’’ and inserting ‘‘December 31, 2009’’.

SEC. 209. MODIFICATION OF TREATMENT OF LOANS TO QUALIFIED CONTINUING CARE FACILITIES.

(a) In General.—Section 7872 is amended by redesignating subsection (h) as subsection (i) and inserting after subsection (i) the following new subsection:

‘‘(h) Exception for loans to qualified continuing care facilities.—(1) In general.—Neither paragraph (8) of section 1411 shall apply for any calendar year to any below-market loan made after the date of the enactment of this Act.

(2) Special rule for certain funds.—An election under this paragraph applies.

(3) Qualifying continuing care facility.—‘‘Qualifying continuing care facility’’ means any continuing care, assisted living, or nursing facility, as is available in the continuing care setting, for an individual who—

(I) is in assisted living or nursing facility, as is available in the continuing care setting, for an individual who—

(ii) in an independent living unit which has additional available facilities outside such unit for the provision of meals and other personal care,

(iii) in an assisted living facility or a nursing facility, as is available in the continuing care setting,

(iv) in a continuing care facility, and

(v) in a nursing home which is property to which this subsection applies.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

TITLE III—ALTERNATIVE MINIMUM TAX AND ALLOTMENTS

SEC. 301. INCREASE IN ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT FOR 2006.

(a) In General.—Section 55(d)(1) (relating to exemption amount for taxpayers other than corporations) is amended—

(1) by striking ‘‘$58,000’’ and all that follows through ‘‘2005’’ in subparagraph (A) and inserting ‘‘$62,550 in the case of taxable years beginning in 2006’’;

(2) by striking ‘‘$40,250’’ and all that follows through ‘‘2005’’ in subparagraph (B) and inserting ‘‘$42,550 in the case of taxable years beginning in 2006’’;

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 302. ALLOWANCE OF NONREFUNDABLE PERSONAL CREDITS AGAINST REGULAR AND ALTERNATIVE MINIMUM TAX LIABILITY.

(a) In General.—Paragraph (2) of section 30(a) is amended—

(1) by striking ‘‘2006’’ in the heading thereof and inserting ‘‘2009’’;

(2) by striking ‘‘or 2005’’ and inserting ‘‘2006’’.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

TITLE IV—CORPORATE ESTIMATED TAX PROVISIONS

SEC. 401. TIME FOR PAYMENT OF CORPORATE ESTIMATED TAXES.

Notwithstanding section 6655 of the Internal Revenue Code of 1986—

(A) the case of a corporation with assets of not less than $1,000,000,000 (determined as of the end of the preceding taxable year)—

(1) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2006 shall be 105 percent of such amount,

(2) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2007 shall be 105 percent of such amount,

(3) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2010 shall be 105 percent of such amount,

(4) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2012 shall be 106.25 percent of such amount,

(5) the amount of any required installment of corporate estimated tax which is otherwise due in July, August, or September of 2013 shall be 107.5 percent of such amount, and

(6) the amount of the next required installment after an installment referred to in subparagraph (A), (B), or (C) shall be appropriately reduced to reflect the amount of the increase by reason of such subparagraph,

(B) 20.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2010 shall not be due until October 1, 2010,

(C) 20.5 percent of the amount of any required installment of corporate estimated tax which is otherwise due in September 2011 shall not be due until October 1, 2011.

TITLE V—REVENUE OFFSET PROVISIONS

SEC. 501. APPLICATION OF EARNINGS STRIPPING RULES TO PARTNERS WHICH ARE CORPORATIONS.

(a) In General.—Section 1503(j) (relating to limitation on deduction for interest on certain indebtedness) is amended by redesignating paragraph (b) as paragraph (c) and by inserting after paragraph (c) the following new paragraph:

‘‘(d) Treatment of noncorporate partners.—Except to the extent provided by regulations, in the case of a partnership which owns (directly or indirectly) an interest in a partnership—

(1) Section 7872(g) is amended by adding at the end the following new paragraph:

‘‘(2) Section 142(g)(2)(B) is amended by striking ‘‘Section 7872(g)’’ and inserting ‘‘Subsections (g) and (h) of section 7872’’.

(c) Effective Date.—The amendment made by this section shall apply to calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.

TITLES VI—NURSING HOME AND ASSISTED LIVING FACILITIES EXCISE TAX ACT OF 2006

SEC. 601. ADDITIONS AND MODIFICATIONS.

(a) In General.—Section 58(e)(11) is amended by striking ‘‘10 percent’’ and inserting ‘‘15 percent’’.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

(c) Effect on Prior Law.—This section shall not be construed to affect any law relating to the disclosure of information by a facility, if such law was in effect on October 1, 2006.
“(A) such corporation’s distributive share of interest income paid or accured to such partnership shall be treated as interest income paid or accrued to such corporation;

“(B) such corporation’s distributive share of interest paid or accrued by such partnership shall be treated as interest paid or accrued by such corporation, and

“(C) such corporation’s share of the liabilities of such partnership shall be treated as liabilities of such corporation.”

(b) \textit{ADDITIONAL REGULATORY AUTHORITY.}—Section 6049(b)(2), as redesignated by subsection (a), is amended by striking “and” at the end of subparagraph (B), by striking the period at the end of subparagraph (D) and, by adding at the end the following new subparagraph:

“(D) regulations providing for the reallocation of shares of partnership indebtedness, or distributive shares of the partnership’s interest income or interest expense.”

(c) \textit{EFFECTIVE DATE.}—The amendments made by this section shall apply to taxable years beginning on or after the date of the enactment of this Act.

\section{SEC. 502. REPORTING OF INTEREST ON TAX-EXEMPT BONANDES.}

(a) \textit{IN GENERAL.}—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by striking “paragraph (C)” and inserting “paragraphs (C) and (D).”

(b) \textit{ADDITIONAL REGULATORY AUTHORITY.}—Section 6049(b)(2)(C), as redesignated by subsection (a), is amended by inserting “(C) and (D) as subparagraphs (B) and (C), respectively,” after “(C)”.

(c) \textit{EFFECTIVE DATE.}—The amendments made by this section shall apply to interest paid after December 31, 2005.

\section{SEC. 503. 3-YEAR AMORTIZATION OF GEOLOGICAL AND GEOPHYSICAL EXPENDITURES FOR CERTAIN MAJOR INTEGRATED OIL COMPANIES.}

(a) \textit{IN GENERAL.}—Section 167(h)(2)(B), as redesignated by subsection (a), is amended by substituting “5-year” for “24 month”.

(b) \textit{MAJOR INTEGRATED OIL COMPANY.}—For purposes of subsection (a), the term “major integrated oil company” means, with respect to any taxable year, a producer of crude oil—

“(I) which has an average daily worldwide production of crude oil of at least 500,000 barrels for the taxable year,

“(II) which had gross receipts in excess of $1,000,000,000 for its last taxable year ending during calendar year 2005, and

“(III) to which subsection (c) of section 613A does not apply by reason of paragraph (4) of section 613A(d), determined—

“(I) by subtracting 15 percent for each of the 5 taxable years preceding the 5-year period, and

“(II) without regard to whether subsection (c) of section 613A(d) applies by reason of paragraph (2) of section 613A(d).

For purposes of clauses (i) and (ii), all persons treated as a single employer under subsections (a) and (b) of section 52 shall be treated as 1 person such amount of each short taxable year, the rule under section 486(c)(3)(B) shall apply.”

(b) \textit{EFFECTIVE DATE.}—The amendment made by this section shall apply to amounts paid or incurred after the date of the enactment of this Act.

\section{SEC. 504. APPLICATION OF FIRPTA TO REGULATED INVESTMENT COMPANIES.}

(a) \textit{IN GENERAL.}—Section 897(h)(4)(A)(i) (defining qualified investment entity) is amended by inserting “which is a United States real property holding corporation or which would be a United States real property holding corporation if the exceptions provided in subsections (c)(3) and (h)(2) did not apply to interests in such corporation or in a regulated investment company” after “regulated investment company”.

(b) \textit{EFFECTIVE DATE.}—The amendment made by this section shall apply to taxable years beginning after December 31, 2005, and in the case of a distribution to which section 897(h)(2) relates to short-term capital gain dividends (as defined in section 897(h)(1), the amount which would be treated as a short-term capital gain dividend to the shareholder (without regard to this subparagraph)—

“(i) shall not be treated as a short-term capital gain dividend, and

“(ii) shall be included in such shareholder’s gross income as a dividend from the regulated investment company.”

\section{SEC. 505. TREATMENT OF DISTRIBUTIONS ATTRIBUTABLE TO FOREIGN GAINS.}

(a) \textit{QUALIFIED INVESTMENT ENTITY.—}

“(1) \textit{IN GENERAL.—}Section 897(h)(1) is amended—

“A) by striking “a nonresident alien individual” or a foreign corporation” in the first sentence and inserting “a nonresident alien individual, a foreign corporation, or other qualified investment entity”;

“(B) by striking “such nonresident alien individual or foreign corporation” in the first sentence and inserting “such nonresident alien individual, foreign corporation, or other qualified investment entity”; and

“(C) by striking the second sentence and inserting the following new sentence: “Notwithstanding the preceding sentence, any distribution by a qualified investment entity to a nonresident alien individual or a foreign corporation which is regularly traded on an established securities market located in the United States shall not be treated as gain recognized from the sale or exchange of a United States real property interest if such individual or corporation did not own more than 5 percent of such class of stock at any time during the 5-year period ending on the date of such distribution.”

(b) \textit{APPLICATION OF SECTION 897 RULES TO REGULATED INVESTMENT COMPANIES.}—Section 897(h)(4)(A) is amended by adding at the end the following new sentence: “Notwithstanding the preceding sentence, an entity described in clause (1)(ii) shall be treated as a qualified investment entity for purposes of applying paragraphs (1) and (5) and section 1445 with respect to any distribution by the entity to a nonresident alien individual or a foreign corporation which is attributable directly or indirectly to a distribution from a real estate investment trust.”

(c) \textit{REGULATING ON DISTRIBUTIONS TREATED AS GAIN FROM UNITED STATES REAL PROPERTY INTERESTS.—}Section 1445(c) (relating to special rules for distributions, etc. by corporations, partnerships, trusts, etc.) is amended by redesignating paragraph (6) as paragraph (7) and by inserting after paragraph (5) the following new paragraph:

“(B) DISTRIBUTIONS BY REGULATED INVESTMENT COMPANIES AND REAL ESTATE INVESTMENT TRUSTS.—If any portion of a distribution from a qualified investment entity (as defined in section 897(h)(4)(A)) (including any gain or loss realized by such individual or a foreign corporation from the sale or exchange of a United States real property interest) of a qualified investment entity shall be treated as a qualified investment entity shall deduct and withhold under subsection (a) a tax equal to 35 percent (or, to the extent provided in regulations, 15 percent (or, to the extent provided in regulations, 35 percent) in the case of a short taxable year beginning after December 31, 2010) of the amount so treated.”

\section{SEC. 506. PREVENTION OF AVOIDANCE OF TAX ON INVESTMENTS OF FOREIGN PERSONS IN UNITED STATES REAL PROPERTY THROUGH WASH SALE TRANSACTIONS.}

(a) \textit{IN GENERAL.—}Section 897(h) (relating to special rules for certain investment entities) is amended by adding at the end the following new paragraph:

“(5) \textit{TREATMENT OF CERTAIN WASH SALE TRANSACTIONS.}—

“(A) \textit{IN GENERAL.}—If an interest in a domestically controlled qualified investment entity is disposed of in an applicable wash sale transaction, the taxpayer shall, for purposes of this section, be treated as having gain from the sale or exchange of a United States real property interest in an amount equal to the portion of the distribution described in subparagraph (B) with respect to such interest which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1).”

(b) \textit{APPLICABLE WASH SALES TRANSACTION.—}

For purposes of this section—

“(i) \textit{IN GENERAL.}—The term ‘applicable wash sales transaction’ means any transaction (or series of transactions) under which a nonresident alien individual, foreign corporation, or qualified investment entity—

“(I) disposes of an interest in a domestically controlled qualified investment entity during the 61-day period preceding the ex-dividend date of a distribution which is to be made with respect to the interest and any portion of which, but for the disposition, would have been treated by the taxpayer as gain from the sale or exchange of a United States real property interest under paragraph (1), and

“(II) acquires, or enters into a contract or option to acquire, a substantially identical interest in such entity during the 61-day period beginning with the 1st day of the 30-day period described in subclause (I).

For purposes of subclause (II), a ‘substantially identical interest’ is defined as an interest in—

“(A) another qualified investment entity determined in good faith by the Secretary of the Treasury or his delegate, and

“(B) and any interest which such person has entered into any contract or option to acquire.”
(ii) **APPLICATION TO SUBSTITUTE DIVIDEND AND SIMILAR PAYMENTS.—**Subparagraph (A) shall apply to—

(i) any substitute dividend payment (within the meaning of section 355), or

(ii) any other similar payment specified in regulations which the Secretary determines necessary to prevent avoidance of the purposes of this section.

The portion of any such payment treated by the taxpayer as gain from the sale or exchange of a United States real property interest under subparagraph (c) of section 367 of the Code (relating to gain from sale or exchange of United States real property interest) shall not be treated as gain from the sale or exchange of a United States real property interest if—

(i) the payment is a substitute dividend payment, or

(ii) an interest in a stock or securities in a corporation, partnership, or controlled entity (as otherwise provided in this subparagraph, the term ‘investment assets’ means—

(i) cash,

(ii) any stock or securities in a corporation,

(iii) any interest in a partnership,

(iv) any debt instrument or other evidence of indebtedness,

(v) any option, forward or futures contract, note, principal contract, or derivative,

(vi) foreign currency, or

(vii) any other similar asset.

(iii) **EXCEPTION FOR DISTRIBUTIONS IN A 20-PERCENT CONTROLLED ENTITY.—**For purposes of this subsection, the term ‘20-percent controlled entity’ means, with respect to any distribution, any entity (other than a corporation described in clause (i)(I) or (ii))—

(i) a lending or finance business (within the meaning of section 954(h)(4)),

(ii) a banking business through a bank (as defined in section 358), a domestic building and loan association (within the meaning of section 7701(a)(9)), or any similar institution specified by the Secretary, or

(iii) an active and regular business if the conduct of the business is licensed, authorized, or regulated by an applicable insurance regulatory body.

(iv) **LOOK-THRU RULE.—**The distributing or controlled corporation shall, for purposes of applying this subsection, be treated as owning its ratable share of the assets of any 20-percent controlled entity.

(v) **20-PERCENT CONTROLLED ENTITY.—**For purposes of this clause, the term ‘20-percent controlled entity’ means—

(i) any stock and securities in, or any asset described in subsection (b)(2)(B), would be) taken into account by the distributing or controlled corporation.

(ii) any exception for securities marketed to a market.

Such term shall not include any security (as defined in section 7874(c)(2)) which is held by a dealer in securities and to which section 475(a) applies.

(iii) **TREATMENT OF CERTAIN POOLED FINANCING BONDS.—**The treatment of certain pooled financing bonds is described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(iv) **APPLICATION TO DISTRIBUTIONS INVOLVING DISQUALIFIED INVESTMENT COMPANIES.—**In general, the term ‘disqualified investment company’ means any corporation or other entity that is a 20-percent controlled entity or any qualified investment company that is a qualified investment entity which is regularly traded on an established securities market within the meaning of section 351 and is held by a nonresident alien individual, foreign corporation, or qualified investment entity did not own more than 5 percent of such class of stock at any time during the 1-year period ending on the date of the distribution described in clause (i)(I).

(b) **WITHHOLDING REQUIREMENTS.—**Section 1451(b) (relating to exemptions) is amended by adding at the end of such section the following new paragraph:

‘‘(i) the use of related persons, intermediaries, pass-through entities, options, or other arrangements, and

(ii) the treatment of assets unrelated to the trade or business of a corporation as investment assets if, prior to the distribution, investment assets were used to acquire such unrelated assets.

‘‘(B) which in appropriate cases exclude from the application of this subsection a distribution which does not have the character of a redemption which would be treated as a sale or exchange under section 302, and

‘‘(C) which modify the application of the attribution rules applied for purposes of this subsection.’’.

(b) **EFFECTIVE DATES.—**

(1) **IN GENERAL.—**The amendments made by this section shall apply to distributions after the date of the enactment of this Act.

(2) **TRANSITION RULE.—**The amendments made by this section shall not apply to any distribution pursuant to a transaction which is—

(A) made pursuant to an agreement which was binding on such date of enactment and at all times thereafter,

(B) described in a ruling request submitted to the Internal Revenue Service on or before such date, or

(C) described on or before such date in a public announcement or in a filing with the Securities and Exchange Commission.

**SECTION 508. LOAN AND REDEMPTION REQUIREMENTS ON POOLED FINANCING REQUIREMENTS.—**

(a) **STRENGTHENED REASONABLE EXPECTATION REQUIREMENT.—**Subparagraph (A) of section 189(b)(2) (relating to reasonable expectation requirement) is amended to read as follows:

‘‘(A) IN GENERAL.—The requirements of this paragraph are met with respect to an issue if the issuer reasonably expects that the close of such period will have been so used.’’.

(c) **WRITTEN LOAN COMMITMENT REQUIREMENTS.—**Section 140(f) (relating to treatment of certain pooled financing bonds) is amended by redesignating paragraphs (4) and (3) as paragraphs (6) and (7), respectively, and inserting after paragraph (3) the following new paragraphs:

(4) **WRITTEN LOAN COMMITMENT REQUIREMENTS.—**

‘‘(A) IN GENERAL.—The requirement of the preceding paragraph is met with respect to an issue if the issuer receives prior to issuance written loan commitments identifying the ultimate potential borrowers of at least 95 percent of the net proceeds of the issue (as of the close of such period) will have been so used.

‘‘(B) EXCEPTION.—Subparagraph (A) shall not apply with respect to any issue which—

(i) is a State (or an integral part of a State) issuing pooled financing bonds to make or finance loans to subordinate governmental units of such State, or

(ii) is a State-created entity providing financing for water-infrastructure projects
(5) **Redemption Requirement.**—The requirement of this paragraph is met if to the extent that the percentage of the proceeds of an issue required to be used under clause (i) or (ii) of paragraph (2)(A) is used by the close of the period identified in such clause, the issuer uses an amount of proceeds equal to the excess of—

(A) the amount required to be used under such clause, over

(B) the amount actually used by the close of such period, to redeem outstanding bonds within 90 days after the end of such period."

(c) **Limitation on Use of Proceeds of Small Issuer Exception to Arbitrage Rebate.**—Section 149(f)(4)(D) is amended by inserting before the period at the end the following new subparagraph:

(4)(A) the amount actually used by the close of such period, to redeem outstanding bonds within 90 days after the end of such period.

(d) **Conforming Amendments.**—

(1) Section 149(f)(1) is amended by striking “paragraphs (2) and (3)” and inserting “paragraphs (2), (3), (4), and (5)”.

(2) Section 149(f)(7)(B), as redesignated by subsection (b), is amended by striking “paragraph (4)(A)” and inserting “paragraph (6)(A)”.

(3) Section 54(f)(2) is amended by striking “section 149(f)(4)(A)” and inserting “section 149(f)(6)(A)”.

(e) **Effective Date.**—The amendments made by this section shall apply to bonds issued after the date of the enactment of this Act.

### SEC. 509. PARTIAL PAYMENTS WITH SUBMISSION OF OFFERS-IN-COMPROMISE.

(a) **In General.**—Section 712 (relating to compromises) is amended by redesignating subsections (c) and (d) as subsections (d) and (e), respectively, and by inserting after subsection (b) the following new subsection:

**‘‘(c) Rules for Submission of Offers-in-Compromise.‘‘**

‘‘(1) **Partial Payment Required with Submission.**—

(A) **Lump-Sum Offers.**—

(i) In General.—The submission of any lump-sum offer-in-compromise shall be accompanied by the payment of 20 percent of the amount of such offer.

(ii) **Lump-Sum Offer-in-Compromise.**—For purposes of this section, the term ‘lump-sum offer-in-compromise’ means any offer of payment made in 5 or fewer installments.

(B) **Periodic Payment Offers.**—

(i) In General.—The submission of any periodic offer-in-compromise shall be accompanied by the payment of the amount of the first proposed installment.

(ii) **Failure to Make Installment During Period of Offer.**—Any failure to make an installment (other than the first installment) due under such offer-in-compromise during the period such offer is being evaluated by the Secretary as a withdrawal of such offer-in-compromise.

**‘‘(2) Rules of Application.‘‘**

(A) **Use of Payment.**—The application of any payment submitted under paragraph (1) may be applied toward the assessed tax or other amounts imposed under this title with respect to such tax which may be specified by the taxpayer.

(B) **Use of Proceeds.**—In the case of any assessed tax or other amounts imposed under this title with respect to such tax which is the subject of an offer-in-compromise to which this subsection applies, such tax or other amounts shall be reduced by any user fee imposed under this title with respect to such offer-in-compromise.

(C) **Other Authority.**—The Secretary may issue regulations waiving any payment required under paragraph (1) in a manner consistent with the practices established in accordance with the requirements under subsection (d)(3)."

(b) **Additional Rules Relating to Treatment of Offers.**—

(1) **Unacceptable Offer if Payment Requirements Are Not Met.**—Paragraph (3) of section 712(d) (relating to standards for evaluation of offers), as redesignated by subsection (a), is amended by striking the period at the end of subparagraph (A) and inserting a comma, by striking the period at the end of subparagraph (B) and inserting “and”, and by adding at the end the following new subparagraph:

‘‘(C) any offer-in-compromise which does not meet the requirements of subparagraph (A)(i) or (B)(i), as the case may be, of subsection (c)(1) may be returned to the taxpayers or processed unprosecutable.‘‘

(2) **Deemed Acceptance of Offer Not Rejected Within Certain Period.**—Section 712, as amended by subsection (a), is amended by adding after the end thereof the following new subsection:

‘‘(f) **Deemed Acceptance of Offer Not Rejected Within Certain Period.**—Any offer-in-compromise submitted under this section shall be deemed to be accepted by the Secretary if such offer is not rejected by the Secretary before the date which is 24 months after the date of the submission of such offer. For purposes of the preceding sentence, any period during which any tax liability which is the subject of such offer-in-compromise is in a judicial proceeding shall not be taken into account in determining the expiration of the 24-month period.

**‘‘(g) Conforming Amendment.‘‘**—Section 6159(f)(1) is amended by striking “section 712(d)” and inserting “section 712(e)”.

**‘‘(h) Effective Date.‘‘**—The amendments made by this section shall apply to offers-in-compromise submitted on and after the date which is 60 days after the date of the enactment of this Act.

### SEC. 510. INCREASE IN AGE OF MINOR CHILDREN WHOSE UNEARNED INCOME IS TAXED AS IF PARENT’S INCOME.

(a) **In General.**—Section 1903(g)(2)(A) (relating to child to whom subsection applies) is amended by striking “age 14” and inserting “age 18”.

(b) **Treatment of Distributions From Qualified Disability Trusts.**—Section 1903(g)(4) (relating to net unearned income) is amended by adding after the end thereof the following new subparagraph:

‘‘(C) **Treatment of Distributions from Qualified Disability Trusts.**—For purposes of this section, the term ‘qualified disability trust’ (as defined in section 1903(c)(10)), any amount included in the income of such child under sections 652 and 662 during a taxable year shall be considered earned income of such child for such taxable year.”

(c) **Conforming Amendment.**—Section 1(g)(2) is amended by striking “and” at the end of subparagraph (A), by striking the period at the end of subparagraph (B) and inserting “and”, and by inserting after subparagraph (B) the following new subparagraph:

‘‘(C) such child does not file a joint return for the taxable year.”

(d) **Effective Date.**—The amendments made by this section shall apply to taxable years beginning after December 31, 2010.

### SEC. 511. IMPOSITION OF WITHOLDING ON CERTAIN PAYMENTS MADE BY GOVERNMENT ENTITIES.

(a) **In General.**—Section 3402 is amended by adding after the end thereof the following new subsection:

‘‘(1) **Extension of Withholding to Certain Payments Made by Government Entities.**—

(A) The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) making Federal, State, or local payments of any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.

(B) The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) shall withhold from any payment—

(A) except as provided in subparagraph (B), which is subject to withholding under any other provision of this chapter or Chapter 1, and

(B) which is subject to withholding under section 3406 and from which amounts are being withheld under such section.

**‘‘(c) of interest.‘‘**

(D) for real property.

(E) to any governmental entity subject to the requirements of paragraphs (a) and (b) of section 6050M(e)(3).

(F) made pursuant to a classified or confidential contract described in section 6093(m)(3).

**‘‘(G) made by a political subdivision of a State (or any instrumentality thereof) which makes less than $100,000,000 of such payments annually.‘‘**

(H) which is in connection with a public assistance or public welfare program for which eligibility is determined by a needs or income test, and

(I) to any government employee not otherwise excludable with respect to their services as an employee.

**‘‘(b) Coordination With Other Sections.‘‘**

For purposes of sections 3403 and 3404 and for purposes of so much of subtitle F (except section 7265) as relates to this chapter, payments to any person for property or services which are subject to withholding shall be treated as if such payments were wages paid by an employer to an employee.

**‘‘(b) Effective Date.‘‘**—The amendment made by this section shall apply to payments made after December 31, 2010.

### SEC. 512. CONVERSIONS TO ROTH IRAs.

(a) **Repeal of Income Limitations.**—

(1) **In General.**—Paragraph (3) of section 408A(c) (relating to limits based on modified adjusted gross income) is amended by striking sub-paragraph (B) and redesignating subparagraphs (C) and (D) as subparagraphs (B) and (C), respectively.

(2) **Conforming Amendment.**—Clause (i) of section 408A(c)(3)(B) (as amended by subsection (a)) is amended by striking “except that—

all that follows and inserting “except that any amount included in gross income under section 6050M(e)(3) shall not be taken into account, and”.

(3) **Rollovers to a ROTH IRA FROM AN IRA OTHER THAN A ROTH IRA.**—

(a) **In General.**—Clause (iii) of section 408A(d)(3)(A) (relating to rollovers from an IRA other than a ROTH IRA) is amended to read as follows:

(b) **Conforming Amendments.**—Clause (i) of section 408A(d)(3)(E) is amended to read as follows:

**‘‘(c) Acceleration of Inclusion.‘‘**—

(1) **In General.**—The amount otherwise required to be included in gross income for any taxable year beginning in 2010 by reason of this paragraph shall be treated as if it were included in gross income for the 2 taxable-year period beginning with the first taxable year beginning in 2011.

(2) **Conforming Amendments.**—

(A) Clause (i) of section 408A(d)(3)(E) is amended to read as follows:

**‘‘(i) Acceleration of Inclusion.‘‘**—

(1) **In General.**—The amount otherwise required to be included in gross income for any taxable year beginning in 2010 or the first taxable year in the 2-year period under subparagraph (A)(iii) shall be increased by the aggregate of all contributions from Roth IRAs for such taxable year which are allocable under paragraph (4) to the portion of such qualified rollover contribution required to be included in gross income under paragraph (4) of this chapter. The Government of the United States, every State, every political subdivision thereof, and every instrumentality of the foregoing (including multi-State agencies) shall make the appropriate withholding and report any property or services (including any payment made in connection with a government voucher or certificate program which functions as a payment for property or services) shall deduct and withhold from such payment a tax in an amount equal to 3 percent of such payment.

**‘‘(H) Limitation on Aggregate Amount Included.‘‘**—The amount required to be included...
in gross income for any taxable year under subparagraph (A)(iii) shall not exceed the aggregate amount required to be included in gross income under subparagraph (A)(iii) for all taxable years beginning on or after the due date (including extensions) for the taxable year of such person, the sum of the amounts included for all preceding taxable years.

(b) Effective Date.—The amendments made by this section shall apply to taxable years beginning after December 31, 2005.

SEC. 513. REPEAL OF FSC/ETI BINDING CONTRACT LIMITATION.

(a) FSC Provisions.—Paragraph (1) of section 911(d)(1)(A) of the Code is amended by striking “(2) (A) (i)” and inserting “(2) (A) (i)”, respectively.

(b) Eti Provisions.—Section 911(d)(1)(A) of the Code is amended by striking paragraph (2) and inserting “(2) (A) (i)”.

(c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 514. ONLY WAGES ATTRIBUTABLE TO DOMESTIC PRODUCTION TO ACCOUNT IN DETERMINING DEDUCTION.

(a) In General.—Paragraph (2) of section 199(b) (relating to W-2 wages) is amended to read as follows:

(2) W-2 wages.—For purposes of this section—

(A) in general.—The term ‘W-2 wages’ means, with respect to any person for any taxable year of such person, the sum of the amount determined in paragraphs (3) and (4) of section 6051(a) paid by such person with respect to employment of employees by such person during the calendar year ending during such taxable year.

(B) Limitation to Wages Attributable to Domestic Production.—Such term shall not include any amount which is not properly allocable to domestic production gross receipts for purposes of subsection (c)(1).

(C) Return Requirement.—Such term shall not include any amount which is not properly included in a return filed with the Social Security Administration on or before the 60th day after the due date (including extensions) for such return.

(b) Simplification of Rules for Determining W-2 Wages of Partners and S Corporations.—

(1) in general.—Clause (iii) of section 199(b)(1)(A) is amended to read as follows:

(iii) such partner or shareholder shall be treated for purposes of subsection (b) as having W-2 wages for the taxable year in an amount equal to such person’s allocable share of the W-2 wages of the partnership or S corporation for the taxable year (as determined under regulations prescribed by the Secretary).’’

(2) Conforming Amendment.—Paragraph (2) of section 199(b)(2)(D) (relating to inflation adjustment) is amended by striking ‘‘and subsection (d)(1)’’. (c) Effective Date.—The amendments made by this section shall apply to taxable years beginning after the date of the enactment of this Act.

SEC. 515. MODIFICATION OF EXCLUSION FOR DOMESTIC PRODUCTION WAGE EXPENSE.

(a) In General.—Section 280C(c)(1)(B) is amended by striking ‘‘2000’’ and inserting ‘‘2005’’.

(b) Modification of Housing Cost Amount.—Clause (i) of section 911(c)(1)(B) is amended to read as follows:

‘‘(i) 16 percent of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by—

(1) MAXIMUM AMOUNT OF EXCLUSION.—

(A) in general.—Subparagraph (A) of section 911(c)(1) is amended by inserting ‘‘to the extent such expenses do not exceed the amount determined under paragraph (2) after the taxable year’’.

(B) Limitation.—Subsection (c) of section 911 is amended by inserting after paragraph (3) as follows:

(1) following new paragraph:

‘‘(2) Limitation.—(A) in general.—The amount determined under this paragraph is an amount equal to the product of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which the taxable year of the individual begins, multiplied by—

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(B) Regulations.—The Secretary may issue regulations or other guidance providing for the adjustment of the percentage under subparagraph (A) on the basis of geographic differences in costs relative to housing costs in the United States.’’.

(c) Conforming Amendments.—

(1) section 911(d)(4) is amended by striking ‘‘and (c)(1)(B)(ii)’’ and inserting ‘‘and (c)(1)(B)(ii), (c)(2)(A)(ii), and (c)(2)(A)(ii)’’.

(2) section 911(d)(7) is amended by striking ‘‘subsection (c)(5)’’ and inserting ‘‘subsection (c)(4)’’.

(d) Rates of Tax Applicable to Nonexcluded Income.—Section 911 (relating to exclusion of certain income of citizens and residents of the United States entering into prohibited tax shelter transactions) is amended by striking subsection (f) and inserting the following new subsection:

‘‘(A) in general.—The amount determined under any transaction for a taxable year shall be the greater of—

(i) 30 percent (adjusted as may be provided under subparagraph (B)) of the amount (computed on a daily basis) in effect under subsection (b)(2)(D) for the calendar year in which such taxable year begins, multiplied by—

(ii) the number of days of such taxable year within the applicable period described in subparagraph (A) or (B) of subsection (d)(1).

(B) Post-transaction Determination.—If any tax-exempt entity described in subparagraph (1), (2), or (3) of subsection (c) is a party to a prohibited tax shelter transaction during a taxable year, such entity shall pay a tax for such taxable year in the amount determined under subsection (b)(1).

(2) Entity Manager.—If any entity manager of a tax-exempt entity approves such entity as (or otherwise causes such entity to be) a party to a prohibited tax shelter transaction at any time during the taxable year and knows or has reason to know that the transaction is a prohibited tax shelter transaction, such manager shall pay a tax for such taxable year in the amount determined under subsection (b)(2).

(3) Amount of Tax.—

(A) in the case of a tax-exempt entity being a party to a prohibited tax shelter transaction, is attributable to such transaction, or

(B) in the case of a substantially listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year, or

(C) 15 percent of the proceeds received by the entity for the taxable year which—

(i) in the case of a prohibited tax shelter transaction (other than a substantially listed transaction), are attributable to such transaction, or

(ii) in the case of a substantially listed transaction, are attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(B) Increase in Tax for Certain Knowing Transactions.—In the case of a tax-exempt entity, the amount which, if known, or believed, to be a prohibited tax shelter transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(i) the entity’s net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to such transaction) for such taxable year which—

(A) in the case of a prohibited tax shelter transaction (other than a substantially listed transaction), is attributable to such transaction, or

(B) in the case of a substantially listed transaction, is attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(3) 15 percent of the proceeds received by the entity for the taxable year which—

"(i) in the case of a prohibited tax shelter transaction (other than a substantially listed transaction), are attributable to such transaction, or

(ii) in the case of a substantially listed transaction, are attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(C) Increase in Tax for Certain Knowing Transactions.—In the case of a tax-exempt entity, the amount which, if known, or believed, to be a prohibited tax shelter transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(D) 15 percent of the proceeds received by the entity for the taxable year which—

(i) in the case of a prohibited tax shelter transaction (other than a substantially listed transaction), are attributable to such transaction, or

(ii) in the case of a substantially listed transaction, are attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.

(D) Increase in Tax for Certain Knowing Transactions.—In the case of a tax-exempt entity, the amount which, if known, or believed, to be a prohibited tax shelter transaction was a prohibited tax shelter transaction at the time the entity became a party to the transaction, the amount of the tax imposed under subsection (a)(1)(A) with respect to any transaction for a taxable year shall be the greater of—

(E) 15 percent of the proceeds received by the entity for the taxable year which—

(i) in the case of a prohibited tax shelter transaction (other than a substantially listed transaction), are attributable to such transaction, or

(ii) in the case of a substantially listed transaction, are attributable to such transaction and which is properly allocable to the period beginning on the later of the date such transaction is identified by guidance as a listed transaction by the Secretary or the first day of the taxable year.
(i) 100 percent of the entity’s net income (after taking into account any tax imposed by this subtitle (other than by this section) with respect to the prohibited tax shelter transaction) for such taxable year which is attributable to the prohibited tax shelter transaction, or

(ii) 75 percent of the proceeds received by the entity for the taxable year which are attributable to the tax shelter transaction.

This subparagraph shall not apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enactment of this section.

(2) ENTITY MANAGER.—In the case of each entity manager, the amount of the tax imposed under subsection (a)(1) shall be $20,000 for each approval (or other act causing participation) described in subsection (a)(2).

(c) TAX-EXEMPT ENTITY.—For purposes of this section, the term ‘tax-exempt entity’ means an entity which is—

(i) described in section 501(c) or 501(d),

(ii) described in section 170(c) (other than the United States),

(iii) an Indian tribal government (within the meaning of section 7701(a)(40)),

(iv) a private foundation described in section 4947(a)(1)(A), or

(v) an arrangement described in section 4975(a).

(d) ENTITY MANAGER.—For purposes of this section, the term ‘entity manager’ means—

(i) any entity described in paragraph (1), (2), or (3) of subsection (c)—

(A) the person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and

(B) with respect to any act, the person having authority or responsibility with respect to such act;

and

(ii) in the case of an entity described in paragraph (4), (5), (6), or (7) of subsection (c), the person who approves or otherwise causes the entity to become a party to the prohibited tax shelter transaction.

(e) PROHIBITED TAX SHELTER TRANSACTION; SUBSEQUENTLY LISTED TRANSACTION.—For purposes of this section—

(1) PROHIBITED TAX SHELTER TRANSACTION.—

(A) IN GENERAL.—The term ‘prohibited tax shelter transaction’ means any confidential transaction or any transaction which is attributable to a prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enactment of this section.

(B) Subsequent Listing.—If a transaction is listed pursuant to section 6022(c) of the Internal Revenue Code of 1986 (as added by the amendments made by this section), the tax imposed under subsection (a)(1) shall not apply to proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

(f) DISCLOSURE OF REPORTABLE TRANSACTIONS.—Every tax-exempt entity described in section 4966(c)(1) shall (in such form and manner and at such time as determined by the Secretary) disclose to any tax-exempt entity (as defined in section 4965(e)(1))—

(i) any listed transaction, and

(ii) any prohibited reportable transaction.

(g) LISTED TRANSACTION.—The term ‘listed transaction’ includes—

(i) any listed transaction, and

(ii) any prohibited reportable transaction.

(h) DISCLOSURE.—The term ‘disclosure’ means—

(i) any disclosed information pertaining to a reportable transaction before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

(i) PENALTIES.—The tax imposed by this section is

(1) in general.—Except as provided in paragraph (2), the amendments made by this section shall apply to taxable years ending after the date of the enactment of this Act, with respect to transactions before, on, or after such date, except that no tax under section 4965(a) of the Internal Revenue Code of 1986 (as added by this section) shall apply with respect to income or proceeds that are properly allocable to any period ending on or before the date which is 90 days after such date of enactment.

(2) CONFORMING AMENDMENT.—The table of subchapters for chapter 42 is amended by adding, after the title of subchapter F, the following new subchapter:

‘‘SUBCHAPTER F. TAX SHELTER TRANSACTIONS.’’.

(2) DISCLOSURE REQUIREMENTS.—(A) DISCLOSURE BY ENTITY TO THE INTERNAL REVENUE SERVICE.—(i) IN GENERAL.—Section 6033(a) (relating to organizations required to file) is amended by redesignating paragraph (2) as paragraph (3) and by inserting after paragraph (1) the following new paragraph:

(3) BEING A PARTY TO CERTAIN REPORTABLE TRANSACTIONS.—Every tax-exempt entity described in section 4966(c)(1) shall file (in such form and manner and at such time as determined by the Secretary) a disclosure of—

(A) such entity’s being a party to any prohibited tax shelter transaction (as defined in section 4965(e)(1)), and

(B) the identity of any other party to such transaction which is known by such tax-exempt entity.’’.

4. CONFORMING AMENDMENT.—Section 6033(a)(1) is amended by striking ‘‘paragraph (2)’’ and inserting ‘‘paragraph (3)’’.

5. DISCLOSURE OF REPORTABLE TRANSACTION TO TAX-EXEMPT ENTITY.—Any taxable party to a prohibited tax shelter transaction (as defined in section 4965(e)(1)) shall by statement disclose to any tax-exempt entity (as defined in section 4965(e)(1)) which is a party to such transaction that such transaction is a prohibited tax shelter transaction.’’.

6. PENALTY FOR NONDISCLOSURE.—(A) IN GENERAL.—Section 6552(c) (relating to returns by exempt organizations and by certain trusts) is amended by redesignating paragraph (3) and (4) as paragraphs (4) and (5), respectively, and by inserting after paragraph (2) the following new paragraph:

(5) DISCLOSURE UNDER SECTION 6033.(c)(2).—(A) PENALTY ON ENTITIES.—In the case of a failure to file a disclosure required under section 6033, there shall be imposed on the tax-exempt entity (the entity manager in the case of a tax-exempt entity described in paragraph (4), (5), (6), or (7) of section 4966(c)(1)) $100 for each day during which such failure continues. The maximum penalty under this subparagraph on failures with respect to any 1 disclosure shall not exceed $50,000.

(i) WRITTEN DEMAND.—(I) IN GENERAL.—The Secretary may make a written demand on any entity or manager subject to penalty under subparagraph (A) specifying thereunder reasonable future date by which the disclosure shall be filed for purposes of this subparagraph.

(ii) FAILURE TO COMPLY WITH DEMAND.—If any entity or manager fails to comply with any demand under clause (i) on or before the date specified in such demand, there shall be paid by such entity or manager failing to so comply $100 for each day during which such failure continues. The maximum penalty imposed under this subparagraph on all entities and managers subject to any 1 disclosure shall not exceed $10,000.

(2) CONFORMING AMENDMENT.—(Par. (1) of section 6652(c) is amended by striking ‘‘6033’’ each place it appears and inserting ‘‘6033(a)(1)’’.

7. Effective Dates.—(A) IN GENERAL.—The amendments made by subsections (b) and (c) shall apply to disclosures the due date for which are after the date of the enactment of this Act.

And the Senate agree to the same.

WILLIAM THOMAS, JIM McCRACKEN, DAVID CAMP.
Managers on the Part of the House.

WILLIAM GRASSLEY, JON KYL.
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. 4297), to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, 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 clarifying changes.

TITLE I—extension and modification of provisions A. Allowance of Nonrefundable Personal Credits Against Regular and Alternative Minimum Tax Liability

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 clarifying changes.

Present law provides for certain nonrefundable personal tax credits (i.e., the dependent care credit, the credit for the elderly and disabled, the adoption credit, the child tax credit, the credit for individuals purchasing home mortgages, the HOPE Scholarship and Lifetime Learning credits, the credit for savers, the credit for certain nonbusiness energy property, the credit for alternative motor vehicles, and alternative motor vehicle refueling property). For taxable years beginning in 2008, the nonrefundable personal credits are allowed to the extent of the full amount of the individual’s regular tax and alternative minimum tax.

The portion of these credits relating to personal use property is subject to the same tax liability limitation as the nonrefundable personal tax credits (other than the adoption credit, child credit, and saver’s credit).
For taxable years beginning after 2005, the nonrefundable personal credits (other than the adoption credit, child credit and saver’s credit) are allowed only to the extent that the individual’s regular income tax liability exceeds the individual’s tentative minimum tax, determined without regard to the minimum tax foreign tax credit. The adoption credit, child credit and saver’s credit allowed to the full extent of the individual’s regular tax and alternative minimum tax.

The alternative minimum tax is the amount by which the regular income tax exceeds the regular income tax an individual would have paid if the individual’s regular income tax had been computed without considering the preference and adjustments.

The exemption amount is phased out years beginning before 2006 (in the case of individuals; (3) $22,500 ($29,000 for taxable years beginning after December 31, 2007) in the case of other unmarried individuals; (3) $75,000 ($87,500 in the case of a married individual filing a separate return) and (2) 25 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (“AMTI”) as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual’s tax-exempt income adjusted to take account of specified preferences and adjustments.

The exemption amount is: (1) $45,000 ($58,000 for taxable years beginning before 2006) in the case of married individuals filing a joint return and surviving spouses; (2) $35,750 ($49,250 for taxable years beginning before 2006) in the case of other unmarried individuals; (3) $22,500 ($29,000 for taxable years beginning before 2006) in the case of married individuals filing a separate return, and (4) $22,500 in the case of an estate or trust. The exemption amount is phased out by an amount equal to 25 percent of the amount by which the individual’s AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $112,500 in the case of other unmarried individuals, (3) $75,000 in the case of married individuals filing separate returns, an estate, or a trust. These amounts are not indexed for inflation.

The House bill extends for one year the present-law provision allowing nonrefundable personal credits to the full extent of the individual’s regular tax and alternative minimum tax years beginning on or before December 31, 2006.

Effective date.—The provision applies to taxable years beginning after December 31, 2005.

Senate Amendment

The Senate amendment extends for two years the present-law provision allowing nonrefundable personal credits to the full extent of the individual’s regular tax and alternative minimum tax (through taxable years beginning on or before December 31, 2007). The provision also applies to the personal credits for alternative motor vehicles, and alternative motor vehicle refueling property.

Effective date.—The provision applies to taxable years beginning after December 31, 2005.

Conference Agreement

The conference agreement includes the House bill provision.

B. Tax Incentives for Business Activities on Indian Reservations

The Senate amendment extends for two years the present-law employment credit provision (through taxable years beginning on or before December 31, 2007).

Effective date.—As same as the House bill provision.

Conference Agreement

The conference agreement does not include the House bill provision or the Senate amendment provision.

The conference agreement does not include the Senate bill provision or the Senate amendment provision.
C. WORK OPPORTUNITY TAX CREDIT AND WELFARE-TO-WORK TAX CREDIT

(Secs. 103 and 104 of the House bill, sec. 109 of the Senate amendment and secs. 51 and 51A of the Code)

EXPIRE SERVICES LAW

Work opportunity tax credit

Targeted groups eligible for the credit

The work opportunity tax credit is available on an elective basis for employers hiring individuals from one or more of eight targeted first-year wage categories: (1) certain families eligible to receive benefits under the Temporary Assistance for Needy Families Program; (2) high-risk youth (on probation with the department of corrections or on parole); (3) individuals receiving rehabilitation referrals; (4) qualified summer youth employees; (5) qualified veterans; (6) families receiving food stamps; and (7) persons receiving certain Supplemental Security Income (SSI) benefits.

A high-risk youth is an individual aged 18 but not aged 25 on the hiring date who is certified by a designated local agency as having a principal place of abode within an empowerment zone, enterprise community, or renewal community. The credit is not available if the principal place of abode ceases to be within an empowerment zone, enterprise community, or renewal community. The credit is also available to employers hiring individuals from one or more of nine targeted groups.

Qualified ex-felon is an individual certified by a designated local agency as: (1) having been convicted of a felony under State or Federal law; (2) being a member of an economically disadvantaged family; and (3) having a hiring date within one year of release from prison or conviction.

A food stamp recipient is an individual aged 18 but not aged 25 on the hiring date certified by a designated local agency as being a member of a family either currently or recently receiving assistance under an eligible food stamp program.

Qualified wages

Generally, qualified wages are defined as cash wages paid by the employer to a member of a targeted group. The employer’s deduction for wages is reduced by the amount of the credit.

Calculation of the credit

The credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. With respect to qualified summer youth employees, the maximum credit is $1,200 (40 percent of the first $3,000 at risk for the work opportunity tax credit categories previously employed by the employer. In addition, many other technical rules apply.

Expiration

The work opportunity tax credit is not available for individuals who had previously been employed by the employer. The maximum credit is $8,500 per employee. In addition, many other technical rules apply.

1. WELFARE-TO-WORK TAX CREDIT

Targeted group eligible for the credit

The welfare-to-work tax credit is available on an elective basis to employers of qualified long-term family assistance recipients. The credit is available if the employee is a member of a family who has received family assistance for a total of at least 24 months ending on the hiring date; the employee, but not more than the total family, is a member of a family certified as a member of an economically disadvantaged family.

Qualified wages

Qualified wages for purposes of the welfare-to-work tax credit are defined more broadly than the work opportunity tax credit. Unlike the definition of wages for the work opportunity tax credit which in simple cash wages, the definition of wages for the welfare-to-work tax credit includes cash wages paid to an employee plus amounts paid by the employer for: (1) health plan coverage for the employee but not more than the applicable premium defined under section 4980B(f)(4); (2) dependent care assistance excludable under a section 127 program (or that would be excludable but for the expiration of sec. 127); (2) health plan coverage for the employee but not more than the applicable premium defined under section 4980B(f)(4); and (3) dependent care assistance excludable under section 129. The employer’s deduction for wages is reduced by the amount of the credit.

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Coordination of the work opportunity tax credit and the welfare-to-work tax credit

An employer cannot claim the work opportunity tax credit with respect to wages of any employee on which the employer claims the welfare-to-work tax credit. Other rules

The work opportunity tax credit is not allowed if the wages are paid to a relative or dependant of the taxpayer. Similarity wages paid to replacement workers during a strike or lockout are not eligible for the work opportunity tax credit. Wages paid to any employee during any period for which the employer received on-the-job training program payments with respect to that employee are not eligible for the work opportunity tax credit. The work opportunity tax credit generally is not allowed for wages paid to individuals who had previously been employed by the employer. In addition, many other technical rules apply.

Expiration

The welfare-to-work tax credit is available for individuals with long-term family assistance who begin work for an employer after December 31, 2005. In addition, many other technical rules apply.

Expenses

The welfare-to-work tax credit is not available for individuals who begin work for an employer after December 31, 2005.

H2218

CONGRESSIONAL RECORD—HOUSE

May 9, 2006

work opportunity tax credit

The House bill extends the work opportunity tax credit for one year (through December 31, 2006). Also, the House bill raises the maximum age limit for the food stamp recipient category to include individuals who are at least age 18 but not under age 30 on the hiring date.

Effective date

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

Welfare-to-work tax credit

The House bill extends the welfare-to-work tax credit for one year (through December 31, 2006).

Effective date

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

SENATE AMENDMENT

In general

The Senate amendment combines the work opportunity and welfare-to-work tax credits and extends the combined credit for one year. The welfare-to-work credit is repealed.

Targeted groups eligible for the combined credit

The combined credit is available on an elective basis for employers hiring individuals from one or more of all nine targeted groups. The nine targeted groups are the present-law eight groups with the addition of the welfare-to-work credit-long-term family assistance recipient as the ninth targeted group.

The Senate amendment raises the age limit for the high-risk youth category to include individuals aged 18 but not aged 40 on the hiring date. The Senate amendment also raises the high-risk youth category to be a member of a designated community resident category.

The Senate amendment repeals the requirement that a qualified ex-felon be an individual certified as a member of an economically disadvantaged family.

The Senate amendment raises the age limit for the food stamp recipient category to include individuals aged 18 but not aged 40 on the hiring date.

Qualified wages

Qualified wages for the combined credit are defined as wages paid to a member of the targeted group during the one-year period following the week in which the individual began work for the employer. Therefore, the maximum credit per employee is $2,400 ($40 of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum credit is $1,200 ($40 of the first $3,000 of qualified first-year wages).

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Coordination of the work opportunity tax credit and the welfare-to-work tax credit

An employer cannot claim the work opportunity tax credit with respect to wages of any employee on which the employer claims the welfare-to-work tax credit. Other rules

The welfare-to-work tax credit incorporates directly or by reference many of these other rules contained on the work opportunity tax credit. Expenses

The welfare-to-work tax credit is not available for individuals who begin work for an employer after December 31, 2005.

HOUSE BILL

Work opportunity tax credit

The House bill extends the work opportunity tax credit for one year (through December 31, 2006). Also, the House bill raises the maximum age limit for the food stamp recipient category to include individuals who are at least age 18 but under age 30 on the hiring date.

Effective date

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

Welfare-to-work tax credit

The House bill extends the welfare-to-work tax credit for one year (through December 31, 2006).

Effective date

The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.
Calculation of the credit

First-year wages.—For the eight work opportunity tax credit categories, the credit equals 40 percent (25 percent for employment of 400 hours or less) of qualified first-year wages. Wages for which the first-year credit is qualified (in such property are qualified wages (not in excess of $6,000) attributable to service rendered by a member of a targeted group during the one-year period ending on the day the individual began work for the employer. Therefore, the maximum credit per employee for members of any of the eight work opportunity tax credit categories generally is $2,400 (40 percent of the first $6,000 of qualified first-year wages). With respect to qualified summer youth employees, the maximum one-year credit remains $1,200 (40 percent of the first $3,000 of qualified first-year wages). For the welfare-to-work/long-term family assistance recipients, the maximum credit equals $4,000 per employee (40 percent of $10,000 of wages).

Second year wages.—In the case of long-term family assistance recipients the maximum credit is $5,000 (50 percent of the first $10,000 of qualified second-year wages).

Minimum employment period

No credit is allowed for qualified wages paid to employees who work less than 120 hours in the first year of employment.

Coordination of opportunity tax credit and the welfare-to-work tax credit

Coordination is no longer necessary once the two credits are combined.

Effective date.—The provision is effective for wages paid or incurred to a qualified individual who begins work for an employer after December 31, 2005, and before January 1, 2007.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

D. DEDUCTION FOR CORPORATE DONATIONS OF COMPUTER TECHNOLOGY AND EQUIPMENT

(Section 106 of the House bill, sec. 111 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of inventory or other ordinary-income or short-term capital gain property, the amount of the charitable deduction generally is limited to the taxpayer’s basis in the property. In the case of a charitable contribution of tangible personal property, the deduction is limited to the tax basis in such property, if the use by the recipient charitable organization is unrelated to the organization’s tax-exempt purpose. Contributions involving contributions to a private foundation (other than certain private operating foundations), the amount of the deduction is limited to the tax-exempt basis in the property.

Under present law, a taxpayer’s deduction for charitable contributions of computer technology and equipment generally is limited to the tax basis (typically, cost) in the property. However, certain corporations may claim a deduction in excess of basis for a “qualified computer contribution.” This enhanced deduction is equal to the lesser of (1) basis plus one-half of the item’s appreciation (i.e., basis plus one half of fair market value minus basis) or (2) two times basis. This enhanced deduction for qualified computer contributions expires for any contribution made during any taxable year beginning after December 31, 2005.

A qualified computer contribution means a charitable contribution of any computer technology or equipment, which meets standards of functionality and suitability as established by the Secretary of the Treasury. The contribution must be to certain educational organizations or public libraries and made not later than three years after the taxpayer acquired the property or, if the taxpayer constructed the property, not later than the date construction of the property is substantially complete. If the original use of the property must be by the donor or the donee, and in the case of the donee, must be used substantially for educational purposes related to the computer property in the donor’s hands. The property must fit productively into the donee’s education plan. The donee may not transfer the property in exchange for money, other property, or services, except for shipping, installation, and transfer costs. To determine whether property is constructed by the taxpayer, the rules applicable to tangible personal property generally are applied. That is, property is considered constructed by the taxpayer only if the cost of the parts used in the construction of the property (other than parts manufactured by the taxpayer or a related person) does not exceed 50 percent of the taxpayer’s basis in the property. Contributions may be made to private foundations under certain conditions.

HOUSE BILL

The present-law provision is extended for one year to apply to contributions made during any taxable year beginning after December 31, 2005, and before January 1, 2007.

Effective date.—The provision is effective for contributions made in taxable years beginning after December 31, 2005.

SENIOR AMENDMENT

Same as House bill.

Effective date.—The provision is effective on the date of enactment.

CONFEREE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

E. AVAILABILITY OF ARCHER MEDICAL SAVINGS ACCOUNTS

(Sec. 106 of the House bill and sec. 220 of the Code)

PRESENT LAW

Arch medical savings accounts

In general

Within limits, contributions to an Archer medical savings account (‘‘Archer MSA’’) are deductible in determining adjusted gross income for employment tax purposes if made by the employer of an eligible individual. Earnings on amounts in the account, as well as distributions (not for medical expenses) are includible in gross income. Distributions from an Archer MSA for medical expenses are not includible in gross income. Distributions not used for medical expenses are subject to an additional 15 percent tax unless the distribution is made after age 65, death, or disability.

Eligible individuals

Archers MSAs are available to employees covered under an employer-sponsored high deductible plan of a small employer and self-employed individuals covered under a high deductible health plan. An employer is a small employer if it employed, on average, no more than 50 employees on business days during the preceding or the second preceding year. An individual is not eligible for an Archer MSA if he or she is covered under any other health plan in addition to the high deductible health plan. Effective date.—The provision is effective on the date of enactment.

No provision.

SENIOR AMENDMENT

The conference agreement does not include the House bill provision.

The report required by Archer MSA trusteees is treated as timely filed if made before the close of the 90-day period beginning on the date of enactment and publication whether the threshold level has been exceeded is treated as timely if made before the close of the 120-day period beginning on the date of enactment.
In general

A taxpayer generally must capitalize the cost of property that is part of a trade or business and recover such cost over time through annual deductions for depreciation or amortization. Tangible property generally is depreciated under the MACRS (Modified Accelerated Cost Recovery System) recovery system ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168). The cost of nonresidential real property is recovered using the straight-line method of depreciation (or improvement) for which the expenditure is attributable to the enlargement of the building or property (sec. 168). The cost of nonresidential real property is subject to the mid-month placed-in-service convention. Under the mid-month convention, the depreciation rate for the first year is based on the number of months the property was in service, and the property placed in service at any time during a month is treated as having been placed in service in the middle of the month.

Depreciation of leasehold improvements

Generally, depreciation allowances for improvements made on leased property are determined under MACRS, even if the MACRS recovery period assigned to the property is longer than the term of the lease. This rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service. If a leasehold improvement constitutes an addition to the nonresidential real property already placed in service, the improvement generally is depreciated using the straight-line method over a 15-year recovery period, beginning in the month the building or improvement is placed in service. However, exceptions exist for certain qualified leasehold improvements and certain qualified restaurant property.

Qualifying leasehold improvement property

Section 168(e)(3)(E)(v) provides a statutory 15-year recovery period for qualified leasehold improvement property placed in service before January 1, 2006. For purposes of the provision, qualified leasehold improvement property means any improvement to a building if such improvement is placed in service more than three years after the date such building was first placed in service and more than 50 percent of the building’s square footage is devoted to the provision of services that are on-premises consumption of, and tutoring for, prepared meals. Qualified restaurant property is recovered using the straight-line method.

H. TAX INCENTIVES FOR INVESTMENT IN THE DISTRICT OF COLUMBIA

The conference agreement does not include the House bill provision to extend the statutory 36-month leasehold improvement property cost recovery provision for marginal production (through taxable years beginning on or before December 31, 2006).

Effective date—The provision applies to taxable years beginning after December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERECE AGREEMENT

The conference agreement does not include the House bill provision to extend the statutory 36-month leasehold improvement property cost recovery provision for marginal production (through taxable years beginning on or before December 31, 2006).

Effective date—The provision applies to taxable years beginning after December 31, 2005.

The conference agreement does not include the House bill provision to extend the statutory 36-month leasehold improvement property cost recovery provision for marginal production (through taxable years beginning on or before December 31, 2006).

Effective date—The provision applies to taxable years beginning after December 31, 2005.

G. TAXABLE INCOME LIMIT ON PERCENTAGE DEPLETION FOR OIL AND NATURAL GAS PRODUCED FROM MARGINAL PROPERTIES

The Code permits taxpayers to recover their investments in oil and gas wells through depletion deductions. Two methods of depletion are currently allowable under the Code: (1) the cost depletion method, and (2) the percentage depletion method. Under the cost depletion method, the taxpayer deducts an amount equal to the cost of depletable property which is sold or produced during the taxable year. Under the percentage depletion method, the taxpayer deducts an amount equal to the depletable property which is sold or produced during the taxable year and the ratio of units sold from that property during the taxable year to the number of units reported as sold or produced plus the number of units sold during the taxable year. Thus, the amount recovered under cost depletion may never exceed the taxpayer’s basis in the property.

The Code generally limits the percentage depletion method for oil and gas properties to independent producers and royalty owners in the percentage depletion method, 15 percent of the taxpayer’s gross income from oil- or gas-producing property is allowed as a deduction in each taxable year (subject to a deduction of $3 per barrel of crude oil). The percentage depletion limit is intended to prevent depletion deductions that are in excess of the taxpayer’s taxable income from that property in any year. For marginal production, the 150-percent taxable income limitation has been suspended for taxable years beginning after December 31, 1997, and before January 1, 2006.

Marginal production is defined as domestic crude oil and natural gas production from stripper well property or from property substantially all of the production from which during the calendar year is heavy oil. Stripper well property is defined as property from which the average daily production is 15 barrel equivalents or less, determined by dividing the average daily production of domestic crude oil and domestic heavy oil production by the number of wells. Heavy oil is domestic crude oil with a weighted average gravity of 20 degrees API or less (corrected to 60 degrees Fahrenheit).

Wages paid to a qualified employee who earns more than $3,000 are eligible for the wage credit (although only the first $15,000 of wages is eligible for the credit).

Wages paid to a qualified employee who earns more than $3,000 are eligible for the wage credit (although only the first $15,000 of wages is eligible for the credit). The wage credit is available with respect to a qualified full-time or part-time employee (employed for at least 90 days) who is a D.C. Zone resident, or earns more than $15,000 for the wage credit (although only the first $15,000 of wages is eligible for the credit). The wage credit is available with respect to a qualified full-time or part-time employee (employed for at least 90 days), regardless of the number of other employees who work for the employer. In general, any taxable business carrying on activities in the D.C. Zone may claim the wage credit, regardless of whether the employer meets the definition of a "D.C. Zone business." An employer’s deduction otherwise allowed for wages paid is reduced by the amount of the credit.

However, the wage credit is not available for wages paid in connection with certain business activities described in sections 14(e)(5)(B) and certain farming activities.
wage credit claimed for that taxable year.\(^4\) Wages are not to be taken into account for purposes of the wage credit if taken into account in determining the employer’s work opportunity credit under section 51 or the welfare-to-work credit under section 51A.\(^5\) In addition, the $15,000 cap is reduced by any wages taken into account in computing the work opportunity tax credit or the welfare-to-work credit.\(^6\) The wage credit may be used to offset up to 25 percent of alternative minimum tax liability.\(^7\)

**Section 179**

In general, a D.C. Zone business is allowed an additional $35,000 of section 179 expensing for qualifying property placed in service by a D.C. Zone business.\(^8\) The section 179 expensing amount is phased out by the amount by which 50 percent of the cost of qualified zone property placed in service during the year by the taxpayer exceeds $200,000 ($400,000 for taxable years beginning after 2002 and before 2008). The term “qualified zone property” is defined as depreciable tangible property (including buildings), provided that (1) the property is acquired by the taxpayer (from an unrelated party) after the designation took effect, (2) the original use of the property in the D.C. Zone commences with the taxpayer, and (3) substantially all of the use of the property is in the D.C. Zone in the active conduct of a trade or business by the taxpayer.\(^9\) Special rules are provided in the Act that the zone designation is substantially renovated by the taxpayer.

**Tax-exempt financing**

A qualified D.C. Zone business is permitted to borrow proceeds from tax-exempt qualified zone facility bonds (as defined in section 1394) issued by the District of Columbia.\(^10\) Such bonds are subject to the District of Columbia’s annual private activity bond limit, which is currently annually set by the District of Columbia. Generally, qualified enterprise zone facility bonds for the District of Columbia are bonds 95 percent or more of the net proceeds of which are used to finance certain facilities within the D.C. Zone. The aggregate face amount of all outstanding qualified enterprise zone facility bonds per qualified D.C. Zone business may not exceed $75,000.\(^11\) Only the amount that the taxpayer (from an unrelated party) after the zone designation took effect, has the property (from an unrelated party) after the designation took effect, (2) the original use of the property in the D.C. Zone commences with the taxpayer, and (3) substantially all of the use of the property is in the D.C. Zone in the active conduct of a trade or business by the taxpayer. Special rules are provided in the Act that the zone designation is substantially renovated by the taxpayer.

**Qualified zone property**

A zero-percent capital gains rate applies to capital gains from the sale of certain qualified D.C. Zone assets held for more than five years.\(^12\) In general, a qualified D.C. Zone asset means stock or partnership interests held in qualified enterprise zone facility bonds issued by a D.C. Zone business or tangible property held by a D.C. Zone business. For purposes of the zero-percent capital gains rate, the D.C. Enterprise Zone is defined to include all census tracts within the District of Columbia where the poverty rate is not less than 10 percent. In general, gain eligible for the zero-percent capital gains rate means gain from the sale or exchange of a D.C. Zone asset that is (1) a capital asset or property used in the trade or business as defined in section 1221(b), and (2) acquired before January 1, 2006, that is not attributable to real property, or to intangible assets, qualifies for the zero-percent, provided that such real property or intangible asset is an integral part of a qualified D.C. Zone business.\(^13\) However, no gain attributable to periods before January 1, 1998, and after December 31, 2010, is qualified capital gain.

**District of Columbia homeowner tax credit**

First-time homebuyers of a principal residence in the District of Columbia are eligible for a nonrefundable tax credit of up to $5,000 of the amount of the purchase price. The $5,000 maximum credit applies both to individuals and joint taxpayers. Married individuals filing separately can claim a maximum credit of $2,500 each. The credit phases out for individual taxpayers with adjusted gross incomes above $90,000 ($110,000-$130,000 for joint filers). For purposes of eligibility, “first-time homebuyer” means any individual if such individual did not have ownership of a residence in which that individual resides that is owned or rented by the taxpayer and that constitutes a principal residence. The District of Columbia in the one-year period ending on the date of the purchase of the residence to which the credit applies. The credit is scheduled to expire for residences purchased after December 31, 2005.\(^14\)

**HOUSE BILL**

The provision extends the designation of the D.C. Zone for one year (through December 31, 2006), thus extending the wage credit and section 179 expensing for one year.

The provision extends the tax-exempt financing provision, allowing for bonds issued during the period beginning on January 1, 1998, and ending on December 31, 2006.

The provision extends the zero-percent capital gains rate applicable to capital gains from the sale of certain qualified D.C. Zone assets for one year.

The provision extends the first-time homebuyer credit for one year, through December 31, 2006.

**Effective date.**—The amendment generally is effective for tax years beginning after December 31, 2005, except the provision relating to bonds is effective for obligations issued after the date of enactment.

**SENATE AMENDMENT**

The Senate amendment is the same as the House bill.

**Effective date.**—The provision is effective on the date of enactment.

**CONFERENCE AGREEMENT**

The conference agreement does not include the House amendment or the Senate amendment provision.

**I. POSSESSION TAX CREDIT WITH RESPECT TO AMERICAN SAMOA (Sec. 111 of the House bill and sec. 936 of the Code)**

**PRESENT LAW**

In general, certain domestic corporations with business operations in the U.S. possessions are eligible for the possession tax credit.\(^15\) This credit offsets the U.S. tax imposed on certain income related to operations in the U.S. possessions.\(^16\) For purposes of the section 936 credit, possessions include, among other places, American Samoa. Income eligible for the section 936 credit includes non-U.S. source income from (1) the active conduct of a trade or business within a U.S. possession, (2) the sale or exchange of substantially all of the assets that were used in such a trade or business, or (3) certain possessions investment-

\(^4\) Sec. 280C(a).
\(^5\) Secs. 1400A(a), 1396C(3)(A) and 51A(d)(2).
\(^6\) Secs. 1400A(a), 1396C(3)(B) and 51A(d)(2).
\(^7\) Sec. 3(c)(2).
\(^8\) Sec. 1397A.
\(^9\) Sec. 1396.
\(^10\) Sec. 1400A.
\(^11\) Sec. 1395.
\(^12\) However, sole proprietorships and other taxpayers selling assets directly cannot claim the zero-percent rate on capital gain from the sale of any intangible property (i.e., the integrally related test does not apply).
\(^13\) Sec. 1400A(1).
\(^14\) Sec. 27(b)(1), 936.
\(^15\) Domestic corporations with activities in Puerto Rico are eligible for the section 38A economic activity-based limit, which this tax credit is calculated under the rules set forth in section 936.
HOUSE BILL

The House bill extends for one year the present-law Section 896 credit as applied to American Samoa; it thus allows existing credit claimants to claim the credit for income from activities in American Samoa in taxable years beginning on or before December 31, 2006. Effective date.—The provision is effective for taxable years beginning after December 31, 2005.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision.

J. PARITY IN THE APPLICATION OF CERTAIN HEALTH RESEARCH PARITY REQUIREMENTS

(Section 36 of the House bill and section 589 of the Code)

PRESENT LAW

The Code, the Employee Retirement Income Security Act of 1974 ( "ERISA") and the Public Health Service Act ( "PHS Act") contain provisions under which group health plans that provide both medical and surgical benefits and mental health benefits cannot impose aggregate lifetime or annual dollar limits on mental health benefits that are not imposed on substantially all medical and surgical benefits ( "mental health parity requirements "). In the case of a group health plan which provides benefits for mental health, the mental health parity requirements do not affect the terms and conditions of a plan under which the employer sponsoring the plan if the plan fails to meet the requirements.

The mental health parity requirements do not affect the terms and conditions (including cost sharing, limits on numbers of visits or days of coverage, and requirements relating to medical necessity) relating to the amount, duration, or scope of mental health benefits under the plan, except as specifically provided in regard to parity in the imposition of aggregate lifetime limits and annual limits.

The Code imposes an excise tax on group health plans which fail to meet the mental health parity requirements. The excise tax is equal to $100 per day per enrollee in the group health plan for the amount by which the employer sponsoring the plan if the plan fails to meet the requirements. The maximum tax that can be imposed during a taxable year cannot exceed the lesser of 10 percent of the employer's group health plan expenses for the prior year or $500,000. No tax is imposed if the Secretary determines that the employer did not know, and in exercising reasonable diligence would not have known, that the failure existed.

The mental health parity requirements do not apply to group health plans of small employers nor do they apply if their application results in an increase in the cost under a group health plan of at least one percent. Further, the mental health parity requirements do not require group health plans to provide mental health benefits.

The Code, ERISA and PHS Act mental health parity provisions are scheduled to expire after December 31, 2005, with respect to benefits for services furnished after December 31, 2005.

K. RESEARCH CREDIT

(Section 113 of the House bill, section 108 of the Senate amendment, and section 41 of the Code)

PRESENT LAW

General rule

Prior to January 1, 2006, a taxpayer could claim a research credit equal to 20 percent of the amount by which the taxpayer's qualified research expenses for a taxable year exceeded its base amount for that year. Thus, the research credit was generally available with respect to incremental increases in qualified research.

A 20-percent research tax credit was also available with respect to the excess of (1) 100 percent of the taxpayer's qualified research expenses (including grants or contributions) paid for basic research conducted by universities (and certain nonprofit research organizations) over two minimum basic research floors plus (b) an amount reflecting any decrease in non-research giving to universities by the corporation by comparison with the grant received during a fixed-base period, as adjusted for inflation. This separate credit computation was commonly referred to as the university basic research credit.

Finally, a research credit was available for a taxpayer's expenditures on research undertaken by an energy research consortium. This separate credit computation was commonly referred to as the energy research credit.

Unlike the other research credits, the energy research credit applied to all qualified expenditures, not just those in excess of a base amount.

The research credit, including the university basic research credit and the energy research credit, expired on December 31, 2005.19

Computation of allowable credit

Except for energy research payments and certain university basic research payments made by corporations, the research tax credit is based only on the taxpayer's qualified research expenses for the current taxable year exceeded its base amount. The base amount for the current year generally was computed by applying the taxpayer's fixed-base percentage by the average amount of the taxpayer's gross receipts for the four preceding years. If a taxpayer incurred both expenses and had gross receipts during each of at least three years from 1984 through 1988, then its fixed-base percentage was the ratio of the taxpayer's total qualified research expenses for the 1984-1988 period bore to its total gross receipts for that period (subject to a maximum fixed-base percentage of 16 percent).

All other taxpayers (so-called start-up firms) were assigned a fixed-base percentage of three percent.20

191991 (and repealed the special rule to prorate qualified expenses incurred before January 1, 1991). The Tax extension Act of 1991 extended the research credit for the period July 1, 1991, through December 31, 1993. The Omnibus Budget Reconciliation Act of 1993 ( "the 1993 Act") extended the credit for three years—i.e., retroactively from July 1, 1992 through June 30, 1995. The 1993 Act also provided a special rule for start-up fixed-base ratio of such firms eventually will be computed by reference to their actual research experience.

Further, the mental health parity requirements do not require group health plans to provide mental health benefits.

The Code, ERISA and PHS Act mental health parity provisions are scheduled to expire after December 31, 2005, with respect to benefits for services furnished after December 31, 2005.

19This description of present law refers to the law in effect at the time the committee reported the House of Representatives, which was before the enactment of Pub. L. No. 104-168, which extended the mental health parity provisions of the code, ERISA, and the PHS Act through December 31, 2006.

20The Small Business Job Protection Act of 1996 extended the credit for five years, through June 30, 2004, increased the rates of credit under the alternative incremental research credit regime, and expanded the definition of research to include research undertaken in Puerto Rico and possessions of the United States. The Working Families Tax Relief Act of 2001 extended the research credit through December 31, 2005. The Energy Tax Incentives Act of 2005 added the energy research credit.
In computing the credit, a taxpayer’s base amount could not be less than 50 percent of its current-year qualified research expenses.

To prevent artificial increases in research expenses by capitalizing expenditures on research facilities commonly owned or otherwise related entities, a special aggregation rule provided that in the same controlled group of corporations treated as a single taxpayer (sec. 41(f)(1)). Under regulations prescribed by the Secretary, special rules applied if a taxpayer did not claim the credit when a portion of a trade or business (or unit thereof) of changed hands, under which qualified research expenses and gross receipts for periods of ownership of the trade or business were treated as transferred with the trade or business that gave rise to those positions for purposes of recomputing a taxpayer’s fixed-base percentage (sec. 41(f)(3)).

Alternative incremental research credit regime

Taxpayers were allowed to elect an alternative incremental research credit regime. If a taxpayer elected to be subject to this alternative regime, the taxpayer was assigned a three-tiered fixed-base percentage (that was lower than the fixed-base percentage otherwise applicable) and the credit rate likewise was reduced. Under the alternative incremental credit, a credit rate of 2.65 percent applied to the extent that a taxpayer’s current-year research expenses exceeded a base amount computed by using a fixed-base percentage of 1 percent. A credit rate of 3.2 percent applied to the extent that a taxpayer’s current-year research expenses exceeded a base amount computed by using a fixed-base percentage of 1.5 percent but did not exceed a base amount computed by using a fixed-base percentage of two percent. A credit rate of 3.8 percent applied to the extent that a taxpayer’s current-year research expenses exceeded a base amount computed by using a fixed-base percentage of 2.65 percent but did not exceed a base amount computed by using a fixed-base percentage of 3.2 percent. A credit rate of 3.2 percent applied to the extent that a taxpayer’s current-year research expenses exceeded a base amount computed by using a fixed-base percentage of 3.8 percent but did not exceed a base amount computed by using a fixed-base percentage of 4.5 percent.

Under section 174, taxpayers may elect to deduct currently the amount of certain research or experimental expenditures paid or incurred in connection with a trade or business, notwithstanding the general rule that business expenses to develop or create an asset that has a useful life extending beyond the taxable year must be capitalized. While the credit was in effect, however, deductions allowed to a taxpayer under section 174 (or any other section) were reduced by an amount equal to 100 percent of the taxpayer’s current-year research expenses (sec. 280C(c)). Taxpayers could alternatively elect to claim a reduced research tax credit (13 percent) under section 174 in lieu of reducing deductions otherwise allowed (sec. 280C(c)(3)).

QUALIFIED ZONE ACADEMY BONDS

The provision also creates, at the election of the Secretary, certain qualified zone academy bonds. An election to use the alternative incremental credit is in effect. A special transition rule applies which permits a taxpayer to elect to use the alternative incremental credit in lieu of the alternative incremental credit if such election is made during the taxable year which includes the date of enactment of the provision. The special transition rule only applies to the taxable year which includes the date of enactment.

Effective date.—The extension of the research and experimental credit, effective for taxable years ending after December 31, 2005. The modification of the alternative incremental credit and the creation of the alternative simplified credit are effective for taxable years ending after December 31, 2006.
Financial institutions that hold qualified zone academy bonds are entitled to a non-refundable tax credit in an amount equal to a credit rate multiplied by the face amount of the bond. A taxpayer holding a qualified zone academy bond on the credit allowance date is entitled to a credit. The credit is includable in gross income (as if it were a taxable investment income) on the bond, and may be claimed against regular income tax and AMT liability.

The Treasury Department sets the credit rate at a rate estimated to allow issuance of qualified zone academy bonds without discount and without interest cost to the issuer. The maximum term of the bond is determined by the Treasury Department so that the present value of the obligation to repay the bond is 50 percent of the face value of the bond.

'Qualified zone academy bonds' are defined as any bond issued by a State or local government, provided that: (1) at least 95 percent of the proceeds are used for the purpose of renovating, providing equipment to, developing course materials for use at, or training teachers and other school personnel in a "qualified zone academy" ("qualified zone academy" being defined in section 142) and (2) private entities have promised to contribute to the qualified zone academy certain equipment, technical assistance or training, employee services or services with a fair market value equal to at least 10 percent of the bond proceeds.

A school is a "qualified zone academy" if: (1) the school is a public school that provides education and training below the college level, (2) the school operates a special academic program in cooperation with businesses to enhance the academic curriculum and increase graduation and employment rates, and (3) either (a) the school is located in an urban or enterprise community designated under the Code or (b) it is reasonably expected that at least 35 percent of the students at the school will be eligible for free or reduced-cost lunches under the school lunch program established under the National School Lunch Act.

Arbitrage restrictions on tax-exempt bonds
To prevent States and local governments from issuing more tax-exempt bonds than is necessary to avoid being flourished or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability of issuers of qualified zone academy bonds to earn profits through tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., defined "temporary periods" before funds are needed for the purpose of the borrowing) or on specified types of investments (e.g., "reasonably required reserve or replacement funds"). Subject to limited exceptions, profits that are earned during these periods or on such investments must be rebated to the Federal Government. Governmental bonds are subject to less restrictive arbitrage rules than most private activity bonds. The arbitrage rules do not apply to qualified zone academy bonds.

HOUSE BILL
The House bill extends for one year, through December 31, 2006, the tax credit for qualified zone academy bonds.

Effective date.—The provision is effective for bonds issued after December 31, 2005.

CONFERENCE AGREEMENT
The conference agreement does not include the House bill provision or the Senate amendment provision.

N. ABOVE-THE-LINE DEDUCTION FOR HIGHER EDUCATION EXPENSES
(Section 116 of the House bill, section 183 of the Senate amendment and section 222 of the Code)

PRESENT LAW
An individual is allowed an above-the-line deduction for qualified tuition and related expenses for higher education paid by the individual during the taxable year. The individual's qualified tuition and related expenses include tuition and fees required for the enrollment or attendance of the taxpayer, the taxpayer's spouse, or any dependent of the taxpayer with respect to whom the taxpayer may claim a personal exemption, at an eligible institution of higher education for courses of instruction of such institution. Charges and fees associated with meals, lodging, insurance, transportation, and similar personal, living, or family expenses are not eligible for the deduction. The expenses of education involving sports, games, or hobbies are not qualified tuition and related expenses unless this education is part of a degree program.

The amount of qualified tuition and related expenses must be reduced by certain scholarships, educational assistance allowances, and other amounts paid for the benefit of such individual, and by the amount of such expenses taken into account for purposes of determining any exclusion from gross income of: (1) income from certain United States Savings Bonds used to pay higher education tuition and fees; and (2) income from a Coverdell education savings account. Additionally, the amount that is reduced by the earnings portion (but not the return of principal) of distributions from a qualified tuition program if an exclusion for the benefit of a taxpayer is in effect is subject to the exclusion for eligible students under section 529. No deduction is allowed for any expense
for which a deduction is otherwise allowed or with respect to an individual for whom a Hope credit or Lifetime Learning credit is elected for such taxable year.

The conference agreement does not include the House provision or the Senate amendment provision.

O. DEDUCTION OF STATE AND LOCAL GENERAL SALES TAXES

(See 117 of the House bill, sec. 165 of the Senate amendment, and sec. 164 of the Code)

PRESENT LAW

For purposes of determining regular tax liability, an itemized deduction is permitted for certain State and local taxes paid, including sales taxes, property taxes, and personal property taxes. The itemized deduction is not permitted for purposes of determining a taxpayer’s alternative minimum taxable income. For taxable years beginning in 2004 and 2005, the maximum deduction is $4,000 for an individual whose adjusted gross income for the taxable year does not exceed $65,000 ($130,000 in the case of a joint return), or $2,000 for other individuals whose adjusted gross income does not exceed $30,000 ($60,000 in the case of a joint return). No deduction is allowed for an individual whose adjusted gross income exceeds the relevant adjusted gross income limitations, for a married individual who does not file a joint return, or for an individual with respect to whom a personal exemption deduction may be claimed by another taxpayer for the taxable year. The deduction is not available for taxable years beginning after December 31, 2005.

HOUSE BILL

The provision extends the tuition deduction for one year, through December 31, 2006.

Effective date.—The provision is effective for taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House provision or the Senate amendment provision.

P. EXTENSION AND EXPANSION TO PETROLEUM PRODUCTS OF EXPENDING FOR ENVIRONMENTAL REMEDIATION COSTS

(See 201 of the House bill, sec. 113 of the Senate amendment, and sec. 196 of the Code)

PRESENT LAW

Present law allows a deduction for ordinary and necessary expenses paid or incurred in carrying on any trade or business.

Treas. regulations provide that the cost of incidental repairs that neither materially add to the value of a depreciable asset nor appreciably prolong its useful life, but keep it in an ordinarily efficient operating condition, may be deducted currently as a business expense. Section 263(a)(1) limits the amount of depreciation allowable under section 162 by prohibiting a current deduction for certain capital expenditures. Treasury regulations define “capital expenditures” as amounts paid or incurred for the purpose of adding material or substantial value, or substantially prolonging the useful life, of property owned by the taxpayer, or to adapt property to a new or different use.

Outside the context of these rules, amounts paid or incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site do not constitute capital expenditures. The determination of whether an expense is deductible or capitalizable is based on the facts and circumstances of each case.

Taxpayers may elect to treat certain environmental remediation expenditures that they otherwise should account as deductible in the year paid or incurred.2 The deduction applies for both regular and alternative minimum tax purposes. The conference agreement does not include the provision extending and expanding the deduction for environmental remediation expenditures, which would otherwise be available to those who incurred expenditures during the taxable year in connection with the abatement or control of hazardous substances at a qualified contaminated site.

A “qualified contaminated site” (a so-called “brownfield”) generally is any property that is held for use in a trade or business, for the production of income, or as an inventory and is certified by the appropriate State environmental agency to be an area at which there has been (or there is threat of release) or disposal of a hazardous substance. Both urban and rural property may qualify. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (“CERCLA”) or that cannot qualify as targeted hazardous substances are defined by reference to sections 101(14) and 102 of CERCLA, subject to additional limitations applicable to asbestos and similar substances which are within buildings or naturally occurring substances such as radon, and certain other substances released into drinking water supplies due to deterioration through age, changes in land use, contamination of areas by hazardous substances at a qualified contaminated site does not constitute a qualified contaminated site.

Under section 1400A(g), the above provisions apply to expenditures paid or incurred to abate contamination at qualified contaminated sites in the Gulf Opportunity Zone (defined as that portion of the Hurricane Katrina Disaster Area determined by

24 Sec. 162.

25 Sec. 198.

26 Sec. 1245 (1974).


28 Section 101(14) of CERCLA specifically excludes “gasoline spill sites” from the definition of “hazardous substance.”
the President to warrant individual or individual and public assistance from the Federal Government under the Robert T. Stafford Disaster Relief and Emergency Assistance Act by reason of Hurricane Katrina) before January 1, 2008; in addition, within the Gulf Opportunity Zone section 1400N(g) broadens the definition of hazardous substance to include petroleum products (def- refined by reference to section 9612(a)(3)).

HOUSE BILL

The House bill extends for two years the present-law provisions relating to environmental remediation expenditures (through December 31, 2007). In addition, the provision expands the definition of hazardous substance to include petroleum products. The effective date.―The provision applies to expenditures paid or incurred after December 31, 2005.

Senate amendment

The Senate amendment modifies the House bill to provide a temporary exception from the present-law provisions relating to environmental remediation expenditures (through December 31, 2006). The Senate amendment withholds the House bill in expanding the definition of hazardous substances to include petroleum products.

Effective date.―The provision applies to expenditures paid or incurred after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the House bill provision or the Senate amendment provision.

Q. CONTROLLED FOREIGN CORPORATIONS

1. Subpart F exception for active financing (Sec. 202(a) of the House bill and secs. 953 and 954 of the Code)

Present law

Under the subpart F rules, 10-percent U.S. shareholders of a controlled foreign corporation (“CFC”) are subject to U.S. tax currently on certain income earned by the CFC, whether or not such income is distributed to the shareholders. The income subject to current inclusion under the subpart F rules includes, among other things, insurance income of a CFC (subject to tax under Subchapter L of the Code, with the exceptions provided for in section 899(b)), and income derived by a nonbanking, nonfinance, or similar business, or in the conduct of an insurance business (so-called “active financing income”).

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be primarily and predominately engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions to the insurance income requirements. The exceptions apply, which provide that income derived by a CFC or a qualified business unit (“QBU”) of a CFC from transactions with customers for the purpose of obtaining insurance or annuity contracts is the income derived by a CFC that is allocable to any insurance contract in connection with risks located outside the CFC’s country of organization is taxable as subpart F insurance income.

Temporary exceptions from foreign personal holding company income. The temporary exceptions provide for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business (so-called “active financing income”).

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be primarily and predominately engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions to the insurance income requirements. The exceptions apply, which provide that income derived by a CFC or a qualified business unit (“QBU”) of a CFC from transactions with customers for the purpose of obtaining insurance or annuity contracts is the income derived by a CFC that is allocable to any insurance contract in connection with risks located outside the CFC’s country of organization is taxable as subpart F insurance income.

Temporary exceptions from foreign personal holding company income. The temporary exceptions provide for subpart F purposes for certain income that is derived in the active conduct of a banking, financing, or similar business, or in the conduct of an insurance business (so-called “active financing income”).

With respect to income derived in the active conduct of a banking, financing, or similar business, a CFC is required to be primarily and predominately engaged in such business and to conduct substantial activity with respect to such business in order to qualify for the exceptions to the insurance income requirements. The exceptions apply, which provide that income derived by a CFC or a qualified business unit (“QBU”) of a CFC from transactions with customers for the purpose of obtaining insurance or annuity contracts is the income derived by a CFC that is allocable to any insurance contract in connection with risks located outside the CFC’s country of organization is taxable as subpart F insurance income.

Present law permits a taxpayer in certain circumstances, subject to approval by the IRS, to use the tax reserve method that would apply if the qualifying insurance company were subject to tax under Subchapter L of the Code, with the modifications provided under present-law provisions relating to IRS user fees.

House bill

The House bill extends for two years (for taxable years beginning before 2009) the present-law temporary exceptions from subpart F foreign personal holding company income, foreign base company services income, and foreign personal holding company income. The exceptions apply for certain income derived by a nonbanking, nonfinance, or similar business, or in the conduct of an insurance business (so-called “active financing income”).
January 1, 2009, and for taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.

The conference agreement includes the House bill provision.

2. Look-through treatment of payments between related controlled foreign corporations under foreign personal holding company income rules (sec. 207(h) of the House bill and sec. 954(c) of the Code).

In general, in general, gain or loss reflected in the value of an asset is not recognized for income tax purposes until a taxpayer disposes of the asset. On the sale or exchange of a capital asset, any gain generally is included in income. Any net capital gain of an individual is taxed at a maximum rate lower than the rates applicable to ordinary income. Net capital gain is the excess of the net long-term capital gain for the taxable year over any capital loss for the year. Gain or loss is treated as long-term if the asset is held for more than one year.

Capital losses generally are deductible in full against other taxable income. Individual taxpayers may deduct capital losses may be carried forward indefinitely to another taxable year.

A capital asset generally means any property except (1) inventory, stock in trade, or property held primarily for sale to customers in the ordinary course of the taxpayer’s trade or business, (2) depreciable or real property used in the taxpayer’s trade or business (3) property held for less than a year, (4) business accounts or notes receivable, (5) certain U.S. publications, (6) commodities, (7) currency, or (8) goodwill of a business. In addition, the net gain from the disposition of certain property used in the taxpayer’s trade or business is treated as long-term capital gain. Gain from the disposition of depreciable personal property is not treated as capital gain to the extent of all previous allowances. Gain from the disposition of depreciable real property is generally not treated as capital gain to the extent of the depreciation allowances. However, any gain in excess of depreciation allowances that would have been available under the straight-line method of depreciation.

The House bill, for taxable years beginning after December 31, 2006, and before January 1, 2009, that would otherwise have been taxed at the 10 percent rate is taxed at an 8 percent rate. Any gain from the sale or exchange of property held more than five years which would otherwise have been taxed at the 10 percent rate is taxed at an 8 percent rate.

The tax rates on 28 percent gain and unrecaptured section 1250 gain are the same as for taxable years beginning before 2009.

In general A dividend is the distribution of property made by a corporation to its shareholders out of its after-tax earnings and profits.

Under present law, dividends received by an individual from domestic corporations and qualified foreign corporations are taxed at the same rates that apply to capital gains. This treatment applies for purposes of both the regular tax and the alternative minimum tax. Thus, for taxable years beginning before 2009, dividends received by an individual are taxed at rates of five (zero for taxable years beginning after 2009) and 15 percent.

If a shareholder does not hold a share of stock for more than 60 days during the 121-day period beginning 60 days before the ex dividend date (as measured under section 246(c)), dividends received on the stock are not eligible for the reduced rates. Also, the reduced rates are not available to individuals to the extent that the taxpayer is obligated to make related payments with respect to positions in substantially similar or related property.

Qualified dividend income includes otherwise qualified dividends received from qualified foreign corporations. The term ‘qualified foreign corporation’ includes a foreign corporation that is eligible for the benefits of a comprehensive income tax treaty with the United States. and which the United States, and which includes an exchange of information program. In addition, a foreign corporation is treated as a qualified foreign corporation with respect to any stock in which the corporation with respect to stock that is readily tradable on an established securities market in the United States.

Dividends received from a corporation that is a passive foreign investment company (as defined in section 1297) in either the taxable year of the distribution, or the preceding taxable year, are not qualified dividends.

Special rules apply in determining a taxpayer’s foreign tax credit limitation under section 902, as qualified foreign dividend income. For these purposes, rules similar to the rules of section 904(b)(2)(B) concerning adjustments to the foreign tax credit limitation reflect any capital gain rate differential will apply to any qualified dividend income.
If a taxpayer receives an extraordinary dividend (within the meaning of section 1099(c)) eligible for the reduced rates with respect to any share of stock, any loss on the sale or exchange of the stock is treated as a long-term capital loss to the extent of the dividend. A dividend is treated as investment income for purposes of determining the amount of deductible investment interest only if the taxpayer elects to treat the dividend as not eligible for the reduced rates. The amount of dividends qualifying for reduced rates that may be paid by a regulated investment company (‘RIC’) for any taxable year in which the qualified dividend income received by the RIC is less than 95 percent of its gross income (as specially computed) may not exceed the sum of (i) the qualified dividends gross income (as specially computed) received by the RIC for the taxable year and (ii) the amount of earnings and profits accumulated in a non-RIC taxable year that were distributed by the RIC during the taxable year. The amount of dividends qualifying for reduced rates that may be paid by a real estate investment trust (‘REIT’) for any taxable year may not exceed the sum of (i) the qualified dividend income of the REIT for the taxable year, (ii) an amount equal to the excess of the income subject to the taxes imposed by section 857(b)(1) and the regulations prescribed under section 857(f)(4) for the preceding taxable year over the amount of these taxes for the preceding taxable year, and (iii) the amount of earnings and profits accumulated in a taxable year that were distributed by the REIT during the taxable year. The reduced rates do not apply to dividends received from an organization that was exempt from tax under section 501 or was a tax-exempt farmers’ cooperative in either the taxable year of the distribution or the preceding taxable year; dividends received from a mutual savings bank that received a deduction under section 591; or deductible dividends paid on employer securities.32

**Tax rates after 2006**

For taxable years beginning after 2006, dividends received by an individual are taxed at ordinary income rates.

**HOUSE BILL**

The House bill extends for two years the present-law provisions relating to lower capital gain and dividend tax rates (through taxable years beginning on or before December 31, 2010).

**Effective date.**—The provision applies to taxable years beginning after December 31, 2006.

**SENATE AMENDMENT**

No provision.

**CONFERENCE AGREEMENT**

The conference agreement includes the House bill provision.

8. CREDIT FOR ELECTIVE DEFERRALS AND IRA CONTRIBUTIONS (THE ‘SAVER’S CREDIT’)

(Sec. 204 of the House bill, sec. 102 of the Senate amendment, and sec. 225B of the Code)

PRESENT LAW

Present law provides a temporary nonrefundable tax credit for eligible taxpayers for qualified retirement savings contributions made in 2006. The maximum annual credit allowed is $1,000 (or $500, if the taxpayer is married and files a joint return). The credit is limited to 10% of the amount of the taxpayer’s contributions (up to $2,000) made in 2006. No general business credit under section 469 applies with respect to the credit.

**CONGRESSIONAL RECORD—HOUSE** May 9, 2006

**TABLE 1.—CREDIT RATES FOR SAVER’S CREDIT**

<table>
<thead>
<tr>
<th>Joint file</th>
<th>Heads of household</th>
<th>All other files</th>
<th>Credit rate (percent)</th>
</tr>
</thead>
<tbody>
<tr>
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<td>$0—$15,000</td>
<td>$0—$15,000</td>
<td>10</td>
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<tr>
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<td>$15,001—$25,000</td>
<td>$15,001—$25,000</td>
<td>20</td>
</tr>
<tr>
<td>$25,001—$50,000</td>
<td>$25,001—$50,000</td>
<td>$25,001—$50,000</td>
<td>30</td>
</tr>
<tr>
<td>Over $50,000</td>
<td>Over $50,000</td>
<td>Over $50,000</td>
<td>40</td>
</tr>
</tbody>
</table>

The credit does not apply to taxable years beginning after December 31, 2006.34

**HOUSE BILL**

The House bill extends the saver’s credit for two years, through December 31, 2008.

**Effective date.**—The provision is effective on the date of enactment.

**SENATE AMENDMENT**

The Senate amendment extends the saver’s credit for three years, through December 31, 2009.

**Effective date.**—The provision is effective on the date of enactment.

**CONFERENCE AGREEMENT**

The conference agreement does not include the House bill provision or the Senate amendment provision.

T. EXTENSION OF INCREASED EXPENSING FOR SMALL BUSINESS

(Sec. 205 of the House bill, sec. 101 of the Senate amendment, and sec. 179 of the Code)

PRESENT LAW

In lieu of depreciation, a taxpayer with a small amount of annual investment may elect to deduct (or “expense”) such costs. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2007, is $100,000 of the cost of qualifying property placed in service for the taxable year.35 In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business. Off-the-shelf computer software placed in service in taxable years beginning before 2008 is treated as qualifying property. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $100,000 and $200,000 amounts are indexed for inflation for taxable years beginning after 2005 and before 2008.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitation may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 469 applies with respect to the credit. Section 38 is allowed with respect to any amount for which a deduction is allowed under section 179. An expensing election is made under rules prescribed by the Secretary.36

For taxable years beginning in 2008 and thereafter (or before 2005), the following rules apply. A taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $200,000. The $25,000 and $200,000 amounts are not indexed. In general, qualifying property is defined as depreciable tangible personal property that is purchased for use in the active conduct of a trade or business (not including off-the-shelf computer software). An expensing election may be revoked only with consent of the Commissioner.37

31In addition, for taxable years beginning before 2006, amounts treated as ordinary income on the disposition of certain preferred stock (sec. 396) are treated as dividends for purposes of applying the reduced rates; the tax rate for the accumulated earnings tax (sec. 531) and the personal holding company tax (sec. 541) is reduced to 15 percent; and the corporate alternative minimum tax (sec. 56) is repealed.

32The House bill was enacted as part of the Economic Growth and Tax Relief Reconciliation Act of 2001 (‘‘EGTRRA’’), Pub. L. No. 107-16. The provisions of EGTRRA generally do not apply for purposes of determining the minimum tax liability as of December 31, 2003.

33Additional section 179 incentives are provided with respect to a qualified property used by a business failing in a highly leveraged real estate transaction (‘‘ HLREIT’’), an empowerment zone (sec. 1391), or a renewal community (sec. 199A).

34Sec. 179(c)(1). Under Treas. Reg. sec. 179–5, applicable to property placed in service in taxable years beginning after 2002 and before 2008, a taxpayer is permitted to make or revoke an election under section 179 without the consent of the Commissioner on an amended Federal tax return for that taxable year. This amended return must be filed within the time prescribed by law for filing an amended return for the taxable year. T.D. 9298, July 12, 2000.

35Sec. 179(c)(2).
The provision extends for two years the increased amount that a taxpayer may deduct and the other section 179 rules applicable in taxable years beginning before 2008. Thus, under the provision, these present-law rules continue in effect for taxable years beginning after 2007 and before 2010.

**Effective date.**—The provision is effective for taxable years beginning after 2007 and before 2010.

**SENATE AMENDMENT**

The Senate amendment provision is the same as the House bill.

**CONFERENCE AGREEMENT**

The conference agreement includes the provision in the House bill and the Senate amendment.

**U. EXTEND AND INCREASE ALTERNATIVE MINIMUM TAX EXEMPTION AMOUNT FOR INDIVIDUALS**

(Sec. 106 of the Senate amendment and sec. 55 of the Code)

**PRESENT LAW**

Present law imposes an alternative minimum tax. The alternative minimum tax is the amount by which the tentative minimum tax exceeds the regular income tax. An individual’s tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $77,500 ($87,500 in the case of a married individual filing a joint return and surviving spouses; (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (“AMTI”) as exceeds the exemption amount. The maximum tax rates on net capital gain and dividends used in computing the regular tax are used in computing the tentative minimum tax. AMTI is the individual’s taxable income adjusted to take account of specified preferences and adjustments.

The exemption amount is: (1) $45,000 ($58,000 for taxable years beginning before 2006) in the case of married individuals filing a joint return and surviving spouses; (2) $33,750 ($40,250 for taxable years beginning before 2006) in the case of unmarried individuals other than surviving spouses; (3) $22,500 ($26,250 for taxable years beginning before 2006) in the case of married individuals filing a separate return; and (4) $22,500 in the case of estates and trusts. The exemption amount is phased out at a rate equal to 25 percent of the amount by which the individual’s AMTI exceeds (1) $150,000 in the case of married individuals filing a joint return and surviving spouses, (2) $125,000 in the case of unmarried individuals other than surviving spouses, and (3) $75,000 in the case of married individuals filing separate returns, estates, and trusts. These amounts are not indexed for inflation.

**HOUSE BILL**

No provision.

**SENATE AMENDMENT**

Under the Senate amendment, for taxable years beginning in 2006, the exemption amounts are increased to: (1) $62,550 in the case of married individuals filing a joint return and surviving spouses; (2) $44,500 in the case of unmarried individuals other than surviving spouses; and (3) $31,275 in the case of married individuals filing a separate return.

**Effective date.**—These provisions apply to taxable years beginning after December 31, 2005.

**CONFERENCE AGREEMENT**

The conference agreement includes the provision in the Senate amendment.

The Senate amendment provision is the same as the House bill.

**CONFERENCE AGREEMENT**

The conference agreement includes the provision in the Senate amendment.

The Senate amendment provision. Congress has the authority to designate “targeted populations” as low-income communities for purposes of the new market tax credit. For this purpose, a “targeted population” is defined in section 123(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106-554 (December 21, 2000).

**PRESENT LAW**

Section 45D of the Code provides for new market tax credits for qualified investments made by taxpayers in a corporation, a capital interest in a partnership, or a capital interest in an association. The credit is not available for new investments in CDEs after December 31, 2006. The credit is reduced to 25 percent of the otherwise allowable amount for investments made after December 31, 2006.

The Secretary has the authority to designate “targeted populations” as low-income communities for purposes of the new market tax credit. For this purpose, a “targeted population” is defined in section 123(a) of the Community Renewal Tax Relief Act of 2000, P.L. No. 106-554 (December 21, 2000).

**PRESENT LAW**

Section 45D of the Code provides for new market tax credits for qualified investments made by taxpayers in a corporation, a capital interest in a partnership, or a capital interest in an association. The credit is not available for new investments in CDEs after December 31, 2006. The credit is reduced to 25 percent of the otherwise allowable amount for investments made after December 31, 2006.

**PRESENT LAW**

Section 45D of the Code provides for new market tax credits for qualified investments made by taxpayers in a corporation, a capital interest in a partnership, or a capital interest in an association. The credit is not available for new investments in CDEs after December 31, 2006. The credit is reduced to 25 percent of the otherwise allowable amount for investments made after December 31, 2006.

**PRESENT LAW**

Section 45D of the Code provides for new market tax credits for qualified investments made by taxpayers in a corporation, a capital interest in a partnership, or a capital interest in an association. The credit is not available for new investments in CDEs after December 31, 2006. The credit is reduced to 25 percent of the otherwise allowable amount for investments made after December 31, 2006.

**PRESENT LAW**

Section 45D of the Code provides for new market tax credits for qualified investments made by taxpayers in a corporation, a capital interest in a partnership, or a capital interest in an association. The credit is not available for new investments in CDEs after December 31, 2006. The credit is reduced to 25 percent of the otherwise allowable amount for investments made after December 31, 2006.

**PRESENT LAW**

Section 45D of the Code provides for new market tax credits for qualified investments made by taxpayers in a corporation, a capital interest in a partnership, or a capital interest in an association. The credit is not available for new investments in CDEs after December 31, 2006. The credit is reduced to 25 percent of the otherwise allowable amount for investments made after December 31, 2006.
and is unavailable for purchases after December 31, 2006.

HOUSE BILL
No provision.

SENATE AMENDMENT
Under the Senate amendment, the full amount of the credit for qualified electric vehicles is available for purchases prior to December 31, 2006. As under present law, the credit is unavailable for purchases after December 31, 2006.

Effective date.—The provision is effective for property placed in service after December 31, 2005.

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

X. APPLICATION OF EGTRRA SUNSET TO TITLE II OF THE SENATE AMENDMENT (Sec. 231 of the Senate amendment)

PRESENT LAW
Reconciliation is a procedure under the Congressional Budget Act of 1974 (the "Budget Act") by which Congress implements spending and tax policies contained in a budget resolution. The Budget Act contains numerous rules enforcing the scope of items permitted to be considered under the budget reconciliation process. The so-called "Byrd rule," was incorporated into the Budget Act in 1990. The Byrd rule, named after its principal sponsor, Senator Robert C. Byrd, is contained in section 313 of the Budget Act. The Byrd rule generally permits committee that submitted the title or provision in question to be extraneous if it falls under one or more of the following six definitions:

1. It does not produce a change in outlays or revenues;
2. It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions;
3. It is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure;
4. It produces a change in outlays or revenues which is merely incidental to the non-budgetary components of the provision;
5. It would increase the deficit for a fiscal year beyond those covered by the reconciliation measure; and
6. It recommends changes in Social Security.

The Economic Growth and Tax Relief Reconciliation Act of 2001 (EGTRRA) contains sunset provisions to ensure compliance with the Budget Act. Under title IX of EGTRRA, the provisions of, and amendments made by, that Act that are in effect on September 30, 2011, shall cease to apply as of the close of that date. Except that all provisions of, and amendments made by, the Act generally do not apply for taxable years, plan or limitation years beginning after December 31, 2010. With respect to the estate, gift, and generation-skipping transfer provisions of the Act, the provisions do not apply to estates of decedents dying, gifts made, or generation-skipping transfers made after December 31, 2010.


Effective date.—The provision is effective for transfers made after the date of enactment.

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

TITLE II — OTHER PROVISIONS
A. TAXATION OF CERTAIN SETTLEMENT FUNDS
SEC. 301 of the House bill and sec. 468B of the Code

PRESENT LAW
Present law provides that if a taxpayer makes a payment to a designated settlement fund pursuant to a court order, the deduction timing rules that require economic performance generally are deemed to be met as the payments are made by the taxpayer to the fund. A designated settlement fund means a fund which is: established pursuant to a court order; and is subject to the settlor’s tort liability arising out of personal injury, death or property damage; is administered by persons a majority of whom are independent of the taxpayer; and in terms of the fund the taxpayer (or any related person) may not hold any beneficial interest in the income or corpus of the fund.

Generally, a designated settlement fund is taxed as a separate entity at the maximum tax rate on its modified income. Modified income is generally gross income less deductions for administrative costs and other incidental expenses incurred in connection with the operation of the settlement fund. The cleanup of hazardous waste sites is sometimes funded by environmental “settlement funds” or escrow accounts. These escrow accounts are established in consent decrees between the Environmental Protection Agency ("EPA") and the settling parties under the jurisdiction of a Federal district court. The purpose of these accounts is to resolve claims against private parties under Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"). Present law provides that nothing in any provision of law is to be construed as providing that an escrow account, settlement fund, or similar fund is not subject to current income tax.

HOUSE BILL
No provision.
least 90 percent of the fair market value of the corporation’s gross assets consist of stock and securities of a controlled corporation that is engaged in the active conduct of a trade or business.

In determining whether assets are part of a five-year qualifying active business, assets acquired more recently than five years prior to the date of the taxable transaction to which section 355 does not apply to any transaction that is a “device” for the distribution of earnings and profits to a shareholder that is a payment of tax on a dividend without the payment of tax on a distribution of its stock, rather than as a distribution of earnings and profits to a shareholder that is a payment of tax on a dividend.

A corporation holds an interest in a partnership if, at any time during the five-year period ending on the date of enactment of the provision, it is a partner in such partnership.

Under the House provision, the active business test is determined by reference to the relevant affiliated group. The relevant affiliated group for this purpose includes the corporation that distributes the stock and securities of a controlled corporation, as the common parent.

The Senate amendment provision is the same as the House provision, except for a modification of the effective date.

The term ‘investment assets’ also does not include any interest in, or any debt instrument or other evidence of indebtedness issued by, a corporation or any person that did not own 50 percent or more of the voting power of any corporation immediately after such transaction. The term ‘investment assets’ also does not include any interest in, or any debt instrument or other evidence of indebtedness issued by, a corporation or any person that did not own 50 percent or more of the voting power of any corporation immediately after such transaction.
The conferees wish to clarify that the disqualified investment corporation provision applies when a person directly or indirectly holds 50 percent of either the vote or the value of a distributing corporation immediately following a distribution, and such person did not hold such 50 percent interest directly or indirectly prior to the distribution. As one example, this applies if a person that held 50 percent or more of the vote, but not of the value, of a distributing corporation immediately prior to a transaction in which a controlling corporation that was 100 percent owned by that distributing corporation is distributed, directly or indirectly holds 50 percent of the value of either the distributing corporation or the distributing corporation immediately following such transaction.

The conferees further wish to clarify that the enumeration in subsection 355(g)(5)(A) through (C) of specific situations that Treasury regulations may address is not intended to restrict or limit any other situations that Treasury may address under the general authority of new section 355(g)(5) to carry out, or prevent the avoidance of, the purposes of the disqualified investment corporation provision.

Effective date.—The starting effective date of the provision that applies the active business test by reference to the relevant affiliated group's ownership interest in the distributing corporation is January 1, 2006. The conference agreement changes the date on which the provision sunsets so that the provision is in effect through September 30, 2016. The conference agreement further clarifies that Treasury may address under the general authority of new section 355(g)(5) to carry out, or prevent the avoidance of, the purposes of the provision, including the proposal to require that 50 percent ownership interest be directly or indirectly held by a person as of the date of the distribution, and to carry out, or prevent the avoidance of, the purposes of the provision as of any other date, subject to the State volume limitation based on the distribution corporation immediately following such transaction.

C. QUALIFIED VETERAN MORTGAGE BONDS

SEC. 303 of the House bill and sec. 143 of the Code)

PRESENT LAW

Private activity bonds are bonds that are issued by States or local governments, but the proceeds of which are used (directly or indirectly) by a private person and pay interest on which is derived from funds (directly or indirectly) by a private person. The exclusion from income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain permitted purposes (“qualified private activity bonds”).

The definition of a qualified private activity bond includes both qualified mortgage bonds and qualified private activity bonds.

Qualified veterans’ mortgage bonds are private activity bonds the proceeds of which are used to make mortgage loans to certain veterans and their families. The use of the proceeds of qualified veterans’ mortgage bonds is limited to States that had issued such bonds before June 22, 1984. Qualified veterans’ mortgage bonds are not subject to the limitations that are generally applicable to private activity bonds. Instead, annual issuance in each State is subject to a State volume limitation based on the volume of qualified veterans’ mortgage bonds issued in the State before June 22, 1984. The five States eligible to issue these bonds are Alaska, California, Oregon, Texas, and Wisconsin. Loans financed with qualified veterans’ mortgage bonds can be made only with respect to principal residences and can not be made to acquire or replace existing mortgages. Mortgage loans made with the proceeds of these bonds can be made only to veterans who served on active duty before July 1, 1977 and who applied for the loan before the date 12 years after the last date on which such veteran left active service (the “eligibility period”).

Qualified mortgage bonds are issued to make mortgage loans to qualified mortgagees for owner-occupied residences. The Code imposes several limitations on qualified mortgage bonds, including limitations for homebuyers and purchase price limitations for the home financed with bond proceeds. In addition, qualified mortgage bonds cannot be used to finance a mortgage for a homebuyer who had an ownership interest in a principal residence in the three years preceding the execution of the mortgage (the “first-time homebuyer requirement”).

HOUSE BILL

The House bill repeals the requirement that veterans receiving loans financed with qualified veterans’ mortgage bonds must have served before 1977. The provision amends the eligibility period to 25 years (rather than 30 years) following release from the military service. The bill provides new State volume limits for qualified veterans’ mortgage bonds. In 2010, the new annual limit on the total volume of veterans’ bonds is $25 million for Alaska, $66.25 million for California, $25 million for Oregon and Wisconsin, and $25 million for Texas. These volume limits are phased-in over the four-year period immediately preceding 2010 by applying the applicable percentage of the 2010 volume limits. The following table provides those percentages.

<table>
<thead>
<tr>
<th>Calendar Year</th>
<th>Applicable Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>15</td>
</tr>
<tr>
<td>2007</td>
<td>20</td>
</tr>
<tr>
<td>2008</td>
<td>25</td>
</tr>
<tr>
<td>2009</td>
<td>30</td>
</tr>
</tbody>
</table>

The volume limits are zero for 2011 and each year thereafter. Unused allocation cannot be carried forward to subsequent years.

Effective date.—The provision generally applies to bonds issued after December 31, 2006. The provision expanding the definition of eligible veterans extends the financing provided after date of enactment.

CONFERENCE AGREEMENT

No provision.

SENATE AMENDMENT

The conference agreement includes the House bill with the following modifications. The conference agreement does not amend existing law as it relates to qualified veterans’ mortgage bonds issued by the States of California and Texas. In the case of qualified veterans’ mortgage bonds issued by the States of Alaska, Oregon, and Wisconsin, (1) the requirement that veterans must have served after 1977 is repealed and (2) the eligibility period for applying for a loan following release from the military service is reduced from 30 years to 25 years.

In addition, the annual issuance of qualified veterans’ mortgage bonds in the States of Alaska, Oregon, and Wisconsin is subject to new State volume limitations which are phased in between the years 2006 and 2010. The State volume limit in these States for any calendar year is 60 percent of the larger of (1) the applicable percentage of the 2010 volume limit or (2) the applicable percentage of the 2006 volume limit.

Effective date.—The provision expanding the definition of eligible veterans applies to bonds issued on or after date of enactment. The provisions modifying the State volume limitations apply to allocations of volume limitations made after April 5, 2006.

D. CAPITAL GAINS TREATMENT FOR CERTAIN SELF-CREATED MUSICAL WORKS

SEC. 304 of the House bill and sec. 1221 of the Code

PRESENT LAW

Capital gains

The maximum tax rate on the net capital gain income of an individual is 15 percent for taxable years beginning in 2006. By contrast, the maximum tax rate on an individual’s ordinary income is 35 percent. The reduced 15-percent rate generally is available for gain from the sale or exchange of a capital asset for which the taxpayer has satisfied a holding-period requirement. Capital assets generally include all property held by a taxpayer with certain specified exclusions. A capital asset includes property held by a capital asset applies to inventory property or property held by a taxpayer primarily for sale to customers in the ordinary course of the taxpayer’s trade or business. Another exclusion from capital asset status applies to copyrights, literary, musical, or artistic compositions, letters or memoranda, or similar property held by a taxpayer whose personal efforts created the property (or held by a taxpayer whose basis in the property is determined by reference to the basis of the taxpayer whose personal efforts created the property). Consequently, when a taxpayer that owns copyrights in, for example, books, songs, or paintings that the taxpayer created (or a taxpayer who acquired the copyrights have been transferred by the works’ creator in a substituted basis transaction) sells the copyrights, gain from the sale is treated as ordinary income, not capital gain.

Charitable contributions

A taxpayer generally is allowed a deduction for the fair market value of property contributed to a charity. If a taxpayer makes a contribution of property that would have generated ordinary income (or short-term capital gain), the taxpayer’s charitable contribution deduction generally is limited to the property’s fair market value.

HOUSE BILL

The House bill provides that the election of a taxpayer, the sale or exchange before January 1, 2011 of musical compositions or musical or literary works in which the taxpayer has personal efforts created the composition or copyright, is treated as a sale or exchange of a capital asset. The House bill provides that the charitable contribution deduction generally is limited to the property’s fair market value.
Generally, the United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only of U.S.-source income from shipping operations, which is “effectively connected” with the conduct of a trade or business in the United States (sec. 887). Such income is generally taxed in the manner in which the income is attributable to transactions with a U.S. person, and at the same rates as the income of a U.S. corporation.

The conference agreement imposes a four percent tax on the amount of a foreign corporation’s U.S. source gross transportation income (sec. 887). Transportation income includes income from the use (or hiring or leasing for use) of a vessel and income from services directly related to the use of a vessel. Fifty percent of the transportation income attributable to transactions with a U.S. person is treated as income effectively connected with the income, and (2) substantially all the income is attributable to regularly scheduled transportation.

The tax does not apply, however, to U.S. source gross transportation income that is treated as income effectively connected with the conduct of a U.S. trade or business. U.S. source gross transportation income is not treated as connected income unless (1) the taxpayer has a fixed place of business in the United States involved in earning the income, and (2) substantially all the income is attributable to regularly scheduled transportation.

The tax imposed by section 882 or 887 on income from operations may be limited by an applicable U.S. income tax treaty or by an exemption of a foreign corporation’s international shipping operations income in instances where a foreign country grants an equivalent exemption (sec. 888).

Notwithstanding the general rules described above, the American Jobs Creation Act of 2004 generally allows corporations that are qualifying vessel operators to elect a “tonnage tax” in lieu of the corporate income tax on taxable income from certain shipping activities. Accordingly, an electing corporation’s gross income does not include its income from qualifying shipping activities (and items of loss, deduction, or credit are disallowed with respect to such excluded income), and electing corporations are only subject to tax on these activities at the maximum corporate income tax rate on the notional shipping income, which is based on the net tonnage of the corporation’s qualifying vessels.52 No deductions are allowed against the notional shipping income for any expenses or credits in kind. Nor is it allowed against the notional tax imposed under the tonnage tax regime.


53 Generally, a qualifying vessel operator is a corporation that (1) operates one or more qualifying vessels and (2) meets certain requirements with respect to its shipping activities.

54 An electing corporation’s notional shipping income for the taxable year is the product of the following:

(a) the number of days during the taxable year that the electing corporation operated such vessel as a qualifying vessel in the United States foreign trade.
(b) the number of deadweight tons of such vessel that is used exclusively in the U.S. foreign trade.

(c) the number of days during the taxable year that the vessel was impaired or idle.

(d) the average daily notional shipping income from the operation of the qualifying vessel, which is determined by dividing the amount of notional shipping income attributable to the vessel for the taxable year by the denominator of which is the sum of (b) and (d).

55 Deadweight measures the lifting capacity of a ship expressed in long tons (2,240 lbs.), including cargo, fuel, lube oil, crew, passengers, repair parts, and supplies, as well as the transportation of goods or passengers between places in the United States and a foreign place or between foreign places. The temporary disregard of goods or passengers between places in the United States of any qualifying vessel or the tonnage of a qualifying vessel may be disregarded, under special rules.

56 H.R. 2661.
total income from the property; (2) determining the hypothetical overpayment or underpayment of tax based on this recalculated depreciation; and (3) applying the overpayment or underpayment of tax to their gross income for the taxable year. As provided in Treasury regulations, a “re-computation year” is the third and tenth taxable years after the year in which the property was placed in service, unless the actual income from the property for each taxable year ending with or before the close of such years is greater than 50 percent of the estimated income from the property for such years.

A special rule is provided under Treasury guidance in the case of certain authors and other individuals (regardless of their relationship to their employers) to capitalize depreciable expenses under section 263A and with respect to the recovery or amortization of such property. IRS Notice 88-2 (1988-1 C.B. 548) provides an elective safe harbor under which eligible taxpayers capitalize qualified created costs incurred during the taxable year and amortize 25 percent in each of the two successive taxable years. Under the Notice, qualified creative costs, including the production costs of musical and dance compositions including accompanying words, and other similar properties, provided the personal efforts of the individual predominately create the property, are treated as incurred by an individual, and also a corporation or partnership, substantially all of which is owned by one qualified employee owner (an individual and family member).

H09MYPT1 House

No provision.

SENATE AMENDMENT

The Senate amendment provides that if any expense is paid or incurred by the taxpayer or by the donor (regardless of whether it is termed a gift or services furnished by the charity) for goods or services furnished by the charity that are partly as a gift and partly as consideration for goods or services furnished by the charity, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether it is termed a gift or services furnished by the charity (a “quid pro quo” contribution) is required to inform the contributor in writing of an estimate of the value of the goods or services furnished by the charity and that only the portion of the amount that the goods or services are deductible as a charitable contribution.

Effective date.—The provision is effective for expenses paid or incurred after December 31, 2005, in taxable years ending after that date.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision with the following modifications. Under the conference agreement, the five-year amortization period is elective for the taxable year. Thus, a taxpayer that places in service any musical composition or copyright with respect to a musical composition in a taxable year may elect not to amortize amounts paid or incurred with respect to such musical compositions.

In addition, the conference agreement provides that the five-year amortization period begins in the month the property is placed in service.

Effective date.—The conference agreement is effective for expenses paid or incurred with respect to property placed in service in taxable years beginning after December 31, 2005 and before January 1, 2011.

TITLE III—CHARITABLE PROVISIONS

A. CHARITABLE GIVING INCENTIVES

1. Charitable deduction for nonitemizers; floor on deductions for itemizers (Sec. 201 of the Senate amendment and secs. 63 and 170 of the Code)

PRESENT LAW

In computing taxable income, an individual taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and up to the fair market value of property contributed to a charitable organization described in section 501(c)(3), to certain veterans’ organizations, fraternal societies, and cemetery companies, or to a Federal, State, or local governmental entity for exclusively public purposes. The deduction also is allowed for purposes of calculating alternative minimum taxable income.

The amount of the deduction allowable for a taxable year with respect to a charitable contribution may be reduced depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer.

A taxpayer who takes the standard deduction (i.e., who does not itemize deductions) may not take a separate deduction for charitable contributions.

A payment to a charity (regardless of whether it is termed a “contribution”) in exchange for which the donor receives an economic benefit (except for items 19 through 25) to the extent that the donor can demonstrate that the payment exceeds the fair market value of the benefit received from the charity. To facilitate distinguishing charitable contributions from purchases of goods or services from charities, present law provides that no charitable contribution deduction is allowed for a separate contribution of $250 or more unless the donor obtains a contemporaneous written acknowledgement of the contribution from the charity indicating whether it is termed a gift or services furnished by the charity.

Under present law, total deductible contributions of an individual taxpayer to public charities, private operating foundations, and certain types of private nonoperating foundations may not exceed 50 percent of the taxpayer’s contribution base, which is the taxpayer’s adjusted gross income for a taxable year (disregarding the loss carryback). To the extent a taxpayer has not exceeded the 50-percent limitation, (1) contributions of capital gain property to public charities generally may be deducted up to 30 percent of the taxpayer’s contribution base, (2) contributions of cash to private foundations and certain other charitable organizations generally may be deducted up to 20 percent of the taxpayer’s contribution base, (3) contributions of capital gains generally may be deducted up to 20 percent of the taxpayer’s contribution base, and (4) contributions by individuals in excess of the 50-percent, 30-percent, and 20-percent limit may be carried over and deducted over the next five taxable years, subject to the relevant percentage limitations on the deduction in each of those years.

In addition to the percentage limitations imposed specifically on charitable contributions, present law imposes a reduction on most itemized deductions, including charitable contribution deductions, for taxpayers with adjusted gross income of a threshold amount, which is indexed annually for inflation. The threshold amount for 2006 is $150,500 ($77,250 for married individuals filing separate returns). If either spouse’s adjusted gross income is subject to the limit, the total amount of itemized deductions is reduced by three percent of adjusted gross income in excess of the threshold amount, but not by more than 80 percent of itemized deductions subject to the limit. Beginning in 2006, the overall limitation on itemized deductions phases out for all taxpayers. The overall limitation on itemized deductions is eliminated for taxable years beginning after December 31, 2009; however, this elimination is the limitation sunsets on December 31, 2010.

H09MYPT1 House

No provision.

SENATE AMENDMENT

Deduction for nonitemizers

In the case of an individual taxpayer who does not itemize deductions, the provision allows a “direct charitable deduction” from adjusted gross income for charitable contributions paid in cash during the taxable year (with deduction limited to a portion of income). As an addition to the standard deduction. The direct charitable deduction is the amount of the deduction allowable under section 170(a) for the taxable year for cash contributions (determined without regard to any carryover). The amount deductible under the provision is subject to the following cap: 30 percent of the adjusted gross income of the taxpayer, reduced by any charitable contributions made in the taxable year that are deductible for regular income tax purposes.

Floor on itemized deductions

Under the provision, the amount of an individual’s charitable contribution deduction...
(cash and noncash) is subject to a floor. The floor is $2,000 ($2,520 in the case of a joint return). In the case of an individual who elects to itemize deductions, the floor applies to the deductible portion of the direct charitable deduction. The provision does not otherwise allow for the deduction of the direct charitable contribution. The provision does not otherwise change the present-law rules pertaining to charitable contributions.

In general

If an amount withdrawn from a traditional individual retirement arrangement (IRA) or a Keogh plan before attainment of age 591/2 is subject to an additional 10 percent early withdrawal tax, unless an exception applies. Under present law, minimum distributions are required to be made from retirement arrangements, including IRAs. Minimum required distributions from a traditional IRA are generally not to be paid before attainment of age 591/2 (except in the case of death, disability, or a single distribution of all the IRA’s value in the year in which the IRA owner attains age 701/2.)

In addition, present law requires that any Roth IRA be distributed over a single distribution of all the IRA’s value in the year in which the IRA owner attains age 591/2. The provision is effective in the case of a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions; (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution.

Minimum distribution rules also apply in the case of Roth IRAs that are treated as rollover distributions, and the value of non-deductible contributions to a Roth IRA. Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from Roth IRA that are not qualified withdrawal tax, unless an exception applies. Under present law, minimum distributions are required to be made from retirement arrangements, including IRAs. Minimum required distributions from a traditional IRA are generally not to be paid before attainment of age 591/2 (except in the case of death, disability, or a single distribution of all the IRA’s value in the year in which the IRA owner attains age 701/2.)

In addition, present law requires that any Roth IRA be distributed over a single distribution of all the IRA’s value in the year in which the IRA owner attains age 591/2. The provision is effective in the case of a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions; (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution.

Minimum distribution rules also apply in the case of Roth IRAs that are treated as rollover distributions, and the value of non-deductible contributions to a Roth IRA. Qualified withdrawals from a Roth IRA are excludable from gross income. Withdrawals from Roth IRA that are not qualified withdrawal tax, unless an exception applies. Under present law, minimum distributions are required to be made from retirement arrangements, including IRAs. Minimum required distributions from a traditional IRA are generally not to be paid before attainment of age 701/2 (except in the case of death, disability, or a single distribution of all the IRA’s value in the year in which the IRA owner attains age 701/2.)

In addition, present law requires that any Roth IRA be distributed over a single distribution of all the IRA’s value in the year in which the IRA owner attains age 591/2. The provision is effective in the case of a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions; (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution.

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In addition, present law requires that any Roth IRA be distributed over a single distribution of all the IRA’s value in the year in which the IRA owner attains age 591/2. The provision is effective in the case of a Roth IRA that is not a qualified distribution, in determining the portion of the distribution attributable to earnings and distributions are deemed to be distributed in the following order: (1) regular Roth IRA contributions; (2) taxable conversion contributions; (3) nontaxable conversion contributions; and (4) earnings. In determining the amount of taxable distributions from a Roth IRA, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution. All regular Roth IRA contributions, all Roth IRA distributions in the same taxable year are treated as a single distribution.
Charitable gift annuities. Direct distributions (together referred to as a unitrust or charitable remainder unitrust or (2) a charitable remainder unitrust from employer-sponsored retirement plans, includ-
ing a trust’s noncharitable beneficiaries. The penalty for failure to file this return is calculated based on the amount of tax owed. A split-interest trust generally is not subject to tax and therefore, in general, a penalty may not be imposed for the failure to file Form 5227. Form 5227 is not required to be made publicly available.

No provision.

PROVISION

Qualified charitable distributions from IRAs

The provision provides an exclusion from gross income for otherwise taxable IRA dis-

tributions from a traditional or a Roth IRA in the case of qualified charitable distribu-
tions. Special rules apply in determining the amount of a distribution that is otherwise taxable. The present-law rules governing taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable dis-

tributions. Qualified charitable distributions are taken into account for purposes of the minimum distributions rules applicable to traditional IRAs to the same extent the dis-

tribution would have been taken into ac-

count under such rules had the distribution not been taken into account. Under present law, an IRA owner may not make qualified charitable distributions from amounts attributable to split-interest trusts for failure to file a re-

turn. Under the provision, the Secretary will prescribe rules under which IRA owners are deemed to elect out of withholding if they designate a distribution to tax and therefore, in general, a penalty may not be imposed for the failure to file Form 5227. Form 5227 is not required to be made publicly available.

No provision.

SENATE AMENDMENT

Qualified charitable distributions from IRAs

The provision provides an exclusion from gross income for otherwise taxable IRA dis-

tributions from a traditional or a Roth IRA in the case of qualified charitable distribu-
tions. Special rules apply in determining the amount of a distribution that is otherwise taxable. The present-law rules regarding taxation of IRA distributions and the deduction of charitable contributions continue to apply to distributions from an IRA that are not qualified charitable dis-

tributions. Qualified charitable distributions are taken into account for purposes of the minimum distributions rules applicable to traditional IRAs to the same extent the dis-

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turn. Under the provision, the Secretary will prescribe rules under which IRA owners are deemed to elect out of withholding if they designate a distribution to tax and therefore, in general, a penalty may not be imposed for the failure to file Form 5227. Form 5227 is not required to be made publicly available.

No provision.

HISTORICAL

CONGRESSIONAL RECORD — HOUSE

May 9, 2006

year is exempt from this return requirement for such taxable year. A failure to file the re-

quired return may result in a penalty on the tax of $10 a day for as long as the failure continues, up to a maximum of $5,000 per re-

turn.
In addition, split-interest trusts are re-

quired to file annually Form 5227. Form 5227 provides for information to be reported to the IRS in the case of a trust that is a charitable re-


...
The penalty is $20 for each day the failure continues up to $10,000 for any one return. In the case of a split-interest trust with gross income in excess of $250,000, the penalty is $100 for each dollar of the failure continues in addition to a maximum of $50,000. In addition, if a person (meaning any officer, director, trustee, employee, or other individual who is under a duty to file returns or include required information) knowingly failed to file the return or include required information, then that person is personally liable for such a penalty and any penalties imposed in addition to the penalty that is paid by the organization.

Information regarding beneficiaries that are not charitable organizations as described in section 170 must be exempt from the requirement to make information publicly available. In addition, the provision repeals the present-law exception to the filing requirement for split-interest trusts that are otherwise subject to the filing requirement.

Effective date

The provision relating to qualified charitable distributions is effective for distributions made after December 31, 2005, and before January 1, 2008. The provision relating to information returns of split-interest trusts is effective for returns for taxable years beginning after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Charitable deduction for contributions of food inventory (sec. 203 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

Under present law, a taxpayer’s deduction for certain contributions of inventory generally is limited to the taxpayer’s basis (typically, cost) in the inventory, or if less the fair market value of the inventory.

For certain contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item’s appreciation (i.e., basis plus one-half of fair market value in excess of basis) or (2) two times basis (sec. 170(e)(3)). In general, a C corporation’s charitable contribution deductions for a year may not exceed 10 percent of the corporation’s taxable income (sec. 170(b)(2)). To be eligible for the enhanced deduction, the contributed property generally must be inventory of the tax-exempt organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee’s exempt purpose solely for the care of the ill, the needy, or infants, (2) not transfer the property in exchange for money, other property, or services, and (3) provide a written statement that the donee’s use of the property will be consistent with such requirements. In the case of property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for 180 days thereafter.

A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by decreases to the cost of goods sold by the donor of the fair market value of the property or the donor’s basis with respect to the inventory (Trea. Reg. sec. 1.170A-4A(c)(3)). Accordingly, if the allowable charitable deduction for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor’s basis may still be recovered by the donor rather than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis. The valuation of food inventory has been the subject of disputes between taxpayers and the IRS.

Under the Katrina Emergency Tax Relief Act of 2005, any taxpayer, whether or not a C corporation, engaged in a trade or business is eligible to claim the enhanced deduction for certain donations made after August 28, 2005, and before January 1, 2006, of food inventory. For taxpayers other than C corporations, the enhanced deduction for food inventory in a taxable year generally may not exceed 10 percent of the taxpayer’s net income for such taxable year from all sole proprietors, S corporations, or partnerships (or other entity that is not a C corporation) from which contributions of apparently wholesome food are made. “Apparently wholesome food” is food intended for human consumption that meets all quality and labeling standards imposed by Federal, State, and local laws and regulations even though the item is not readily marketable due to appearance, age, freshness, grade, size, surplus, or other conditions.

HOUSE BILL

No provision.

SENATE AMENDMENT

Extension of Katrina Emergency Tax Relief Act of 2005

The provision extends the provision enacted as part of the Katrina Emergency Tax Relief Act of 2005, under which, under the provision, any taxpayer, whether or not a C corporation, engaged in a trade or business, is eligible to claim the enhanced deduction for donations of food inventory. For taxpayers other than C corporations, the total deduction for donations of food inventory in a taxable year generally may not exceed 10 percent of the taxpayer’s net income for such taxable year from all sole proprietors, S corporations, or partnerships (or other non C corporations) from which apparently wholesome food are made. For example, as under the Katrina Emergency Tax Relief Act of 2005, if a taxpayer is a sole proprietor, the sole proprietor, and a partner in a partnership, and each business makes charitable contributions of food inventory, the taxpayer’s deduction for food inventory’s donation is limited to 10 percent of the taxpayer’s net income from the sole proprietorship and the taxpayer’s interests in the S corporation and partnership.

However, if only the sole proprietorship and the S corporation made charitable contributions of food inventory, the taxpayer’s deduction would be limited to 10 percent of the net income from contributions of the sole proprietorship and the taxpayer’s interest in the S corporation, but not the taxpayer’s interest in the partnership.

Under the provision, the enhanced deduction for food is available only for food that qualifies as “apparently wholesome food.” “Apparently wholesome food” is defined as it is under the Katrina Emergency Tax Relief Act of 2005.

Modifications to enhanced deduction for food inventory

Under the provision, for purposes of calculating the enhanced deduction for food inventory that do not account for inventories under section 471 and that are not required to capitalize indirect costs under section 263A are able to elect to treat the basis of the contributed food as being equal to 25 percent of the food’s fair market value.

The provision provides that the maximum amount of the enhanced deduction for eligible contributions of food inventory to the lesser of fair market value or twice the taxpayer’s basis in the food items.

For example, a taxpayer who makes an eligible donation of food that has a fair market value of $10 and a basis of $4 could take a deduction of $3 (twice basis). If the taxpayer’s basis is $8 instead of $4, then the deduction would be $10 (fair market value). By contrast, under present law, a C corporation’s deduction in the first example would be $7 (fair market value less half the appreciation) and in the second example would be $8. (Except for contributions made after August 28, 2005, and before January 1, 2006, taxpayers other than C corporations generally could take a deduction for a contribution of food inventory only for the $4 basis in either example.)

The provision provides that the fair market value of donated apparently wholesome food that cannot or will not be sold solely due to internal standards of the taxpayer or lack of market is determined without regard to such internal standards or lack of market and by taking into account the price at which the same or substantially the same food items (as to both type and quality) are sold by the taxpayer at the time of the contribution or, if not sold at such time, in the recent past.

Effective date

The provision is effective for contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Basis adjustment to stock of S corporation contributing property (Sec. 294 of the Senate amendment and sec. 1367 of the Code)

PRESENT LAW

Under present law, if an S corporation contributes money or other property to a charitable organization, each shareholder takes into account the shareholder’s pro rata share of the contribution in determining its own income tax liability. However, if the shareholder reduces the basis in the stock of the S corporation by the amount of the charitable contribution that flows through to the shareholder, the shareholder’s basis in the stock of the S corporation is reduced by the amount of the charitable contribution.

The provision provides that the amount of a shareholder’s basis reduction in the stock of an S corporation in exchange for charitable contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008, is treated as a basis adjustment to stock of an S corporation.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision provides that the amount of a shareholder’s basis reduction in the stock of an S corporation in exchange for charitable contributions is treated as a basis adjustment to stock of an S corporation.

"Lucky Stores Inc. v. Commissioner, 105 T.C. 420 (1995) (holding that the value of surplus bread inventory donated to charity was the full retail price of the bread rather than half the retail price, as the IRS asserted)."

"The 18 percent limitation does not affect the application of the generally applicable percentage limitation. For example, if 10 percent of a sole proprietor’s net income from the proprietor’s trade or business is apparent wholesome food, then a sole proprietor’s charitable contribution base will be $90 percent of the proprietor’s contribution base. Although the sole proprietor’s charitable contribution base is consistent with present law, such contributions may be carried forward because they exceed the 50 percent limitation. Contributions of food inventory by a taxpayer that is not a C corporation that exceed the 10 percent limitation but not the 50 percent limitation could not be carried forward."


"Sec. 3367(a)(2)(B)."
of an S corporation by reason of a charitable contribution made by the corporation will be equal to the shareholder’s pro rata share of the adjusted basis of the contributed property.44

Thus, for example, assume an S corporation with one individual shareholder makes a charitable contribution of stock with a basis of $200 and a fair market value of $500. The shareholder will be treated as having made a $500 charitable contribution (or a lesser amount if the special rules of section 170(e) apply), and will reduce the basis of the S corporation stock by $200.45

Effective date.—The provision applies to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Charitable deduction for contributions of book inventory

The conference agreement does not include the Senate amendment provision.

PRESENT LAW

Under present law, a taxpayer’s deduction for charitable contributions of inventory generally is limited to the taxpayer’s basis (typically, cost) in the inventory, or if less the fair market value of the inventory.46

For contributions of inventory, C corporations may claim an enhanced deduction equal to the lesser of (1) basis plus one-half of the item’s appreciation (i.e., basis plus appreciation times 50 percent of the basis) or (2) two times basis (sec. 170(e)(3)). In general, a C corporation’s charitable contribution deductions for a year may not exceed a percentage of the corporation’s taxable income (sec. 170(b)(2)). To be eligible for the enhanced deduction, the contributed property generally must be inventory of the taxpayer, or a charitable organization described in section 501(c)(3) (except for private nonoperating foundations), and the donee must (1) use the property consistent with the donee’s purpose solely for the care of the ill, the needy, or infants, (2) not transform the property in exchange for money, other property, or services, and (3) provide the taxpayer a written statement that the donee’s use of the property will be consistent with such requirements. In the case of property subject to the Federal Food, Drug, and Cosmetic Act, the property must satisfy the applicable requirements of such Act on the date of transfer and for a period of five years after the transfer. A donor making a charitable contribution of inventory must make a corresponding adjustment to the cost of goods sold by the lesser of the fair market value of the property or the donor’s basis with respect to the property (Trea. Reg. sec. 1.170A-4(a)(3)). Accordingly, the allowable charitable contribution for inventory is the fair market value of the inventory, the donor reduces its cost of goods sold by such value, with the result that the difference between the fair market value and the donor’s basis may still be recovered by the donor other than as a charitable contribution.

To use the enhanced deduction, the taxpayer must establish that the fair market value of the donated item exceeds basis.

The Katrina Emergency Tax Relief Act of 2005 enhanced the deduction for C corporations to certain qualified book contributions made after August 28, 2005, and before January 1, 2006. For such purposes, a qualified book contribution means a charitable contribution of books to a public school that provides elementary education or secondary education (kinder-

44See Rev. Rul. 96-11 (1996-1 C.B. 140) for a rule relating to the result in the case of charitable contributions made by a public charity.

45This provision assumes that basis of the S corporation stock (before reduction) is at least $200.

46Sec. 6720C of the Code)
make an organization's annual returns or exemption application materials available for public inspection. The penalty amount is $20 for each day during which a failure occurs. If more than one person or entity were tax exempt). In addition, the applicable percentage of the contribution base, which is the taxpayer's adjusted gross income computed without regard to any net unrelated loss of the controlled entity, applies only to the portion of payments received or accrued in a taxable year that exceed the amount of the specified payment that would have been paid or accrued if such payment had been determined under the principles of section 482. Thus, if a payment of a controlled subsidiary to its parent organization exceeds fair market value, the excess amount of such payment over fair market value (as determined in accordance with section 482) is included in the subsidiary organization's unrelated business income, to the extent that such excess reduced the net unrelated income (or increased any net unrelated loss) of the controlled entity (determined as if the entity were tax exempt). In addition, the provision imposes a 20-percent penalty on the larger of such excess determined without regard to any amendment or supplement to a return of tax, or such excess determined with regard to all such amendments and supplements.

The provision provides that if modifications to section 512(b)(13) made by the 1997 Act did not apply to a contract because of the transitional relief provided by the 1997 Act, the provisions also do not apply to amounts received or accrued under such contract before January 1, 2001.

Require public availability of unrelated business income tax returns

The provision extends the present-law public inspection and disclosure requirements and penalties applicable to the Form 990 to the unrelated business income tax return (Form 990-T) of organizations described in section 501(c)(3). The provision provides that certain information may be withheld by the organization from public disclosure and inspection if public availability would adversely affect the organization, similar to the information that may be withheld under present law with respect to applications for tax exemption and the Form 990 (e.g., information relating to a trade secret, patent, process, style of work, or apparatus of the organization, if the Secretary determines that public disclosure of such information would adversely affect the organization).
an historically important land area or a certified historic structure.

Qualified conservation contributions of capital gain property are subject to the same limitations and carryover rules of other charitable contributions of capital gain property.

No provision.  

SENATE AMENDMENT

In general

Under the provision, the 30-percent contribution base limitation on contributions of capital gain property by individuals does not apply to contributions of conservation contributions (as defined under present law). Instead, individuals may deduct the fair market value of any qualified conservation contribution (as defined in section 170(b)(1)(A)) to the extent of the excess of 50 percent of the contribution base over the amount of all other allowable charitable contributions. These contributions are not taken into account in determining the amount of other allowable charitable contributions.

Individuals are allowed to carryover any qualified conservation contributions that exceed the 50-percent limitation for up to 15 years.

For example, assume an individual with a contribution base of $100 makes a qualified conservation contribution of property with a fair market value of $80 and makes other charitable contributions subject to the 50-percent limitation of $60. The individual is allowed a deduction of $50 in the current taxable year for the non-conservation contributions (50 percent of the $100 contribution base) and is allowed to carryover the excess ($10 for up to 5 years). No current deduction is allowed for the qualified conservation contribution, but the entire $90 qualified conservation contribution may be carried forward for up to 15 years.

Farmers and ranchers

Individuals

In the case of an individual who is a qualified farmer or rancher for the taxable year in which the contribution is made, the qualified conservation contribution is allowable up to 100 percent of the excess of the taxpayer’s contribution base over the amount of all other allowable charitable contributions.

In the above example, if the individual is a qualified farmer or rancher, in addition to the $50 deduction for non-conservation contributions, he or she is allowed a deduction of $30 for the conservation contribution and $30 may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.

Corporations

In the case of a corporation (other than a publicly traded corporation) that is a qualified farmer or rancher for the taxable year in which the contribution is made, any qualified conservation contribution is allowable up to 100 percent of the excess of the corporation’s taxable income (as computed under section 170(b)(2)) over the amount of all other allowable charitable contributions. Any excess may be carried forward for up to 15 years as a contribution subject to the 100-percent limitation.

Definition

A qualified farmer or rancher means a taxpayer whose gross income from the trade of farming (within the meaning of section 170(f)(1)) is greater than 50 percent of the taxpayer’s gross income for the taxable year.

Effective date.—The provision applies to contributions made in taxable years beginning after December 31, 2005, and before January 1, 2008.

8. Enhanced deduction for charitable contributions of literary, musical, artistic, or scholarly compositions (sec. 208 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

In the case of a charitable contribution of literary, musical, artistic, or scholarly compositions, the amount of the deduction generally is limited to the taxpayer’s basis in the property.20 In the case of a charitable contribution of tangible personal property, the deduction is limited to the taxpayer’s basis in such property if the use by the recipient charitable organization is unrelated to the organization’s tax-exempt purpose. In cases involving contributions of tangible personal property to a private foundation (other than certain private foundations),21 the amount of the deduction is limited to the taxpayer’s basis in the property.

Under present law, charitable contributions of literary, musical, and artistic compositions by positions created specifically for the purposes of creating such compositions, or contributed for an organization described in section 170(b)(1)(A). Furthermore, the use by the donee organization of the property is related to such organization’s exempt purposes.

To be eligible for the deduction, the contribution must be of an undivided portion of the donor’s entire interest in the property.

For purposes of the charitable income tax deduction, the copyright and the work in which the copyright is embodied are not treated as separate property interests.

Effective date.—The deduction for qualified artistic contributions applies to contributions made after December 31, 2005, and before January 1, 2008.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

9. Mileage reimbursements to charitable volunteers (sec. 209 of the Senate amendment and new sec. 139B of the Code)

PRESENT LAW

In general, an itemized deduction is permitted for charitable contributions, subject to certain limitations that depend on the type of taxpayer, the use of the property, and the donee organization. Unreimbursed out-of-pocket transportation expenses necessarily incurred in performing donated services—may qualify as a charitable contribution.

No charitable contribution deduction is allowed for traveling expenses (including expenses for meals and lodging) while away from home, whether paid directly or by reimbursement, unless there is no significant element of personal pleasure, recreation, or vacation in such travel.

In determining the amount treated as a charitable contribution where a taxpayer operates a vehicle to provide donated services to a charity, the taxpayer either may deduct actual out-of-pocket expenditures or, in the case of a passenger automobile, may use the charitable standard mileage rate. The charitable standard mileage rate is set by statute at 14 cents per mile.

The taxpayer may also deduct parking fees and tolls incurred in rendering the services, but may not deduct any amount (regardless of the computation of the cost) paid to a person other than the taxpayer who is an individual related to the taxpayer or to certain limited types of private foundations (if any) to which property created by the person generally is unrelated. If the donor is a member of the donee organization, the deduction is limited to the lesser of the fair market value of the contributed property (if the donor is a member of the donee organization) or the income from the property. However, the donee organization must be related to the organization’s charitable purpose or function, and the donor must receive a written statement from the organization verifying such use.

Under the provision, the tangible property and the copyright on such property are treated as separate properties for purposes of the “partial interest” rule; thus, a gift of artwork without the copyright or a copyright without the artwork will constitute a partial interest and is deductible. Contributions of letters, memoirs, or similar property that are written, compiled, or produced by an individual while the individual is an officer or employee of any person (including a government agency or instrumentality) do not qualify for a fair market value deduction unless the contributed property is entirely personal.
method used) for general repair or maintenance expenses, depreciation, insurance, registration fees, etc. Regardless of the computation method used, the taxpayer must keep records of expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain reliable written records of actual expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain reliable written records of actual expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain reliable written records of actual expenses incurred.

In lieu of actual operating expenses, an optional flat rate may be used in computing the deductible costs of business use of an automobile. The business standard mileage rate is determined by the IRS and updated periodically. For business use occurring on or after January 1, 2006, the business standard mileage rate specified by the IRS is 44.5 cents per mile.

The standard mileage rate for charitable purposes is lower than the standard business rate because the charitable rate covers only the out-of-pocket operating expenses (including gasoline and oil) directly related to the use of the automobile in delivering the donated services that a taxpayer may deduct as a charitable contribution. The charitable rate does not include costs that are not deductible as a charitable contribution such as general repair or maintenance expenses, depreciation, and registration fees. Such costs are, however, included in computing the business standard mileage rate.

Volunteer drivers who are reimbursed for mileage expenses have taxable income to the extent the reimbursement exceeds deductible travel expenses. Employees who are reimbursed for mileage expenses under a qualified arrangement (such as a mileage allowance) in lieu of reimbursing actual expenses generally have taxable income to the extent the reimbursement exceeds the amount of the business standard mileage rate multiplied by the actual business miles.

Under section 6041, information reporting generally is required with respect to payments of $500 or more in any taxable year.

Under the Katrina Emergency Tax Relief Act of 2005, reimbursement by an organization described in section 501(c)(3) (other than public charities and private foundations) to a volunteer for the costs of using a passenger automobile in providing donated services is considered a charitable contribution. The deduction of relief related to Hurricane Katrina is excludable from the gross income of the volunteer up to an amount that does not exceed the business standard mileage rate prescribed for business use (as periodically adjusted), provided that recordkeeping requirements applicable to deductible business expenses are satisfied. Unlike the provision enacted as part of the Tax Relief Act of 2005, the provision is not limited to use solely for the provision of relief related to Hurricane Katrina. The provision does not permit claiming a deduction or credit with respect to amounts excluded under the provision. Information reporting required by section 6041 is not required with respect to reimbursements excluded under the provision.


CONFERECE AGREEMENT

The conference agreement does not include the Senate amendment provision.

10. Alternative percentage limitation for corporate charitable contributions to the mathematics and science partnership program (sec. 219 of the Senate amendment and sec. 170 of the Code)

PRESENT LAW

Under present law, a corporation is allowed to deduct charitable contributions up to 10 percent of the corporation’s modified taxable income. Taxable income is determined without regard to (1) charitable contributions deduction, (2) any net operating loss carryback, (3) deduction of any net capital loss carried back for the taxable year, (4) any capital loss carryback for the taxable year.

Any charitable contribution by a corporation that is not currently deductible because of the percentage limitation may be carried forward for up to five taxable years.

HOUSE BILL

No provision.

SENATE AMENDMENT

Under the provision, the corporate percentage limitation is applied separately to eligible mathematics and science contributions and to all other charitable contributions. In addition, the applicable percentage limitation for purposes of eligible charitable contributions and science contributions is 15 percent; the applicable percentage limitation for all other corporate charitable contributions remains 10 percent.

In general, an eligible mathematics and science contributions is a charitable contribution (other than a contribution of used equipment) to a qualified partnership for the purpose of an activity described in section 2202(c) of the Elementary and Secondary Education Act of 1965. Such activities include, for example, creating opportunities for enhanced and ongoing professional development of mathematics and science teachers and promoting strong teaching skills for mathematics and science teachers and teacher educators. A qualified partnership is an eligible partnership determined by the IRS. Under this section, a partnership is determined as having a potential for tax avoidance or evasion.

Treas. Reg. sec. 1.6011-4(c).

A taxpayer has participated in a transaction with a charitable contribution to the extent that such contribution has resulted in the taxpayer claiming a loss under section 2202 of the Internal Revenue Code. For purposes of this section, a charitable contribution consists of a charitable contribution in a listed transaction that the taxpayer has paid an advisor a minimum amount for services performed during the tax year.

Treas. Reg. sec. 1.6011-4(d).

A charitable contribution to a listed transaction is generally treated as a listed transaction for purposes of determining when a taxpayer generally must maintain reliable written records of actual expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain reliable written records of actual expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain reliable written records of actual expenses incurred. For example, where a taxpayer uses the charitable standard mileage rate to determine a deduction, the IRS has stated that the taxpayer generally must maintain reliable written records of actual expenses incurred.
protection if the taxpayer’s tax return reflects a tax benefit from the transaction, and the taxpayer has the right to the full or partial refund of fees or the fees are contingent.

Present law requires a penalty for any material advisor who fails to include on any return or statement any required information with respect to a reportable transaction.104 The penalty applies regardless of whether the material advisor, acting in his capacity as such, is the client in the transaction. The penalty cannot be waived with respect to a listed transaction. As to reportable transactions, the IRS Commissioner may rescind all or a portion of the penalty if rescission would promote compliance with the tax laws and effective tax administration.

Disclosure of listed and other reportable transactions by material advisors

Present law requires each material advisor with respect to a reportable transaction (including any listed transaction) to timely file an information return with the Secretary.105 The information return must include (1) information identifying and describing the transaction, (2) information describing any potential tax benefits expected to result from the transaction, and (3) such other information as the Secretary may prescribe. The return must be filed by the date specified by the Secretary. A “material advisor” means any person (1) who provides material aid, assistance, or advice with respect to organizing, managing, promoting, selling, implementing, insuring, or carrying out any reportable transaction, and (2) who directly or indirectly derives gross income in excess of $250,000 ($50,000 in the case of a reportable transaction substantially all of the tax benefits from which are provided to natural persons) or such other amount as may be prescribed by the Secretary for such advice or assistance.106

The conference agreement includes provisions which provide (1) that only one material advisor is required to file an information return in cases in which two or more material advisors provided substantially all of the tax benefits, (2) that the information returns with respect to a particular reportable transaction, (2) exemptions from the requirements of this section, and (3) such other information as the Secretary may prescribe to carry out the purposes of this section.107

Present law imposes a penalty on any material advisor who fails to timely file an information return, or who files a false or incomplete information return, with respect to a reportable transaction (including a listed transaction).108 The amount of the penalty is $50,000. If the violation occurs with respect to a listed transaction, the amount of the penalty is increased to the greater of (1) $200,000, or (2) 50 percent of gross income attributable to any person with respect to aid, assistance, or advice which is provided with respect to the transaction before the date the information return that includes the transaction is filed. An intentional failure or act by a material advisor with respect to the requirements of this section.109

Disclosure of participation in prohibited tax shelter transactions

The provision requires that a taxable party to a prohibited tax shelter transaction disclose to the tax-exempt entity that the transaction is a prohibited tax shelter transaction. Failure to make such disclosure is subject to the present-law penalty for failure to include reportable transaction information under section 6707A. Thus, the penalty is $10,000 in the case of a natural person or $50,000 in any other case, except that if the transaction is a listed transaction, the penalty is increased to the greater of (1) $200,000, or (2) $50,000 in any other case.110

The provision requires disclosure by a tax-exempt entity to the IRS of each participation in a prohibited tax shelter transaction and disclosure of other known parties to the transaction. The penalty for failure to disclose is imposed on the entity (or entity manager, in the case of qualified pension plans and similar tax favored retirement arrangements) at $100 per day the failure continues, not to exceed $50,000. If any person fails to comply with the tax-exempt entity by the Secretary for disclosure, such person or persons shall pay a penalty of $100 per day (beginning on the date of the failure to comply) not to exceed $10,000 per prohibited tax shelter transaction. As under present-law section 6652, no penalty is imposed with respect to any failure if it is shown that the failure is due to reasonable cause.

Penalty on entity managers

A tax of $20,000 is imposed on an entity manager that approves or otherwise causes a tax-exempt entity to be a party to a prohibited tax shelter transaction. The penalty is increased to the higher of (1) 10 percent of the entity’s net income (after taking into account any tax imposed with respect to the transaction) for such year that is attributable to the transaction and that are properly allocable to the entity, or (2) 75 percent of the proceeds received by the entity that are attributable to the transaction. The penalty is increased to the greater of (1) $200,000, or (2) 50 percent of the proceeds received by the entity that are attributable to the transaction.

In addition, if a transaction is not a listed transaction at the time a tax-exempt entity enters into the transaction (and is not otherwise reportable), the entity manager shall be subject to the tax-exempt entity by the Secretary for disclosure, such person or persons shall pay a penalty of $100 per day (beginning on the date of the failure to comply) not to exceed $10,000 per prohibited tax shelter transaction. As under present-law section 6652, no penalty is imposed with respect to any failure if it is shown that the failure is due to reasonable cause.

The conference agreement includes the Senate amendment provision, with modifications.

The conference agreement does not include the provision that the entity level or entity manager tax does not apply if the entity’s participation is not willful and is due to reasonable cause.

In addition, the conference agreement adds a tax in the event that a tax-exempt entity

104 Sec. 6707A.
105 Sec. 6707(a), as added by the American Jobs Creation Act of 2004, Pub. L. No. 108-357, sec. 816(a).
106 Sec. 6707(a)(1).
107 Sec. 6707.
108 Sec. 6707(b).
109 Sec. 6707.
110 Sec. 6707(a).
becomes a party to a prohibited tax shelter transaction without knowing or having rea-son to know that the transaction is a prohib-ited tax shelter transaction. In that case, the tax-exempt entity is subject to a tax in the taxable year the entity becomes a party and any subsequent taxable year of the highest unrelated business taxable income rate times (1) the entity’s annual receipts, or is in excess of $1,000,000, or (2) the amount invested by, the participation of, or the existence of which would lead a reasonable person to conclude that the transaction is a prohibited tax shelter transaction, the reason to know standard is not met.

Not obtaining a reasoned written opinion of legal counsel does not alone indicate whether a person has reason to know. However, if a transaction is extraordinary for the entity, promises a return for the organization that is exceptional considering the receipts of the entity, then, in general, the presence of such factors may indicate that the entity or entity manager has a responsi-bility to inquire further about whether irs: The conference agreement clarifies that the definition of an entity manager to provide: (1) in the case of a qualified pension plan, IRA, or similar tax-favored savings arrangements (such as Coverdell education savings accounts, health savings accounts, and qualified tuition plans) an entity man-ager is any person who is in a position to cause the entity to be a party to a prohib-ited tax shelter transaction, and (2) in all other cases, an entity manager is a person with authority or responsibility similar to that exercised by an officer, director, or trustee of an organization, and with respect to any amount invested or otherwise invested or any entity, promises a return for the organization that is exceptional considering the receipts of the entity, then, in general, the presence of such factors may indicate that the entity or entity manager has a responsi-bility to inquire further about whether a transaction is a prohibited tax shelter trans-action, or absent such inquiry, that the rea-son to know standard is satisfied. For example, if a tax-exempt entity’s investment in a transaction is $1,000, and the entity is prom-ised or expects to receive $10,000 in the near term, investment of $1,000,000 would be considered exceptional and the entity should make inquiries with respect to the trans-action. As another example, if a tax-exempt entity’s investment in a transaction is greater than five percent of the entity’s annual receipts, or is in excess of $1,000,000, and the entity fails to make appropriate in-quiries with respect to its participation in such transaction, such failure is a factor tending to show that the reason to know standard is met. The conference agreement further states that the disclosure provisions apply to any prohibited tax shelter transaction to which a tax-exempt entity came a party on or before the date of enactment. The conference agreement further states that the disclosure provisions apply to any prohibited tax shelter transaction to which a tax-exempt entity came a party on or before the date of enactment.

Effective date.—In general, the provision is effective for taxable years ending after the date of enactment, and, with respect to transactions before, on, or after such date, except that no tax shall apply with respect to in-come or proceeds that are properly allocable to a tax-exempt entity’s share of the transactions for which the due date of the tax-exempt entity properly allocable to a tax-exempt entity’s share of the transactions for which the due date of the tax-exempt entity is greater than five percent of the entity’s annual receipts, or is in excess of $1,000,000, and the entity fails to make appropriate in-quiries with respect to its participation in such transaction, such failure is a factor tending to show that the reason to know standard is met. The conference agreement further states that the disclosure provisions apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enact-ment. The conference agreement further states that the disclosure provisions apply to transactions before, on, or after such date, except that no tax shall apply with respect to in-come or proceeds that are properly allocable to a tax-exempt entity’s share of the transactions for which the due date of the tax-exempt entity is greater than five percent of the entity’s annual receipts, or is in excess of $1,000,000, and the entity fails to make appropriate in-quiries with respect to its participation in such transaction, such failure is a factor tending to show that the reason to know standard is met. The conference agreement further states that the disclosure provisions apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enact-ment. The conference agreement further states that the disclosure provisions apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enactment. The conference agreement further states that the disclosure provisions apply to any prohibited tax shelter transaction to which a tax-exempt entity became a party on or before the date of enactment.
subsequently paid by the acquirer of the contract.115

**Tax treatment of charitable organizations and donors**

Present law generally provides tax-exempt status to certain charitable organizations. Certain other organizations, no part of the net earnings of which inures to the benefit of any private shareholder or individual, and which meet other requirements,116 are entitled to deduct from taxable income the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity for exclusively public purposes.118

State-law insurable interest rule

State law generally provides that the owner of a life insurance contract must have an insurable interest in the insured person when the life insurance contract is issued. State law as to the insurable interest of a charitable organization in the life of any individual. Some State laws provide that a charitable organization meeting the requirements of section 501(c)(3) is treated as having an insurable interest in the life of any donor,119 or, in other States, in the life of any individual who consents (whether or not the individual is a donor).120

Other States’ insurable interest rules permit the purchase of a life insurance contract even though the owner paying the consideration for the contract is not a donor.121

Transactions involving charities and non-charities acquiring life insurance

Recently, there has been an increase in transactions involving the acquisition of life insurance contracts using arrangements in which the insurance of one entity (such as a charity or private investor) is transferred to another entity (such as a charity or private investor) for the purpose of obtaining the insurance. In many cases, these transactions are structured to fund the purchase of the life insurance contracts, sometimes together with annuity contracts. Both the private investors and the charity have an interest in the contracts, directly or indirectly through the use of the transfer-for-value rule, by reference to the rights of the charitable organization. In some cases, the charity and the private investors receive cash payments with the investment in the contracts while the life insurance in force or as the insured individuals die.

No provision.

**SENATE AMENDMENT**

The provision imposes an excise tax, equal to 100 percent of the acquisition costs, on the taxable acquisition of any interest in an applicable insurance contract. An applicable insurance contract is any life insurance, annuity or endowment contract in which both an applicable exempt organization and any person that is not an applicable exempt organization have, directly or indirectly, held an interest in the contract (whether or not the interests are held at the same time). An applicable exempt organization is any organization described in section 170(c), 180(h)(2)(A)(iv), 2635(a), or 2522(a).

Exceptions to the term “applicable insurance contract” apply under the provision. For example, (1) a right with respect to the applicable insurance contract pursuant to a side contract or other similar arrangement, (2) an indirect interest in an applicable insurance contract, and (3) a right to distributions, guaranteed payments, or income of a part or all of the contract premiums, commissions, fees, charges, or other amounts of acquiring or maintaining an interest in an applicable insurance contract.

Under the provision, acquisition costs include the direct or indirect costs (including premiums, commissions, fees, charges, or other amounts) of acquiring or maintaining an interest in an applicable insurance contract. Except as provided in regulations, if acquisition costs of any taxable acquisition are paid or incurred in more than one calendar year, the excise tax under the provision is imposed each time such costs are paid or incurred. The term “applicable insurance contract” applies to an interest in an applicable insurance contract (whether or not the individual is a donor) that has an interest solely as a lender with respect to the contract.

An exception to the term “applicable insurance contract” applies under the provision. For example, (1) a right with respect to the applicable insurance contract, (2) an indirect interest in an applicable insurance contract, and (3) a right to distributions, guaranteed payments, or income of a part or all of the contract.

The term does not apply if the sole interest in the contract of each person other than the applicable exempt organization is as a named beneficiary. For example, (1) a life insurance contract is treated as a taxable acquisition of an interest in an applicable insurance contract if the contract is treated as a taxable acquisition of an interest in an applicable insurance contract, and (2) an indirect interest in an applicable insurance contract.

It is intended that an interest in an applicable insurance contract includes, for example, (1) a right with respect to the applicable insurance contract, (2) an indirect interest in an applicable insurance contract, or (3) a right to distributions, guaranteed payments, or income of a part or all of the contract.

The term does not apply if the sole interest in the contract of each person other than the applicable exempt organization is as a named beneficiary. For example, (1) a life insurance contract is treated as a taxable acquisition of an interest in an applicable insurance contract, and (2) an indirect interest in an applicable insurance contract.

An exception to the term “applicable insurance contract” also applies under the provision. For example, (1) a right with respect to the contract, (2) an indirect interest in the contract, or (3) a right to distributions, guaranteed payments, or income of a part or all of the contract.

115 Section 101(a)(2). The transfer-for-value rule does not apply, however, in the case of a transfer in which the life insurance contract (or interest in the contract) transferred has a basis in the hands of the transferor that is determined by reference to the transferor’s basis. Similarly, the transfer-for-value rule generally does not apply if the transfer is between certain parties (specifically, if the transfer is to the insured, a partner of the insured, a partner or employee of the applicable exempt organization, or of persons otherwise meeting one of the first two exceptions.

116 Section 501(c)(3).

117 Section 170.

118 Section 170.

119 For this purpose, an interest as a lender includes a security interest in the insurance contract to which the loan relates.
contract, provided other requirements are met. This exception applies only if the number of insured persons under loans by such lenders with respect to such contracts does not exceed five percent of the total officers, directors, and employees of the organization or 20, or (2) five. Under this exception, the aggregate amount financed with respect to one or more contracts covering a single individual may not exceed $50,000.

In addition, Treasury regulatory authority is provided to except certain contracts from treatment as applicable insurance contracts. Contracts may be excepted based on specific factors, such as (1) the lesser of five percent of the aggregate amount financed under the tax of the contract (determined without regard to the extent to which, such organization has paid or contributed with respect to the contract), and (3) the likelihood of abuse.

The application of the exceptions can be illustrated as follows. Assume that an individual’s exempt organization, which is an organization described in section 170(c), has paid or contributed with respect to a contract for a single individual. The application of the exceptions can be illustrated as follows. Assume that an exempt organization and a person that is not an exempt organization have an interest in the contract (other than an applicable exempt organization) that is not in the interest of one of the parties to the contract. The provision also applies to contracts for life insurance policies. The exceptions apply only if the amount involved is not in excess of the lesser of the amount paid or contributed by the exempt organization or a person that is not an exempt organization.

The code imposes excise taxes on excess benefit transactions between disqualified persons (as defined in section 4958(f)) and charitable or private foundations, and private operating foundations (as defined in section 4941). These excise taxes are subject to abatement if the organization or the disqualified person can show reasonable cause, and if the initial tax was imposed for each year in the taxable period, beginning with the first year for which the tax becomes due.

The code imposes excise taxes on excess benefit transactions between disqualified persons and charitable or private foundations, and private operating foundations (as defined in section 4941). These excise taxes are subject to abatement if the organization or the disqualified person can show reasonable cause, and if the initial tax was imposed for each year in the taxable period, beginning with the first year for which the tax becomes due.

CONGRESSIONAL RECORD — HOUSE H2245

May 9, 2006

Public charities and social welfare organizations

The code imposes excise taxes on excess benefit transactions between disqualified persons and charitable or private foundations, and private operating foundations (as defined in section 4941). These excise taxes are subject to abatement if the organization or the disqualified person can show reasonable cause, and if the initial tax was imposed for each year in the taxable period, beginning with the first year for which the tax becomes due.

Tax on failure to distribute income

Private nonoperating foundations are required to pay out a minimum amount each year as qualifying distributions. In general, a qualifying distribution is an amount paid to accomplish one or more of the organization’s exempt purposes, including reasonable and necessary administrative expenses.

Failure to pay out the minimum results in an initial excise tax on the foundation’s undistributed income. In addition, any undistributed amount that is not paid out in a subsequent taxable year is subject to an additional tax of 100 percent of the undistributed amount.

129 Sec. 4958(d)(2). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

130 Sec. 4958(d)(1).

131 Sec. 4961.

132 Sec. 4941(d)(2).

133 Sec. 4962(b).

134 Sec. 4963.

135 Sec. 4942(c)(1)(A).

124 Sec. 4958. The excess benefit transaction tax is commonly referred to as “intermediate sanctions,” because it imposes penalties generally considered to be less punitive than the revocation of the organization’s exempt status.

125 Sec. 4958(d)(1). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

126 Sec. 4958(d)(1).

127 Sec. 4941(d)(1).

128 See sec. 4941(d)(2).

129 Sec. 4941(b).

130 Sec. 4961.

131 Sec. 4942(c)(1)(A).
not been made by the end of the applicable taxable period.133 A foundation may include as a qualifying distribution the salaries, occupancy expenses, travel costs, and other reasonable and necessary administrative expenses that the foundation incurs in operating a grant program. A qualifying distribution also includes any amount paid to acquire voting stock in a corporation, reduced by the amount of voting stock held by all disqualified persons (as defined in section 4946). If it is established that no disqualified person has effective control of the corporation, a private foundation and disqualified persons together may own up to 35 percent of the voting stock of a corporation. A private foundation shall not be treated as having excess business holdings in any corporation if it owns (together with certain other related private foundations) more than four percent of the voting stock and not more than two percent in value of all outstanding shares of voting stock in that corporation. Similar rules apply with respect to holdings in a partnership (‘profits interest’ is substituted for ‘voting stock’) and capital interests (‘voting stock’ is substituted for ‘other unincorporated enterprises (by substituting ‘beneficial interest’ for ‘voting stock’)). Private foundations are not permitted to have business holdings in a proprietorship. Foundations generally have a five-year period to dispose of excess business holdings (acquired other than by purchase) without being subject to an initial tax. This five-year period may be extended an additional five years in limited circumstances.137

The initial tax is equal to five percent of the value of the excess business holdings held during the foundation’s applicable taxable year. An additional tax is imposed if an initial tax is imposed and at the close of the applicable taxable year the excess business holdings continue to hold excess business holdings. The amount of the additional tax is equal to 200 percent of such holdings.

Tax on jeopardizing investments

Private foundations and foundation managers are subject to tax on investments that jeopardize the foundation’s charitable purpose.138 In general, an initial tax of five percent of the amount of the investment applies to the foundation and to foundation managers who participated in the making of the investment knowing that it jeopardized the carrying out of the foundation’s exempt purposes. The initial tax on foundation managers may not exceed $5,000 per investment. If the investment is not removed from jeopardy by the sale, transferring, or disposal of the investment, an additional tax of 25 percent of the amount of the investment is imposed on the foundation and five percent of the amount of the investment is imposed on the foundation manager who refused to agree to removing the investment from jeopardy. The additional tax on foundation managers may not exceed $10,000 per investment. An excise tax of 25 percent of which is to accomplish a charitable purpose and no significant purpose of which is the production of income or the appreciation of property, is not considered a jeopardizing investment.139

Tax on taxable expenditures

Certain expenditures of private foundations are subject to tax. In general, taxable expenditures include: (1) for lobbying; (2) to influence the outcome of a public election or carry on a voter registration drive (unless certain requirements are met); (3) as a grant to an individual for travel, study, or similar purposes unless made pursuant to procedures approved by the Secretary; (4) as a grant to an organization that is not a charity or exempt operating foundation unless the foundation exercises expenditure responsibility,140 with respect to the grant; or (5) for any non-charitable purpose. For each taxable expenditure, a tax is imposed on the foundation of 10 percent of the amount of the expenditure, and an additional tax is also imposed on the foundation if the expenditure is not corrected. A tax of 2.5 percent of the expenditure (up to $5,000) also is imposed on a foundation manager who refuses to agree to correction of such expenditure. An additional tax of 50 percent of the amount of the expenditure (up to $10,000) is imposed on a foundation manager who refuses to agree to correction of such expenditure.

House Bill

No provision.

Senate Amendment

Self-dealing and excess benefit transaction initial taxes and dollar limitations

For acts of self-dealing other than the payment of compensation by a private foundation to a disqualified person, the provision increases the initial tax on the self-dealer from five percent of the amount involved to 10 percent of the amount involved. For acts of self-dealing regarding the payment of compensation by a private foundation to a disqualified person, the provision increases the initial tax on the self-dealer from five percent of the amount involved (none of which is subject to abatement) to 25 percent of the amount involved (15 percent of which is subject to abatement). The provision increases the initial tax on foundation managers from 2.5 percent of the amount involved to five percent of the amount involved and increases the dollar limitation on the amount of the initial and additional taxes on foundation managers per act of self-dealing from $10,000 per act to $20,000 per act. Similarly, the provision doubles the dollar limitation on the distribution of public charities and social welfare organizations for participation in excess benefit transactions from $10,000 per transaction to $20,000 per transaction.

Failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures

The provision doubles the amounts of the initial taxes and the dollar limitations on foundation managers with respect to the private foundation excise taxes on the failure to distribute income, excess business holdings, jeopardizing investments, and taxable expenditures.

Specifically, for the failure to distribute income, the initial tax on the foundation is increased from 15 percent of the undistributed amount to 30 percent of the undistributed amount.

For excess business holdings, the initial tax on excess business holdings is increased from five percent of the value of such holdings to 10 percent of such value.

For jeopardizing investments, the initial tax on the foundation is increased from 2.5 percent of the investment that is imposed on the foundation and on foundation managers is increased to 10 percent of the amount of the investment.

The dollar limitation on the initial tax on foundation managers of $5,000 per investment is increased to $10,000 and the dollar limitation on the additional tax on foundation managers of $10,000 per investment is increased to $20,000.

For taxable expenditures, the initial tax on the foundation is increased from 10 percent of the amount of the expenditure to 20 percent, the initial tax on the foundation manager is increased from 2.5 percent of the amount of the expenditure to five percent, the dollar limitation on the initial tax on foundation managers is increased from $5,000 to $10,000, and the dollar limitation on the additional tax on foundation managers is increased from $10,000 to $20,000.

Effective date

The provision is effective for taxable years beginning after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment.

4. Reform rules for charitable contributions of easements on buildings in registered historic districts (Sec. 214 of the Senate amendment and sec. 170 of the Code)

In General

Present law provides special rules that apply to charitable deductions of qualified conservation contributions, which include of the amount of the expenditure to 20 percent.

134 Sec. 4945. Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

135 Sec. 4943(c)(6).

136 Sec. 4943(b).

137 Sec. 4945(b).

138 Sec. 4943(c)(2).

139 Sec. 4943(c)(1).

140 Sec. 4943(a)(1) (B) and 4943(g)(2). In general, an organization is permitted to adjust the distributable amount in those cases where distributions during the five-year period have exceeded the payout requirements. Sec. 4942(i).

141 Sec. 4943(c). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

142 Sec. 4943(c). Taxes imposed may be abated if certain conditions are met. Secs. 4961 and 4962.

143 Sec. 4943(b).

144 Sec. 4943(a)(1)(B) and 4943(g)(2).

145 Sec. 4943(g)(1)(B).
Preservation of a certified historic structure
A certified historic structure means any building, structure, or land which is (i) listed in the National Register, or (ii) located in a registered historic district in section 47(c)(3)(B) and is certified by the Secretary of the Interior to the Secretary of the Treasury as being of historic significance to the district. For this purpose, a structure means any structure, whether or not it is decapitation, and, accordingly, easements on private residences may qualify. In general, the donor and the donee must enter into a written agreement certifying, under penalty of perjury, that the donee is a qualified organization, with a purpose of environmental protection, land conservation, historic preservation, and that the donee has the resources to manage and enforce the restrictions and a commitment to do so.

Taxpayers claiming a deduction for a qualified conservation contribution with respect to the exterior of a building located in a registered historic district in excess of the greater of three percent of the fair market value of the underlying property or $10,000 must pay a $50 fee to the Internal Revenue Service for the deduction to be allowed. Amounts paid are required to be dedicated to Internal Revenue Service enforcement of qualified conservation contributions.

Effective date—The provision relating to deductions for contributions relating to structures and land areas is effective for contributions made after the date of enactment. The limitation on the amount that may be deducted and the filing fee is effective for contributions made after December 31, 2005.

CONFERENC E AGREEMENT

The conference agreement does not include the Senate amendment provision.

5. Reform rules relating to charitable contributions of taxidermy and recapture tax benefit on property not used for an exempt use (secs. 215 and 216 of the Senate amendment and secs. 170, 6060L, and new sec. 6720B of the Code)

PRESENT LAW

Deductibility of charitable contributions

In general
In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity. The amount of the deduction allowed for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and the income of the taxpayer. In general, more generous charitable contribution deduction rules apply to gifts made to charitable trusts than to gifts made to private foundations. Within certain limitations, donors also are entitled to deduct their contributions to section 501(c)(3) organizations for Federal estate and gift taxes. By contrast, contributions to nongovernmental, non-charitable tax-exempt organizations generally are not deductible by the donor, although such organizations are eligible for the exemption from Federal income tax with respect to such donations.

Contributions of property
The amount of the deduction for charitable contributions of cap-and-cream property generally equals the fair market value of the contributed property on the date of the contribution. Contributions of cash, capital asset, or property used in the taxpayer’s trade or business, the sale of which

153 Id.
155 Id.
156 Id.
157 Id.
158 Id.
159 Id.
160 Id.
161 Secs. 170(b) and (e).
162 Exceptions to the general rule of non-deductibility of non-charitable tax-exempt organizations generally are not deductible by the donor.

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at its fair market value, at the time of contribution, would have resulted in gain that would have been long-term capital gain. Contributions of capital gain property are subject to different percentage limitations based on the donor’s income) other than contributions of property.

For contributions of property, the deductible amount is reduced from the fair market value of the contributed property by the amount of any gain, generally resulting in a deduction equal to the taxpayer’s basis. This rule applies to contributions of: (1) ordinary income property, e.g., property that, at the time of contribution, would not have resulted in long-term capital gain if the property was sold by the taxpayer at its fair market value on the date of contribution; (2) tangible personal property that is used by the donee in a manner unrelated to the donee’s exempt (or governmental) purpose; and (3) property to or for the use of a private foundation (other than a foundation defined in section 170(b)(1)(E)).

Charities are required to obtain a qualified appraisal report for property contributed having a value of more than $5,000. For claims of more than $5,000, the taxpayer or appraiser must provide a copy of the appraisal report to the IRS within two years of the property receipt. Taxpayers are required to attach the appraisal to the tax return. Taxpayers may request a copy of the appraisal from the IRS by written request. The provision defines taxidermy as a mounted work of art which is subject to the tangible personal property rule (number 2 above). For example, for appreciated taxidermy, if the property is used to fund the donor’s exempt purpose, the deduction is fair market value. But if the property is not used to further the donor’s exempt purpose, the deduction is the donor’s basis. If the property is depreciated, the value is less than the taxpayer’s basis in such property, taxpayers generally deduct the fair market value of such contributions, regardless of the property used for exempt or unrelated purposes by the donee.

Substantiation

No charitable deduction is allowed for any contributions of property unless the taxpayer substantiates the contribution by a contemporaneous written acknowledgement of the contribution by the donee organization.150 Form 8283, which must be attached to the donor’s return for any contribution of property worth more than $500, is required to be furnished by donees, except for contributions of art valued at more than $5,000. Information required on Form 8283 includes, among other things, a description of the property, the appraisal fair market value (if an appraisal is required), the donor’s basis in the property, the use of the property, a statement of whether the use related to the exempt purpose of the donee, the date of the contribution, the amount received on disposition, and the date of the disposition.170

Contributions of taxidermy

For contributions of taxidermy property with a claimed value of more than $500, the individual must include with the individual’s return a photograph of the taxidermy and comparable sales data for similar items. It is intended that valuation must be based on comparable sales and that a deduction is not allowable if sufficient comparable sales are not provided.

For contributions of more than $5,000, the taxpayer must notify the IRS of the deduction and include with the taxpayer’s return a statement of value from the IRS, similar to what is provided for items of art, a request for such a statement and a fee of $50. The provision defines taxidermy property as a mounted work of art which contains any part of a dead animal. It is intended that for purposes of the charitable contribution deduction, a taxpayer may not include in the taxpayer’s basis of the contribution any costs attributable to the travel. Recapture of tax benefit upon subsequent disposition of tangible personal property intended for exempt use

In general, the provision recovers the tax benefit for charitable contributions of tangible personal property with respect to which a fair market value deduction is claimed for an exempt purpose. The provision applies to appreciated tangible personal property that is identified by the donee organization as for a use related to the purpose or function constituting the donee’s basis for tax exemption, and for which a deduction of more than $5,000 is claimed (“applicable property”).171

Under the provision, if a donee organization disposes of applicable property within three years of the contribution of the property, the donor is subject to an adjustment of the tax benefit. If the disposition occurs in the first year of the donor’s basis, the contribution is made, the donor’s deduction generally is basis and not fair market value.172 If the disposition occurs in a subsequent year, the donor must include as ordinary income for its taxable year in which the disposition occurs an amount equal to the excess (if any) of (i) the amount of the deduction previously claimed by the donor; and (ii) the donor’s basis in the property at the time of the contribution.

There is no adjustment of the tax benefit if the donee organization makes a certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization. The statement must certify that the property was not subsequently disposed of, the property by the donee was related to the purpose or function constituting the basis for the donee’s exemption knowing that it is not intended for such use.173

Reporting of exempt use property contributions

The provision modifies the present-law information return requirements that apply upon the disposition of contributed property by a charitable organization (Form 8282, sec. 6061). The return requirement is extended to dispositions made within three years after receipt (from two years). The donee organization must also provide, to the extent already required to be provided on the return, a description of the donee’s use of the property, a statement of whether the property is used for items of art, a request for such a statement and a fee of $50. The provision defines taxidermy property as a mounted work of art which contains any part of a dead animal. It is intended that for purposes of the charitable contribution deduction, a taxpayer may not include in the taxpayer’s basis of the contribution any costs attributable to the travel.

Recapture of tax benefit upon subsequent disposition of tangible personal property intended for exempt use

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There is no adjustment of the tax benefit if the donee organization makes a certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization. The statement must certify that the property was not subsequently disposed of, the property by the donee was related to the purpose or function constituting the basis for the donee’s exemption knowing that it is not intended for such use.173

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Recapture of tax benefit upon subsequent disposition of tangible personal property intended for exempt use

In general, the provision recovers the tax benefit for charitable contributions of tangible personal property with respect to which a fair market value deduction is claimed for an exempt purpose. The provision applies to appreciated tangible personal property that is identified by the donee organization as for a use related to the purpose or function constituting the donee’s basis for tax exemption, and for which a deduction of more than $5,000 is claimed (“applicable property”).171

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There is no adjustment of the tax benefit if the donee organization makes a certification to the Secretary, by written statement signed under penalties of perjury by an officer of the organization. The statement must certify that the property was not subsequently disposed of, the property by the donee was related to the purpose or function constituting the basis for the donee’s exemption knowing that it is not intended for such use.
6. Limit charitable deduction for contributions of clothing and household items and modify recordkeeping and substantiation requirements for certain charitable contributions.

PRESENT LAW

**Deductibility of charitable contributions**

In general

In computing taxable income, a taxpayer who itemizes deductions generally is allowed to deduct the amount of cash and the fair market value of property contributed to an organization described in section 501(c)(3) or to a Federal, State, or local governmental entity. The amount of the deduction allowable for a taxable year with respect to a charitable contribution of property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and capital gain property may be subject to different percentage limitations than other contributions of property.

For certain contributions of property, the deduction is reduced from the fair market value of the contributed property by the amount of any gain, generally resulting in a deduction equal to the taxpayer’s basis. This is true of contributed qualified real property (property contributed to a qualified organization, the value of which is determined for Federal income tax purposes), any capital asset or property used in the taxpayer’s trade or business, or any property that is contributed by the donor to a Federal, State, or local governmental entity. The amount of the deduction for contributions of capital gain property are subject to the limitation described in section 170(e). Thus, contributions of capital gain property may be reduced or limited depending on the type of property contributed, the type of charitable organization to which the property is contributed, and capital gain property may be subject to different percentage limitations than other contributions of property.

In addition to the foregoing recordkeeping and substantiation requirements, contributions of clothing and household items and to assign an applicable minimum taxable income. The deduction is equal to the lesser of (1) basis plus one-half of the item’s appreciation (i.e., basis plus one-half of the fair market value in excess of basis) or (2) two times basis. Sec. 170(c)(3), 170(c)(4), 170(c)(5), 2055(a)(3), 2055(a)(4), 2106(a)(2)(A)(iii), 2106(a)(4), 2106(c)(2)(B)(xiii), 2252(a)(x), and 2252(a)(x).

**Substantiation**

The required content of such a record includes the following: (1) a cancelled check; (2) a receipt (or a letter or other written communication) from the donee showing the name of the donee, the date of the contribution, and the amount of the contribution; or (3) in the absence of a cancelled check or a receipt, other reliable written records showing the name of the donee, the date of the contribution, and the amount of the contribution. For a contribution of property other than money, the donor generally must maintain records showing the fair market value of the property contributed. Many contributions are not deductible by the donor, though such organizations are eligible for the exclusion.

In the case of charitable contributions for which the donor has obtained a qualified appraisal, the provision also does not apply to contributions for which a deduction of more than $500 is claimed if (1) the donee reports the contribution on the earlier of the due date (including extensions) for filing the return of tax for the taxable year of the donor in which the contribution was made or the due date of the return filed; (2) the donee reports the sales price of the contributed item to the donor; and (3) the amount claimed as a deduction with respect to the contributed item does not exceed the amount of the sales price reported to the donor. The provision does not apply to contributions by C corporations. The provision applies to new and used items. Household items include furniture, furnishings, electronics, appliances, linens, and other similar items, food, paintings, antiques, and other objects of art, jewelry and gems, and collections are excluded from the provision.

**Substantiation**

**Clothing and household items**

As under present law, for contributions with a claimed value of $250 or more, the taxpayer must obtain contemporaneous substantiation of the donee organization, which must include a description of the property contributed. The provision provides that, as part of such substantiation, the taxpayer must maintain records showing the name of the donee, the date of the contribution, and such other information as the Secretary may require in order to claim the contribution. The provision requires the Secretary to prepare and publish an itemized list of clothing and household items and to assign an amount to each item on the list. The assigned amount is treated as the fair market value of the item for purposes of the charitable contribution deduction. The provision is based on an assumption that the item is in good condition or better. Any deduction for a charitable contribution of such item may not exceed the item’s assigned amount. Any deduction for an item not in good used condition or better may not exceed 50 percent of the item’s assigned amount. Any deduction for an item that is not functional with respect to the use for which it was designed is not allowed. This list must be published by the Secretary at least once each calendar year and is applicable to contributions of clothing and household items made with respect to contributions made after the date the list is effective. The list must be published by the Secretary at least once each calendar year and is applicable to contributions of clothing and household items made with respect to contributions made after the date the list is effective. The list must be published by the Secretary at least once each calendar year and is applicable to contributions of clothing and household items made with respect to contributions made after the date the list is effective.
In general, under present law and the provision a donor may take a deduction for a charitable contribution of a fractional interest in tangible personal property (such as an artwork), provided the donor satisfies the requirements for deductibility (including the requirements concerning contributions of partial interests and future interests in property), and in subsequent years make additional charitable contributions of interests in the same property. For this purpose, a donor’s charitable deduction for the initial contribution of a fractional interest in an item of tangible personal property (or collection of such determined as under current law, e.g., based upon the fair market value of the artwork at the time of the contribution of the fractional interest in such property) must extend over the substantial interest or right owned by the donor in such property and must consist of a fraction of one and every other substantial interest or right owned by the donor in such property and must extend over the entire term of the donor’s interest in such property.

In general, a charitable deduction is not allowable for a contribution of a fractional interest in tangible personal property. For this purpose, a future interest is one “in which a donor purports to give tangible personal property to a charitable organization in exchange for a transfer of an undivided present interest in the property” and is not processed in any其他文章。
Appraiser oversight

The Secretary is authorized to regulate the practice of representatives of persons before the Department of the Treasury (“Department”) and hearings before the Department or the Internal Revenue Service (“IRS”) a representative of a person is incompetent, who is disreputable, who violates the rules regulating practice before the Department or the IRS, or who (with intent to defraud) willfully and knowingly fails to disclose the person being represented (or a person who may be represented).

The Secretary also is authorized to bar from appearing before the Department or the IRS, for the purpose of offering opinion evidence on the value of property or other assets, any individual against whom a civil or criminal proceeding is pending in any court of the United States, or against whom a civil or criminal proceeding is proceeding before the Department or the IRS.

Qualified appraiser

The provision defines a qualified appraiser as an individual who (1) has earned an appraisal designation from a recognized professional appraiser organization or has otherwise met minimum education and experience requirements to be determined by the IRS in regulations; (2) performs appraisals for which he or she receives compensation; (3) can demonstrate verifiable education and experience in valuing the type of property for which the appraisal is being performed; and (4) has not been prohibited from practicing before the IRS by the Secretary at any time during the three years preceding the conduct of the appraisal; and (5) is not excluded from being a qualified appraiser under applicable Treasury regulations.

Qualified appraisal

The provision defines a qualified appraisal as an appraisal prepared by a qualified appraiser (as defined by the provision) in accordance with generally accepted appraisal standards and any regulations or other guidance prescribed by the Secretary.

Effective date

The provision amending the accuracy-related penalty applies to returns filed after the date of enactment. The provision establishing a civil penalty is imposed on any person who prepares an appraisal that is to be used to support a tax position if such appraisal results in a substantial or gross valuation misstatement. The requirement applies to appraisals prepared with respect to returns or submissions filed after the date of enactment. The provisions relating to appraiser oversight apply to returns filed with respect to returns or submissions filed after the date of enactment. With respect to any contribution of a qualified real property interest which is a restriction with respect to the exterior of a building described in section 170(h)(4)(C)(i) (currently designated section 170(h)(4)(B)(i)), relating to certain property located in a registered historical district certified as being of historic significance to the district), and any appraisal with respect to such contribution, the provision generally applies to returns filed after November 15, 2004.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

Establish additional exemption standards for credit counseling organizations (Sec. 221 of the Senate amendment and secs. 501 and 513 of the Code)

Under present law, a credit counseling organization may be exempt as a charitable or educational organization described in section 501(c)(3), or as a social welfare organization described in section 501(c)(3). The IRS has issued two revenue rulings holding that certain credit counseling organizations are exempt as charitable or educational organizations or as social welfare organizations. In Revenue Ruling 65–299,195 an organization whose purpose was to assist families and individuals with financial problems, and help reduce the incidence of personal bankruptcy, was determined to be a social welfare organization described in section 501(c)(4).

The organization counseled people in financial difficulties, advised applicants on payment of debts, and also assisted in setting up debt repayment plans. The organization did not restrict its services to the poor, made no charge for counseling services, and made a nominal charge for certain services to cover postage and supplies. For financial counseling services, the organization received contributions from local businesses, lending agencies, and labor unions.

In Revenue Ruling 69–441,197 the IRS ruled that the organization was not a charitable or educational organization exempt under section 501(c)(3) by virtue of aiding low-income people who had financial problems and providing education to the public. The organization in that ruling had two functions: (1) educating the public on personal money management, such as budgeting, buying practices, and the use of credit cards, which included the use of films, speakers, and publications; and (2) providing individual counseling to low-income individuals and families without charge. As part of its counseling activities, the organization established debt management plans for clients who required such services, at no charge to the clients.198 The organization was supported by contributions primarily from creditors, and its board of directors was comprised of representatives from religious organizations, civic groups, labor, business groups, and educational institutions.

In 1976, the IRS denied exempt status to an organization, Consumer Credit Counseling Services of Alabama, Inc., which were distinguishable from those in Revenue Ruling 69–441 in that (1) it did not restrict its services to the poor, and (2) it charged a nominal fee for its debt management plans.199 The organization provided free information to the general public through the use of speakers, films, and publications on the avoidance of consumer credit, the use of consumer credit, and the use of consumer credit. It also provided counseling to debt-distressed individuals, not necessarily poor or low-income, and provided debt management plans at a cost of $10 per month, which was waived in cases of financial hardship. Its debt management activities were a relatively small part of its overall activities. The district court determined the organization qualified as charitable and educational within section 501(c)(3), finding the debt management plans to be an integral part of the agency’s counseling function, and that its debt management activities were incidental to its principal functions, as only approximately 12 percent of the counselors were devoted to such programs and the charge for the service was nominal. The court also considered the facts that the agency was publicly supported and that it was operated by members of the general public, as factors indicating a charitable operation.200

A recent estimate shows the number of credit counseling organizations increased from approximately 200 in 1990 to over 1,000 in 2002.201 During the period from 1994 to late

196Debt management plans and debt payment arrangements, including debt consolidation arrangements, entered into by a debtor and one or more of the debtor’s creditors, generally structured to reduce the amount of a debtor’s regular ongoing payment by modifying the interest rate, minimum payment or other terms or conditions. Such plans frequently are promoted as a means for a debtor or to restructure debt without filing for bankruptcy.
199The case involved 24 agencies throughout the United States.
200Opening Statement of The Honorable Max Sandlin, Hearing on Non-Profit Credit Counseling Organizations, House Ways and Means Committee, Subcommittee on Oversight (November 20, 2000).
A 2003, 1,215 credit counseling organizations applied to the IRS for tax exempt status under section 501(c)(3), including 810 during 2000 to 2003. The IRS has recognized more than 850 credit counseling organizations as exempt under section 501(c)(3). Few credit counseling organizations have sought section 501(c)(4) status, and the IRS reports it has not seen significant increase in number or activity of such organizations operating as social welfare organizations. As of late 2005, there were 872 active tax-exempt credit counseling agencies operating in the United States. A credit counseling organization described in section 501(c)(3) is exempt from Federal and State consumer protection laws that provide exemptions for organizations described therein. Some believe that these exclusions (from Federal and State regulation) may be a primary motivation for the recent increase in the number of organizations seeking and obtaining exempt status under section 501(c)(3). Such regulatory exemptions generally are not available for social welfare organizations described in section 501(c)(4).

Congress recently conducted hearings investigating the activities of credit counseling organizations under various consumer protection laws, such as the Federal Trade Commission Act. In addition, the IRS has commenced a broad examination and compliance program with respect to the credit counseling industry, pursuant to which the IRS has initiated audits of 50 credit counseling organizations representing 15 of the 15 largest in terms of gross receipts.

Under the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005, an individual generally may not be a debtor in bankruptcy unless such individual has, within 180 days of a petition for bankruptcy, received from an nonprofit approved budget and credit counseling agency an individual or group briefing that outlines the opportunities for credit counseling and assists the individual in performing a related budget analysis. The clerk of the court must maintain a publicly available list of nonprofit budget and credit counseling agencies approved by the U.S. Trustee (or bankruptcy administrator). In general, the U.S. Trustee (or bankruptcy administrator) shall only approve an 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 information related to the quality, effectiveness, and financial security of the services it provides. The minimum qualifications for approval of such an agency include: (1) having an independent board of directors; (2) charging no more than a reasonable fee, and providing services without regard to ability to pay; (3) adequate provision for safekeeping and payment of client funds; (4) in a manner that includes full disclosures to clients; (5) provision of adequate counseling with respect to a client’s credit problems; (6) trained counselors who receive no compensation for the outcome of the counseling services; (7) experience and background in providing credit counseling; and (8) adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan. An individual debtor must file with the court a certificate from the approved nonprofit budget and credit counseling agency. Each required vesting services describing the services provided, and a copy of the debt management plan, if any, developed through the agency.

The organization provides credit counseling services tailored to the specific needs and circumstances of the consumer; the organization makes no loans to debtors and does not negotiate the making of loans on behalf of debtors; the organization generally does not provide credit counseling services to a consumer due to inability of the consumer to pay; the reputation of the consumer for debt management plan enrollment, and the unwillingness of a consumer to enroll in a debt management plan;

The organization establishes and implements a fee policy to require that any fees charged to a consumer for its services are reasonable, and prohibits charging any fee based in whole or in part on a percentage of the consumer’s debt, the consumer’s payments to be made pursuant to a debt management plan, or on the projected or actual savings to the consumer resulting from enrolling in a debt management plan;

The organization has a board of directors or other governing body (a) that is controlled by persons who represent the broad interests of the public, such as public officials acting in their capacities as such, persons having special knowledge or expertise in credit or financial education, and community leaders; (b) not more than 20 percent of whom are persons employed in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization’s activities (other than through the receipt of reasonable directors’ fees); the repayment of consumer debt to creditors other than the credit counseling organization or its affiliates; and (c) not more than 20 percent of whose voting power of which is vested in persons who are employed by the organization or who will benefit financially, directly or indirectly, from the organization’s activities (other than through the receipt of reasonable directors’ fees);

The organization receives a reasonable amount for providing referrals to others for financial services (including debt management services) or credit counseling services to be provided to consumers, and pays no amount to others for obtaining referrals of consumers;

The organization does not own more than 35 percent of the total combined voting power of a corporation (or profits or beneficial interest in the case of a partnership or trust or estate) that is in the business of lending money, repairing credit, or providing credit counseling services;

The organization makes no loans to debtors and does not negotiate the making of loans on behalf of debtors;
Under the provision, a credit counseling organization is described in section 501(c)(3) only if, in addition to satisfying the above requirements applicable to such organizations, it is organized and operated such that the organization (1) charges no fees (other than nominal fees) for debt management plan services and waives any fees if the consumer is unable to pay such fees; (2) does not solicit contributions from consumers during the initial counseling process, where the consumer is receiving services from the organization; (3) normally limits debt management plan services (in the aggregate) to 25 percent of the organization’s total gross investment income in a taxable year; and (4) does not solicit contributions from individuals for the purpose of paying for credit counseling services for any other consumer.

Additiona1 requirements for social welfare organizations

Under the provision, a credit counseling organization is described in section 501(c)(4) only if, in addition to satisfying the above requirements applicable to such organizations, it is organized and operated such that the organization charges no fees (other than nominal fees) for credit counseling services, and waives any fees if the consumer is unable to pay such fees. In addition, a credit counseling organization shall not be treated as an unrelated business trade or business for purposes of the tax on unrelated business income tax if (1) the organization does not engage in any substantial business activity other than (a) furnishing credit counseling services, (b) soliciting contributions from consumers for credit counseling services, and (c) maintaining an endowment fund, and (2) the nominal fees charged by the organization do not exceed the nominal fees charged by not-for-profit credit counseling services for substantially similar services.

Debt management plan services treated as an unrelated trade or business

Under the provision, debt management plan services are treated as an unrelated trade or business for purposes of the tax on unrelated business income if the amount of fees charged for such services exceeds 10 percent of the organization’s total investment income in a taxable year.

Credit counseling services

Credit counseling services are services (a) the provision of educational information to the general public on budgeting, personal finance, financial literacy, saving and spending practices, and the sound use of consumer credit; (b) the assisting of individuals and families with financial problems by providing them with counseling; or (c) any combination of such activities.

Debt management plan services

Debt management plan services are services related to the repayment, consolidation, or restructuring of a consumer’s debt, and include services performed with creditors of lower interest rates, the waiver or reduction of fees, and the marketing and processing of debt management plans.

Effective date

In general the provision applies to taxable years beginning after the date of enactment. For a credit counseling organization that is described in section 501(c)(3) or 501(c)(4) on the date of enactment, the provision is effective for taxable years beginning after the date that is one year after the date of enactment.

CONFERE ACE AGREEMENT

The conference agreement does not include the Senate amendment.

10. Expand the base of the tax on private foundation net investment income (sec. 222 of the Senate amendment and sec. 4940 of the Code)

PRESENT LAW

In general

Under section 4940(a) of the Code, private foundations that are recognized as exempt from Federal income tax under section 501(a) are subject to an excise tax on their net investment income. Private foundations that are not exempt from tax, such as certain charitable trusts, are not subject to an excise tax on their net investment income. 

The Code defines capital gain net income from program related investments and by stating, in addition, that “gains and losses from the sale or other disposition of property used in furtherance of the exempt purposes of the private foundation are excluded.” As an example, the regulations provide that gain or loss on the sale of buildings used for the foundation’s exempt activities are not taken into account for purposes of the section 4940 tax. If a foundation uses exempt property for exempt purposes and (other than incidentally) for nonexempt purposes, then the portion of the gain or loss received upon sale or other disposition that is allocable to the investment use is taken into account for purposes of the tax.

The regulations further provide that “property shall be treated as held for investment purposes even though such property is disposed of by the foundation immediately upon its receipt, if it is property of a type which generally produces interest, dividends, rents, royalties, or capital gains.”

Additional requirements for charitable and educational organizations

Under the provision, a charitable or educational organization is described in section 501(c)(3) only if, in addition to satisfying the above requirements applicable to such organizations, it is organized and operated such that the organization (1) charges no fees (other than nominal fees) for debt management plan services and waives any fees if the consumer is unable to pay such fees; (2) does not solicit contributions from consumers during the initial counseling process, where the consumer is receiving services from the organization; (3) normally limits debt management plan services (in the aggregate) to 25 percent of the organization’s total gross investment income in a taxable year; and (4) does not solicit contributions from individuals for the purpose of paying for credit counseling services for any other consumer.

Additional requirements for charitable and educational organizations

Under the provision, a charitable or educational organization is described in section 501(c)(3) only if, in addition to satisfying the above requirements applicable to such organizations, it is organized and operated such that the organization (1) charges no fees (other than nominal fees) for debt management plan services and waives any fees if the consumer is unable to pay such fees; (2) does not solicit contributions from consumers during the initial counseling process, where the consumer is receiving services from the organization; (3) normally limits debt management plan services (in the aggregate) to 25 percent of the organization’s total gross investment income in a taxable year; and (4) does not solicit contributions from individuals for the purpose of paying for credit counseling services for any other consumer.

1. If, under any such measure, the organization’s debt management plan services exceed 25 percent of the organization’s total activities, the organization is treated as exceeding the 25-percent limit. For example, an organization that devotes 20 percent of its total staff time to debt management plan services is regarded as exceeding the 25-percent limit, even if the organization devotes less than 15 percent of its total financial resources to debt management plan services.

2. If, under any such measure, the organization’s debt management plan services exceed 25 percent of the organization’s total activities, the organization is treated as exceeding the 25-percent limit. For example, an organization that devotes 20 percent of its total staff time to debt management plan services is regarded as exceeding the 25-percent limit, even if the organization devotes less than 15 percent of its total financial resources to debt management plan services.

3. If, under any such measure, the organization’s debt management plan services exceed 25 percent of the organization’s total activities, the organization is treated as exceeding the 25-percent limit. For example, an organization that devotes 20 percent of its total staff time to debt management plan services is regarded as exceeding the 25-percent limit, even if the organization devotes less than 15 percent of its total financial resources to debt management plan services.

4. If, under any such measure, the organization’s debt management plan services exceed 25 percent of the organization’s total activities, the organization is treated as exceeding the 25-percent limit. For example, an organization that devotes 20 percent of its total staff time to debt management plan services is regarded as exceeding the 25-percent limit, even if the organization devotes less than 15 percent of its total financial resources to debt management plan services.

5. If, under any such measure, the organization’s debt management plan services exceed 25 percent of the organization’s total activities, the organization is treated as exceeding the 25-percent limit. For example, an organization that devotes 20 percent of its total staff time to debt management plan services is regarded as exceeding the 25-percent limit, even if the organization devotes less than 15 percent of its total financial resources to debt management plan services.
the property is actually used to produce income or not" was not unreasonable or plainly inconsistent with the statute. However, on remand to the district court, the district court considered the market value of the timber property at issue, though a type of property generally used to produce investment income, was not susceptible for such use. Thus, the district court concluded that the Treasury could tax the gain under this portion of the regulation.

The question then turned to the taxpayer's second challenge to the regulation. At issue was the meaning of the regulatory phrase "capital gains through appreciation." The regulation provided that if property is of a type that generally produces capital gains through appreciation, then the gain is subject to tax. The Treasury argued that the timber property at issue, although held by the court not to be property (in this case) susceptible for use to produce interest, dividends, rents, or royalties, still was held by the taxpayer to produce capital gain through appreciation and therefore the gain should be subject to tax under the regulation.

On this issue, the court held for the taxpayer, reasoning that the language of the Code clearly is limited to certain gains and losses, e.g., the court cited the Code language providing that "there shall be taken into account only gains and losses from the sale or other disposition of property used for the production of interest, dividends, rents, and royalties." The court noted that "capital gain through appreciation" is not enumerated in the statute. The court used as an example a jade figurine held by a foundation. Jade figurines do not generally produce interest, dividends, rents, or royalties, but gain on the sale of such a figurine would be taxable under the "capital gains through appreciation" standard, yet such standard does not apply.

With respect to capital losses, the Code provides that carryovers are not permitted, whereas the regulations state that neither carryovers nor carrybacks are permitted.

Application of Zemurray to the Code and the Regulations

Applying the Zemurray case to the Code and regulations results in a general principle for purposes of present law: private foundations are subject to tax under section 4940 for purposes of present law, notwithstanding Treasury regulations generally are not subject to the section 4940 tax definition. Where the regulations state that neither carryovers nor carrybacks are permitted, whereas the regulations state that rather carryovers nor carrybacks are permitted.

The conference agreement does not include the Senate amendment provision.

No provision.

No provision.

Under present law, an organization that qualifies as a "convention or association of churches" (within the meaning of sec. 130(b)(1)(A)(i)) is not required to file an annual return. If a Zemurray-type foundation or organization operates or does business, the organization's mailing address and Internet web site address (if any), the organization's tax-exempt status is revoked. In addition, if the organization's tax-exempt status is revoked after the second year, the organization also must file an annual return by reason of normally having gross receipts below a certain specified amount (generally, under $25,000) shall furnish to the Secretary annually the legal name of the organization, the address of the organization, the organization's principal place of business, the names and addresses of any principal officers, the organization's federal identification number, and other information, including name of current business or accounting firm, address, and telephone number of the principal business or accounting firm, and a description of the type of organization.

The conference agreement does not include the Senate amendment provision.

No provision.
of tax-exemption, irrespective of whether the organization was required to make an application for recognition of tax-exemption in order to gain tax-exemption originally. If used for tax-exempt status after a revocation under the provision, the organization shows to the satisfaction of the Secretary reasonable cause for failing to file the required annual notices or returns, the organization’s tax-exempt status may, in the discretion of the Secretary, be reinstated retroactive to the date of revocation. An organization not challenge under the Code’s declaratory judgment procedures (section 7428) a revocation of tax-exemption made pursuant to the provision. The penalty for failure to file the notice. The provision does not require that the notice be made available to the public. In the public disclosure and inspection rules generally applicable to exempt organizations. The provision does not affect an organization’s obligation under present law to file required information returns or existing penalties for failure to file such returns.

The Secretary is required to notify in a timely manner every organization that is subject to the notice filing requirement of the new filing obligation. Notification by the Secretary shall be by mail, in the case of any organization and addressee of which is included in the list of exempt organizations maintained by the Secretary, and by Internet or other means of outreach, in the case of another organizations. In addition, the Secretary is required to publicize in a timely manner appropriate forms and instructions and other means of outreach the new public disclosure and inspection obligations for prospective failures to file the information return.

The Secretary is authorized to publish a list of organizations whose exempt status is revoked or suspended.

Effective date.—The provision is effective for notices and returns with respect to annual periods beginning after 2005.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

13. Disclosure to state officials of proposed actions related to section 501(c) organizations

The conference agreement includes the following language with regard to section 501(c) organizations (as such terms are defined in section 6103(b)) and section 7213A (as such terms are defined in section 6103(b)) of the Code)

PRESENT LAW

In the case of proposed actions that are described in section 501(c)(3) and exempt from tax under section 501(a) or have been applied for exemption as an organization described in section 501(a), or (2) a revocation of a section 501(c)(3) organization’s tax-exempt status, and (3) the mailing of a notice of deficiency for any tax imposed under section 507, chapter 41, or chapter 42; (2) the names, addresses, and taxpayer identification numbers of organizations that have applied for recognition as section 501(c)(3) organizations; (3) the issuance of a proposed deficiency of tax imposed under section 507, chapter 41, or chapter 42; (4) the names, addresses, and taxpayer identification numbers of organizations with respect to which information has been disclosed under (1) through (4) above, 240 Disclosure or inspection is permitted for the purpose of, and only to the extent necessary in, the administration of State laws regulating charitable solicitation, charitable trusts, charitable solicitation, and fraud.

Such disclosure or inspection may be made only to or by an appropriate State officer or officer or employee of the State who is designated by the appropriate State officer, and may not be made by or to a contractor or agent. The Secretary also is permitted to disclose only to or by an appropriate State officer or officer or employee of the State who is designated by the appropriate State officer, and may not be made by or to a contractor or agent.

The Secretary is required to make available for inspection and copying, such returns, filed statements, records, reports, and other information relating to the above-described disclosures, as are relevant to any State law described.

240 Such returns and return information also may be open to inspection by an appropriate State officer.

Constitutional Record — House

H2255

May 9, 2006

PRESENT LAW

Requirements for section 501(c)(3) tax-exempt status

Charitable organizations, i.e., organizations described in section 501(c)(3), generally are exempt from Federal income tax and are subject to receipt and dividend restrictions. A charitable organization must operate primarily in pursuance of one or more tax-exempt purposes constituting the basis

of this document
of its tax exemption. In order to qualify as operating primarily for a purpose described in section 501(c)(3), an organization must satisfy the following operational requirements: (1) that it carry on its activities in a manner which neither inure to the benefit of any person or class of persons nor are not carried on for profit, not a private benefit; (2) the organization may not be operated primarily to conduct an unrelated trade or business; (3) the organization must operate for the public benefit, not in furtherance of any private gain or personal benefit to any person; and (4) the organization must neither carry on any other substantial non-charitable activity.

Classification of section 501(c)(3) organizations

Section 501(c)(3) organizations are classified as either private foundations or non-private foundations. A private foundation is an organization that is not a public charity and includes any amount paid to acquire an asset used in an organization that is not a public charity or exempt operating foundation unless the foundation exercises expenditure responsibility, or (5) any for any non-charitable purpose. Additional excise taxes may also apply in the event a private foundation holds certain business interests ("excess business holdings") or (6) for any other reason, including a lack of control test.

Supporting organizations

The Code provides that certain "supporting organizations" (in general, organizations that provide support to another section 501(c)(3) organization that is not a private foundation) are classified as public charities rather than private foundations. To qualify as a supporting organization, an organization must satisfy all three of the following requirements: (1) it must be supported, supervised, or controlled by or controlled directly or indirectly by one or more disqualified persons (as described in section 4946); (2) its activities must be not in connection with one or more publicly supported organizations; or (3) it must be operated in connection with one or more publicly supported organizations.

Type I supporting organizations

In the case of supporting organizations that are operated, supervised, or controlled by one or more publicly supported organizations, Type II supporting organizations are subject to certain limitations, as an itemized deduction from Federal income taxes. Such contributions also generally are deductible for estate and gift tax purposes. However, the taxpayer retains control over the assets transferred to charity, the transfer may not qualify as a completed gift for purposes of claim ing charitable deductions. Public charities enjoy certain advantages over private foundations regarding the deductibility of contributions. For example, the donors are allowed a deduction for the fair market value of charitable contributions made to public charities. However, such contributions are subject to certain limitations, as an itemized deduction from Federal income taxes. Such contributions also generally are deductible for estate and gift tax purposes.
to public charities generally are deductible in an amount equal to the property’s fair market value, except for gifts of inventory and other ordinary income property, short-term collectibles, artwork, and tangible personal property. The deduction limitation is determined on a taxable year-by-year basis. The applicable percentage limitation is 50 percent of annual gross income in a taxable year. The applicable percentage limitations vary depending upon the type of property contributed and the classification of the donee. Generally, contributions to non-operating private foundations are limited to a smaller percentage of the donor’s contribution base (up to 30 percent) than contributions to public charities (up to 50 percent).

In general, taxpayers who make contributions and claim a charitable deduction must satisfy recordkeeping and substantiation requirements. The requirements vary depending on the type and value of property contributed. Generally, a deduction generally may be denied if the donor fails to satisfy applicable recordkeeping or substantiation requirements.

Intermediate sanctions (excess benefit transactions)

The Code imposes excise taxes on excess benefit transactions between disqualified persons and public charities. An excess benefit transaction generally is a transaction in which an economic benefit is provided by a public charity directly or indirectly to one or more disqualified persons, if the value of the economic benefit provided exceeds the value of the consideration (including the fair value of services) received for providing such benefit.

For purposes of the excess benefit transaction rules, a disqualified person is any person in a position to exercise substantial influence over the affairs of the public charity at any time in the five-year period ending on the date of the transaction at issue. Persons holding certain powers, responsibilities, or interests (e.g., officers, directors, or trustees) are considered to be in a position to exercise substantial influence over the affairs of the public charity. An excess benefit transaction tax is imposed on the disqualified person and, in certain cases, on the organization managers, but is not imposed on the public charity. An initial tax of 25 percent of the excess benefit amount is imposed on the disqualified person that receives the excess benefit. An additional tax of 25 percent of the excess benefit amount is imposed on the disqualified person if the violation is not corrected within a specified period. A tax of 10 percent of the excess benefit (not to exceed $10,000 with respect to any excess benefit transaction) is imposed on an organization manager that knowingly participated in the excess benefit transaction, if the manager’s participation was willful and not due to reasonable cause, and if the initial tax was imposed on the disqualified person.

Community foundations

Community foundations generally are broadly supported section 501(c)(3) public charities that make grants to other charitable organizations located within a community foundation’s particular geographic area. Donors sometimes make contributions to a community foundation that transfers to a separate trust or fund, the assets of which are held and managed by a bank or investment company.

Certain community foundations are subject to special rules that permit them to treat the separate funds or trusts maintained by the community foundation as a single entity, referred to as a “single entity” status allows the community foundation to be classified as a public charity. Of the requirements that community foundations must maintain, one is that the foundation be maintained by the community foundation may not be subject to the donor to any material restrictions or conditions. The prohibition against material restrictions or conditions is designed to prevent a donor from encumbering a fund in a manner that prevents the community foundation from freely distributing the assets and income from it in furtherance of the community foundation’s charitable purposes.

Under Treasury regulations, whether a particular restriction or condition placed in the donor’s contribution exceeds the value of the consideration (including the fair value of services) received for providing such benefit.

The provision defines a “donor advised fund” as a fund or account that is: (1) separately identified by reference to contributions of a donor or donors; (2) owned and controlled by a sponsoring organization and with respect to which a donor (or any person appointed or designated by such donor (a “donor advisor”) (3) to which the sponsoring organization contributes or has contributed assets and on which the sponsoring organization has a material interest.

No provision.
not apply in the case of a donor advised fund maintained by a private foundation that is subject to the requirements of section 4942. The applicable percentage is three percent (or five percent for any illiquid asset held for a period of four years following the taxable year in which the deductible contribution was made, determined after the date of enactment, four percent for the second such taxable year, and five percent for any such taxable year thereafter.

**Generally applicable account-level activity requirement**

Under the provision, a sponsoring organization must distribute from each of its donor advised funds an amount equal to the lesser of the required minimum in-kind contribution amount for such period (or average required minimum balance, if greater) for the type of donor advised fund at issue. An applicable three-year period must correspond with three consecutive taxable years of the sponsoring organization.

The first applicable three-year period for a donor advised fund begins only after the fund has been in existence for one full year.

**Account-level distribution requirement for accounts that hold illiquid assets**

If, as of the end of any taxable year of the sponsoring organization, a donor advised fund has assets that include marketable securities (i.e., “illiquid assets”) that equal more than 10 percent of the total value of assets in the fund (determined using the methodology described below), the donor advised fund is considered to be an “illiquid asset donor advised fund” for subsequent taxable years.

For a donor advised fund held in the fund maintained by a private foundation that is subject to the requirements of section 4942, the required minimum initial contribution amount for such period (or average required minimum balance, if greater) for the type of donor advised fund at issue.

**Qualifying distributions**

For purposes of all of the distribution requirements described in the provision, qualifying distributions are distributions of donor advised funds described in section 170(b)(1)(A) (other than Type III supporting organizations or a sponsoring organization if the amount is for maintenance in a donor advised fund). Distributions to Type I or Type II supporting organizations may be qualifying distributions but are not prohibited by regulations. Distributions to the sponsoring organization generally are qualifying distributions; however, a distribution to the sponsoring organization is not a qualifying distribution if the distribution is for maintenance in the fund described in section 170(b)(1)(A).

**Valuation**

Special valuation rules apply for purposes of determining the required distributable amount for a taxable year under the aggregate payout requirement applicable to accounts that hold illiquid assets. For such purposes, the fair market values of cash and other securities for which market quotations are readily available are determined on a monthly basis. All other assets (“illiquid assets”) are valued by the donor or a qualified appraiser, subject to procedures similar to those described in section 4922 that determine the fair market value of such assets.

**Additional substantiation requirements**

In addition to satisfying present-law substantiation requirements under section 170(c), a donor must obtain, with respect to each contribution to a sponsoring organization to be maintained in a donor advised fund, a contemporaneous written acknowledgment from the sponsoring organization that describes in the donor’s contribution and an account of the sponsoring organization established by the donor.

A sponsoring organization must distribute from each illiquid asset donor advised fund qualifying distributions by the end of any taxable year following such subsequent taxable year an amount equal to the applicable percentage of the value of the assets in the donor advised fund as of the end of such year (the “illiquid asset payout requirement”). The applicable percentage is three percent for the first taxable year beginning after the date of enactment, five percent for the second such taxable year, and five percent for any such taxable year thereafter.

If, as of the end of any taxable year of the sponsoring organization, an illiquid asset in a donor advised fund has not been held for a period of 12 months, such asset is not considered an illiquid asset for such year. However, if an illiquid asset has been exchanged for another illiquid asset within the three-year period for which the required minimum initial contribution amount is set, the asset is not considered an illiquid asset for any of the taxable years of the sponsoring organization.

**Qualifying distributions**

For purposes of all of the distribution requirements described in the provision, qualifying distributions are distributions of donor advised funds described in section 170(b)(1)(A) (other than Type III supporting organizations or a sponsoring organization if the amount is for maintenance in a donor advised fund). Distributions to Type I or Type II supporting organizations may be qualifying distributions but are not prohibited by regulations. Distributions to the sponsoring organization generally are qualifying distributions; however, a distribution to the sponsoring organization is not a qualifying distribution if the distribution is for maintenance in the fund described in section 170(b)(1)(A).
authorized to promulgate rules permitting adjustments in the value of an illiquid asset in situations where the asset declines significantly in value following a contribution or purchase.

Treatment of qualifying distributions

Distributions made in satisfaction of any of the above-described distribution requirements are counted for purposes of all payout requirements in the provision. For purposes of any distribution requirement described in this provision, the taxpayer may designate the form of the qualifying distribution as being made out of the undistributed amount remaining from any prior taxable year or as being made in satisfaction of the distribution for the current taxable year. Amounts distributed in excess of the undistributed amount for the current year and all previous taxable years may be carried forward for up to five taxable years following the taxable year in which the excess payment is made.

Excise tax for failure to distribute

In the event of a failure to distribute the required amount in connection with any of the above-described distribution requirements within the prescribed time period, the provision imposes excise taxes similar to the private foundation excise taxes under section 4942. Specifically, a first-tier excise tax equal to 30 percent of the undistributed amount is imposed. The first and second tier taxes are subject to abatement under generally applicable present law rules. Taxable periods begin with respect to any undistributed amount for any taxable year or applicable 3-year period, the period beginning with the first day of the taxable year or applicable 3-year period on the earlier of the date of mailing of a notice of deficiency with respect to the imposition of the initial tax or the date on which such tax is assessed.

Disqualified persons, excess benefit transactions, and other sanctions

Disqualified persons

The provision provides that donors, donor advisors, and investment advisors to donor advised funds (as well as persons related to the foregoing) are treated as disqualified persons with respect to the sponsoring organization under section 4958 or under section 4946(a).

Excess benefit transactions

The provision also provides that distributions from a donor advised fund to a person that with respect to such fund is a donor, donor advisor, or a person related to a donor or donor advisor (though not an investment advisor) is treated as an excess benefit transaction under section 4958, with the entire amount paid to any such person treated as the amount of the excess benefit. This rule applies regardless of whether the sponsoring organization is a public charity or a private foundation. In the event of a failure to comply with this rule, the transaction would have been subject to the section 4941 self-dealing rules.

Section 501(c) organizations

Any amount repaid as a result of a correction such an excess benefit transaction shall not be held in or credited to any donor advised fund.

Other sanctions

Under the provision, distributions from a donor advised fund (as opposed to a sponsoring organization’s non donor advised funds or accounts) to any person other than the sponsoring organization’s non donor advised funds or accounts described in section 170(b)(1)(A) are prohibited (other than Type III supporting organizations). If a donor advised fund is prohibited from making distributions to a donor or donor advisor, the excise tax imposed on a distribution made from a donor advised fund is determined by multiplying the rate of the initial tax imposed against a disqualified person under section 4958 by the amount of the distribution that gave rise to the more-than- incidental benefit.

Reporting and disclosure

The provision requires each sponsoring organization to disclose on its information return: (1) the total number of donor advised funds it exercises control over; (2) the value of the assets held in those funds at the end of the organization’s taxable year; and (3) the aggregate contributions to and grants made from those funds during the three years before the current taxable year. The required information must be disclosed within three years after the date on which the required information is disclosed to the IRS.

In addition, when seeking recognition of its exempt status, each sponsoring organization must disclose whether it intends to maintain donor advised funds. Effective date

The provision generally is effective for taxable years beginning after the date of enactment. Distribution requirements are effective for taxable years beginning after the date of enactment. Information return requirements are effective for taxable years ending after the date of enactment. The requirements concerning disclosures on an organization’s application for recognition of exempt status are effective for organizations applying for recognition of exempt status after the date of enactment. Requirements relating to contributions to donor advised funds are effective for contributions made after 180 days from the date of enactment.

Conference agreement

The conference agreement does not include the Senate amendment provision.

15. Improve accountability of supporting organizations

The conference agreement does not include the Senate amendment provision.

a. The conference agreement does not include the Senate amendment provision.

b. The conference agreement does not include the Senate amendment provision.

Conference agreement

The conference agreement does not include the Senate amendment provision.

PRESENT LAW

Requirements for section 501(c)(3) tax-exempt funds

Charitable organizations, i.e., organizations described in section 501(c)(3), generally are exempt from Federal income tax and are eligible to receive tax deductible contributions. A charitable organization must operate primarily in pursuance of one or more tax-exempt purposes constituting the basis of its tax exemption.

In order to qualify as an organization primarily engaged in the performance of services described in section 501(c)(3), an organization must satisfy the following operational requirements:

1. The net earnings of the organization may not inure to the benefit of any person in a position to influence the activities of the organization.
2. The organization must operate to provide a public benefit, not a private benefit.
3. The organization may not operate primarily to conduct an unrelated trade or business.
4. The organization may not engage in substantial legislative lobbying.
5. The organization may not participate or intervene in any political campaign.

Section 501(c)(3) organizations are required to seek formal recognition of tax-exempt status by filing an application with the IRS (Form 1023). In response to the application, the IRS issues a

280 By requiring that distributions from a donor advised fund be made only to certain entities, the provision eliminates excess benefit transactions from a donor advised fund to a donor or donor advisor (or person related to a donor or donor advisor) treated as an excess benefit transaction under section 4958, with the entire amount paid to such a disqualified person. In the event of a failure to comply with this rule, the transaction would have been subject to the section 4941 self-dealing rules.
determination letter or ruling either recognizing the applicant as tax-exempt or not.

In general, organizations exempt from Federal income tax under section 501(a) are required to file annual information returns with the IRS. Under present law, the information return requirement does not apply to several classes of exempt organizations. Organizations exempt from the filing requirement include organizations other than private foundations, the gross receipts of which in each taxable year normally are not more than $25,000.

Classification of section 501(c)(3) organizations

In general

Section 501(c)(3) organizations are classified either as “public charities” or “private foundations.” Foundations generally are defined under section 509(a)(3) as all organizations described in section 501(c)(3) other than an organization granted public charity status by reason of: (1) being a specified type of organization (i.e., churches, educational institutions, hospitals and certain other medical organizations, certain organizations providing assistance to colleges and universities, or a governmental unit); (2) receiving a substantial part of its support from governmental units or direct or indirect contributions of the General public; or (3) providing support to another section 501(c)(3) entity that is not a private foundation. In contrast to public charities, private foundations are funded from a limited number of sources (e.g., an individual, family, or corporation). Donors to private foundations and persons related to such donors together control the operations of private foundations.

Because private foundations receive support that is generally not contributed by a small number of supporters, private foundations are subject to a number of anti-abuse rules and excise taxes not applicable to public charities. For example, the excise tax imposes excise taxes on acts of “self-dealing” between disqualified persons (generally, an enumerated class of foundation insiders and a private foundation). Acts of self-dealing include, for example, sales or exchanges, or leasing, of property; lending of money; or the furnishing of goods, services, or facilities between a disqualified person and a private foundation. In addition, private non-operating foundations are required to pay out a minimum amount each year as qualifying distributions. A qualifying distribution is an amount paid to accomplish one or more of the organization’s exempt purposes, including reasonable and necessary administrative expenses. Certain expenditures of private foundations are also subject to tax. In general, taxable expenditures are expenditures: (1) for lobbying; (2) to influence the outcome of a public election or carry on a voter registration drive (unless certain requirements are met); (3) to make a grant to an individual for travel, study, or similar purposes unless made pursuant to procedures approved by the Secretary; (4) as a grant to an organization that is not a public charity or exempt operating foundation unless the foundation exercises expenditure responsibility with respect to the grant; or (5) for any non-charitable purpose. In addition, excise taxes may apply in the event a private foundation holds certain business interests (“excess business holdings”) or invests in a manner that jeopardizes the foundation’s exempt purposes.

Public charities also enjoy certain advantages over private foundations regarding the deductibility of contributions. For example, contributions of appreciated capital gain property to a private foundation generally are deductible only to the extent of the donor’s cost basis. In contrast, contributions to public charities generally are deductible in an amount equal to the property’s fair market value. In addition, contributions to public charities may be deducted for inventory and other ordinary income property, short-term capital gain property, and tangible personal property (so long as the contribution is unrelated to the donee organization’s exempt purposes). In addition, under present law, a taxpayer’s deductible contributions generally are limited to the smaller of the taxpayer’s contribution base, which generally is the taxpayer’s adjusted gross income for the taxable year, or 50 percent of the property contributed and the classification of the donee organization. In general, contributions to non-operating private foundations are limited to a smaller percentage of the donor’s contribution base (up to 30 percent) than contributions to public charities (up to 50 percent).

Supporting organizations (section 509(a)(3))
The Code provides that certain “supporting organizations” (in general, organizations that provide support to another section 501(c)(3) organization that is not a private foundation) are classified as public charities rather than private foundations. To qualify as a supporting organization, an organization must meet all three of the following tests: (1) it must be organized and at all times operated, supervised, or controlled by a publicly supported organization; (2) it must exercise expenditure responsibility over the policies, programs, and activities of the supporting organization; and (3) it must meet the so-called “common control” requirement, generally there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations. Rather than the parent-subsidiary relationship characteristic of Type I organizations, the relationship between a Type II supporting organization and the supporting organization generally is more analogous to a brother-sister relationship. In order to satisfy the Type II relationship requirement, generally there must be common supervision or control by the persons supervising or controlling both the supporting organization and the publicly supported organizations.

Type II supporting organizations

Type II supporting organizations are supervised or controlled in connection with one or more publicly supported organizations. The relationship between a Type II supporting organization and the supported organization is generally less comparable to that of a parent and subsidiary. The requisite relationship may be established by the fact that a majority of the organization’s directors, officers, or donors to the supporting organization are appointed or elected by the governing body, members of the governing body, officers acting in their official capacity, or the employees of one or more publicly supported organizations.

Type III supporting organizations

Type III supporting organizations are “operated in connection with” one or more publicly supported organizations. To satisfy the “operated in connection with” relationship, Treasury regulations require that the supporting organization be responsive to, and significantly involved in the operations of, the publicly supported organization. This requirement is deemed to be satisfied in connection with a “publicly supported organization merely because the supporting organization exercises significant influence over the publicly supported organization, even if the obligation to make payments is enforceable under state law.311

Type III supporting organizations

Type III supporting organizations are ‘operated in connection with’ one or more publicly supported organizations. To satisfy the ‘operated in connection with’ relationship, the Treasury regulations require that the supporting organization be responsive to and significantly involved in the operations of, the publicly supported organization. A Type III supporting organization need not be an entity that is primarily engaged in furthering one or more exempt purposes.
more of its officers, directors, or trustees are elected or appointed by the officers, directors, trustees, or membership of the supported organization; (b) one or more members of the board of directors of one or more publicly supported organizations are also officers, directors, or trustees of the supporting organization; (c) directors, trustees, or officers of the supporting organization maintain a close continuous working relationship with the officers, directors, or trustees of the publicly supported organizations; and (d) a person that has a position of arrangement, the officers, directors, or trustees of the supporting organization have a significant voice in the investment policies of the supporting organization, the timing and manner of making grants, the selection of grant recipients by the supporting organization, and otherwise directing the income or assets of the supporting organization. Alternatively, the responsiveness test may be satisfied if the supporting organization is a charitable trust under state law, each specified supported organization is a named beneficiary under the trust’s governing instrument, and the beneficiary organization has the power to enforce the trust and compel an accounting under state law.

In general, the internal part test requires that the Type III supporting organization maintain significant involvement in the operations of one or more publicly supported organizations. If such publicly supported organizations are in turn dependent upon the supporting organization for the type of support which it provides. There are two alternative methods for satisfying the integral part test. The first alternative is to establish that (1) the activities engaged in for or on behalf of the publicly supported organization are activities to perform the functions of, or carry out the purposes of, such organizations; and (2) these activities, but for the support of the organization, normally would be engaged by the publicly supported organizations themselves. The second method for satisfying the integral test is to establish that, (1) the supporting organization pays substantially all of its income to or for the use of one or more publicly supported organizations; (2) the tax on support received by one or more of the publicly supported organizations is sufficient to assure the attentiveness required; and (3) the organization is not controlled directly or indirectly by one or more disqualified persons (other than foundation managers and other than one or more publicly supported organizations) through a certification on the annual information return.

Disclosure requirements
All supporting organizations are required to file an annual information return (Form 990 series) with the Secretary, regardless of the organization’s gross receipts. A supporting organization must indicate on such annual information return whether it is a Type I, Type II, or Type III supporting organization and must identify its supported organizations.

Supporting organizations must demonstrate annually that the organization is not controlled directly or indirectly by one or more disqualified persons (other than foundation managers and other than one or more publicly supported organizations) through a certification on the annual information return.

Disqualified person
For purposes of the excess benefit transaction rules (sec. 4958), a disqualified person of a supporting organization is treated as a disqualified person of the supported organization.

Provisions that apply to Type III supporting organizations
Modify payout requirement of Type III supporting organizations

A Type III supporting organization must pay each taxable year, to or for the use of one or more public charities described in section 509(a)(1) or 509(a)(2) ("qualifying distributions"). The tax is imposed at the rate of (i) 85 percent of its adjusted net income (as defined in section 4942(f)) for the preceding taxable year or (ii) the applicable percentage (the excess of any of the assets of the organization other than assets that are used (or held for use) directly in supporting the charitable programs of the supporting organization or one or more supported organizations, determined as of the last day of the preceding taxable year, and (b) any amount received or accrued in such year as repayments of amounts that were taken into account as support provided by the supporting organization in prior years. Qualifying distributions are treated as dividends of the immediately preceding taxable year, and then of the taxable year, unless the taxpayer elects to have an amount as satisifying the payout of any prior taxable year. Amounts distributed in excess of the required payout for the current year and all previous taxable years may be carried forward for five taxable years following the taxable year in which the excess payment is made.

A supporting organization’s administrative expenses associated with or for the use of a supported organization. The holding of the

Intermediate sanctions (excess benefit transaction tax)
The Code imposes excise taxes on excess benefit transactions between disqualified persons and public charities. An excess benefit transaction is a transaction in which an economic benefit is provided by a public charity directly or indirectly to a disqualified person, if the value of the economic benefit provided exceeds the value of the consideration (including the performance of services) received for providing the economic benefit. For purposes of the excess benefit transaction rules, a disqualified person is any person in a position to exercise substantial influence over the affairs of the public charity at any time in the five-year period ending on the date of the transaction at issue. Persons holding certain powers, responsibilities, or interests (e.g., officers, directors, or trustees) are considered to be in a position to exercise substantial influence over the affairs of the public charity. An excess benefit transaction tax is imposed on the disqualified person and, in certain cases, on the organization managers, but is not imposed on the public charity. An initial tax on the excess benefit amount is imposed on the disqualified person that receives the excess benefit. An additional tax on the disqualified person of 200 percent of the excess benefit applies if the violation is not corrected within a specified period. A tax of 10 percent of the excess benefit (not to exceed $10,000 with respect to any excess benefit transaction) is imposed on an organization manager that knowingly participated in the excess benefit transaction, if the manager’s participation was willful and due to the failure of the initial tax was imposed on the disqualified person.

HOUSE BILL
No provisions.
assets for investment purposes, or to operate an unrelated trade or business, is not consid-
ered a use or holding for use directly to sup-
port a supported organization’s charitable programs. It may provide equal
ance as to types of uses of assets that are
considered to be directly in support of a sup-
ported organization’s charitable programs similarly provided under Treasury
Regulation section 53.4942(a)-2(c)(3)(1).

An organization that fails to meet the pay-
out requirement is subject to an initial tax of
$50 per thousand dollars of the unpaid amount, up to 100 percent of the unpaid amount if the payout requirement is not met by the earli-
er date of mailing of a notice of defici-
ency. The initial tax is assessed on the date on
which the initial tax is assessed.

Excess business holdings

The excess business holdings rules of sec-
tion 4943 are applied to Type III supporting
organizations. In applying such rules, the
term disqualified person has the meaning
provided in section 4958, and also includes
substantial contributors and related persons
and any organization that is effectively con-
trolled by the same person or persons who
control the supporting organization or any
organization substantially all of the con-
tributions to which were made by the same
person or persons who made substantially all
of the contributions to the supporting or-
ganization. These business holdings rules
do not apply if the holdings are held for the
benefit of the community pursuant to the di-
rection of a State attorney general or a State
official with jurisdiction over the Type III
supporting organization. The Secretary
has the authority not to impose the excess
business holding rules if the organization es-
tablishes to the satisfaction of the Secre-
tary that the business holdings are consistent with the exempt purposes
of the organization.

Transition rules apply to the present hold-
ing of an organization similar to those of
section 4943(c)(4)-(6).

The excess business holdings rules also
apply to Type II supporting organizations
but only if such organization accepts any
gift or contribution from a person (other
than a public charity, not including a sup-
porting organization) who (1) controls, di-
rectly or indirectly, an officer or director
(with persons described below) the governing
body of a supporting organization of the
supporting organization; (2) is a member of the family of such person; or (3) is a 35 percent
controlled entity.

Organizational and operational requirements

In general, after the date of enactment of
the provision, a Type III supporting organi-
zation may not support more than five orga-
nizations. A transition rule applies to Type
III supporting organizations that support more than five organizations on such date.

Such organizations are not required to re-
duce the number of supported organizations, but may not increase the number of organi-
zations supported above the number of orga-
nizations supported on the date of enact-
ment, and may not add new supported orga-
nizations as beneficiaries unless no more than five organizations are supported by the supporting organization following such addi-
tion.

A Type III supporting organization may
not support an organization that is not orga-
nized for profit on any day during the period for which the return is filed. A qualified
organization must be signed by a senior officer or a mem-
ber of the governing board of the supporting organization.

Relationship to supported organization(s)

A Type III supporting organization must,
as part of its exemption application (Form
1023) attach a letter from each supported or-
ganization acknowledging that the supported
organization has been designated by such or-
ganization as a supported organization.

On the annual information return filed by
a Type III supporting organization, the orga-
nization must have obtained the required let-
ters from organizations that received its sup-
port. It is intended that all such letters must be signed by a senior officer or a mem-
ber of the board of the supported organiza-
tion. The letters must show (1) that the sup-
ported organization agrees to be supported by the supporting organization, (2) the type of support provided, and (3) how such support furthers the supported or-
ganization’s charitable purposes.

A Type III supporting organization must
keep each organization it supports in
formation regarding the supporting organi-
zation in order to help ensure the supporting organization’s responsiveness. Such a show-
ing copying system, to the extent not
provided in section 4958, and also includes
organizations as beneficiaries unless no more
than five organizations on such date.

Effective date

The provision generally is effective on the
date of enactment. The return require-
ment applies to distributions and expenditures made after the date of enactment. The return require-
ments are effective for returns filed for tax-
able years ending after the date of enact-
ment.

CONCLUSION

The conference agreement does not include
the Senate amendment provision.

TITLES

A. RESOLUTIONS

N.Y. LIBERTY ZONE TAX INCENTIVES

(SEC. 301 of the Senate amendment)

PRESENT LAW

In general

Present law includes a number of incen-
tives to invest in property located in the
New York Liberty Zone, which is the area
located on or south of Canal Street, East
Broadway (east of its intersection with
Canal Street), or Grand Street (east of its
intersection with East Broadway) in the Bor-
ough of Manhattan in the City of New York,
New York. These incentives were enacted
following the terrorist attack in New York
City on September 11, 2001.

Special depreciation allowance for qualified
New York Liberty Zone property

Section 1400L(b) allows an additional first-
year depreciation deduction equal to 30 per-
cent of the adjusted basis of property in the
New York Liberty Zone property.324 In order to qualify, property gen-
erally must be placed in service on or before
December 31, 2006 (December 31, 2009 in the case of nonresidential real property and resi-
dential rental property).

The additional first-year depreciation de-
duction is allowed for both regular tax and
alternative minimum tax purposes for the taxable year in which the property is placed in
service. A taxpayer is allowed to elect out of
the additional first-year depreciation for any
class of property for any year.

In order for property to qualify for the ad-
ditional first-year depreciation deduction, it
must meet all of the following requirements.

First, the property must be property to
which the general rules of the Modified Ac-
celerated Cost Recovery System (‘MACRS’)
apply with (1) an applicable recovery period of 20 years or less, (2) water utility property (as defined in section 168(e)(5)), (3) certain nonresidential real property and residential rental property, or (4) computer software other than computer
software covered by section 197. A special rule prunes the additional first-year de-
preciation deduction under this provision for
qualified NYLZ leasehold improvement prop-
erty325 and (2) property eligible for the addi-
tional first-year depreciation deduction under section 168(k) (i.e., property is eligible

324In addition to the NYLZ provisions described above, other NYLZ incentives are provided: (1) § 8250 of
the MACRS which allows additional first-year depreciation for certain nonresidential real property, residential
rental property and public utility property is au-
thorized to be issued after March 9, 2002, and before
January 1, 2010, and (2) § 243(b) of the Internal
Revenue Code which allows accelerated depreciation for
property located in the New York Liberty Zone, and for
property located in the Washington Liberty Zone.

325Qualified NYLZ leasehold improvement property is def-
ined in another provision. Leasehold Improvement prop-
erty that does not meet the requirements to be treated as ‘qualified NYLZ leasehold improvement property’ may be eligible for the 30 percent ad-
ditional first-year depreciation deduction (assuming all other conditions are met).
for only one 30 percent additional first-year depreciation). Second, substantially all of the use of such property must be in the NYLZ. Third, the original use of the property for NYLZ leasehold improvements must commence with the taxpayer on or after September 11, 2001. Finally, the property must be acquired by purchase320 by the taxpayer after September 10, 2001 and before December 31, 2006. For qualifying nonresidential real property and residential rental property, the property must be placed in service before December 31, 2006.321

For purposes of this provision, purchase is defined as under section 179(d).322

Nonresidential real property and residential rental property is eligible for the additional first-year depreciation only if the tenant such property rehabilitates real property damaged, or replaces real property destroyed or condemned as a result of the terrorist attacks on September 11, 2001.

Property that is manufactured, constructed, or produced by the taxpayer for use by the taxpayer qualifies for the additional first-year depreciation deduction.323 The taxpayer begins the manufacture, construction, or production of the property after September 10, 2001, and the property is placed in service after December 31, 2006.324 (and all other requirements are met). Property that is manufactured, constructed, or produced for the taxpayer by another person under a contract entered into before the manufacture, construction, or production of the property is considered to be manufactured, constructed, or produced by the taxpayer.

Depreciation of New York Liberty Zone leasehold improvements

Generally, depreciation allowances for improvements made on leased property are determined in accordance with the recovery period assigned to the property.325 If the recovery period assigned to the property is longer than the term of the lease,326 this rule applies regardless of whether the lessor or the lessee places the leasehold improvements in service.327 If a leasehold improvement constitutes an addition or improvement to nonresidential real property already placed in service, generally the tenant is allowed depreciation using the straight-line method over a 39-year recovery period, beginning in the month the addition or improvement is placed in service.328

A special rule exists for qualified NYLZ leasehold improvement property, which is recovered over five years using the straight-line method. The term qualified NYLZ leasehold improvement property is defined in section 168(e)(6) that is acquired and placed in service after September 10, 2001, and before January 1, 2002.329 Also, in the case of leasehold improvements placed in service before January 1, 2002, the five-year (and not the seven-year) recovery period is available only if substantially all of the use of such property is in the NYLZ in the active conduct of a trade or business by the taxpayer in the NYLZ, and (2) the original use of which in the NYLZ commences with the taxpayer after September 10, 2001.330

For property placed in service after September 10, 2001 and before January 1, 2007, the additional first-year depreciation deduction merely be offset against the additional first-year depreciation deduction. The $25,000 amount is reduced (but not below zero) by the amount of the cost of qualifying property placed in service during the taxable year. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. The $400,000 amount is indexed for inflation.

For taxable years beginning in 2008 and thereafter, a taxpayer with a sufficiently small amount of annual investment may elect to deduct up to $25,000 of the cost of qualifying property placed in service for the taxable year. The $25,000 amount is reduced (but not below zero) by the amount of the cost of qualifying property placed in service during the taxable year. The $100,000 amount is reduced (but not below zero) by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000. In general, qualifying property for this purpose is defined as depreciable tangible personal property (and certain computer software) that is purchased for use in the active conduct of a trade or business or the productive use in a trade or business or for investment.

The amount eligible to be expensed for a taxable year may not exceed the taxable income for a taxable year that is derived from the active conduct of a trade or business (determined without regard to this provision). Any amount that is not allowed as a deduction because of the taxable income limitations may be carried forward to succeeding taxable years (subject to similar limitations). No general business credit under section 38 is available with respect to any amount for which a deduction is allowed under section 179.

The amount a taxpayer can deduct under section 179 is increased for qualifying property placed in service after September 10, 2001, and before January 1, 2002.331 Specifically, the maximum dollar amount that may be deducted under section 179 is increased by the lesser of (1) $35,000 or (2) the cost of qualifying property placed in service during the taxable year. This amount is in addition to the amount otherwise deductible under section 179.

Qualifying property for purposes of the NYLZ provision means section 179 property332 purchased and placed in service by the taxpayer after September 10, 2001 and before January 1, 2007, where (1) substantially all of the use of such property is in the NYLZ in the active conduct of a trade or business on or before December 31, 2006.333 As defined in section 179(d).334

On September 10, 2001, the extension of section 179 for 2001 was made available to the taxpayor under section 179(d)(1). Also, in the case of leasehold improvements placed in service before January 1, 2002, the five-year (and not the seven-year) recovery period is available only if substantially all of the use of such property is in the NYLZ in the active conduct of a trade or business by the taxpayer in the NYLZ, and (2) the original use of which in the NYLZ commences with the taxpayer after September 10, 2001.335

The phase-out range for the section 179 deduction attributable to NYLZ property is applied by taking into account only 50 percent of the cost of NYLZ property that is section 179 property placed in service before September 11, 2001.336 Also, no general business credit under section 38 is allowed with respect to any amount for which a deduction is allowed under section 179.

Property placed in service after September 10, 2001 and before January 1, 2007, is extended for replacement period for New York Liberty Zone involuntary conversions

New York Liberty Zone involuntary conversions

The provision repeals the four NYLZ incentives relating to the additional first-year depreciation allowance for the five-year depreciation of leasehold improvements, the additional section 179 expensing, and the extended replacement period for involuntary conversions.

Creation of New York Liberty Zone tax credits

The provision provides a credit against tax imposed (other than taxes of section 3111(a), 3603, or subtitle D) paid or incurred by any governmental unit of the City of New York or the City of New York equal to the lesser of (1) the total expenditures during such year by such governmental unit for qualifying property placed in service after September 10, 2001, (2) the amount allocated to such governmental unit for such governmental unit for such calendar year. Qualifying projects means any transportation infrastructure project, including highways, mass transit systems, railroads, airports, ports, and waterways, in or connecting with the New York Liberty Zone, which is

See Rev. Proc. 2002-33, 2002-21 I.R.B. 963 (May 20, 2002), for procedures on claiming the increased section 179 expensing deduction by taxpayers who filed their tax returns before June 1, 2002.338

The provision does not change the present-law rules relating to NYLZ private activity bond financing and additional advance refunding bonds.

333 As defined in sec. 179(d).
designated as a qualifying project jointly by the Governor of the State of New York and the Mayor of the City of New York.

The Governor of the State of New York and the Mayor of the City of New York may jointly allocate to a governmental unit the amount of expenditures which may be taken into account for purposes of the credit for any other credit allowed in the credit period with respect to a qualifying project. The aggregate limit that may be allocated for all calendar years in the credit period is two billion dollars. The aggregate amount for any calendar year in the credit period shall not exceed the sum of 200 million dollars plus the aggregate amount authorized to be allocated for all preceding years in the credit period which was not allocated. The credit period is the ten-year period beginning on January 1, 2006.

If, at the close of the credit period, the aggregate amounts allocated are less than the 2 billion dollar aggregate limit, the Governor of the State of New York and the Mayor of the City of New York may jointly allocate, for any calendar year following the credit period, for expenditures with respect to qualifying projects, amounts that in sum for all years following the credit period would equal such shortfall.

Under the provision, any expenditure for a qualifying project taken into account for purposes of the credit shall be counted against State and local funds for the purpose of any Federal program.

Effective date.
The provision is effective on the date of enactment which is placed in service prior to the original sunset dates under present law. The extended replacement service prior to the original sunset dates (including certain directly related and ancillary financings) located in the same municipality or county. However, no provision.

B. MODIFICATION OF S CORPORATION PASSIVE INVESTMENT INCOME RULES

(1) The Senate amendment increases the 25-percent threshold to 60 percent; eliminates gains from the sale or exchange of stock or securities from the definition of passive investment income; and eliminates the rule terminating a distribution as passive income, thereby allowing excess passive investment income for three consecutive taxable years. Effectively. The provision applies to taxable years beginning after December 31, 2006, and before October 1, 2009.

C. CAPITAL EXPENDITURE LIMITATION FOR QUALIFIED SMALL ISSUE BONDS

(2) The provision is effective on the date of enactment for bonds issued after December 31, 2009, to bonds issued after December 31, 2006.

D. PREMIUMS FOR MORTGAGE INSURANCE

The conference agreement does not include the Senate amendment provision.

E. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY

The conference agreement does not include the Senate amendment provision.

1256 contract (or related property) of an options or commodities dealer.

In addition, an S corporation election is terminated whenever the S corporation has accumulated net passive investment income at the close of each of three consecutive taxable years and has gross receipts for each of those years meeting or exceeding the amount of which are passive investment income.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment increases the 25-percent threshold to 60 percent; eliminates gains from the sale or exchange of stock or securities from the definition of passive investment income; and eliminates the rule terminating a distribution as passive income, thereby allowing excess passive investment income for three consecutive taxable years. Effectively. The provision applies to taxable years beginning after December 31, 2006, and before October 1, 2009.

CONFEREENCE AGREEMENT

The conference agreement does not contain the language of the Senate amendment provision.

C. CAPITAL EXPENDITURE LIMITATION FOR QUALIFIED SMALL ISSUE BONDS

Qualified small-issue bonds are tax-exempt State and local government bonds used to finance private business manufacturing facilities (including certain directly related and ancillary facilities) on the acquisition of land and equipment by certain farmers. In both instances, these bonds are subject to limits on the amount of financing that may be provided, both for a single borrowing and in the aggregate. In general, no more than $1 million of small-issue bond financing may be outstanding at any time for the purpose of business (including related parties) located in the same municipality or county. Generally, this $1 million limit may be increased to $10 million if all other capital expenditures of the business in the same municipality or county are counted toward the limit over a six-year period that begins three years after the issue date of the bonds and ends three years after such date. Outstanding aggregate borrowing is limited to $40 million per borrower (including related parties) regardless of where the property is located.

For bonds issued after September 30, 2009, the Codification of capital expenditures to be disregarded, in effect increasing from $10 million to $20 million the maximum allowable amount of total capital expenditures by an eligible business in the same municipality or county. However, no more than $10 million of bond financing may be outstanding at any time for property of an eligible business (including related parties) located in the same municipality or county. Other limits (e.g., the $40 million per borrower limit) also continue to apply.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision applies the application of the $20 million capital expenditure limitation from bonds issued after September 30, 2009, to bonds issued after December 31, 2006. Effectively. The provision is effective on the date of enactment for bonds issued after December 31, 2006.

CONFEREENCE AGREEMENT

The conference agreement includes the Senate amendment provision.


Qualified residence interest is deductible notwithstanding the general rule that personal interest is nondeductible (sec. 163(h)). Qualified residence interest is interest on a qualified residence mortgage for the purchase, construction, or improvement of a principal or second residence of the taxpayer. The maximum amount of home equity indebtedness is $20 million. The maximum amount of acquisition indebtedness is $1 million. Acquisition indebtedness means debt that is incurred in acquiring, constructing, or substantially improving a qualified residence, and that is secured by the residence. Home equity indebtedness is debt (other than acquisition indebtedness) that is secured by the taxpayer’s principal or second residence, to the extent the aggregate amount of such debt does not exceed the difference between the total acquisition indebtedness with respect to the residence, and the fair market value of the residence.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision provides that $1 million of qualified mortgage insurance by a taxpayer during the taxable year in connection with acquisition indebtedness on a qualified residence of the taxpayer are treated as interest that is qualified residence interest and thus deductible. The amount allowable as a deduction under the provision is phased out ratably by 10 percent for each $1,000 by which the taxpayer’s adjusted gross income exceeds $100,000 ($50,000 and $50,000, respectively, in the case of a married individual filing a separate return). Thus, the deduction is allowed if the taxpayer’s adjusted gross income exceeds $101,000 ($50,000 in the case of married individual filing a separate return).

For this purpose, qualified mortgage insurance means mortgage insurance provided by the Veterans Administration, the Federal Housing Administration, or the Rural Housing Administration, and private mortgage insurance (defined in section 2 of the Homeowners Protection Act of 1998 as in effect on the date of enactment of the Senate amendment provision).

Amounts paid for qualified mortgage insurance that are properly allocable to periods after the close of the taxable year are treated as paid in the period to which they are allocated. No deduction is allowed for the unmortized balance if the mortgage is paid before its term (except in the case of qualified mortgage insurance provided by the Department of Veterans Affairs or Rural Housing Administration).

Reporting rules are under the provision. Effective date.—The Senate amendment provision is effective for amounts paid or accrued in taxable years beginning after December 31, 2006, and properly allocable to that period, with respect to mortgage insurance contracts issued after December 31, 2006.

CONFEREENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

E. SENSE OF THE SENATE ON USE OF NO-BID CONTRACTING BY FEDERAL EMERGENCY MANAGEMENT AGENCY

Present law does not provide for the special rules contemplated in the Sense of the Senate provision described below.
No provision.

SENATE AMENDMENT
The Senate amendment provides that it is the sense of the Senate that the Federal Emergency Management Agency should (1) rebid certain contracts entered into following Hurricane Katrina for which competing bids were not solicited; (2) implement its plan for a competitive contracting strategy and, in carrying out that strategy, prioritize local and small disadvantaged businesses in contracting and subcontracting; and (3) immediately after awarding any contract, make public the dollar amount of the contract and whether competing bids were solicited.

Effective date.—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

F. SENSE OF CONGRESS REGARDING DOHA ROUND
( Sec. 306 of the Senate amendment)

PRESENT LAW
Present law does not provide a sense of Congress regarding the Doha Round of trade negotiations.

HOUSE BILL
No provision.

SENATE AMENDMENT
The Senate amendment provision provides that it is the sense of Congress that the United States should not be a signatory to an agreement or protocol with respect to the Doha Development Round of the World Trade Organization (WTO) negotiations or any other bilateral or multilateral trade negotiations if the agreement or protocol (1) adopts any provision to lessen the effectiveness of domestic and international disciplines on unfair trade or safeguard provisions or (2) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws. The provision also provides that it is the sense of Congress that (1) the United States trade laws and international rules appropriately serve the public interest by offsetting injurious unfair trade, and that further balancing by or other similar provisions are unnecessary and would add to the complexity and difficulty of achieving relief against such unfair trade practices, and (2) the United States should ensure that any new agreement relating to international disciplines on unfair trade or safeguard provisions fulfills the purposes and corrects decisions by WTO dispute settlement panels or the Appellate Body that have unjustifiably and negatively impacted, or threaten to negatively impact, the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws.

Effective date.—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

G. TREATMENT OF CERTAIN STOCK OPTION PLANS UNDER NONQUALIFIED DEFERRED COMPENSATION RULES
( Sec. 308 of the Senate amendment)

PRESENT LAW
Present law provides generally that certain loans that bear a below-market rate are treated as loans bearing interest at the market rate, accompanied by imputed payments characterized in accordance with the substance of the transaction (for example, as a gift, compensation, a dividend, or interest).342 The Senate amendment provision provides that it is the sense of the Senate that any Federal regulations under section 7872 of the Code shall not treat options to acquire stock under a nonqualified deferred compensation plan as subject to requirements prescribed in regulations predecessors of section 7872, if the agreement or protocol (1) adopts any provision to lessen the effectiveness of requirements as prescribed in regulations predecessors of section 7872, or (2) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws.

Effective date.—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

H. SENSE OF THE SENATE REGARDING THE DEDICATION OF EXCESS FUNDS
( Sec. 309 of the Senate amendment)

PRESENT LAW
Present law provides generally that certain loans that bear a below-market rate are treated as loans bearing interest at the market rate, accompanied by imputed payments characterized in accordance with the substance of the transaction (for example, as a gift, compensation, a dividend, or interest).342 The Senate amendment provision provides that it is the sense of the Senate that any Federal regulations under section 7872 of the Code shall not treat options to acquire stock under a nonqualified deferred compensation plan as subject to requirements prescribed in regulations predecessors of section 7872, if the agreement or protocol (1) adopts any provision to lessen the effectiveness of requirements as prescribed in regulations predecessors of section 7872, or (2) would lessen in any manner the ability of the United States to enforce rigorously its trade laws, including the antidumping, countervailing duty, and safeguard laws.

Effective date.—The Senate amendment provision is effective upon enactment.

CONFERENCE AGREEMENT
The conference agreement does not include the Senate amendment provision.

No provision.

SENATE AMENDMENT
The Senate amendment provision provides that it is the sense of the Senate that any Federal regulations under section 7872 for any calendar year for any planning for a below-market rate are treated as loans bearing interest at the market rate, accompanied by imputed payments characterized in accordance with the substance of the transaction (for example, as a gift, compensation, a dividend, or interest).342 The Senate amendment provision provides that it is the sense of the Senate that any Federal regulations under section 7872 for any calendar year for any

Note:

341 Sections 422 and 423, respectively.

342 Sec. 7872.

343 Sec. 7872(g).

below-market loan owed by a facility which on the last day of the year is a qualified continuing care facility, if the loan was made pursuant to a continuing care contract and if the lender or the lender’s spouse attains age 62 before the close of the year.

For this purpose, a continuing care contract means a written contract between an individual or the individual’s spouse and (1) the individual or the individual’s spouse may use a qualified continuing care facility for their life or lives; (2) the individual or the individual’s spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of services); (3) the individual or the individual’s spouse will be provided assisted living or nursing care as the health of the individual or the individual’s spouse requires, and as is available in the continuing care facility.

For this purpose, a qualified continuing care facility means one or more facilities: (1) that provide services after continued care contracts; (2) that include an independent living unit, plus an assisted living or nursing facility, or both; (3) substantially all of the independent living unit residents of which are covered by continuing care contracts. For these purposes, a nursing home is not a qualified continuing care facility. Effective date.—The provision is effective for loans made after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with modifications. The conference agreement provision provides that a continuing care contract is a written contract between an individual and a qualified continuing care facility under which: (1) the individual or the individual’s spouse may use a qualified continuing care facility for their life or lives; (2) the individual or the individual’s spouse will be provided with housing in an independent living unit, as appropriate for the health of the individual or the individual’s spouse, and (3) the individual or the individual’s spouse will be provided assisted living or nursing care as the health of the individual or the individual’s spouse requires, and as is available in the continuing care facility.

For this purpose, a continuing care contract means a written contract between an individual and a qualified continuing care facility under which: (1) the individual or the individual’s spouse may use a qualified continuing care facility for their life or lives; (2) the individual or the individual’s spouse will be provided with housing in an independent living unit (which has additional available facilities outside such unit for the provision of services); (3) the individual or the individual’s spouse will be provided assisted living or nursing care as the health of the individual or the individual’s spouse requires, and as is available in the continuing care facility. The Secretary is required to issue guidance that limits the term “continuing care contract” to contracts that provide only facilities, care, and services described in the preceding sentence.

For purposes of defining the terms “continuing care contract” and “qualified continuing care facility” under the conference agreement provision, the term “assisted living facility” is intended to mean a facility at which assistance is provided (1) with activities of daily living (such as eating, toileting, transferring, bathing, dressing, and continence) or (2) in cases of cognitive impairment, to protect the health or safety of an individual. The term “nursing facility” is intended to mean a facility that offers care similar to the utilization of licensed nursing staff.

Effective date.—The conference agreement provision is generally effective for calendar years after December 31, 2005, with respect to loans made before, on, or after such date. The conference agreement provision does not apply to any calendar year after 2010. Thus, the conference agreement provision does not apply with respect to interest imputed after December 31, 2010. After such date, such loan will be treated as if in effect prior to enactment.

J. EXCLUSION OF GAIN ON SALE OF A PRINCIPAL RESIDENCE BY A MEMBER OF THE INTELLIGENCE COMMUNITY

(See 311 of the Senate amendment and sec. 121 of the Code)

PRESENT LAW

Under present law, an individual taxpayer may exclude up to $250,000 ($500,000 if married filing a joint return) of gain realized on the sale or exchange of a principal residence. To be eligible for the exclusion, the taxpayer must have owned and used the residence as a principal residence for at least two of the five years ending on the sale or exchange. A taxpayer who fails to meet these requirements by reason of a change of place of employment, health, or, to the extent provided under regulations, unforeseen circumstances is eligible to exclude an amount equal to the fraction of the $250,000 ($500,000 if married filing a joint return) that is attributable to the fraction of the two years that the ownership and use requirements are met.

Present law contains special rules relating to members of the uniformed services or the Foreign Service of the United States. An individual may elect to suspend for a maximum of 10 years the five-year test period for owning certain residences because of service in the uniformed services or the Foreign Service of the United States. The election may be made with respect to any period of extended duty and may be revoked at any time by the taxpayer.

Effective date.—The provision is effective for sales and exchanges after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

K. SENSE OF THE SENATE REGARDING THE PERMANENT EXTENSION OF EGTRRA AND JGTRRA PROVISIONS RELATING TO THE CHILD TAX CREDIT

The Senate amendment includes a provision stating that it is the sense of the Senate that the conference agreement provision is effective on the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

L. PARTIAL EXPENSING FOR ADVANCED MINE SAFETY EQUIPMENT

(See 313 of the Senate amendment)

PRESENT LAW

A taxpayer generally must capitalize the cost of property used in a trade or business and recover such cost over time through annual depreciation or amortization. Tangible property generally is depreciable under the Modified Accelerated Cost Recovery System ("MACRS"), which determines depreciation by applying specific recovery periods, placed-in-service conventions, and depreciation methods to the cost of various types of depreciable property (sec. 168).

Personal property is classified under MACRS based on the property’s class life unless a different classification is specifically provided in section 168. The class life applicable for personal property is the asset guideline period (midpoint class life as of January 1, 1986). Based on the property’s classification, a recovery period is prescribed under MACRS. In general, there are six classes of recovery periods to which personal property can be assigned. For example, personal property that has a class life of four years or less has a recovery period of three years, whereas personal property with a class life greater than 10 years has a recovery period of five years. The class lives and recovery periods for most property are contained in Revenue Procedure 87–56.151
In lieu of depreciation, a taxpayer with a sufficiently small amount of annual investment may elect to deduct (or “expense”) such costs. Present law provides that the maximum amount a taxpayer may expense, for taxable years beginning in 2003 through 2007, is $100,000 of the cost of qualifying property placed in service for the taxable year. In general, qualifying property is defined as tangible personal property that is purchased for use in the active conduct of a trade or business. The $100,000 amount is reduced by the amount by which the cost of qualifying property placed in service during the taxable year exceeds $400,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that the taxpayer may elect to deduct (or "expense") the cost of any qualified advanced mine safety equipment property as a deduction in the taxable year in which the equipment is placed in service.

Advanced mine safety equipment property means any property that uses information or communication technology or devices used to allow a miner to maintain constant communication with an individual who is not in the mine; (2) electronic identification and location devices that allow individuals not in the mine to track at all times the movements and location of miners working in or at the mine; (3) emergency oxygen-generating, self-rescue devices that provide oxygen for at least 90 minutes; (4) pre-positioned supplies of oxygen providing each miner on a shift the ability to survive for at least 48 hours; and (5) comprehensive atmospheric monitoring systems that monitor the levels of carbon monoxide, methane and oxygen that are present in all areas of the mine and that can detect smoke in the case of a fire in a mine.

To be treated as qualified advanced mine safety equipment property under the provision, the original use of the property must have commenced with the taxpayer, and the taxpayer must have placed the property in service after the date of enactment.

The portion of the cost of any property with respect to which an expensing election under section 179 is made may not be taken into account for purposes of the 50 percent deduction allowed under this provision. For Federal tax purposes, the basis of property is reduced by the portion of its cost that is taken into account for purposes of the 50 percent deduction allowed under the provision.

The provision requires the taxpayer to report information required by the Treasury Secretary with respect to the operation of mines of the taxpayer, in order for the deduction to be allowed for the taxable year.

Effective date.--The provision applies to costs paid or incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

N. FUNDING FOR VETERANS HEALTH CARE AND DISABILITY COMPENSATION AND HOSPITAL INFRASTRUCTURE FOR VETERANS

SEC. 315 of the Senate amendment

PRESENT LAW

Within the U.S. Department of Veterans Affairs, the Veterans Health Administration provides medical, surgical, and rehabilitative care to veterans. The Veteran Benefits Administration provides services to veterans, including services related to compensation and pensions.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment authorizes the appropriation of funds for the Department of Veterans Health Administration for Medical Care as well as the Veterans Benefits Administration for Compensation and Pensions for fiscal years 2006 through 2010 in the amounts listed below:

<table>
<thead>
<tr>
<th>Fiscal Year</th>
<th>Veterans Health Administration</th>
<th>Veterans Benefits Administration</th>
</tr>
</thead>
<tbody>
<tr>
<td>2006</td>
<td>$900,000,000</td>
<td>$2,300,000,000</td>
</tr>
<tr>
<td>2007</td>
<td>$1,000,000,000</td>
<td>$2,700,000,000</td>
</tr>
<tr>
<td>2008</td>
<td>$1,100,000,000</td>
<td>$3,100,000,000</td>
</tr>
<tr>
<td>2009</td>
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<td>$3,500,000,000</td>
</tr>
<tr>
<td>2010</td>
<td>$1,300,000,000</td>
<td>$4,000,000,000</td>
</tr>
</tbody>
</table>

The Senate amendment also establishes the Veterans Hospital Improvement Fund, with an initial balance of $1,000,000,000, to be administered by the Secretary of Veterans Affairs. The funds are to be used for improvements of health facilities treating veterans.

Effective date.—The Senate amendment is effective upon the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

O. SENSE OF THE SENATE REGARDING PROTECTING MIDDLE-CLASS FAMILIES FROM THE ALTERNATIVE MINIMUM TAX

SEC. 316 of the Senate amendment

PRESENT LAW

Present law imposes an alternative minimum tax. The alternative minimum tax is the amount by which the alternative minimum tax exceeds the regular income tax. An individual’s tentative minimum tax is the sum of (1) 26 percent of so much of the taxable excess as does not exceed $175,000 ($87,500 in the case of a married individual filing a separate return) and (2) 28 percent of the remaining taxable excess. The taxable excess is so much of the alternative minimum taxable income (“AMTI”) as exceeds an exemption amount. AMTI is the individual’s taxable income adjusted to take account of specified preferences and adjustments.

Under present law, for taxable years beginning before January 1, 2009, the maximum rate of tax on the adjusted net capital gain of an individual is 15 percent, and dividends received by an individual from domestic corporations and qualified foreign corporations are taxed at the same rates that apply to capital gains. For taxable years beginning after December 31, 2008, the maximum rate of tax on the adjusted net capital gain of an individual is 20 percent, and dividends received by an individual are taxed as ordinary income at rates of up to 35 percent.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that it is the sense of the Senate that protecting middle-class families from the alternative minimum tax should be a higher priority for Congress in 2006 than extending a tax cut that does not expire until the end of 2008. The Senate amendment provision.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

TITLE V—REVENUE OFFSET PROVISIONS

A. PROVISIONS DESIGNED TO CURTAIL TAX SHELVING

1. Understatement of taxpayer’s liability by income tax return preparer (Sec. 401 of the Senate amendment and sec. 6694 of the Code)

PRESENT LAW

An income tax return preparer who prepares a return with respect to which there is an understatement of tax that is due to an undisclosed position for which there was not a realistic possibility and does not by reason of being sustained on its merits, or a frivolous position, is liable for a penalty of $250, provided the preparer knew or reasonably should have known of the understatement.

The provision requires the taxpayer to prepare and engage in specified willful or reckless conduct with respect to preparing such a return is liable for a penalty of $1,000.

HOUSE BILL

No provision.

SENATE AMENDMENT

The provision alters the standards of conduct that must be met to avoid imposition of
the first penalty described above by replacing the realistic possibility standard with a requirement that there be a reasonable belief that the tax treatment of the position was more likely than not the proper treatment. The provision also replaces the not-trivial standard with the requirement that there be a reasonable basis for the tax treatment of the position. The penalty is increased from $1,000 to $1,000 and $25,000. Effective date.—The provision is effective for cases filed after the date of enactment.

CONCERTED AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. frivolous tax submissions (Sec. 402 of the Senate amendment and sec. 6702 of the Code)

PRESENT LAW

The Code provides that an individual who files a frivolous income tax return is subject to a penalty of $500 imposed by the IRS (sec. 6702). The Code also permits the Tax Court to impose a penalty of up to $25,000 if a taxpayer has make a frivolous or maintain- ce proceedings primarily for delay or if the taxpayer’s position in the proceeding is frivolous or groundless (sec. 6703(a)).

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the IRS-imposed penalty by increasing the amount of the penalty to up to $5,000 and by applying it to all taxpayers and to all types of Federal taxes.

The Senate amendment also modifies present law with respect to certain submissions that are frivolous or arguments that are intended to delay or impede tax administra- tion. The submissions to which the Senate amendment applies are requests for a collection due process hearing, installment agreements, offers-in-compromise, and tax- payer assistance orders. First, the Senate amendment permits the IRS to disregard such requests. Second, the Senate amend- ment permits the IRS to impose a penalty of up to $5,000 for such requests, unless the taxpayer withdraws the request after being given an opportunity to do so.

The Senate amendment requires the IRS to publish a list of positions, arguments, re- quests, and submissions determined to be frivolous or of these provisions.

Effective date.—The Senate amendment appli- es to submissions made and issues raised after the date on which the Secretary first prescribes the required list of frivolous posi-

CONCERTED AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Penalty for promoting abusive tax shelters (Sec. 405 of the Senate amendment and sec. 6701 of the Code)

PRESENT LAW

A penalty is imposed on any person who organizes, assists in the organization of, or participates in the creation of, a partnership or other entity, any investment plan or arrangement, or any other plan or ar- rangement, if in connection with such activity the person makes or furnishes a quali- fying false or fraudulent statement or a gross valuation overstatement. The penalty is equal to 100 percent of the gross income derived (or to be derived) from the activity. The penalty amount is calculated with respect to each instance of an activity subject to the penalty, each instance in which in- come was derived by the person or persons subject to the penalty, and each person who participated in an activity subject to the penalty.

The Senate amendment, if more than one person is liable for the penalty, all such persons are jointly and severally liable for the penalty. The Senate amendment expands the scope of the penalty to include activities that do not result in a meaningful change to the taxpayer’s economic position other than a purported reduction in federal income tax.

Economic substance doctrine

Courts generally deny claimed tax benefits if the transaction that gives rise to those benefits lacks economic substance inde- pendent of tax considerations. In addition, the Senate amend- ment provides that the penalty, as well as amounts paid to settle or avoid the imposi- tion of the penalty, is not deductible for tax purposes.

Effective date.—The provision is effective for activities occurring after the date of enactment.

CONCERTED AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Penalty for aiding and abetting the under- statement of tax liability (Sec. 404 of the Senate amendment and sec. 6701 of the Code)

PRESENT LAW

A penalty is imposed on a person who: (1) aids or assists in, procures, or advises with respect to a tax return or other document; (2) knows (or has reason to believe) that such document will be used in connection with a material tax matter; and (3) knows that this would result in an understatement of tax (or to be done) from the activity. The penalty amount is equal to 100 percent of the gross income derived (or to be derived) from the activity. The penalty amount is equal to 100 percent of the gross income derived (or to be derived) from the activity. The penalty amount is equal to 100 percent of the gross income derived (or to be derived) from the activity. The penalty amount is equal to 100 percent of the gross income derived (or to be derived) from the activity.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment modifies the penalty with respect to the allowability of any deduction or credit, the excludability of any income, or the securing of any other tax ben-

348Because in general the Tax Court is the only pre-payment forum available to taxpayers, it deals with most of the frivolous, groundless, or dilatory arguments raised in tax cases.

349Sec. 6701.
where a taxpayer seeks to claim tax benefits, unintended by Congress, by means of transactions that serve no economic purpose other than tax savings.

**Business purpose**

Another common law doctrine that overlays and is often considered together with (if not part and parcel of) the economic substance doctrine is the business purpose doctrine. The business purpose test is a subjective inquiry into the motives of the taxpayer that is, whether the taxpayer was motivated to enter into the transaction to serve some useful non-tax purpose. In making this determination, some courts have bifurcated a transaction in which independent activities with non-tax objectives have been combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the latter.

### Application by the courts

**Elements of the doctrine**

There is a lack of uniformity regarding the preparation of a business purpose inquiry. Some courts apply a conjunctive test that requires a taxpayer to establish the presence of both economic substance (i.e., the objective and non-tax business purpose) and business purpose (i.e., the subjective component) in order for the transaction to survive judicial scrutiny. Other courts adopt an approach used by some circuits in which the business purpose test regards economic substance and business purpose as "simply more precise factors to consider" in determining whether a transaction is motivated by a business purpose other than tax savings. These courts must conclude that either a business purpose or economic substance is sufficient to render the transaction non-taxable. A narrower approach used by some courts is to conclude that economic substance is the only factor to consider, and if economic substance exists, then the transaction is non-taxable.353

Recently, the Court of Federal Claims questioned whether there is any viable test for the business purpose doctrine.354 The court also stated that "the use of the 'economic substance' doctrine to trump 'mere compliance with the Code' would violate the separation of powers."355

### Non-tax economic benefits

There also is a lack of uniformity regarding the type of non-tax economic benefit a taxpayer must establish in order to satisfy economic substance. Several courts have decided that the subject transactions lacked profit potential.356 In addition, some courts have applied the economic substance doctrine in situations in which a taxpayer was exposed to risk and the transaction failed to produce profit.357 The court concluded that the economic risks and profit potential were insignificant when compared to the tax benefits.358 Under this analysis, the tax benefits must be more than nominal. Conversely, other courts view the application of the economic substance doctrine as requiring an objective determination of whether a reasonable possibility of profit exists from the transaction apart from the tax benefits.359 In these cases, economic substance (as opposed to tax benefits) is evaluated.360 In the transaction, at least one court has concluded that the tax benefits on the grounds that the only economic benefit from the transaction was "indefinitely delayed money in the bank."361

### Financial accounting benefits

In determining whether a taxpayer had a valid business purpose for entering into a transaction, at least one court has concluded that the purported arising of a non-tax business purpose from tax savings does not qualify as a non-tax business purpose.362 However, based on court decisions recognizing the importance of financial accounting treatment, taxpayers have asserted that financial accounting benefits arising from tax savings can satisfy the business purpose.

### No provision.

**SENATE AMENDMENT**

The Senate amendment to this provision clarifies and enhances the application of the economic substance doctrine. Under the provision, in a case in which a court determines that the economic substance doctrine is relevant to a transaction (or a series of transactions), such transaction (or series of transactions) has economic substance (and thus satisfies the economic substance doctrine) only if the taxpayer establishes that (1) the transaction was motivated by a valid business purpose (apart from Federal income tax consequences) the taxpayer’s economic position, and (2) the taxpayer has a substantial non-tax purpose for entering into such transaction and the transaction is a reasonable means of accomplishing such purpose.363 Under this provision, the economic substance doctrine provides a non-tax business purpose for the transaction must bear a reasonable relationship to the taxpayer’s normal business operations or investment activities.

353 See, e.g., Minnesota Tea Co. v. Helvering, 302 U.S. 609, 613 (1938) ("A given result at the end of a devious path is not made any the better because reached by following a devious path.").

354 See, e.g., American Electric Power, Inc. v. U.S., 136 F.3d 971, 973 (Fed. Cir. 1998) ("The economic substance doctrine requires an objective determination of whether a reasonable non-tax purpose is served by the transaction, apart from tax benefits.") (citing 26 U.S.C. § 7872 (6th Cir. 2003)).

355 See, e.g., Joint Committee on Taxation, Report of Investigation of Eron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, Report No. 51 (February 2002) ("Eron Report"), Volume III at C-91, 929. Eron Corporation relied on Frank Lyon Co. v. Commissioner, 899 F.2d 905, 908 (9th Cir. 1990) ("The business purpose test is a subjective inquiry into the motives of the taxpayer that is, whether the taxpayer in fact was motivated by a business purpose other than tax savings.")

356 See, e.g., ACC Partnership v. Commissioner, 157 F.3d at 256 (8th Cir. 1995) ("The threshold question is whether the business purpose or economic substance doctrine involves a conjunctive analysis—there must be an objective inquiry regarding the effects of the transaction on the taxpayer’s economic position, as well as a subjective inquiry regarding the taxpayer’s motives for engaging in the transaction. Under the provision, a transaction must satisfy both tests—i.e., it must change in a meaningful way (apart from Federal income tax consequences) the taxpayer’s economic position, and the taxpayer must have a substantial non-tax purpose for entering into such transaction (and the transaction is a reasonable means of accomplishing such purpose) in order to satisfy the economic substance doctrine. This clarification eliminates the disparity that exists among the circuits in which either a change in economic substance or a non-tax business purpose is found to have been sufficient to satisfy the economic substance doctrine.

357 See, e.g., James W. Sacks v. United States, 898 (6th Cir. 1993) ("The economic substance doctrine involves a conjunctive analysis—there must be an objective inquiry regarding the effects of the transaction on the taxpayer’s economic position, as well as a subjective inquiry regarding the taxpayer’s motives for engaging in the transaction. Under the provision, a transaction must satisfy both tests—i.e., it must change in a meaningful way (apart from Federal income tax consequences) the taxpayer’s economic position, and the taxpayer must have a substantial non-tax purpose for entering into such transaction (and the transaction is a reasonable means of accomplishing such purpose) in order to satisfy the economic substance doctrine. This clarification eliminates the disparity that exists among the circuits in which either a change in economic substance or a non-tax business purpose is found to have been sufficient to satisfy the economic substance doctrine.

358 See, e.g., Joint Committee on Taxation, Report of Investigation of Eron Corporation and Related Entities Regarding Federal Tax and Compensation Issues, Report No. 51 (February 2002) ("Eron Report"), Volume III at C-91, 929. Eron Corporation relied on Frank Lyon Co. v. Commissioner, 899 F.2d 905, 908 (9th Cir. 1990) ("The business purpose test is a subjective inquiry into the motives of the taxpayer that is, whether the taxpayer in fact was motivated by a business purpose other than tax savings.").
In determining whether a taxpayer has a substantial non-tax business purpose, an objective of achieving a favorable accounting treatment for financial reporting purposes will not be treated as having a substantial non-tax purpose. Furthermore, a transaction that is expected to increase financial accounting income as a result of generating tax deductions or losses without a corresponding economic benefit (i.e., a permanent book-tax difference) should not be considered to have a substantial non-tax purpose unless a substantial non-tax purpose exists apart from the financial accounting benefits.

By requiring that a transaction be a "reasonable means" of accomplishing its non-tax purpose, the provision reiterates the present-law ability of the courts to bifurcate a transaction in which independent activities with non-tax objectives are combined with an unrelated item having only tax-avoidance objectives in order to disallow the tax benefits of the overall transaction.

**Profit potential**

Under the provision, a taxpayer may rely on factors other than profit potential to demonstrate that a transaction results in a meaningful change in the taxpayer's economic position; the provision merely sets forth a reasonable threshold of profit potential if that test is relied on to demonstrate a meaningful change in economic position. If a taxpayer relies on a profit potential, however, the present value of the reasonably expected profit must exceed the tax benefits to be claimed in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected. Moreover, the profit potential must exceed a risk-free rate of return in determining pre-tax profit, fees and other transaction expenses and foreign taxes are treated as expenses.

In applying the profit potential test to a lessor of tangible property, depreciation, applicable tax credits (such as the rehabilitation tax credit and the low income housing tax credit), and any other deduction as provided in guidance by the Secretary are not taken into account in measuring tax benefits.

**Transactions with tax-inefficient parties**

The provision also provides special rules for transactions with tax-inefficient parties. For this purpose, a tax-inefficient party means any person or entity not subject to Federal income tax whose net investment in any item would have no substantial impact on its income tax liability. Under these rules, the form of a financing transaction will not be respected if the present value of the tax deductions to be claimed is substantially in excess of the present value of the anticipated economic returns to the lender. Also, the form of a transaction with a tax-inefficient party will not be respected if it results in an allocation of the tax-inefficient party's economic gain or income or if the transaction results in the shifting of basis on account of overstatement of the income or gain of the tax-inefficient party.

**Other rules**

The Secretary may prescribe regulations which provide (1) exemptions from the application of the provision, and (2) other rules as may be necessary or appropriate to carry out the purposes of the provision.

No inference is intended as to the proper application of the economic substance doctrine under present law. In addition, except with respect to the economic substance doctrine, the provision shall not be construed as altering or supplanting any other common law doctrine (including the sham transaction doctrine), and the provision shall be construed as being additive to any such other doctrine.

**Effective date**

The provision applies to transactions entered into after the date of enactment.

**CONFERE NCE AGREEMENT**

The conference agreement does not include the Senate amendment provision.

2. Penalty for understatements attributable to transactions lacking economic substance, etc. (Sec. 412 of the Senate amendment)

**PRESENT LAW**

**General accuracy-related penalty**

An accuracy-related penalty under section 6662 applies to the portion of any underpayment that is attributable to (1) negligence, (2) any substantial understatement of tax, (3) an incorrect valuation of property, (4) any substantial overstatement of pension liabilities, or (5) any substantial estate or gift tax valuation understatement. If the correct income tax liability exceeds that reported by the taxpayer by 10 percent of the correct tax or $5,000 (or, in the case of corporations, by the lesser of (a) 10 percent of the correct tax or $10,000 if greater) or (b) $10 million, then a substantial understatement exists and a penalty may be imposed equal to 20 percent of the underpayment of tax attributable to the understatement.

**Disclosed transactions**

If the taxpayer does not adequately disclose the transaction, the strengthened reasonable cause exception is available only if the relevant facts affecting the tax treatment are adequately disclosed, there is or was substantial authority for the claimed tax treatment, and the taxpayer reasonably believed that disclosure would be more likely than not the proper treatment.

the possibility that (a) a return will not be audited, (b) the treatment will not be raised on audit, or (c) the treatment will be resolved through settlement if raised.380

A taxpayer who is required to rely on an opinion of a tax advisor for this purpose if the opinion is (1) provided by a “disqualified tax advisor” or (2) is a “disqualified opinion.”

A disqualified tax advisor is any advisor who: (1) is a material advisor383 and who participates in the organization, management, promotion or sale of the transaction or is related (within the meaning of section 267(b) or 707(b)(1)) to any person who so participates; (2) is compensated directly or indirectly390 by a material advisor with respect to the transaction; (3) has a fee arrangement with respect to the transaction that is contingent on all or part of the intended tax benefits from the transaction being sustained; or (4) as determined under regulations prescribed by the Secretary, has a disqualifying financial interest with respect to the transaction.

A material advisor is considered as participating in the organization, management, promotion or sale of the transaction if the advisor performs acts relating to the development of the transaction. This may include (within the meaning of section 267(b) or 707(b)(1)) (1) establishing a structure used in connection with the transaction (such as a partnership agreement); (2) describing the transaction (such as an offering memorandum or a statement describing the transaction); or (3) relating to the registration of the transaction with any federal, state or local government (including the “management” of a transaction means involve- ment in the decision-making process regarding any business activity with respect to the transaction); and (4) compensation for “promotion or sale” of a transaction means involvement in the marketing or solicitation of the transaction to others. Thus, an advisor who provides information about the transaction to a potential participant is involved in the promotion or sale of a transaction, as is any ad- visor who recommends the transaction to a potential participant.

Disqualified opinion
An opinion may not be relied upon if the opinion: (1) is based on unreasonable factual or legal assumptions (including assumptions as to future events); (2) unreasonably relies upon representations, statements, findings or agreements of the taxpayer or any other person; (3) does not identify and consider all relevant facts; or (4) fails to meet any other requirement set forth by the Secretary.

Coordination with other penalties
To the extent a penalty on an understate- ment is imposed under section 6662A, that same amount of understatement is not also subject to the accuracy-related penalty under section 6662(a) or to the valuation misstatement penalties under section 6662(e) or 6662(h). However, such amount of under- statement is included for purposes of deter- mining whether any understatement (as de- fined in sec. 6662(d)(2)) is a substantial under- statement as defined under section 6662(d)(1) and, thus, subject under payment under the section 6663 fraud pen- sity.

The penalty imposed under section 6662A does not apply to any portion of an understate- ment to which a fraud penalty is applied under section 6663.

HOUSE BILL
No provision.

SENATE AMENDMENT
The Senate amendment provision imposes a new, stronger penalty for an understate- ment attributable to any transaction that lacks economic substance.386

For purposes of the Senate amendment provision regarding the clarification of the economic substance doctrine,394 the transaction and the transaction is a reasonable- non-economic substance transaction
A transaction is a non-economic substance transaction if it lacks economic substance (as defined in the Statute as a “non-economic substance trans- action understate- ment”).393

That Senate amendment provision provides that the new penalty on an understate- ment attributable to any transaction that lacks economic substance (as defined in the Senate amendment provision regarding the clarification of the economic substance doctrine).393 (2) the transaction was not re- spected under the rules relating to trans- actions with tax-exempt parties (as de- scribed in the Senate amendment provision regarding the clarification of the economic substance doctrine).393 (4) any similar rule of law. For this purpose, a similar rule of law would include, for example, the understate- ment provision regarding the economic substance doctrine).393 or (4) any similar rule of law. For this purpose, a similar rule of law would include, for example, the understate- ment provision regarding the economic substance doctrine).393 or (4) any similar rule of law. For this purpose, a similar rule of law would include, for example, the understate- ment provision regarding the economic substance doctrine).393 or (4) any similar rule of law. For this purpose, a similar rule of law would include, for example, the understate- ment provision regarding the economic substance doctrine).393 or (4) any similar rule of law. For this purpose, a similar rule of law would include, for example, the understate-
highest corporate or individual tax rate (as appropriate) and the increase in taxable income resulting from the difference between the taxpayer’s treatment of the item and the proper treatment of the item (without regard to other items on the tax return), and (2) the amount of any decrease in the aggregate amount of credits which results from a difference between the taxpayer’s treatment of an item and the proper tax treatment of such item. In essence, the penalty will apply to the amount of any understatement attributable solely to a non-economic substance transaction.

As in the case of the understatement penalty for reportable and listed transactions under present law section 6662A(e)(3), except as provided herein, the taxpayer’s treatment of an item will not take into account any amendment or supplement to a return if the amendment or supplement is filed after the earlier of the date the taxpayer is first contacted regarding an examination of such return or such other date as specified by the Secretary.

As in the case of the understatement penalty for undisclosed reportable transactions under present law section 6707A, a public entity that is required to pay a penalty under the provision (in this case, regardless of whether the transaction was disclosed) must disclose the imposition of the penalty in reports to the SEC for such periods as the Secretary shall specify. The disclosure provided to the SEC applies without regard to whether the taxpayer determines the amount of the penalty to be material to the reports in which the penalty is authorized, and any failure to disclose such penalty in the reports is treated as a failure to disclose a listed transaction. A taxpayer must disclose a penalty in connection with any transaction if the taxpayer has exhausted its administrative and judicial remedies with respect to the penalty (or if earlier, when paid).

Regardless of whether the transaction was disclosed, once a penalty under the provision has been included in the first letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the IRS Appeals Division, the penalty cannot be compromised for purposes of a settlement without approval of the Commissioner personally. Furthermore, the IRS is required to keep records summarizing the application of this penalty and providing a description of each penalty compromised under the provision and the reasons for the compromise.

Any understatement on which a penalty is imposed under the provision will not be subject to the accuracy-related penalty under section 6662 or under 6662A (accuracy-related penalties for listed and reportable avoidance transactions). However, an understatement under the provision is taken into account for purposes of determining whether any understatement (as defined in section 6662(d)(2)) is a substantial understatement under section 6662(d)(1). The penalty imposed under the provision will not apply to any portion of an understatement to which a fraud penalty is applied under section 6663.

Effective date.—The provision applies to transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not contain the Senate amendment provision.

3. Denial of deduction for interest on underpayments attributable to noneconomic substance transactions (sec. 413 of the Senate amendment and sec. 163(h) of the Code)

PRESENT LAW

No deduction for interest is allowed for interest paid or accrued on any underpayment of tax which is attributable to the portion of any reportable transaction understatement with respect to which the relevant facts were not adequately disclosed. The Secretary of the Treasury is authorized to define reportable transactions for this purpose.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provision extends the disallowance of interest paid or accrued on any underpayment of tax which is attributable to any non-economic substance understatement (whether or not disclosed).

Effective date.—The provision applies to transactions after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

C. IMPROVEMENTS IN EFFICIENCY AND SAFEGUARDS IN INTERNAL REVENUE SERVICE COLLECTIONS

1. Waiver of user fee for installment agreements using automated withdrawals (Sec. 421 of the Senate amendment and sec. 6159 of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay the tax owed as interest and penalties. In installment payments, IRS may decrease the amounts owed. However, if the IRS determines that doing so will facilitate collection of the amounts owed, an installment agreement does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

Under present law, the IRS is permitted to terminate an installment agreement only if: (1) the taxpayer fails to pay an installment at the time the payment is due; (2) the taxpayer fails to pay any penalty at the time when such liability is due; (3) the taxpayer fails to provide a financial condition update as required by the IRS; (4) the taxpayer fails to disclose an inaccurate or incomplete information when applying for an installment agreement; (5) there has been a significant change in the financial condition of the taxpayer; or (6) the collection of the tax is in jeopardy.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment waives the user fee for installment agreements when a taxpayer fails to timely make a required Federal tax deposit or fails to timely file a tax return (including extensions). Under the provision, the IRS may terminate an installment agreement even if the taxpayer remains current with payments under the installment agreement.

Effective date.—The provision is effective for failures occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

3. Partial payments required with submissions of offers-in-compromise (Sec. 423 of the Senate amendment and sec. 7122 of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into written agreements with any taxpayer under which the taxpayer is allowed to pay taxes owed, as well as interest and penalties, in installment payments, if the IRS determines that doing so will facilitate collection of the amounts owed. An installment agreement does not reduce the amount of taxes, interest, or penalties owed. Generally, during the period installment payments are being made, other IRS enforcement actions (such as levies or seizures) with respect to the taxes included in that agreement are held in abeyance.

Under present law, the IRS is permitted to terminate an installment agreement only if: (1) the taxpayer fails to pay an installment at the time the payment is due; (2) the taxpayer fails to pay any penalty at the time when such liability is due; (3) the taxpayer fails to provide a financial condition update as required by the IRS; (4) the taxpayer fails to disclose an inaccurate or incomplete information when applying for an installment agreement; (5) there has been a significant change in the financial condition of the taxpayer; or (6) the collection of the tax is in jeopardy.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment grants the IRS the authority to terminate an installment agreement when a taxpayer fails to timely make a required Federal tax deposit or fails to timely file a tax return (including extensions). Under the provision, the IRS may terminate an installment agreement even if the taxpayer remains current with payments under the installment agreement.

Effective date.—The provision is effective for failures occurring on or after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Proposed changes to the jeopardy provisions (Sec. 424 of the Senate amendment and sec. 7122 of the Code)

PRESENT LAW

The Code authorizes the IRS to enter into offers-in-compromise agreements to settle any tax liability for less than the total amount due. The IRS currently imposes a user fee of $150 on most offers, payable upon submission of the offer. The IRS may terminate their offers on the basis of doubt as to collectibility or liability or on the basis of effective tax administration. In general, enforcement action is suspended during the period that the IRS evaluates an offer. In some instances, it may take the IRS 12 to 18 months to evaluate an offer. Taxpayers are permitted (but not required) to make a partial payment with their offer; if the offer is rejected, the deposit is generally returned to the taxpayer. There are two general categories of offers-in-compromise, lump-sum offers and periodic payment offers. Taxpayers making lump-sum offers propose to make one lump-sum payment of a specified dollar amount in settlement of their outstanding liability.

400 Sec. 183(h). Under section 6664(d)(2)(A), in such a case of nondisclosure, the taxpayer also is not entitled to the “reasonable cause and good faith” exception to the section 6664(d)(1) penalty for a reportable transaction understatement.

401 Sec. 7122.

402 Sec. 6159.

403 See the description of present law with respect to the immediately preceding Senate amendment provision. “Penalty for understatement attributable to transactions lacking economic substance, etc.” See sec. 6159.

404 Sec. 6159.

405 Sec. 6159.

406 Sec. 6122(b), (3), and (4).

407 Sec. 7122.


409 The IRS categorizes payment plans with more specificity, which is generally not significant for purposes of the provision. See Form 656, Offer in Compromise, page 6 of instruction booklet (revised July 2004).
Taxpayers making periodic payment offers propose to make a series of payments over time (either short-term or long-term) in settlement of their outstanding liability.

No provision.

SENATE AMENDMENT

The provision requires a taxpayer to make partial payments to the IRS while the taxpayer’s offer is being considered by the IRS. For lump-sum offers, taxpayers must make a down payment of 20 percent of the amount of the offer with any application. For periodic payment offers, the provision requires the taxpayer to submit the taxpayer’s offer upon the IRS’s announcement of the proposed payment schedule while the offer is being considered. Offers submitted to the IRS that do not comply with these payment requirements are returned to the taxpayer as unprocessable and immediate enforcement action is permitted. The provision eliminates the user fee requirement for offers submitted with the appropriate partial payment.

The provision also provides that an offer is deemed accepted if the IRS does not make a decision with respect to the offer within two years from the date the offer was submitted.

The Senate amendment authorizes the Secretary to establish guidelines providing exceptions to the partial payment requirements in the case of offers from certain low-income taxpayers and offers based on doubt as to liability.

Effective date—The provision is effective for offers-in-compromise submitted on and after the date which is 60 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with the following modifications. Under the conference agreement, any user fee imposed by the IRS for participation in the offer-in-compromise program must be submitted with the appropriate partial payment. The user fee is applied to the taxpayer’s outstanding tax liability. In addition, under the conference agreement, offers submitted to the IRS that do not comply with these payment requirements may be returned to the taxpayer as unprocessable.

D. PENALTIES AND FINES

1. Increased monetary penalty limitation for the underpayment or overpayment of tax due to fraud

In general, section 7201 imposes a criminal penalty on persons who willfully attempt to evade or defeat any tax imposed by the Code. Upon conviction, the Code provides that the penalty is up to $100,000 or imprisonment of not more than three years (or both). In the case of a corporation, the Code imposes the monetary penalty to a maximum of $500,000.

Uniform sentencing guidelines

Under the uniform sentencing guidelines established by 18 U.S.C. § 3571, a defendant found guilty of a criminal contempt of court is subject to a fine to a maximum that is the greatest of: (a) the amount specified in the underlying provision, (b) for a felony 404 $250,000 for an individual or $500,000 for an organization, or (c) twice the gross gain if a person derives pecuniary gain from the offense. This Title 18 provision applies to all criminal provisions in the United States Code, including those in the Internal Revenue Code. For example, for an individual, the maximum fine under present law upon conviction of violating section 7206 is $250,000 or, if greater, twice the amount of gross gain from the offense.

Effective date—The provision is effective for offers-in-compromise submitted on and after the date which is 60 days after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

2. Doubling of certain penalties, fines, and interest on underpayments related to certain offshore financial arrangements

In general, section 7203 imposes a criminal penalty for fraud, and assessable penalties. These civil penalties are in addition to any interest that may be due as a result of an underpayment of tax. If all or any part of a tax is not paid when due, there is an impose interest on the underpayment, which is assessed and collected in the same manner as the underlying tax and is subject to the respective statutes of limitations for assessment and collection.

Delinquency penalties

Failure to file.—Under present law, a taxpayer who fails to file a tax return on a timely basis is generally subject to a penalty equal to 5 percent of the net amount of tax due each month that the return is not filed, up to a maximum of five months or 25 percent. An exception from the penalty applies if the failure is due to reasonable cause.

In the case of fraudulent failure to file, the penalty is increased to 15 percent of the net amount of tax due for each month that the return is not filed, up to five months or 75 percent. The net amount of tax due is the excess of the amount of the tax required to be shown on the return over the amount of tax shown on the return.

 Failure to pay.—Taxpayers who fail to pay their taxes are subject to a penalty of 0.5 percent per month on the unpaid amount, up to a maximum of 25 percent. If a penalty for failure to file and a penalty for failure to pay tax are shown on a return, a return may not be considered. For the same month, the amount of the penalty for failure to file for such month is reduced by the amount of the penalty for failure to pay tax on a return. If the tax return is filed more than 60 days after its due date, then the penalty for failure to pay tax shown on a return may not reduce the penalty for failure to file for such month. The penalty for failure to file is $100 or 100 percent of the amount required to be shown on the return. For any month in which an installment payment agreement with the IRS is in effect, the penalty is half the usual rate (0.25 percent instead of 0.5 percent), provided that the taxpayer filed the tax return in a timely manner including extensions.

Failure to make timely deposits of tax.—The penalty for the failure to make timely deposits of tax consists of a four-tiered structure in which the amount of the penalty varies with the length of time within which the taxpayer corrects the failure. A depositor is subject to a penalty equal to 2 percent of the amount of the underpayment if the failure is corrected on or before the date that is five days after the prescribed due date. A depositor is subject to a penalty equal to 5 percent of the amount of the underpayment if the failure is corrected on or before the date that is five days after the prescribed due date but on or before the date that is five days after the prescribed due date. A depositor is subject to a penalty equal to 10 percent of the amount of the underpayment if the failure is corrected on or before the date that is 10 days after the due date but on or before the date that is 10 days after the first delinquency notice to the taxpayer (under sec. 6694). Finally, a depositor is subject to a penalty equal to 15 percent of the amount of the underpayment if the failure is corrected on or before the date that is 180 days after the first delinquency notice to the taxpayer and 10 days after the date on which notice and demand for immediate payment of tax is given in cases of jeopardy.

An exception from the penalty applies if the failure is due to reasonable cause. In addition, the Secretary may waive the penalty for an innocent failure to deposit any tax by specified first-time depositors.

Accuracy-related penalties

In general.—The accuracy-related penalties are imposed at a rate of 20 percent of the portion of any underpayment that is attributable, in relevant part, to (1) negligence, (2) any substantial understatement of income tax by a failure to file any return, (3) any understatement of tax by a failure to file any return, fraud or substantial understatement, and (4) any reportable transaction undersection. The penalty for a
substantial valuation misstatement is dou-
bled for certain gross valuation misstate-
ments. In the case of a reportable transac-
tion understatement for which the transac-
tion was closed, the penalty may not exceed 
30 percent. These penalties are coordinated 
with the fraud penalty. This statutory struc-
ture operates to eliminate any stacking of 
the penalties.

No penalty is to be imposed if it is shown 
that there was reasonable cause for a tax-
payer or person other than a taxpay-
er to act in good faith, and in the case of a reportable trans-
action understatement the relevant facts of 
the transaction have been disclosed, there is 
or was reasonable cause for a tax-
payer’s treatment of such transaction, and 
the taxpayer reasonably believed that such treatment 
was more likely than not the 
proper treatment.

Negligence or disregard for the rules or regu-
lations.—If an underpayment of tax is attrib-
utable to negligence, the negligence penalty 
applying only to the portion of the under-
payment that is attributable to negligence. 
Negligence means any failure to make a rea-
sonable attempt to comply with the provi-
sions of the Code. Disregard includes any 
careless, reckless, or intentional disregard 
of the rules or regulations.

Substantial understatement of income tax.— 
Generally, an understatement is substantial 
if the understatement exceeds the greater of 
(1) 10 percent of the correct tax required to be 
shown on the return for the tax year, or 
(2) $5,000.

In determining whether a substantial under-
statement exists, the amount of the under-
statement is adjusted by any portion 
attributable to an item if (1) the treatment 
of the item on the return is or was supported 
by substantial authority, or (2) facts relevant to 
the treatment of the item were ade-
quately disclosed on the return or on a state-
ment attached to the return.

Substantial valuation misstatement.—A pen-
alty applies to the portion of an under-
payment that is attributable to a substantial 
valuation misstatement. Generally, a sub-
stantial valuation misstatement exists if the 
value or adjusted basis of any property 
claimed on a return is 200 percent or more of 
the correct value or adjusted basis. The amount 
of the underpayment if the value or adjusted 
valuation misstatement is 20 percent of the 
amount of the underpayment if the value or 
adjusted basis claimed is 200 percent or more 
but less than 400 percent of the correct 
value or adjusted basis. If the value or adjusted 
basis claimed is 400 percent or more of the 
correct value or adjusted basis, then the 
overpayment is a gross valuation misstate-
ment.

Reportable transaction understatement.—A 
penalty applies to any item that is attrib-
utable to any listed transaction, or to any 
listed transaction (other than a listed 
transaction) if a significant purpose of 
such reportable transaction is tax avoidance 
or evasion.

Fraud penalty

The fraud penalty is imposed at a rate of 75 
percent of the portion of any underpayment 
that is attributable to fraud. The accuracy-
related penalty does not apply to any por-
tion of an underpayment on which the fraud 
penalty is imposed.

Assessment

In addition to the penalties described 
above, the Code imposes a number of addi-
tional penalties, including, for example, pen-
alties for failure to file (or untimely filing 
of) information returns with respect to for-
eign trusts, and penalties for failure to dis-
close any required information with respect to 
to a reportable transaction.

Interest provisions

Taxpayers are required to pay interest to the 
IRS whenever there is an underpayment 
of tax. An underpayment of tax exists when-
ever the correct amount of tax is not paid by 
the last date prescribed for the payment of 
the tax. The last date prescribed for the pay-
ment of the income tax is the original due 
date of the return.

Different interest rates are provided for 
the payment of interest depending upon 
the type of tax, whether the underpayment 
lates to an underpayment or overpayment, 
and the size of the underpayment or overpay-
ment. Interest on underpayments is com-
puted daily.

Offshore Voluntary Compliance Initiative

In January 2003, Treasury announced the 
Offshore Voluntary Compliance Initiative (‘’OVCI’’) to encourage the voluntary dis-
closure of previously unreported income 
placed by taxpayers in offshore accounts and 
accessed through credit card or other finan-
cial arrangements. A taxpayer who had to 
comply with the correct tax liability. The tax-
paying in the OVCI, including sending a 
written request to participate in the pro-
gram by April 15, 2003. This request had to 
be truthful, voluntary, and certain accuracy-
related and delinquency penalties. 405
Voluntary disclosure policy

A taxpayer’s timely, voluntary disclosure of 
a substantial unreported tax liability has long 
been an important factor in deciding 
whether the taxpayer’s case should ulti-
mately be referred for criminal prosecu-
tion. Generally, an understatement is 
substantial under the OVCI is not liable for the 
civil fraud penalty, the fraudulent failure to file 
penalty, or the civil information return pen-
alties. Such a taxpayer is responsible for 
back taxes, interest, and certain accuracy-
related and delinquency penalties. 405

The Senate amendment provision modifies 
Treasury regulation section 1.162-
15(a) for the payment of a fine or similar 
penalty in a criminal proceeding; (2) paid as a civil pen-
alty imposed by Federal, State, or local law, 
including additions to tax and additional 
amount and assessable penalties imposed by 
chapter 68 of the Code; (3) paid in settlement 
of the taxpayer’s actual or potential liability 
for a fine or penalty (civil or criminal); or (4) 
forfeited as collateral posted in connection 
with a proceeding which could result in 
imposition of such a fine. Treasury regulation 
section 1.162-21(b)(2) provides, 
other things, that compensatory 
damages (including damages under section 
436 of the Clayton Act 15 U.S.C. 15s, as 
amended) paid to a government do not con-
stitute a fine or penalty.

No provision.

HOUSE BILL

SENATE AMENDMENT

The Senate amendment doubles the 
amounts of civil penalties, interest, and fines 
related to taxpayers’ underpayments of U.S. 
income tax liability through the direct or in-
direct use of certain offshore financial ar-
rangements. The proposed applies to tax-
payers who did not (or do not) voluntarily 
disclose such arrangements through the 
OVCI or otherwise. Under the Senate 
amendment, the determination any civil 
penalty is to be applied to such under-
payment is made without regard to whether 
a return has been filed, whether there was 
reasonable cause for such underpayment, 
and whether the taxpayer acted in good faith.

The proposed financial arrangements 
include, but are not limited to, the use of cer-
tain foreign leasing corporations for pro-
viding district employees services, certain 

406 Internal Revenue News Release 2002-185, IR-
2003-11 December 11, 2002
408 These arrangements were described and classified 
as listed transactions in Notice 2003-22, 2003-1 
C.B. 851.

(referring to Truck Tank Truck Rentals, Inc. v. Com-
missioner, 356 U.S. 30 (1958))
410 The provision does not affect amounts paid or incurred 
by a taxpayer in performing services or reviews such 
as annual audits that are required of all organi-
zations or individuals in a similar business sector, or 
as a requirement for being allowed to conduct busi-
ness. However, if the government or regulator raised an issue of compliance and a pay-
ment is required in settlement of such issue, the 
provision would affect that payment.
The conference agreement does not contain the following provision:

4. Denial of deduction for punitive damages

(Sec. 434 of the Senate amendment and sec. 162 of the Code)

**PRIVATE LAW**

In general, a deduction is allowed for all ordinary and necessary expenses that are paid or incurred by the taxpayer during the taxable year in carrying on any trade or business.420 However, no deduction is allowed for any payment that is made to an official or employee of a foreign government and is illegal under Federal law.420 In addition, no deduction is allowed under present law for any fine or similar payment made to a government for violation of any law.421 Furthermore, no deduction is permitted for two-thirds of any damages paid in settlement of any lawsuit in which the taxpayer is convicted of a violation of the Clayton Anti-trust law or any related antitrust law.422 In general, gross income includes amounts received on account of personal physical injuries and physical sickness.423 However, this exclusion does not apply to punitive damages.424

**HOUSE BILL**

No provision.

**SENATE AMENDMENT**

The provision denies any deduction for punitive damages that are paid or incurred by the taxpayer as a penalty for a violation or in settlement of a claim. If the liability for punitive damages is covered by insurance, any amount paid by the insurer who is included in gross income of the insured person and the insurer is required to report such amounts to both the insured person and the IRS.

**Effective date.**—The provision is effective for punitive damages that are paid or incurred on or after the date of enactment.

**CONFERECE AGREEMENT**

The conference agreement does not include the Senate amendment provision.
The Code imposes a penalty for bad checks at or above the amount on the person who tendered it. The penalty is two percent of the amount of the bad check or money order. For checks that are less than $750, the minimum penalty is $15 or, if less, the amount of the check.

TAXATION OF DOMESTIC CORPORATIONS

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the double taxation of foreign-source income of a U.S. corporation, an applicable corporation may elect to be treated as a domestic corporation for purposes of the Code as long as the shareholder is a U.S. citizen or resident (subject to limitations).

U.S. taxation of domestic corporations

In addition, foreign corporations generally are taxed on all income, subject to certain limitations. For purposes of the Code, a corporation is treated as domestic if it is incorporated under the law of the United States or of any State. Otherwise, it is foreign. If a corporation is incorporated under the laws of foreign countries or U.S. possessions) generally are treated as foreign.

The Code imposes a penalty for bad checks at or above the amount on the person who tendered it. The penalty is two percent of the amount of the bad check or money order. For checks that are less than $750, the minimum penalty is $15 or, if less, the amount of the check.

The conference agreement does not include the Senate amendment provision.

PENALTY FOR BAD CHECKS AND MONEY ORDERS

The penalty increases the minimum penalty to $25 (or, if less, the amount of the check), applicable to checks that are less than $1,250.

Effective date.—The provision is effective with respect to checks or money orders received after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

I. Tax treatment of inverted corporate entities

1. Tax treatment of inverted corporate entities

The U.S. tax treatment of a multinational corporate group depends significantly on whether the parent corporation of the group is domestic or foreign. For purposes of U.S. tax law, a corporation is treated as domestic if it is incorporated under the law of the United States or of any State. Otherwise, it is foreign. If a corporation is incorporated under the laws of foreign countries or U.S. possessions generally are treated as foreign.

U.S. taxation of domestic corporations

The United States employs a "worldwide" tax system, under which domestic corporations generally are taxed on all income, whether derived in the United States or abroad. In order to mitigate the double taxation of foreign-source income of a U.S. corporation, an applicable corporation may elect to be treated as a domestic corporation for purposes of the Code as long as the shareholder is a U.S. citizen or resident (subject to limitations).

Income earned by a domestic parent corporation from foreign operations conducted by foreign subsidiaries generally is taxable subject to U.S. tax on such income generally is deferred, and U.S. tax is imposed on such income when repatriated. However, certain anti-deferral regimes may cause the domestic parent corporation to be taxed on a current basis in the United States with respect to certain categories of passive or highly mobile income earned by its foreign subsidiaries, regardless of whether the income has been distributed as a dividend to the domestic parent corporation. The main anti-deferral regimes in this context are the controlled foreign corporation rules of subpart F (Secs. 951-956) and the passive foreign investment company rules (Secs. 1291-1298). A foreign tax credit is generally available to offset, in whole or in part, the U.S. tax owed on this foreign-source income, whether such income is repatriated as an actual dividend or included under one of the anti-deferral regimes.

U.S. taxation of related foreign corporations

The United States taxes foreign corporations only on income that has a sufficient nexus to the United States. Thus, a foreign corporation is generally subject to U.S. tax only on income that is "effectively connected" with the conduct of a trade or business in the United States. "Effectively connected income" generally is taxed in the same manner and at the same rates as the income of a U.S. corporation. An applicable corporation (as defined by Sec. 956) treated as a "foreign-corporation group" for U.S. tax purposes generally is taxed on business operations of a foreign corporation to cases in which the business is conducted through a "permanent establishment" in the United States.

In addition, foreign corporations generally are subject to a gross-basis U.S. tax at a flat 30-percent rate on the receipt of interest, rents, and certain similar types of income derived from U.S. sources, subject to certain exceptions. The tax generally is collected by means of withholding tax on the income paid to domestic persons. This tax may be reduced or eliminated under an applicable tax treaty.

U.S. tax treatment of inversion transactions prior to the American Jobs Creation Act of 2004

Prior to the American Jobs Creation Act of 2004 ("AJCA"), a U.S. corporation could reincorporate in a foreign jurisdiction and thereby replace its old U.S. parent corporation of a multinational corporate group with a foreign parent corporation. These transactions were commonly referred to as inversion transactions. Inversion transactions could take many different forms, including stock acquisitions, asset acquisitions, and various combinations of and variations on the two. Most of the known transactions were stock acquisitions. In one example of a stock inversion, a U.S. corporation forms a foreign corporation, which in turn forms a domestic merger subsidiary that merges into the U.S. corporation, with the U.S. corporation surviving, as a subsidiary of the new foreign corporation. Shareholders receive shares of the foreign corporation that are treated as having exchanged their U.S. corporation shares for the foreign corporation shares. An asset inversion could be used to reach a similar result, but through a direct merger of the top-tier U.S. corporation into a new foreign corporation, or a merger of a subsidiary then merges into the U.S. corporation, with the U.S. corporation surviving, as a subsidiary of the new foreign corporation. An inversion transaction could be accompanied or followed by further restructuring of the corporate group. For example, in the case of a stock inversion, the U.S. corporation could transfer some or all of its foreign subsidiaries directly to the new foreign parent corporation or other related foreign corporations. In addition to removing foreign operations from U.S. tax jurisdiction, the corporate group could seek to derive further advantage from the inverted structure by reducing U.S. tax on income held in the foreign affiliate, such as earnings stripping or other transactions. This could include earnings stripping through payment by a U.S. corporation of deductible amounts such as interest, royalties, rents, or management service fees to the new foreign parent or other foreign affiliates. In this respect, the post-inversion structure could enable the group to employ the same tax-reduction strategies that are available to other multinational corporate groups with foreign parents and U.S. subsidiaries, subject to the same limitations (e.g., Secs. 163(j) and 482).

Inversion transactions could give rise to immediate U.S. tax consequences at the shareholder level, depending on the type of inversion. In stock inversions, the U.S. shareholders generally recognized gain (but not loss) under section 367(a), based on the difference between the fair market value of the foreign corporation shares received and the adjusted basis of the domestic parent stock transferred. To the extent that a corporation’s share value had declined, and/or it had many foreign or tax-exempt shareholders, the impact of this section 367(a) "roll charge". The transfer of foreign subsidiaries or other assets to the foreign parent corporation also could give rise to U.S. tax consequences at the corporate level, such as recapture and earnings and profits inclusions under secs. 1051, 1311(b), 304, 367, 1248 or other provisions. The tax on any gains as a result of these restructurings could be reduced or eliminated through the use of net operating losses, foreign tax credits, and other tax attributes.

In asset inversions, the U.S. corporation generally recognized gain (but not loss) under section 367(a) as though it had sold all of its assets, but the shareholders generally did not recognize gain or loss, assuming the transaction met the requirements of a reorganization under section 368.

U.S. tax treatment of inversion transactions under AJCA

In general

AJCA added new section 7874 to the Code, which defines two different types of corporate inversions. The AJCA establishes a different set of consequences for each type. Certain partnership transactions are also covered.

Transactions involving at least 80 percent ownership of stock ownership

The first type of inversion is a transaction in which, pursuant to a plan or a series of related transactions: (1) a U.S. corporation becomes a subsidiary of a foreign corporation or other entity or otherwise transfers substantially all of its properties to such an entity, or (2) the former shareholders of the U.S. corporation hold (by reason of holding stock in the U.S. corporation) 80 percent or more (by vote or value) of the stock of the foreign corporation after the transaction; and (3) the foreign-entitled entity, considered together with all companies connected to it by a common ownership interest of greater than 50 percent ownership (i.e., the "expanded affiliated group"), does not have substantial business activities in the entity’s country of incorporation, compared to the world-wide business activities of the expanded affiliated group. The provision denies the intangible benefits of this type of inversion by imposing the top-tier foreign corporation to be a domestic corporation for all purposes of the Code.

In determining whether a transaction meets the definition of an inversion under the provision, stock held by members of the expanded affiliated group that includes the foreign incorporated entity is disregarded. For example, if the foreign corporation receives stock of the foreign incorporated entity (e.g., so-called "hook" stock), that stock would not be determining whether the transaction meets the definition. Similarly, if a U.S. parent corporation converts an existing wholly owned U.S. subsidiary into a new wholly owned controlled foreign corporation, the stock of the

Acquisitions with respect to a domestic corporate or partnership are deemed to be "pursuant to a plan" if they occur within the 3-year period beginning on the date which is two years before the ownership threshold under the provision is met with respect to the domestic corporation or partnership.

Since the top-tier foreign corporation is treated for all purposes of the Code as domestic, the shareholder-level "roll charge" under section 367(a) does not apply to these inversion transactions.
The Senate amendment makes several changes to the inversions regime of section 7874. First, the provision applies the rules of section 7874 to transactions completed after March 20, 2002, and otherwise treated as an inversion transaction if, on or before March 20, 2002, the foreign-incorporated entity had acquired directly or indirectly more than half the properties constituting the partnership trade or business, as the case may be.

The Senate amendment also lowers the present-law 60-percent ownership threshold for the second category of inversion transactions to greater-than-50-percent, and increases the accuracy-related penalties and tightens the earnings stripping rules of section 163(h) with respect to companies involved in this type of transaction. Specifically, the 20-percent penalty for negligence or disregard of rules or regulations, substantial understatement of income tax, and substantial valuation misstatement is increased to 30 percent of the underpayment entity and taxpayers related to the inverting entity, and the 40-percent penalty for gross valuation misstatement is increased to 50 percent with respect to such taxpayers. In applying section 163(h) to taxpayers related to the inverted entity, the generally applicable debt-equity threshold is eliminated, and the 50-percent thresholds for “excess interest expense” and “excess limitation” are lowered to 25 percent.

The Senate amendment also excludes from the inversions regime the acquisition of a U.S. corporation in cases in which none of the stock of the U.S. corporation was readily tradable on an established market at any time during the four-year period ending on the date of the acquisition, except as provided in regulations.

The provision in the Senate amendment is effective for taxable years ending after March 20, 2002.

The conference agreement does not include the Senate amendment provision.

The conference agreement does not include the Senate amendment provision.
citizen or former long-term resident are subject to gift tax, if the gift is made during the time that such person is subject to the alternative tax regime. The operative rules with respect to these gifts of closely-held foreign stock are the same as described above relating to the estate tax, except that the relevant testing and valuation date is the date of gift rather than the date of death.

**Termination of U.S. citizenship or long-term resident status for U.S. Federal income tax purposes**

An individual continues to be treated as a U.S. citizen or long-term resident for U.S. Federal tax purposes, including for purposes of section 7701(b)(10), until the individual: (1) gives notice of an expatriating act or termination of residence to the Secretary of the Treasury; (2) relinquishes citizenship or terminates residence to the Secretary of State or the Secretary of Homeland Security, respectively; and (2) provides a statement to the Secretary of the Treasury in accordance with section 6039G.

**Sanction for individuals subject to the alternative tax regime who return to the United States for extended periods**

The alternative tax regime does not apply to any individual for any taxable year during the 10-year period following citizenship relinquishment or residency termination if such individual is present in the United States for more than 30 days in the calendar year ending on the date of death. The individual is treated as a U.S. citizen or resident for such taxable year and, therefore, is taxed on his or her worldwide income.

Similarly, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any calendar year ending during the 10-year period following citizenship relinquishment or residency termination, and the individual dies during that year, he or she is treated as a U.S. resident, and the individual’s worldwide estate is subject to U.S. estate tax. Likewise, if an individual subject to the alternative tax regime is present in the United States for more than 30 days in any year during the 10-year period following citizenship relinquishment or residency termination, the individual is subject to U.S. gift tax on any transfer of his or her worldwide assets by gift during that taxable year.

For purposes of these rules, an individual is treated as present in the United States any day during which the individual is physically present in the United States, regardless of the time during that day that the individual is present. The present-law exceptions from being treated as present in the United States for any purposes under sections 3181(b) or 7701(b)(8) do not apply for this purpose, however, for individuals with certain ties to countries other than the United States and individuals with minimal prior physical presence in the United States, a day of physical presence in the United States is disregarded if the individual is performing services in the United States on such day for an unrelated employer (within the meaning of sections 267 and 770(b)), who meets the requirements the Secretary of the Treasury may prescribe in regulations.

**Annual return**

Formers and former long-term residents are required to file an annual return for each year in which citizenship relinquishment or residency termination in which they are subject to the alternative tax regime. The annual return is due even if no U.S. Federal income tax is due. The annual return requires certain information, including information on the permanent home of the individual during that taxable year and the number of days the individual was present in the United States for the year, and detailed information about the individual’s income and assets that are subject to the alternative tax regime. This requirement includes information relating to foreign stock potentially subject to the special estate and gift tax rules.

If the individual fails to file the statement in a timely manner or fails correctly to include all the required information, the individual is required to pay a penalty of $10,000. The $10,000 penalty does not apply if it is shown that the failure is due to reasonable cause and not to willful neglect.

**House Bill**

No provision.

**Senate Amendment**

In general

The Senate amendment creates new section 677A, that generally subjects certain U.S. citizens who relinquish their U.S. citizenship and certain long-term U.S. residents who terminate long-term residency to tax on the net unrealized gain in their property as if such property were sold for fair market value on the day before the expatriation or residency termination ("mark-to-market tax"). Gain from the deemed sale is taken into account at that time without regard to other Code provisions. Any loss from the deemed sale generally is taken into account at the extent otherwise provided in the Code, except that the wash sale rules of section 1081 do not apply. Any net gain on the deemed sale is included in the gross income of such U.S. citizen or resident to the extent it exceeds $600,000 ($1.2 million in the case of married individuals filing a joint return, both of whom relinquish citizenship or terminate residency). The $600,000 amount is increased by a cost of living adjustment factor for calendar years after 2005.

**Individuals covered**

Under the Senate amendment, the mark-to-market tax applies to U.S. citizens who relinquish citizenship and long-term residents who terminate U.S. residency (collectively, "covered expatriates"). The definition of "covered-expatiate" under the provision is the same as that under present law. As under present law, an individual is considered to terminate long-term residency on the day that an individual either ceases to be a lawful permanent resident (i.e., loses his or her green card status), or is treated as a resident of another country under a tax treaty and does not want the treaty.

Exceptions to an individual’s classification as a covered expatriate are provided in two situations. The first exception applies to an individual who becomes a lawful permanent resident of another country. If the individual becomes a lawful resident of such another country, (1) the individual continues to be a U.S. citizen, and (2) the individual was not a resident of the United States for the five taxable years ending with the year of expatriation. The second exception applies to a U.S. citizen who relinquishes U.S. citizenship before reaching age 18, provided that the individual was a resident of the United States for no more than five taxable years before such relinquishment.

**Deemed sale of property upon expatriation or termination of residence**

The deemed sale rule of the provision generally applies to all property interests held.
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by the individual on the date of relinquishment of citizenship or termination of residency. Special rules apply in the case of
trust interests, as described below. U.S. real
property interests (which remain subject to
U.S. tax in the hands of nonresident noncitizens), with the exception of stock of certain
former U.S. real property holding corporations, are exempted from the provision. Regulatory authority is granted to the Treasury
to exempt other types of property from the
provision.
Under the provision, an individual who is
subject to the mark-to-market tax is required to pay a tentative tax equal to the
amount of tax that would be due for a hypothetical short tax year ending on the date
the individual relinquishes citizenship or
terminates residency. Thus, the tentative
tax is based on all income, gains, deductions,
losses, and credits of the individual for the
year through such date, including amounts
realized from the deemed sale of property.
Moreover, notwithstanding any other provision of the Code, any period during which
recognition of income or gain had been deferred terminates on the day before relinquishment of citizenship or termination of
residency (and, therefore, such income or
gain recognition becomes part of the tax
base of the tentative tax). The tentative tax
is due on the 90th day after the date of relinquishment of citizenship or termination of
residency, subject to the election, described
below, to defer payments of the mark-tomarket tax. In addition, notwithstanding
any other provision of the Code, any extension of time for payment of tax ceases to
apply on the day before relinquishment of
citizenship or termination of residency, and
the unpaid portion of such tax becomes due
and payable at the time and in the manner
prescribed by the Secretary of the Treasury.
Deferral of payment of mark-to-market tax
Under the provision, an individual is permitted to elect to defer payment of the
mark-to-market tax imposed on the deemed
sale of property. Interest is charged for the
period the tax is deferred at a rate two percentage points higher than the rate normally
applicable to individual underpayments. The
election is irrevocable and is made on a property-by-property basis. Under the election,
the deferred tax attributable to a particular
property is due when the property is disposed
of (or, if the property is disposed of in a
transaction in which gain is not recognized
in whole or in part, at such other time as the
Secretary of the Treasury may prescribe).
The deferred tax attributable to a particular
property is an amount that bears the same
ratio to the total mark-to-market tax as the
gain taken into account with respect to such
property bears to the total gain taken into
account under these rules. The deferral of
the mark-to-market tax may not be extended beyond the due date of the return for
the taxable year which includes the individual’s death.
In order to elect deferral of the mark-tomarket tax, the individual is required to provide a bond in the amount of the deferred tax
to the Secretary of the Treasury. Other security mechanisms are permitted provided that
the individual establishes to the satisfaction
of the Secretary of the Treasury that the security is adequate. In the event that the security provided with respect to a particular
property subsequently becomes inadequate
and the individual fails to correct the situation, the deferred tax and the interest with
respect to such property will become due. As
a further condition to making the election,
the individual is required to consent to the
waiver of any treaty rights that would preclude the collection of the tax.
The deferred tax amount (including any interest, penalties, and certain other items)

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becomes a lien in favor of the United States
on all U.S.-situated property owned by the
individual. This lien arises on the expatriation date and continues until the tax liability is satisfied, the tax liability has become
unenforceable by reason of lapse of time, or
the Secretary is satisfied that no further tax
liability may arise by reason of this provision. The rules of section 6324A(d)(1), (3), and
(4) (relating to liens arising in connection
with the deferral of estate tax under section
6166) apply to such liens.
Retirement plans and similar arrangements
Subject to certain exceptions, the provision applies to all property interests held by
covered expatriates at the time of relinquishment of citizenship or termination of
residency. Accordingly, such property includes an interest in an employer-sponsored
qualified plan or deferred compensation arrangement as well as an interest in an individual retirement account or annuity (i.e.,
an IRA).432 However, the provision contains a
special rule for an interest in a ‘‘retirement
plan.’’ For purposes of the provision, a ‘‘retirement plan’’ includes an employer-sponsored qualified plan (sec. 401(a)), a qualified
annuity (sec. 403(a)), a tax-sheltered annuity
(sec. 403(b)), an eligible deferred compensation plan of a governmental employer (sec.
457(b)), an individual retirement account
(sec. 408(a)), and an individual retirement annuity (sec. 408(b)). The special retirement
plan rule also applies, to the extent provided
in regulations, to any foreign plan or similar
retirement arrangement or program. An interest in a trust that is part of a retirement
plan is subject to the special retirement plan
rules and not to the rules for interests in
trusts (discussed below).
Under the special retirement plan rules, in
lieu of the deemed sale rule, an amount
equal to the present value of the individual’s
vested, accrued benefit under a retirement
plan is treated as having been received by
the individual as a distribution under the retirement plan on the day before the individual’s relinquishment of citizenship or termination of residency. In the case of any later
distribution to the individual from the retirement plan, the amount otherwise includible in the individual’s income as a result of
the distribution is reduced to reflect the
amount previously included in income under
the special retirement plan rule. The amount
of the reduction applied to a distribution is
the excess of: (1) the amount included in income under the special retirement plan rule,
over (2) the total reductions applied to any
prior distributions. It is not intended that
the retirement plan would be deemed to have
made a distribution at the time of expatriation for purposes of the tax-favored status of
the retirement plan, such as whether a plan
may permit distributions before a participant has severed employment. However, the
retirement plan, and any person acting on
the plan’s behalf, will treat any later distribution in the same manner as the distribution would be treated without regard to
the special retirement plan rule.
It is expected that the Treasury Department will provide guidance for determining
the present value of an individual’s vested,
accrued benefit under a retirement plan,
such as the individual’s account balance in
the case of a defined contribution plan or an
IRA, or present value determined under the
qualified joint and survivor annuity rules applicable to a defined benefit plan (sec. 417(e)).
Interests in trusts
Detailed rules apply under the provision to
trust interests held by an individual at the
432 Application of the provision is not limited to an
interest that meets the definition of property under
section 83 (relating to property transferred in connection with the performance of services).

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time of relinquishment of citizenship or termination of residency. The treatment of
trust interests depends on whether the trust
is a ‘‘qualified trust.’’ A trust is a qualified
trust if a court within the United States is
able to exercise primary supervision over the
administration of the trust and one or more
U.S. persons have the authority to control
all substantial decisions of the trust.
Constructive ownership rules apply to a
trust beneficiary that is a corporation, partnership, trust, or estate. In such cases, the
shareholders, partners, or beneficiaries of
the entity are deemed to be the direct beneficiaries of the trust. In addition, an individual who holds (or who is treated as holding) a trust instrument at the time of relinquishment of citizenship or termination of
residency is required to disclose on his or her
tax return the methodology used to determine his or her interest in the trust, and
whether such individual knows (or has reason to know) that any other beneficiary of
the trust uses a different method.
Nonqualified trusts.—If an individual holds
an interest in a trust that is not a qualified
trust, a special rule applies for purposes of
determining the amount of the mark-to-market tax due with respect to such trust interest. The individual’s interest in the trust is
treated as a separate trust consisting of the
trust assets allocable to such interest. Such
separate trust is treated as having sold its
net assets for their fair market value on the
day before the date of relinquishment of citizenship or termination of residency and having distributed the assets to the individual,
who then is treated as having recontributed
the assets to the trust. Any income, gain, or
loss of the individual arising from the
deemed distribution from the trust is taken
into account as if it had arisen under the
deemed sale rules.
The election to defer payment is available
for the mark-to-market tax attributable to a
nonqualified trust interest. A beneficiary’s
interest in a nonqualified trust is determined
under all the facts and circumstances, including the trust instrument, letters of wishes, historical patterns of trust distributions,
and the existence of, and function performed
by, a trust protector or any similar advisor.
Qualified trusts.—If an individual has an interest in a qualified trust, the amount of
mark-to-market tax on unrealized gain allocable to the individual’s trust interest (‘‘allocable expatriation gain’’) is calculated at
the time of expatriation or residency termination, but is collected as the individual receives distributions from the qualified trust.
The allocable expatriation gain is the
amount of gain which would be allocable to
the individual’s trust interest if the individual directly held all the assets allocable
to such interest.433 If any individual’s interest in a trust is vested as of the day before
the expatriation date (e.g., if the individual’s
interest in the trust is non-contingent and
non-discretionary), the gain allocable to the
individual’s trust interest is determined
based on the trust assets allocable to his or
her trust interest. If the individual’s interest
in the trust is not vested as of the expatriation date (e.g., if the individual’s trust interest is a contingent or discretionary interest),
the gain allocable to his or her trust interest
is determined based on all of the trust assets
that could be allocable to his or her trust interest, determined by resolving all contingencies and discretionary powers in the individual’s favor (i.e., the individual is allocated the maximum amount that he or she
could receive).
Taxes are imposed on each distribution
from a qualified trust. These distributions
433 Allocable expatriation gain is subject to the
$600,000 exemption (adjusted for cost of living increases).

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also may be subject to other U.S. income taxes. If a distribution from a qualified trust is made after the individual relinquishes citizenship or terminates residency, the mark-to-market tax is imposed in an amount equal to the amount of the distribution multiplied by the highest tax rate generally applicable to trusts and estates for the taxable year in which included the date of expatriation but in no event will the tax exceed the balance in the “deferred tax account” with respect to the trust interest. For this purpose, the deferred tax account is equal to (1) the hypothetical tax calculated under the “regular” deemed sale rules accruing against the allocatable expatriation gain, (2) increased by interest charged on the balance in the deferred tax account at a rate two percentage points higher than the rate normally applicable to individual underpayments, for periods beginning after the 90th day after the expatriation date and calculated up to 30 days prior to the date of the distribution, (3) reduced by any mark-to-market taxes imposed on prior trust distributions to the individual, and (4) to the extent provided in Treasury regulations, in the case of a qualified trust and expatriating holding a nonvested interest, reduced by mark-to-market taxes imposed on trust distributions to other persons holding nonvested interests.

The provision is applicable to distributions from a qualified trust generally as to be deducted and withheld by the trustees. If the individual does not agree to waive treaty rights against the withholding tax, the collective expatriation tax, the tax with respect to such distributions is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual with respect to the tax.

EXCEPTIONS TO THE MARK-TO-MARKET TAX

Mark-to-market taxes become due immediately if the trust ceases to be a qualified trust, the individual disposes of his or her qualified trust interest, or the individual dies. In such cases, the amount of mark-to-market tax is calculated under the rules for nonqualified trust interests as of the date of the triggering event, or (2) the balance in the deferred tax account with respect to the trust interest immediately before that date. Such tax is imposed on the trust, the trustee is personally liable for the tax, and any other beneficiary has a right of contribution against such individual with respect to such tax.

Regulatory Authority

The conference agreement authorizes the Secretary of the Treasury to prescribe such regulations as may be necessary or appropriate to carry out the purposes of section 877A. In addition, the Secretary of the Treasury may provide for adjustments to the bases of assets in a trust or a deferred tax account, and the timing of such adjustments, to ensure that gain is taxed currently.

Income tax treatment of gifts and inheritances from a former citizen or former long-term resident

Under the provision, the exclusion from income of capital gains (resulting exclusions from income for the value of property acquired by gift or inheritance) does not apply to the value of any property received by gift or inheritance from a covered expatriate. Accordingly, a U.S. taxpayer who receives a gift or inheritance from such an individual is required to include the value of such property in gross income and subject to U.S. tax on such amount. Having included the value of the property in income, the recipient takes a basis in the property equal to the fair market value. The tax does not apply to property that is shown on a timely filed gift tax return and that is a taxable gift by the former citizen or former long-term resident, or property that is shown on a timely filed estate tax return and included in the gross U.S. estate of the former citizen or former long-term resident. In either case, the tax is imposed in an amount equal to whether the tax liability shown on such a return is reduced by credits, deductions, or exclusions available under the estate tax rules. In addition, the tax does not apply to property in which no estate or gift tax return was filed, but no such return was required to be filed if the former citizen or former long-term resident had not relinquished citizenship or terminated residency, as the case may be.

Coordination with present-law alternative tax regime

The provision provides a coordination rule with the present-law alternative tax regime. Under the provision, the expatriation income tax, section 212(a)(3)(E) of the Immigration and Nationality Act. Specifically, the provision permits the IRS to disclose to the agency administering section 877A, and to identify the items of any noncompliance. Recordkeeping requirements, safeguards, and civil and criminal penalties for unauthorized disclosure or inspection apply to return information disclosed under this provision.

Effective date

The provision generally is effective for U.S. citizens who relinquish citizenship or long-term residents who terminate their residency on or after the date of enactment. The due date for tentative tax, however, may not occur before the 90th day after the date of enactment. The provision relating to income taxes on gifts and inheritances is effective for transfers (other than those from former citizens or former long-term residents or their estates) on or after the date of enactment, whose relinquishment of citizenship or termination of residency occurs after such date. The immigration and disclosure provisions relating to transfers are effective with respect to persons who relinquish citizenship or terminate residency on or after the date of enactment.

Conference Agreement

The conference agreement does not include the Senate report (S.Rept. 109-339).

P. MISCELLANEOUS PROVISIONS

1. Treatment of contingent payment convertible debt instruments (Sec. 431 of the Senate amendment and sec. 1275 of the Code)

Present Law

Under present law, a taxpayer generally deducts the amount of interest paid or accrued within the taxable year on indebtedness issued by the taxpayer. In the case of original issue discount (“OID”), the issuer of a debt instrument generally accrues and deducts interest as a reduction of the amount of the obligation, even though the amount of the OID may not be paid until the maturity of the obligation.

The amount of OID with respect to a debt instrument is equal to the excess of the stated redemption price at maturity over the issue price of the debt instrument. The stated redemption price at maturity includes all amounts that are payable on the debt instrument at maturity. The amount of OID with respect to a debt instrument is a tax attributable to the value of the life of the instrument through a series of adjustments to the issue price for each accrual period. In order to compute the amount of OID and the portion of OID allocable to a particular period, the stated redemption price at maturity and the time of maturity must be known. The debt instruments with OID accrue and deduct the amount of OID as interest expense in the same manner as the bond or other such instruments accrue and include in gross income the amount of OID as interest income.

Treasury regulations provide special rules for determining the amount of OID allocable to a period with respect to certain debt instruments that provide for one or more contingent payments of principal or interest. In these situations, the regulations provide that a debt instrument does not provide for contingent payments merely because it provides for an option to convert the debt instrument into the stock of the issuer or the debt of a related party, or into cash or other property in an amount equal to the approximate value of such stock or debt. The regulations also provide that a payment is not a contingent payment merely because of a contingency that, as of the issue date of the debt instrument, is either remote or incidental.

In the case of contingent payment debt instruments that are issued for money or public debt instruments, the regulations provide that interest on a debt instrument must be taken into account (as OID) whether or not the amount of any payment is fixed or determinable in accordance with the terms of the instrument. The amount of OID that is taken into account for each accrual period is determined by constructing a comparable yield and a projected payment schedule for the debt instrument, and then accruing the OID on the basis of the calculated yield and projected payment schedule by applying rules similar to those for accruing OID on a noncontingent debt instrument (the “noncontingent bond method”). If the actual amount of a contingent payment is not equal to the expected amount, appropriate adjustments are made to reflect the difference. The comparable yield for a debt instrument is the yield at which the issuer would be able to issue a fixed-rate noncontingent debt instrument with terms and conditions similar to those of the contingent payment debt instrument (the “comparable noncontingent debt instrument”), including the level of subordination, term, timing of payments, and general market conditions.

434 Treas. Reg. sec. 1.1275-4(b).
436 See also Treas. Reg. sec. 1.1275-4(h).
437 Treas. Reg. sec. 1.1275-3(j).
With respect to certain debt instruments that are convertible into the common stock of the issuer and that also provide for contingent payments (other than the conversion feature)—often referred to as "contingent convertible" debt instruments—the IRS has stated that the noncontingent bond method applies in computing the accrual of OID on the debt instrument. In applying the noncontingent bond method, the IRS has stated that the comparable yield for a contingent convertible debt instrument is determined by referencing a fixed-rate nonconvertible debt instrument, and the projected payment schedule is determined by treating the issuer stock received upon conversion of the debt instrument as a contingent payment.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, in the case of a debt obligation the issuer guarantees the debt. The provision is effective as if included in the provisions of the Code to address transactions and structures that produce inappropriate foreign tax credit results.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment enhances the regulatory authority of the Treasury Department to address transactions that involve the inappropriate separation of foreign taxes from the related foreign income or in which foreign taxes are imposed on any person in respect of income that is foreign-source income. This grant of regulatory authority supplements existing Treasury Department authority and thereby provide greater flexibility in addressing a wide range of transactions and structures. Regulations issued pursuant to this authority could, for example, provide for the disallowance of a credit for all or a portion of the interest expense of the foreign entity for the allocation of the foreign taxes among the participants in the transaction in a manner more consistent with the economics of the transaction.

Effective date.—The provision generally is effective for transactions entered into after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

PRESENT LAW

The United States employs a "worldwide" tax system, under which residents generally are taxed on income, whether derived in the United States or abroad. In order to mitigate the possibility of double taxation arising from overlapping claims of the United States and a source country to tax the same item of income, the United States provides a credit for foreign income taxes paid or accrued, subject to several conditions and limitations.

For purposes of the foreign tax credit, regulations provide that a foreign tax is treated as being paid by "the person on whom foreign law imposes legal liability for such tax." Thus, for example, if a U.S. corporation owns an interest in a foreign partnership, the U.S. corporation can claim foreign tax credits for the tax that is imposed on it as a partner in the foreign entity. This would be true under the regulations even if the U.S. corporation elected to treat the foreign entity as a corporation for U.S. tax purposes. In such a case, if the foreign entity does not meet the definition of a controlled foreign corporation or does not generate income that is subject to U.S. tax under the rules of subpart F, the income generated by the foreign entity might never be reported on a U.S. return, and yet the U.S. corporation might claim credits for taxes imposed on that income. This is one example of how a taxpayer might attempt to separate foreign taxes from the related foreign income, and thereby attempt to claim a foreign tax credit under circumstances in which there is no threat of double taxation.

The Treasury Department currently has the authority to promulgate regulations under section 901 and other provisions of the Code to address transactions and structures that produce inappropriate foreign tax credit results.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment enhances the regulatory authority of the Treasury Department to address transactions that involve the inappropriate separation of foreign taxes from the related foreign income or in which foreign taxes are imposed on any person in respect of income that is foreign-source income. This grant of regulatory authority supplements existing Treasury Department authority and thereby provide greater flexibility in addressing a wide range of transactions and structures. Regulations issued pursuant to this authority could, for example, provide for the disallowance of a credit for all or a portion of the interest expense of the foreign entity for the allocation of the foreign taxes among the participants in the transaction in a manner more consistent with the economics of the transaction.

Effective date.—The provision generally is effective for transactions entered into after the date of enactment.

CONGRESSIONAL RECORD — HOUSE H2281

May 9, 2006

PRESENT LAW

The Senate amendment provides that, in the case of a debt obligation the issuer guarantees the debt.

SENATE AMENDMENT

The Senate amendment makes two changes to the effective date of the loss deferral rules. The amendment rules shall be repealed the qualified transportation property exception. Second, the Senate amendment applies the loss deferral rules to leases entered into on or before March 12, 2004, if the lessee is a foreign person or entity. With respect to such leases, losses are deferred starting in taxable years beginning after December 31, 2005.

Effective date.—The Senate amendment is effective as if included in the provisions of the American Jobs Creation Act of 2004 (Pub. L. No. 108–357 (2004)), to which it relates.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

4. Application of earnings stripping rules to partners which are corporations (sec. 454 of the Senate amendment and sec. 163 of the Code)

PRESENT LAW

Present law provides rules to limit the ability of U.S. corporations to reduce the U.S. tax on their U.S.-source income through earnings stripping transactions. Section 163(j) specifically addresses earnings stripping involving interest payments, by limiting the deductibility of interest payments to certain related parties ("disqualified interest") to the extent that the payment of interest exceeds 1.5 to 1 and the payor's net interest expense exceeds 50 percent of its "adjusted taxable income" (generally taxable income computed without regard for net interest expense, net operating losses, and depreciation, amortization, and depletion). Disallowed interest amounts can be carried forward indefinitely. In addition, excess limitation (i.e., any excess of the 50-percent limit over a company's net interest expense for a given year) can be carried forward three years.

Proposed Treasury regulations provide that a partner's proportionate share of partnership liabilities is treated as liabilities incurred directly by the partner for purposes of applying the earnings stripping limitation to interest payments by a corporate partner of a partnership. The proposed Treasury regulations provide that interest paid or accrued to a partner is treated as paid or accrued to the partners of the partnership in proportion to each partner's distributive share of the partnership's interest income for the taxable year. In addition, the proposed Treasury regulations provide that interest expense paid or accrued by a partner is treated as paid or accrued to the partners of the partnership in proportion to each partner's distributive share of the partnership's interest expense.

HOUSE BILL

No provision.

SENATE AMENDMENT

The Senate amendment provides that, in the case of a debt obligation the issuer guarantees the debt.

House Bill

No provision.

Prop. Treas. reg. sec. 1.163(j)-2(e)(4).

Prop. Treas. reg. sec. 1.163(j)-2(e)(5).

425This interest also may include interest paid to unrelated parties in certain cases in which a related party guarantees the debt.


427Under the provision, a contingent convertible debt instrument is defined as a debt instrument that, (1) is a debt obligation of the corporation, or a corporation in control of, or controlled by, the issuing corporation; and (2) provides for contingent payments.

In general

Under present law, no deduction is allowed with respect to (1) an activity generally considered to be entertainment, amusement or recreation, unless the taxpayer establishes that the activity is directly related to the active conduct of the taxpayer’s trade or business, or (2) a facility (e.g., an airplane) used in connection with such activity. The Code includes a number of exceptions to the general rule disallowing deductions of entertainment expenses. Under one exception, the deduction disallowed to an employer for expenses for goods, services, and facilities to the extent that the expenses are reported by the taxpayer as compensation and wages to an employee.447 The deduction disallowance rule also does not apply to expenses paid or incurred by the taxpayer for goods, services, and facilities to the extent that the expenses are reported by the taxpayer as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income.448

Specified individuals

In the case of specified individuals, the exceptions to the general entertainment expense disallowance rule for expenses treated as compensation or includible in income apply only to the extent of the amount of expenses treated as compensation or includible in income of the specified individual. For example, a company’s deduction attributable to aircraft operating costs and other expenses for a specified individual’s vacation is limited to the amount reported as compensation to the specified individual. Sutherland Lumber is thus overturned with respect to specified individuals. Specified individuals are individuals who, with respect to an employer or other service provider, includes amounts attributable to or incurred by the employer or other service provider for qualified dividends and capital gains in section 1(h).455

Effective date.—The provision is effective for expenses incurred after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision.

6. Increase in age of minor children whose unearned income is taxed as if parent’s income (Sec. 456 of the Senate amendment and sec. 1(g) of the Code)
that are directly connected with the production of the unearned income.460 A child’s net unearned income cannot exceed the child’s taxable income.

The allocable parental tax equals the hypothetical increase in tax to the parent that results from adding the child’s net unearned income to the parent’s taxable income. If the child received capital gains or qualified dividends, these items are allocated to the parent’s hypothetical taxable income according to the ratio of net unearned income to the child’s total unearned income. If the parent has more than one child subject to the kiddie tax, the net unearned income of all children is combined, and a single kiddie tax is calculated. The parent then allocates a portion of the hypothetical increase, based upon the child’s net unearned income relative to the aggregate net unearned income of all of the parent’s children subject to the tax.

Special rules apply to determine which parent’s tax return and rate is used to calculate the kiddie tax. If the parents file a joint return, the allocable parental tax is calculated using the income reported on the joint return. If the parents are married but file separate returns, the allocable parental tax is calculated using the income of the parent with the greater amount of taxable income. In the case of remarried parents, the child’s custodial parent is the parent whose taxable income is taken into account in determining the child’s liability. If the custodial parent has remarried, the stepparent is treated as the child’s other parent. Thus, if the custodial parent and stepparent file a joint return, the kiddie tax is calculated using the return. If the custodial parent and stepparent file separate returns, the return of the one with the greater taxable income is used. If the parents are unmarried and are married together all year, the return of the parent with the greater taxable income is used.

Unless the parent elects to include the child’s income on the parent’s return (as described below) the child files a separate return to report the child’s income.462 In this case, items on the parent’s return are not affected by the child’s income. The total tax due from the child is greater of:

1. the sum of (a) the tax payable by the child on the child’s earned income and unearned income exceeding $1,700 (for 2006), plus (b) the allocable parental tax on the child’s unearned income, or

2. three times the child’s income without regard to the kiddie tax provisions.

**Parental election to include child’s dividends and interest on parent’s return**

Under certain circumstances, a parent may elect to report a child’s dividends and interest on the parent’s return. If the election is made, the child is treated as having no income for the year and the child does not have net unearned income. If the parent makes the election on Form 8814, Parents’ Election to Report Child’s Interest and Dividends, the requirements for the parent’s election are that:

1. the child has gross income only from interest and dividends (including capital gains distributions and Alaska Permanent Fund Dividends);

2. such income is more than the minimum standard deduction amount for dependents ($850 in 2006) and less than 10 times that amount ($8,500 in 2006);

3. no estimated tax payments for the year were made in the child’s name and taxpayer identification number;

4. no backup withholding occurred; and

5. the child is required to file a return if the parent does not make the election.

If the election is made, only the income that the parent elects to be used when calculating the kiddie tax may make the election. The parent includes in income the child’s gross income in excess of twice the minimum standard deduction amount for dependents (i.e., the child’s gross income in excess of $1,700 for 2007). This amount is taxed at the parent’s rate. The parent also must report an additional tax liability equal to the lesser of: (1) $85 (in 2006), or (2) 10 percent of the child’s gross income exceeding the child’s standard deduction ($850 in 2006). Including the child’s income on the parent’s return can affect the parent’s deductions and credits that are based on adjusted gross income, as well as income-based phase-outs, limitations, and floors.463 In addition, certain deductions that the child would have been entitled to take on his or her own return are lost. Furthermore, if a child receives a tax-exempt interest from a private activity bond, that item is considered a tax preference of the parent for alternative minimum tax purposes.

**Taxation of compensation for services under section 1(g)**

Compensation for a child’s services is considered the gross income of the child, not the parent, even if the compensation is not received by the child (e.g., is the parent’s income under local law).467 If the child’s income tax is not paid, however, an assessment against the child may be considered as also made against the parent to the extent the assessment is attributable to amounts received for the child’s services.

**HOUSE BILL**

No provision.

**SENATE AMENDMENT**

The provision applies to the age to which the kiddie tax provisions apply from under 14 to under 18 years of age. The provision also creates an exception to the kiddie tax for the child’s unearned income earned in a qualified disability trust, defined by cross-reference to sections 1917 and 1614(a)(3) of the Social Security Act.

**Effective date—**The provision applies to taxable years beginning after December 31, 2005.

**CONFERENCE AGREEMENT**

The conference agreement includes the Senate amendment provision with one modification. This modification provides that the kiddie tax does not apply to a child who is married and files a joint return for the taxable year.

7. Impose loan and redemption requirements on pooled financing bonds (sec. 457 of the Senate amendment and sec. 149 of the Code)

**PRESENT LAW**

**In general**

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of such bonds are used to finance direct activities of governmental units or if such bonds are repaid with revenues of governmental units. These bonds are called “governmental bonds.” Interest on State or local government bonds issued to finance activities of private persons is taxable unless specific exemptions apply. These bonds are called “private activity bonds.” The exclusion from income for State and local bonds does not apply to private activities unless the issue is used for certain permitted purposes. In addition, the Code imposes qualification requirements that apply to all State and local bonds. Arbitrage restrictions, for example, limit the ability of issuers to profit from investment of tax-exempt bond proceeds. The Code also imposes requirements that only apply to special purpose governmental units. For instance, pooled financing bonds (defined below) are not tax-exempt unless the issuer meets certain requirements regarding the expected use of proceeds.

**Pooled financing bond restrictions**

State or local governments also issue bonds to provide financing for the benefit of a third party (a “conduit borrower”). Pooled financing bonds are bonds that are issued to make use of or to sell without falling into one or more conduit borrowers, unless the conduit loans are to be used to finance a single project.463 The Code imposes several pooled financing bonds if more than $5 million of proceeds are expected to be used to make loans to conduit borrowers. For purposes of those rules, a pooled financing bond does not include certain private activity bonds.467

A pooled financing bond is not tax-exempt unless the issuer reasonably expects that at least 95 percent of the net proceeds will be lent to ultimate borrowers by the end of the third year after the date of issue. The term “net proceeds” is defined to mean the proceeds of the issue less the following amounts: (1) proceeds used to finance issuance costs; (2) proceeds necessary to pay interest on the bonds during a three-year period; and (3) amounts in reasonably required reserves.471

An issuer’s past experience regarding loan origination is a criterion upon which the reasonableness of the issuer’s expectations can be based. As an additional requirement for tax exemption, all legal and underwriting costs associated with the issuance of pooled financing bonds must be paid for in advance and must be substantially paid within 180 days of the date of issuance.

**Arbitrage restrictions on tax-exempt bonds**

To prevent the issuance of more Federally supported tax-exempt bonds than necessary, the tax exemption for State and local bonds does not apply to any arbitrage bond.472 An arbitrage bond is defined as any bond that is part of an issue if any proceeds of the bond are reasonably expected to be used (or intentionally are used) to acquire higher yielding investments or to replace funds that are used to acquire higher yielding investments. In general, arbitrage profits may be earned only during specified periods (e.g., defined “temporary periods”) before funds are needed for the purpose of the borrowing or on specified types of investments (e.g., “reasonably required reserve or replacement funds”). Subject to limited exceptions, investment profits that are earned during these periods or on such investments must be rebated to the Federal Government (“arbitrage rebate”).

The Code contains provisions to arbitrage rebate requirement, including an exception for bonds issued by small governments (the “small issuer exception”). For the purposes of that exception, small governmental units that...
issue no more than $5 million of tax-exempt governmental bonds in a calendar year.\footnote{473}{The $5 million limit is increased to $25 million if at least $10 million of the bonds are used to finance public schools.} Pooled financing bonds are subject to the arbitrage restrictions that apply to all tax-exempt bonds, including arbitrage rebate.\footnote{473}{Sec. 168(d)(2)(D)(iii)(II).} Under certain circumstances, however, small governments may issue pooled financing bonds without those bonds counting towards the overall limit because the issuer qualifies for the small issuer exception to arbitrage rebate.\footnote{473}{Treas. Reg. sec. 1.148-B(8)(d)(1).} In the case of a pooled financing bond where the ultimate borrowers are governmental units that are general taxing powers not subordinate to the issuer of the pooled bond, the pooled bond does not count against the issuer’s $5 million limitation, provided the issuer is not a borrower of the pooled bond.\footnote{473}{Treas. Reg. sec. 1.148-B(8)(d)(1) and 141.} However, the issuer of the pooled financing bond remains subject to the arbitrage rebate requirement for unloaned proceeds.\footnote{473}{H.R. 8947. House amendment provision, with the following six months.} No provision.

SENATE AMENDMENT

In general

The provision imposes new requirements on pooled financing bonds as a condition of tax-exempt status.\footnote{474}{Sec. 6049.} The provision imposes a written loan commitment requirement to restrict the issuance of pooled bonds where potential borrowers have not been identified (“blind pools”). In addition to the current three-year expectations requirement, the issuer must reasonably expect that at least 50 percent of the net proceeds of the pooled bond will be lent to borrowers one year after the date of issue. Third, the provision requires the redemption of outstanding bonds with proceeds that are not loaned to borrowers within the expected loan origination periods. Finally, the provision eliminates the rule allowing an issuer of pooled financing bonds to disregard the pooled bonds for purposes of determining whether the issuer qualifies for the small issuer exception to rebate.

Borrower identification

Under the provision, interest on a pooled financing bond is tax exempt only if the issuer obtains written commitments with ultimate borrowers for loans equal to at least 50 percent of the net proceeds of the pooled bond within one year after the date of issuance. The loan commitment requirement does not apply to bonds issued by States (or an integral part of a State) to provide loans to subordinate governmental units or State entities created to provide financing for water-infrastructure projects through the federally-sponsored State revolving fund program.\footnote{476}{Sec. 103.} Loan origination expectations

The provision imposes new reasonable expectations requirements for loan origination expectations. The issuer must expect that at least 50 percent of the net proceeds of a pooled financing bond will be lent to ultimate borrowers one year after the date of issue. This is in addition to the present-law requirement that at least 95 percent of the net proceeds of a pooled financing bond will be lent to ultimate borrowers by the end of the third year after the date of issue. Redemption requirement

Under the provision, if bond proceeds are not loaned to borrowers within prescribed periods, outstanding bonds equal to the amount of pooled financing bonds not loaned within the required period must be redeemed within 90 days. The bond redemption requirement applies with respect to proceeds that are unloaned as of expiration of the one-year and three-year loan origination periods. For example, if an amount equal to 45 percent of the net proceeds of an issue are used to make qualifying loans one year after the bonds are issued, an amount equal to five percent of the net proceeds of the issue is no longer available for lending and must be used to redeem bonds within the following six-month period. Similarly, if only 85 percent of the net proceeds of the issue are used to make qualifying loans (or to redeem bonds), then the bonds are not available for lending and must be used to redeem bonds within the following six-month period. Small issuer exception

The provision eliminates the rule disregarding pooled financing bonds from the issuer’s $5,000,000 annual limitation for purposes of the small issuer exception to arbitrage rebate. Effective date—\textemdash{}The provision is effective for bonds issued after the date of enactment.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with the following modifications. Under the conference agreement, issuers of pooled financing bonds must reasonably expect that at least 30 percent of the net proceeds of such bonds will be loaned to ultimate borrowers one year after the date of issue. The present-law requirement that issuers must reasonably expect to loan at least 95 percent of the net proceeds of a pooled financing bond to ultimate borrowers three years after the date of issue is unchanged. Bond proceeds that are not loaned to borrowers as required under the one- and three-year requirements must be used to redeem outstanding bonds within 90 days of the expiration of such one- and three-year periods. The conference agreement requires issuers of pooled financing bonds to obtain, prior to issuance, written commitments from ultimate borrowers equal to at least 30 percent of the net proceeds of the pooled financing bond. The loan commitment requirement does not apply to bonds issued by States (or an integral part of a State) to provide loans to subordinate governmental units or State entities created to provide financing for water-infrastructure projects through the federally-sponsored State revolving fund program. 8. Amend information reporting requirements to include interest on tax-exempt bonds (sec. 458 of the Senate amendment and sec. 6049 of the Code)

PRESENT LAW

Tax-exempt bonds

Generally, gross income does not include interest on State or local bonds.\footnote{477}{Sec. 103(b)(1) and 141.} State and local bonds are classified generally as either governmental bonds or private activity bonds. Tax-exempt bonds are bonds the proceeds of which are primarily used to finance governmental facilities or the debt is repaid with governmental funds. Private activity bonds are bonds in which the State or local government conduit providing financing to nongovernmental persons (e.g., private businesses or individuals). The exclusion from gross income for State and local bonds does not apply to private activity bonds, unless the bonds are issued for certain purposes (“qualified private activity bonds”) permitted by the Code.\footnote{477}{H.R. 8947. House amendment provision, with the following six months.} Tax-exempt interest reporting by taxpayers

The Code provides that every person required to file a return must report the amount of tax-exempt interest received or accrued during any taxable year.\footnote{478}{Sec. 103(b)(1) and 141.} There are a number of reasons why the amount of tax-exempt interest received is relevant to determining tax liability despite the general exclusion from income. For example, the interest income from qualified private activity bonds (other than qualified 501(c)(3) bonds) issued after August 7, 1986, is a preference item for purposes of calculating the alternative minimum tax.\footnote{479}{Sec. 57(a)(5). Special rules apply to exclude interest received on tax-exempt bonds.} Tax-exempt interest also is relevant for determining eligibility for the earned income credit (the “EIC”),\footnote{480}{Sec. 34(c) and the amount of Social Security benefits includable in gross income.\footnote{481}{Sec. 86.}} Moreover, determining includable Social Security benefits is necessary for calculating either adjusted or modified adjusted gross income under several Code sections.\footnote{482}{Sec. 6069.} Information reporting by payors

The Code generally requires every person who makes payments of interest aggregating $10 or more to receive payments of interest as a nominee and who makes payments aggregating $10 or more to file an information return setting forth the amount of interest payments for the calendar year and the name, address, and TIN of the person to whom interest is paid.\footnote{483}{Sec. 6049.} In addition, regulations prescribe the form and manner for filing interest payment information returns. Penalties are imposed for failure to file information returns.\footnote{484}{Sec. 6049.} Treasury Regulations also impose recordkeeping requirements on any person required to file information returns.\footnote{485}{Sec. 6049.} The provision eliminates the exception to information reporting requirements for interest paid on tax-exempt bonds. Effective date—\textemdash{}The provision is effective for interest paid on tax-exempt bonds after December 31, 2005.

CONFERENCE AGREEMENT

The conference agreement includes the Senate amendment provision, with the following modifications. 9. Modification of credit for fuel from a non-conventional source (sec. 459 of the Senate amendment and sec. 45K of the Code)

PRESENT LAW

Certain fuels produced from “non-conventional sources” and sold to unrelated parties are eligible for an income tax credit equal to $3 (generally adjusted for inflation)\footnote{486}{Sec. 7701(a)(4).} per barrel or Btu oil barrel equivalent (“non-
conventional source fuel credit”.

Qualified fuels must be produced within the United States.

Qualified fuels include:

—oil produced from shale and tar sands;
—gas produced from geopressed coal, Devonian shale, coal amalgam, tight formations, or biomass; and
—liquid, gaseous, or solid synthetic fuels produced in limited quantity.

Generally, the non-conventional source fuel credit has expired, except for certain biomass gas and synthetic fuels sold before January 1, 2005. The credit is available at facilities placed in service after December 31, 1992, and before July 1, 1998. The non-conventional source fuel credit provision also includes a credit for producing coke or coke gas at qualified facilities placed in service before 1993 or after June 30, 1998, and before 2010. The coke production credit is available for coke or coke gas produced over the four-year period beginning on January 1, 2006, or the date the facility was placed in service, if later.

The amount of credit-eligible coke produced at any one facility may not exceed an average barrel-of-oil equivalent of 4,000 barrels per day.

The non-conventional source fuel credit is reduced (but not below zero) over a $6 (inflation-adjusted) phase-out period as the reference price for the calendar year in which the sale of qualified non-conventional fuel occurs, the provision modifies the manner in which the phase-out of the non-conventional source fuel credit is calculated. Specifically, in calculating the phase-out of the credit rather than relying upon the reference price for the calendar year in which the sale of qualified non-conventional fuel occurs, the provision modifies the manner in which the phase-out period begins.

The provision eliminates the inflation adjustment for all fuels other than coke and coke gas for 2005, 2006, and 2007. Thus, the current credit amount of $6.79 per barrel of oil equivalent would be retroactively reduced to $6.56 per barrel of oil equivalent, and that reduced amount would remain in effect through the December 31, 2007. Under the provision, the credit amount of $18 per barrel of oil equivalent for coke and coke gas produced under section 45(k) would continue to be adjusted for inflation using 2004 as the base year.

Finally, the provision clarifies that qualifying facilities producing coke and coke gas under section 45(k) do not include facilities that produce petroleum-based coke or coke gas.

**Effective date.**—The provision applies to fuel sold after December 31, 2004.

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**Conference Agreement**

The conference agreement does not include the Senate amendment provision.

10. Modification of individual estimated tax; safe harbor

The conference agreement does not include the provision repealing the phase-out limitation except for certain LIFO layer. The conference agreement does not include the provision for treating those goods included in the opening inventory of the taxable year (in the order of acquisition) to the extent thereon and accrued, those acquired in the taxable year; (ii) inventories the goods at cost; and (iii) treats those goods included in the opening inventory of the taxable year in which the LIFO method was first used as having been acquired at the same time, and determines their cost by the average cost method.

In periods during which a taxpayer produces or purchases more goods than the taxpayer sells (such excess, an “inventory decrement”), a LIFO method taxpayer generally records the inventory cost of such excess (and separately tracks such amount as the “LIFO layer” for such period), adds it to the cost of inventory at the start of the period, and carries such total inventory cost forward to the beginning inventory of the following year.

In periods during which the taxpayer sells more goods than the taxpayer produces or purchases (such decrease, an “inventory decumulation”), a LIFO method taxpayer generally determines the cost of goods sold of the amount of the decrement by treating such sales as occurring out of the most recent LIFO layer (or the most recent LIFO layers, if the amount of the decrement exceeds the combined inventory of the most recent LIFO layer) in reverse chronological order.

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**Amendment**

The provision disallows a portion of the benefit of the LIFO method to integrated oil companies which have an average daily production of crude oil of at least 500,000 barrels of oil and which have in excess of $1 billion for the last taxable year ending during 2005.

Specifically, the provision requires such taxpayers to revalue each historic LIFO layer of crude oil inventories by adding to each layer an amount equal to $18.75 multiplied by the number of barrels of crude oil represented by such LIFO layer; the taxpayer must reduce its cost of sales for such taxable year by a like amount.

For example, suppose a taxpayer, which is an integrated oil company with average daily production of at least 500,000 barrels of oil and revenues in excess of $1 billion, has a 2005 starting inventory of 200x barrels, comprised of a 1995 LIFO layer with 50x barrels valued at $5 per barrel (with a total cost of $250x); a 1998 LIFO layer with 100x barrels valued at $18 per barrel (with a total cost $1800x); and a 2004 LIFO layer with 30x barrels valued at $25 per barrel (with a total cost of $750x), and a 2004 LIFO layer with 20x barrels valued at $35 per barrel (with a total cost $700x), for a total inventory value of $3500x.

Suppose further that the taxpayer’s ending inventory is 200x barrels of oil, i.e., the same as the starting inventory, so the taxpayer has neither an inventory increment nor an inventory decrement for the taxable year.

Under the provision, the taxpayer will revalue each layer upwards by $18.75/barrel. Thus, the taxpayer will increase its 1995 LIFO layer by $937.50x; its 1998 LIFO layer by $1875x; its 2004 LIFO layer by $562.50x; and its 2004 LIFO layer by $757.50x. The taxpayer will offset this $3750x increase in inventory by reducing by $3750x the taxpayer’s cost of goods sold for the last taxable year ending in 2005. In the event the taxpayer’s cost of goods sold for such taxable year prior to such reduction is less than $3750x, the taxpayer will reduce its gross income for such taxable year by such difference.

**Effective date.**—The provision is effective for taxable years ending after December 31, 2005.

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The conference agreement does not include the Senate amendment provision.

11. Revaluation of LIFO inventories of large integrated oil companies

**Present Law**

A taxpayer is generally permitted to use a last-in, first-out (LIFO) method to inventory goods, on the condition that the taxpayer also uses the LIFO method in reporting to shareholders, partners, other proprietors, and beneficiaries, and for credit purposes.

Under the LIFO method, a taxpayer (i) treats those goods included in the opening inventory of the taxable year as being: first, those goods included in the opening inventory of the following taxable year; and second, those acquired in the taxable year; (ii) inventories the goods at cost; and (iii) treats those goods included in the opening inventory of the taxable year in which the LIFO method was first used as having been acquired at the same time, and determines their cost by the average cost method.

In periods during which a taxpayer produces or purchases more goods than the taxpayer sells (such excess, an “inventory increment”), a LIFO method taxpayer generally records the inventory cost of such excess (and separately tracks such amount as the “LIFO layer” for such period), adds it to the cost of inventory at the start of the period, and carries such total inventory cost forward to the beginning inventory of the following year.

In periods during which the taxpayer sells more goods than the taxpayer produces or purchases (such decrease, an “inventory decrement”), a LIFO method taxpayer generally determines the cost of goods sold of the...
case of abandoned property, remaining basis may not be recovered in the year of abandonment of a property as all basis is recovered over the two-year amortization period.

**HOUSE BILL**

No provision.

**SENATE AMENDMENT**

The provision repeals the two-year amortization period with respect to G&G costs paid or incurred by certain large integrated oil companies, defined to include integrated oil companies as defined in section 291(b)(4) of the Code that have an average daily world-wide production of crude oil of at least 500,000 barrels. Thus, affected oil companies are required to amortize their G&G costs associated with successful exploration projects that result in the acquisition of property. Such companies can recover any G&G costs associated with abandoned property in the year of abandonment.

**Effective date.**—The provision is effective for G&G costs paid or incurred in taxable years beginning after August 8, 2005.

**CONFERENCE AGREEMENT**

The conference agreement extends the two-year amortization period for G&G costs to five years for certain major integrated oil companies. Under the conference agreement, the five-year amortization rule for G&G costs applies only to integrated oil companies that have an average daily worldwide production of at least 500,000 barrels for the taxable year, gross receipts in excess of $1 billion in the last taxable year ending during calendar year 2005, and an ownership interest in a crude oil refiner of 15 percent or more.

**Effective date.**—The provision applies to amounts paid or incurred after the date of enactment.

13. Valuation of employee personal use of noncommercial aircraft (sec. 485 of the Senate amendment)

**PRESENT LAW**

Unless an exception applies, gross income includes compensation for services, including fees, commissions, fringe benefits, and similar items. In general, an employee or other service provider must include in gross income any costs associated with the personal use of company-owned property. In general, the value of a fringe benefit exceeds the amount paid by the employee for such benefit.249 This value is generally defined as any corporation, unless the employer provides an employee-owned or controlled noncommercial aircraft.250 In general, the value of a non-commercial flight is determined under the base aircraft valuation formula, also known as the Standard Industry Fare Level (SIFL) valuation formula. If the SIFL valuation formula does not apply, the value of a flight on a company-owned or company-controlled aircraft is generally equal to the amount that an individual would have to pay in an arm’s-length transaction to charter the same or a comparable aircraft for that period for the same or a comparable flight.251

**HOUSE BILL**

No provision.

**SENATE AMENDMENT**

Under the Senate amendment, for purposes of income inclusion, the value of any employee personal use of noncommercial aircraft is equal to the excess of (1) the greater of the fair market value of such use or actual cost of such use (including all fixed and variable costs), over (2) the amount paid by or on behalf of the employee for such use. Thus, the SIFL valuation rules may no longer be used to determine the value of such use.

250 Treas. Reg. sec. 1.61-21(e)(2).
251 Treas. Reg. sec. 1.61-21(b)(6).

**Effective date.**—The provision applies to use after the date of enactment.

**CONFERENCE AGREEMENT**

The conference agreement does not include the Senate amendment provision.

14. Application of Investment in Real Property Tax Act ("FIRPTA") to Regulated Investment Companies ("RICs") (sec. 486 of the Senate amendment and sec. 897(h)(4) of the Code)

**In general**

A nonresident alien individual or foreign corporation is taxable on its taxable income that is effectively connected with the conduct of a trade or business within the United States, at the income tax rates applicable to U.S. persons. A nonresident alien individual is taxed on a portion of the income, derived from sources within the United States, from the sale or exchange of capital assets if the individual is present in the United States for 183 days or more during the taxable year.

In addition, the Foreign Investment in Real Property Tax Act (FIRPTA)497 generally treats a nonresident alien individual or foreign corporation’s gain or loss from the disposition of a U.S. real property interest (USRPI) as income that is effectively connected with a U.S. trade or business, and taxable at the rates applicable to U.S. persons, including the rates for net capital gain. A foreign investor subject to tax on this income is required to file a U.S. income tax return, including IRs 21(b)(6).

The payor of FIRPTA effectively connected income to a foreign person is generally required to withhold U.S. tax from the payment. Withholding is generally 10 percent (or 30 percent in the case of a direct sale by the foreign person of a USRPI, and 35 percent of the amount of a distribution to a foreign person of proceeds attributable to such sales from an entity such as a partnership.)250

The foreign person can request a refund with its U.S. tax return, if appropriate based on that person’s total U.S. effectively connected income and deductions (if any) for the taxable year.

USRPIs include interests in real property located in the U.S. and owned by the U.S. Virgin Islands, and stock of a domestic U.S. real property holding company (USRPHC), generally defined as any corporation, unless the income of the company is derived from arm’s-length trade or business, and the income of the company is derived from sources within the United States. Under FIRPTA, the income of a USRPHC that is effectively connected with the conduct of a trade or business within the United States is generally taxable to such USRPHC at the same rates applicable to U.S. persons. When a distribution is made to a shareholder of a USRPHC, the distribution is treated as a dividend (rather than as a capital gain).

The requirements for FIRPTA taxable income to a foreign person are generally described below.

A distribution by a REIT to a foreign shareholder, to the extent attributable to the REIT’s stock, is treated as IRC section 857(b)(3).

A distribution by a non-REIT to a foreign shareholder, to the extent attributable to the non-REIT’s stock, is treated as IRC section 857(b)(4).

For 2005, 2006, and 2007, a similar exception applies to RIC stock. Thus, stock of a domestically controlled REIT or RIC can be sold without FIRPTA consequences. This exception applies regardless of whether the sale of stock is made directly by a foreign person, or by a REIT or RIC whose distributions to foreign persons are treated as capital gains and are subject to FIRPTA, as described below.

A distribution by a REIT to a foreign shareholder, to the extent attributable to the REIT’s stock, is treated as IRC section 857(b)(1).

A distribution by a non-REIT to a foreign shareholder, to the extent attributable to the non-REIT’s stock, is treated as IRC section 857(b)(2).

The requirements for REIT eligibility include primary investment in real estate assets, with such assets representing gains in the one-year period ending on the date of disposition.504 For 2005, 2006, and 2007, a similar exception applies to RIC stock.

Stock of a “domestically controlled” REIT is not a USRPI. The term “domestically controlled” is defined to mean that less than 50 percent of the value of the stock is owned by non-U.S. shareholders during the 5-year period ending on the date of disposition.505 For 2005, 2006, and 2007, a similar exception applies to RIC stock.

The requirements for IRC eligibility include primary investment in stocks and securities (which can include stock of REITs or other RICs).

FIRPTA contains special rules for real estate investment trusts (REITs) and regulated investment companies at any time during the one-year period ending on the date of the distribution.

Whenever the exception applies, the distribution to the foreign shareholder is treated as an ordinary dividend (rather than as a capital gain dividend), subject to 30 percent (or lower treaty rate) withholding.

Prior to 2005, distributions by RICs to foreign shareholders, to the extent attributable to the RIC’s sale or exchange of USRPIs, were not treated as FIRPTA gain. If distributions were attributable to long-term

497 Sec. 897(h).
498 Secs. 852(a)(1) and 852(b)(2)(A); 857(a)(1).
499 Secs. 852(b)(3); 857(b)(3).
500 Secs. 897(h)(2) and (h)(4)(B).
502 Sec. 857(b)(2)(C).
503 Sec. 857(b)(3).
504 Sec. 857(b)(4).
505 This exception, effective beginning in 2006, was added by section 418 of the American Jobs Creation Act of 2004 ("AJCA"), Pub. L. No. 108–357, and modified by section 409(p) of the Tax Technical Correction Act of 2006.
capital gains, the RIC could designate the distributions as long-term capital gain dividends that would not be subject to any tax to the foreign shareholder, rather than as a regular dividend. However, capital gains eligible for the RIC’s tax rates are also subject to the special rules described below.

Dividends
Even taking into account U.S. treaties, the tax on a dividend generally is not entirely eliminated. Instead, the portfolio investment dividends received by foreign persons generally are subject to U.S. withholding tax at a rate of at least 15 percent. Foreign Investment in Real Property Tax Act (FIRPTA)

Unlike most other U.S. source capital gains, which are generally not taxed to a foreign investor, the Foreign Investment in Real Property Tax Act (FIRPTA) subjects gain or loss of a foreign person from the disposition of a U.S. real property interest (USRPI) to tax as if the taxpayer were engaged in a trade or business within the United States and the gain or loss were effectively connected with such trade or business.

In addition to an interest in real property located in the United States or the Virgin Islands, USRPIs include (among other things) any interest in a domestic corporation within which the taxpaying foreign persons, unless the gain is effective for the conduct of a trade or business, (i) on an obligation that satisfies certain registration requirements or specifications (i.e., the obligation is "foreign targeted"), and (ii) that is not received by a 10-percent shareholder. With respect to a registered obligation, a statement that the beneficial owner is not a U.S. person is required. This exception is not available for any interest received either by a bank on a loan extended in the ordinary course of its business (except in the case of interest paid on an obligation of the United States), or by a controlled foreign corporation from a related person. Moreover, this exception does not apply to certain contingent interest payments. For 2005, 2006 and 2007, a regulated investment company (RIC) may designate certain distributions to foreign shareholders that are attributable to the RIC’s qualified interest income as non-taxable interest distributions to such foreign persons.

Capital gains
A foreign person generally is not subject to U.S. tax on capital gain, including gain realized on the disposition of stock or securities issued by a U.S. person, unless the gain is effectively connected with the conduct of a trade or business in the United States or such person is an individual present in the United States for a period or periods aggregating 183 days or more during the taxable year. A regulated investment company (RIC) can generally designate dividends to foreign persons that are attributable to the RIC’s long term capital gain as a long-term capital gain dividends that are not subject to withholding. For 2005, 2006 and 2007, RICs may designate short-term capital gain dividends.

For the years 2005, 2006 and 2007, RIC capital gain dividends that are attributable to the sale of USRPI are treated as foreign persons that are attributable to the RIC’s qualified interest income and subject to special rules described below.

Under treaties, the United States may reduce or eliminate such taxes.

Real estate investment trusts (REITs) can designate long-term capital gain dividends to shareholders; but when made to a foreign person such distributions attributable to the sale of USRPI interests are also subject to the special rules described below.

Foreign Investment in Real Property Tax Act (FIRPTA)*
FIRPTA income of such RIC or REIT, rather than continuing to be categorized as FIRPTA income. Furthermore, RICs may take the position that in the absence of regulation, the statutory rule requiring the withholding for FIRPTA capital gain that is treated as effectively connective income, made to business or otherwise, such gain should be considered capital gain for which no withholding is required.

In addition, some foreign persons may be attempting to avoid FIRPTA tax on a distribution from a RIC or a REIT, by selling the RIC or REIT stock shortly before the distribution and buying back the stock shortly after the distribution. If the stock is in the hands of a U.S. real property interest in the hands of the foreign seller, that person would take the position that the sale of the stock is capital gain subject to U.S. tax. Stock of a RIC or REIT that is “domestically controlled” is not a U.S. real property interest.

If the stock is a USRPI in the hands of the foreign person, the transferee generally is required to withhold 10 percent of the gross sales price under general FIRPTA withholding rules.\(^\text{528}\)

**No provision.**

### Senate Amendment

The first part of the Senate amendment provision requires any distribution that is made by a RIC or a REIT that would otherwise be subject to FIRPTA because the distribution is due to the disposition of a U.S. real property interest (USRPI) to retain its character as FIRPTA income when distributed by a RIC or REIT. This provision would be treated as if it were from the disposition of a USRPI by that other RIC or REIT.

Under the provision, a RIC continues to be subject to FIRPTA tax, as of December 31, 2007, in any case in which a REIT makes a distribution to the RIC that is attributable to gain from the sale of U.S. real property interests.

The second part of the Senate amendment provision provides that a distribution by a RIC to a foreign shareholder, or to a RIC or REIT shareholder, attributable to sales of USRPIs is not treated as gain from the sale of a USRPI by that shareholder if the distribution is of a class of RIC stock that is regularly traded on an established securities market located in the U.S. and if such shareholder did not hold more than 10 percent of the stock within the one-year period ending on the date of the distribution. Such distributions instead are treated as dividend distributions.\(^\text{529}\)

The third part of the Senate amendment provision requires a foreign person that disposes of stock of a RIC or REIT during the 30-day period preceding a distribution on that stock that is treated as a distribution from the disposition of a USRPI, that acquires an identical stock interest during the 60-day period that begins the first day of such 30-day period preceding the distribution, and that does not in fact receive the distribution in a manner that subjects the person to tax under FIRPTA, to pay FIRPTA tax on an amount equal to the amount of the distribution that was not taxed under FIRPTA as a result of the disposition. A foreign person is treated as having acquired any interest in a RIC or REIT at the time related to that foreign person first under section 465(b)(3)(C).\(^\text{530}\)

The conference agreement includes the Senate amendment provision with modifications and clarifications.

### Conference Agreement

The conference agreement includes the Senate amendment provision with modifications and clarifications.

The conference agreement amends section 1445 so that it explicitly requires withholding on RIC and REIT distributions to foreign persons, attributable to sales of sales of USRPIs, at 35 percent, or, to the extent provided by regulations, at 15 percent.\(^\text{531}\)

The conference agreement clarifies that the treatment of a RIC as a qualified investment company continues through December 31, 2007, with respect to a RIC that receives a distribution from a REIT, not only for purposes of the distribution rules, including withholding on distributions to foreign shareholders, but also for purposes of the new “wash sale” rules of the provision.

The conference agreement modifies the new “wash sale” rule. The period within which the basic “wash-sale” rule applies is changed from 60 days to 61 days.\(^\text{532}\)

The definition of the term “domestically controlled” is expanded to cover not only situations in which the taxpayer acquires a substantially
identical interest, but also situations in which the taxpayer enters into a contract or option to acquire such an interest. The related party rule is also modified to apply the 50-percent common control test under sections 267(b) and 707(b)(1) rather than a 10-percent test.

In addition, treatment of a foreign shareholding of a REIT as a FIRPTA distribution that is treated as U.S. effectively connected income is extended to transactions that meet the definition of a substitute dividend payment provided for purposes of section 861 and that would be properly treated by the foreign taxpayer as a receipt of a distribution of a REIT had itself been received by the taxpayer, but that, by virtue of the substitute dividend payment, is not so treated but for the provision, as well as to other similar arrangements to which Treasury may extend the rules.

Effective date.—The first part of the conference agreement provision, relating to distributions generally, applies to distributions with respect to taxable years of REITs and REITs whose-interest is held by the taxable year specified in section 857(b)(1) but except that no withholding is required under sections 1441, 1442, or 1445 with respect to any distribution before the date of enactment if such distribution otherwise required to be withheld under any such section as in effect before the amendments made by the conference agreement.

The second part of the conference agreement, relating to the “wash sale” and substitute dividend payment transactions, is applicable to distributions and substitute dividend payments occurring on or after the 30th day following the date of enactment.

No inference is intended regarding the treatment under present law of any transactions addressed by the conference agreement.

16. Credit to holders of rural renaissance bonds (sec. 469 of the Senate amendment)

PRESENT LAW

In general

Interest on bonds issued by State and local governments generally is excluded from gross income for Federal income tax purposes if the proceeds of such bonds are used to finance certain activities of governmental units or if such bonds are repaid with revenue of governmental units. These bonds are called “governmental bonds.” Interest on State and local government bonds used for certain activities of private persons is taxable unless a specific exception applies. These bonds are called “private activity bonds.” The term “private person” generally includes the Federal Government and all other individuals and entities other than States or local governments.

Private activity bonds are eligible for tax-exemption if issued for certain purposes permitted by the Code (“qualified private activity bonds”). Private activity bonds are subject to restrictions on the use of proceeds for the acquisition of land and existing property, use of proceeds to finance certain facilities (e.g., airplanes, skyboxes, other luxury boxes, health club facilities, gambling facilities, and liquor stores), and use of proceeds to pay certain fees (e.g., insurance premiums and underwriter fees). Small issue and redevelopment also are subject to additional restrictions on the use of proceeds for certain facilities (e.g., golf courses and marina piers). Moreover, the term of qualified private activity bonds generally may not exceed 120 percent of the economic life (e.g., golf course and marina piers).

Tax-credit bonds

As an alternative to traditional tax-exempt bonds, States and local governments may issue certain taxable bonds. Rather than receiving interest payments, a taxpayer holding a tax-credit bond on an allowable date is entitled to a credit.

In general, the credit is includible in gross income (as if it were a taxable interest payment on the bond), and the credit may be claimed against the regular income tax and alternative minimum tax liability. The following types of tax-credit bonds may be issued under present law: “qualified zone academy bonds,” which are bonds issued for the purpose of providing equipment to, developing course materials for use at, or training teachers and other personnel at certain school facilities; “clean renewable energy facility project for agricultural producers” bonds, which are issued by the States of Louisiana, Mississippi, and Alabama to pay principal, interest, or premium on certain prior bonds.

Arbitrage restrictions on tax-exempt bonds

To prevent States and local governments from issuing more tax-exempt bonds than is necessary for the activity being financed or from issuing such bonds earlier than needed for the purpose of the borrowing, the Code includes arbitrage restrictions limiting the ability to profit from investment of tax-exempt bond proceeds. In general, arbitrage profits may be earned only during specified periods (e.g., “temporary periods”) before funds are needed for the purpose of the bond. These included funds, which are bonds issued by the States of Louisiana, Mississippi, and Alabama to pay principal, interest, or premium on certain prior bonds.

Renaissance Bonds

Renaissance Bonds are defined as any bonds issued under present law: (i) a water or waste treatment project, (ii) an affordable housing project, (iii) a community facility project, including hospitals, fire and police stations, and nursing and assisted-living facilities, (iv) a value-added agriculture or renewable energy facility project for agricultural producers or farmer-owned entities, including any project to produce the propane-gas processing, or renewable-alternative-fuel (including fuel at least 85 percent of the volume of which consists of ethanol), bio-diesel, animal feed, biogas, or wind as a fuel, (v) a distance learning or telemedicine project, (vi) a rural utility infrastructure project, including any electric or telecommunications system, (vii) a project to expand broadband technology, (viii) a rural teleworks project, and (ix) any of the previously described projects if carried out by or under the Delta Regional Authority. A “rural area” means any area other than a city or town which has a population of greater than 50,000 inhabitants or the urbanized area contiguous and adjacent to such city or town.

For purposes of the provision, the term “qualified issuer” means any not-for-profit cooperative lender which, as of the date of enactment of this provision, has received a guarantee under the Rural Electrification Act. A qualified issuer must also meet a user fee requirement during the period any Rural Renaissance Bond issued by such qualified issuer is outstanding. The user fee requirement is met if the qualified issuer makes semi-annual grants for qualified projects during the period any Rural Renaissance Bond issued by such issuer multiplied by one-half the rate on United States Treasury securities of the same maturity.

The maximum maturity limitation on Rural Renaissance Bonds during the period such bonds are outstanding.

To qualify as Rural Renaissance Bonds, the qualified issuer of such bonds is reasonably expected to and actually spend 95 percent or more of the proceeds of such bonds on qualified projects within the five-year period that begins on the date of issuance. To the extent less than 95 percent of the proceeds are used to finance qualified projects during the five-year spending period, bonds will continue to qualify as Rural Renaissance Bonds if unspent proceeds are used within 90 days from the end of such five-year period to redeem any “nonqualified bonds.” For these purposes, the amount of nonqualified bonds is to be determined in the same manner as Treasury regulations under section 142. In addition, the provision provides that the five-year period to redeem any “nonqualified bonds” is extended by the Secretary upon the qualified issuer’s request.
Under the provision, Rural Renaissance Bonds are subject to the arbitrage requirements of section 148 that apply to traditional tax-exempt bonds. Principles under section 148 and regulations thereunder shall apply for purposes of determining the yield restriction and arbitrage rebate requirements applicable to Rural Renaissance Bonds. For example, for arbitrage purposes, the yield on an issue of Rural Renaissance Bonds is computed by taking into account all income, if any, from such bonds, i.e., whether the bonds are issued at par, premium, or discount. However, for purposes of determining yield, the amount of the credit to a taxpayer holding Rural Renaissance Bonds is not treated as interest, although such credit amount is treated as interest income to the taxpayer.

Rural Renaissance Bonds must be designated as such by the qualified issuer and must be issued in registered form. The provision also requires issuers of Rural Renaissance Bonds to report to issuers of the IRS in a manner similar to that required for tax-exempt bonds. There is a national limitation of $200 million of Rural Renaissance Bonds that the Secretary of the Treasury, in the aggregate, may designate. The authority to issue Rural Renaissance Bonds expires December 31, 2006.

Effective date.—The provision is effective for bonds issued after the date of enactment and before January 1, 2010.

CONFERENCE AGREEMENT

The conference agreement does not include the Senate amendment provision.

17. Modify foreign tax credit rules for large integrated oil companies which are dual capacity taxpayers

PRESENT LAW

U.S. persons are subject to U.S. income tax on their worldwide income. A credit against U.S. tax is allowed for foreign taxes that are paid or accrued (or deemed paid) to any foreign country or possession by a domestic corporation which is a dual capacity taxpayer holding a large integrated oil company which is a dual capacity taxpayer that is creditable is treated as interest income to the taxpayer.

The amount of foreign tax credits that a taxpayer may claim in any year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. The foreign tax credit limitation is calculated separately for specified categories of income. The amount of foreign tax credits paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back one year and carried forward 10 years.

Treasury regulations provide detailed rules for determining whether a foreign levy is a creditable income tax. A levy generally is a tax if it is the regular tax imposed under the authority of a foreign country to levy taxes and is not compensation for a specific economic benefit provided by a foreign country. A tax imposed in lieu of another tax and also receives a specific economic benefit from such country is considered a “dual capacity taxpayer.”

In addition, dual capacity taxpayers and to persons who are citizens or residents of the foreign country or possession. If the country does impose a generally applicable income tax, the foreign tax credit is denied if such amounts exceed the amount (as determined under regulations) which is paid by the dual capacity taxpayer pursuant to such generally applicable income tax, or which would have been paid if such generally applicable income tax were applicable to the dual capacity taxpayer. Amounts not in excess of the amounts so paid or deemed paid that qualify under section 903 as “in lieu” of such taxes. Other foreign levies generally are treated as deductible expenses only.

The amount of foreign tax credits that a taxpayer may claim in any year is subject to a limitation that prevents taxpayers from using foreign tax credits to offset U.S. tax on U.S. source income. The foreign tax credit limitation is calculated separately for specified categories of income. The amount of foreign tax credits paid or accrued (or deemed paid) in any taxable year which exceeds the foreign tax credit limitation is permitted to be carried back one year and carried forward 10 years.

Treasury regulations provide detailed rules for determining whether a foreign levy is a creditable income tax. A levy generally is a tax if it is the regular tax imposed under the authority of a foreign country to levy taxes and is not compensation for a specific economic benefit provided by a foreign country. A tax imposed in lieu of another tax and also receives a specific economic benefit from such country is considered a “dual capacity taxpayer.”

The conference agreement does not include the Senate amendment provision.
spending and tax policies contained in a budget resolution. The Budget Act contains numerous rules enforcing the scope of items permitted to be considered under the budget reconciliation provisions. One such rule, the so-called “Byrd rule,” was incorporated into the Budget Act in 1990. The Byrd rule, named after its principal sponsor, Senator Robert C. Byrd, is contained in section 313 of the Budget Act. The Byrd rule generally permits members to raise a point of order against extraneous provisions (those which are unrelated to the goals of the reconciliation process) from either a reconciliation bill or a conference report on such bill.

Under the Byrd rule, a provision is considered to be extraneous if it falls under one or more of the following six definitions:

1. It does not produce a change in outlays or revenues.
2. It produces an outlay increase or revenue decrease when the instructed committee is not in compliance with its instructions.
3. It is outside of the jurisdiction of the committee that submitted the title or provision for inclusion in the reconciliation measure.
4. It produces a change in outlays or revenues from either a reconciliation bill or a conference report on such bill.
5. It would increase the deficit for a fiscal year beyond those covered by the reconciliation measure.
6. It recommends changes in Social Security.

House Bill

No provision.

Senate Amendment

To ensure compliance with the Budget Act, the Senate amendment provides that the provisions of, and amendments made by, title II, title III of the House bill, and title III of the Senate amendment shall not apply to taxable years beginning after September 30, 2010, and that the Code shall be applied and administered to such years as if those provisions and amendments had never been enacted.

Effective date.—The provision is effective on the date of enactment.

Conference Agreement

The conference agreement does not include the Senate amendment provision.

Title VII—Funding for Military Operations (Secs. 601 and 602 of the Senate amendment)

Present law

Present law does not include the Senate amendment provision.

House Bill

No provision.

Senate Amendment

The Senate amendment provides that there is to be appropriated, out of any money in the Treasury that is not otherwise appropriated for the fiscal years 2006 through 2010, the following amounts, to be used for resetting and recapitalizing equipment being used in theaters of operations:

- $15,900,000,000 for operations and maintenance of the Army;
- $1,500,000,000 for operations and maintenance of the Air Force;
- $1,800,000,000 for aircraft for the Army;
- $5,200,000,000 for aircraft for the Air Force;
- $6,300,000,000 for other Army procurement;
- $10,900,000,000 for wheel and tracked combat vehicles for the Army;
- $67,000,000 for the Army working capital fund;
- $60,000,000 for missiles for the Department of Defense;
- $100,000,000,000 for defense wide procurement for the Department of Defense;
- $10,000,000,000 for Marine Corps procurement;
- $9,500,000,000 for operations and maintenance of the Marine Corps;
- $25,000,000,000 for aircraft procurement.

Conference Agreement

The conference agreement does not include the Senate amendment provision.

Title VIII—Other Revenue Offset Provisions

A. Imposition of Withholding on Certain Payments Made by Government Entities (Sec. 3402 of the Code)

Present Law

Withholding requirements.

Employers are required to withhold income tax on wages paid to employees, including wages and salaries of employees or elected officials of Federal, State, and local government entities. Withholding rates vary depending on the amount of wages paid, the length of the payroll period, and the number of withholding allowances claimed by the employee.

Certain non-wage payments also are subject to mandatory or voluntary withholding. For example:

- Employers are required to withhold FICA and Railroad Retirement taxes from wages paid to their employees. Withholding rates are generally uniform.
- Payors of pensions are required to withhold from payments made to payees, unless the payee elects no withholding. Withholding from periodic payments is at a flat rate based on the fourth lowest rate of tax applicable to single taxpayers.

A variety of payments (such as interest and dividends) are subject to backup withholding if the payee has not provided a valid taxpayer identification number (TIN). Withholding is at a flat rate based on the fourth lowest rate of tax applicable to single taxpayers.

- Voluntary withholding applies to certain Federal payments, such as Social Security payments. Withholding is at rates specified by Treasury regulations.
- Optional withholding applies to unemployement compensation benefits. Withholding is at a flat 10-percent rate.
- Foreign taxpayers are generally subject to withholding on certain U.S.-source income which is not effectively connected with the conduct of a U.S. trade or business. Withholding is at a flat 30-percent rate (14 percent for a percentage of the payroll tax withheld).

Many payments, including payments made by government entities, are not subject to withholding under present law. For example, no tax is required to be withheld from payments of wages or to any other payment with respect to which mandatory or voluntary withholding is required. By regulation, the final authority to determine if a payment is subject to withholding under the provision is exempt from the withholding requirement.

The rate of withholding is three percent on all payments regardless of whether the payor is a Federal, State, or local government or a foreign government. Payments subject to withholding under the provision include any payment made in connection with a government voucher or certificate program which functions as a payment for property or services. For example, payments to a commodity producer under a government commodity support program are subject to withholding under this provision.

The provision imposes information reporting requirements on the payments that are subject to withholding under the provision.

The provision does not apply to any payments made through a Federal, State, or local government public assistance or public welfare program for which eligibility is determined by a need for supportive services. For example, payments under government programs providing food vouchers or medical assistance to low-income individuals are not subject to the withholding requirements.

However, payments under government programs to provide health care or other services that are not based on the needs of the recipients of the payments are subject to withholding. Withholding requirements are generally uniform, including programs where eligibility is based on the age of the beneficiary.

The provision does not apply to payments of wages or to any other payment with respect to which mandatory (e.g., U.S.-source income of foreign taxpayers) or voluntary (e.g., unemployment benefits) withholding is required under present law. The provision does not exclude payments that are potentially subject to backup withholding under section 3406. If, however, payments are actually subject to backup withholding, withholding under the provision does not apply.

The provision also does not apply to the following: payments of interest; payments from tax-exempt entities or foreign governments; intra-governmental payments; payments made pursuant to a classified or confidential contract (as defined in section 6503A(f)(3)); and payments to government employees that are not otherwise excludable from the new withholding provision with respect to the employees' services as an employee.

Effective date.—The provision applies to payments made after December 31, 2010.
B. ELIMINATE INCOME LIMITATIONS ON ROTH IRA CONVERSIONS

(SEC. 408A OF THE CODE)

PRESENT LAW

There are two general types of individual retirement arrangements ("IRAs"): traditional IRAs and Roth IRAs. The total amount that may contribute to one or more IRAs for a year is generally limited to the lesser of: (1) a dollar amount ($4,000 for 2006); and (2) the amount of the individual’s compensation that is includible in gross income for the year. In the case of an individual who has attained age 50 before the end of the year, the dollar amount is increased by an additional amount ($1,000 for 2006). In the case of a married couple, contributions can be made up to the dollar limit for each spouse if the combined compensation of the spouses that is includible in gross income is at least equal to the contributed amount. IRA contributions in excess of the applicable limit are generally subject to an excise tax of six percent per year until withdrawn.

Contributions to a traditional IRA may or may not be deductible. The extent to which contributions to a traditional IRA are deductible depends on whether or not the individual (or the individual’s spouse) is an active participant in an employer-sponsored retirement plan and the taxpayer’s AGI. An individual may deduct his or her contributions to a traditional IRA if neither the individual nor the individual’s spouse is an active participant in an employer-sponsored retirement plan. If an individual or the individual’s spouse is an active participant in an employer-sponsored retirement plan, the deduction is phased out for taxpayers with AGI over certain levels. To the extent an individual does not or cannot make deductible contributions, the individual may make nondeductible contributions to a Roth IRA, subject to the maximum contribution limit. Distributions from a traditional IRA are includible in gross income to the extent not attributable to a return of nondeductible contributions.

Individuals with adjusted gross income ("AGI") below certain levels may make contributions to a Roth IRA (up to the maximum IRA contribution limit). The maximum Roth IRA contribution is phased out between $150,000 to $160,000 of AGI in the case of married taxpayers filing a joint return, and between $50,000 to $60,000 in the case of all other returns (except a separate return of a married individual). Contributions to a Roth IRA are includible in gross income. Contributions from a Roth IRA are excludable from gross income. Distributions from a Roth IRA that are not qualified distributions are includible in gross income to the extent attributable to earnings. In general, a qualified distribution is a distribution that is made on or after the individual attains age 59½, death, disability, or which is a qualified special purpose distribution. A distribution is not a qualified distribution if it is made within the five-taxable year period beginning with the taxable year for which an individual first made a contribution to a Roth IRA.

A taxpayer with AGI of $100,000 or less may convert all or a portion of a traditional IRA to a Roth IRA. The amount converted is treated as a distribution from the traditional IRA for income tax purposes, except that the 10-percent additional tax on early withdrawals does not apply.

In the case of a distribution from a Roth IRA that is not a qualified distribution, certain ordering rules apply in determining the amount of the distribution that is includible in income. For this purpose, a distribution is treated as a qualified distribution, and therefore as a distribution that is not a qualified distribution, in the order in which the distributions were made. If a distribution is treated as a qualified distribution, it is treated as made first from the portion, if any, of the distribution conversion that was required to be included in income as a result of the conversion.

Includible amounts withdrawn from a traditional IRA or a Roth IRA before attainment of age 50 or disability are subject to an additional 10-percent early withdrawal tax, unless an exception applies.

H. BILL
No provision.

SENATE AMENDMENT
No provision.

CONFERENCE AGREEMENT

The conference agreement eliminates the income limits on conversions of traditional IRAs to Roth IRAs. This allows taxpayers to make such conversions without regard to their AGI.

For conversions occurring in 2010, unless a taxpayer elects otherwise, the amount includible in gross income as a result of the conversion is included ratably in 2010 and half of the amount includible in gross income as a result of a conversion occurring in 2010 is included in income in 2011, and half of the amount includible in gross income as a result of the conversion is includible in gross income in 2011 and half in 2012. However, income inclusion is accelerated if converted amounts are distributed before the close of the year. The amount includible in income in the year of the distribution is increased by the amount distributed, and the amount included in income in 2012 (or 2011 and 2012 in the case of a distribution in 2010) is the lesser of: (1) half of the amount includible in gross income as a result of the conversion; and (2) the remaining portion of the amount includible in gross income. The following example illustrates the application of the accelerated inclusion rule.

Example.—Taxpayer A has a traditional IRA with a value of $100, consisting of deductible contributions and earnings. A does not have a Roth IRA. A converts the traditional IRA to a Roth IRA. For 2010, as a result of the conversion, $100 is includible in gross income. Unless A elects otherwise, $50 of the income resulting from the conversion is included in income in 2011 and $50 in 2012. Later in 2010, A takes a $20 distribution, which is not a qualified distribution and all of which, under the ordering rules, is attributable to amounts includible in gross income as a result of the conversion. Under the accelerated inclusion rule, $30 is included in income in 2011. (The converted income in 2011 is the lesser of (1) $50 (half of the income resulting from the conversion) or (2) $70 (the remaining income from the conversion), or $30 (the converted income in 2012 is the lesser of (1) $50 (half of the income resulting from the conversion) or (2) $30 (the remaining income from the conversion), i.e., $50 converted in 2010 and $50 included in income in 2011), or $30.)

Under the conference agreement, married taxpayers filing a joint return may convert amounts in a traditional IRA into a Roth IRA.

Foreign trade gross receipts were gross receipts derived from certain activities in connection with "qualifying foreign trade property" with respect to which certain economic processes had taken place outside of the United States. Specifically, the gross receipts must have been: (1) from the sale, exchange, or other disposition of qualifying foreign trade property; (2) from the lease or rental, for periods longer than two years, of qualifying foreign trade property for use by the lessee outside the United States; (3) for services which were related and subsidiary to the sale, exchange, disposition, lease, or rental of qualifying foreign trade property (as described above); (4) for engineering or architectural services for construction projects located outside the United States; or (5) for the performance of certain managerial services for unrelated persons. A taxpayer could elect to treat gross receipts from a transaction as not being foreign trading gross receipts. As a result of such an election, the taxpayer’s gross income attributable to foreign trade property would be subject to a reduced rate of income tax.

Effective date.—The provision is effective for taxable years beginning after December 31, 2009.
election, a taxpayer could use any related foreign tax credits in lieu of the exclusion.

Qualifying foreign trade property generally was property manufactured, produced, grown, or extracted within or outside the United States that was held primarily for sale, lease, or rental in the ordinary course of a trade or business for direct use, consumption, or use outside the United States. No more than 50 percent of the fair market value of such property could be attributable to the sum of: (1) the fair market value of articles manufactured outside the United States; and (2) the direct costs of labor performed outside the United States. With respect to property that was manufactured with the United States, such rules were provided to ensure consistent U.S. tax treatment with respect to manufactured goods.

The American Jobs Creation Act of 2004 ("AJCA") repealed the ETI exclusion, generally effective for transactions after December 31, 2004. AJCA provides a general transition rule under which taxpayers retain 100 percent of their ETI benefits for transactions prior to 2005, 80 percent of their otherwise-applicable ETI benefits for transactions during 2005, 70 percent of their otherwise-applicable ETI benefits for transactions during 2006. In addition to the general transition rule, AJCA provides that the ETI exclusion provisions remain in effect for transactions in the ordinary course of a trade or business if such transactions are pursuant to a binding contract entered into by the taxpayer and an unrelated person and such contract is in effect on September 17, 2003, and at all times thereafter (the "ETI binding contract relief"). In early 2006, the WTO Appellate Body held that the ETI general transition rule and the FSC and ETI binding contract relief measures are prohibited export subsidies.

No provision. SENATE AMENDMENT

HOUSE BILL

No provision. SENATE AMENDMENT

CONFERENCE AGREEMENT

The conference agreement repeals both the FSC binding contract relief and the ETI binding contract relief. The general transition rule remains in effect.

Effective date.—The provision is effective for taxable years beginning after date of enactment.

D. MODIFICATION OF WAGE LIMIT FOR PURPOSES OF DOMESTIC PRODUCTION ACTIVITIES DEDUCTION (Sec. 199 of the Code) PRESENT LAW

In general Present law provides a deduction from taxable income (or, in the case of an individual, adjusted gross income) that is equal to a portion of the taxpayer’s qualified production activities income. For taxable years beginning after December 31, 2005, the deduction is nine percent of such income. For taxable years beginning in 2005 and 2006, the deduction is three percent of income and, for taxable years beginning in 2007, 2008, and 2009, the deduction is six percent of income. However, the deduction for a taxable year is limited to 50 percent of the wages paid by the taxpayer during the calendar year that ends in such taxable year.

Qualified production activities income

In general, "qualified production activities income" is equal to domestic production activities income (as defined in section 199(c), reduced by the sum of: (1) the costs of goods sold that are allocable to such receipts; and (2) other expenses, losses, or deductions which are properly allocable to such receipts.

Application of wage limitation to passthrough entities

For purposes of applying the wage limitation, a shareholder, partner, or similar person who is allocated components of qualified production activities income from a passthrough entity also is treated as having been allocated wages by the Secretary; or (2) twice the qualified production activities income that actually is allocated to such person for the taxable year.

No provision. SENATE AMENDMENT

HOUSE BILL

No provision. SENATE AMENDMENT

CONFERENCE AGREEMENT

Under the conference agreement, the wage limitation is modified such that taxpayers may only include amounts which are properly allocable to domestic production gross receipts. Thus, the wage limitation is 50 percent of the wages prescribed by the Secretary, or (2) the qualified production activities income that is actually allocated to such person for the taxable year.

In addition, the conference agreement repeals the special limitation on wages treated as allocated to partners or shareholders of passthrough entities. Accordingly, for purposes of the wage limitation, a shareholder, partner, or similar person who is allocated components of qualified production activities income from a passthrough entity is treated as having been allocated wages by the Secretary, or (2) twice the qualified production activities income that actually is allocated to such person for the taxable year. The shareholder, partner, or similar person will then include in its wage limitation only those wages which are deducted in arriving at qualified production activities income.

Effective date.—The conference agreement is effective with respect to taxable years beginning after the date of enactment.

E. MODIFICATION OF EXCLUSION FOR CITIZENS LIVING ABROAD (Sec. 911 of the Code) PRESENT LAW

In general U.S. citizens generally are subject to U.S. income tax on all their income, whether derived in the United States or elsewhere. A U.S. citizen who earns income in a foreign country also may be taxed on that income by the foreign country. The United States generally taxes the primary income of a U.S. citizen’s non-U.S. source income to the foreign country in which the income is derived. This concession is effected by the allowance of an exclusion for taxes paid on foreign-source income that exceeds a certain amount.

Exclusion for compensation

The foreign earned income exclusion generally is available for a qualified individual’s non-U.S. source earned income attributable to personal services performed by an individual during the period of foreign residence or presence described above. The maximum exclusion amount for any calendar year is $80,000 in 2002 through 2007 and is indexed for inflation after 2007.

Exclusion for housing costs

A qualified individual is allowed an exclusion from gross income (or, as described below, a deduction) for certain foreign housing costs paid or incurred by or on behalf of the individual. The amount of this housing cost exclusion is equal to the excess of a taxpayer’s reasonable foreign housing expenses over a housing amount. The term “housing expenses” means the reasonable expenses paid or incurred during the taxable year for a taxpayer (and, if they maintain a household also are eligible for exclusion. The term includes expenses attributable to housing such as utilities and insurance, but it does not include separately deductible interest and taxes. If the taxpayer maintains a household outside the United States for personal services performed by the taxpayer because of dangerous, unhealthy, or otherwise adverse living conditions, the housing expenses of the second household also are eligible for exclusion. The base housing amount above which costs are eligible for exclusion in a taxable year is 16 percent of the annual salary (computed on a daily basis) of a grade GS-14, step 1, U.S. government employee, multiplied by the number of days of foreign residence or presence (as described above) in the taxable year.

For purposes of the provision, "wages" include the sum of the amounts of wages as defined in section 83(f), interest and taxes paid on wages, and any other amounts which properly report to the Social Security Administration with respect to the employment of employees of the taxpayer during the calendar year. The taxpayer’s annual taxable income is the taxpayer’s taxable year. Effective deferrals include elective deferrals as defined in section 401(a)(17), Roth contributions (as defined in section 408A) and non-qualified deferrals (as defined in section 415). For years beginning after December 31, 2005, designated Roth contributions (as defined in section 408A) are included.

As under present law, the Secretary shall provide rules for the proper allocation of items (including wages) of qualified production activity income. Section 199(c)(2).
For 2006 this salary is $77,783; the current base housing amount therefore is $12,447 (assuming the taxpayer is a bona fide resident of or is present in a foreign country every day during the period).

To the extent otherwise excluding household costs are not paid or reimbursed by a taxpayer’s employer, these costs generally are allowed as deduction in computing adjusted gross income.

Exclusion limitation amounts

The combined foreign earned income exclusion and housing cost exclusion (including the amounts of any deductible housing costs) may not exceed the taxpayer’s total foreign earned income for the taxable year. The taxpayer’s foreign tax credit is reduced by the amount of the credit that is attributable to excluded income.

Tax brackets

A taxpayer with an excluded income under section 911 is subject to tax on the taxpayer’s other income, after deductions, starting in the lowest tax rate bracket.

No provision.

CONFERENCE AGREEMENT

Exclusion for compensation

The conference agreement provision adjusts for inflation the maximum amount of the foreign earned income exclusion in taxable years beginning in calendar years after 2005 (rather than, as under present law, after 2007). The limitation in 2006 therefore is $82,400.

Exclusion for housing costs

Under the conference agreement, the base housing amount used in calculating the foreign housing cost exclusion in a taxable year is 16 percent of the grade GS-14, step 1 amount, multiplied by the number of days of foreign residence or presence (as previously described) in that year.

Reasonable foreign housing expenses in excess of the base housing amount remain excluded from gross income (or, if paid by the taxpayer, are deductible) under the conference agreement, but the amount of the exclusion is not more than 95 percent of the maximum amount of a taxpayer’s foreign earned income exclusion. The Secretary is given authority to issue regulations or other guidance providing for the adjustment of this 95 percent housing cost limitation based on geographic differences in housing costs relative to housing costs in the United States. The conference agreement intend that the Secretary be permitted to use publicly available data, such as the Quarterly Report Indexes published by the U.S. Department of Labor, or any other information that is reasonably reliable by the Secretary, in making adjustments. The conference agreement also intend that the Secretary may adjust the 30 percent amount upward or downward. The conference agreement intend that the Secretary make adjustments annually.

Under the 30-percent rule described above, the maximum amount of the foreign housing cost exclusion in 2006 is (assuming foreign residence or presence on all days in the year)

\[ \$11,536 = (\$82,400 \times 0.30) = (\$82,400 \times 0.16) \] 

Tax brackets

Under the conference agreement, if an individual exclusion from income under section 911, any income in excess of the exclusion amount determined under section 911 is taxed (under the regular tax and alternative minimum tax) by applying to that income the tax rates that would have been applicable had the individual not elected the section 911 exclusion. For example, an individual with $80,000 of foreign earned income that is excluded under section 911 and with $20,000 in other taxable income (after deductions) would be subject to tax on the $20,000 at tax rates applicable to taxable income in the range of $80,000 to $100,000.

Effective date

The conference agreement provision is effective for taxable years beginning after December 31, 2005.

No provision.

SENATE AMENDMENT

No provision.

CONFERENCE AGREEMENT

In general, corporations are required to make quarterly estimated tax payments of their income tax liability. For a corporation whose taxable year is a calendar year, these estimated tax payments must be made by April 15, June 15, September 15, and December 15.

No provision.

SUMMARY DESCRIPTION OF PROVISION

The conference agreement provision extends the zero- and 15-percent capital gain and dividend rates to taxable years beginning in 2009 and 2010.

Number of affected taxpayers

It is estimated that the provision will affect 33 million individual tax returns.

Discussion

The extension of the provision means that for 2009 and 2010 individual taxpayers and the IRS will continue to use the same forms for capital gains and dividends.

The extension of the lower rates for net capital gain will achieve simplification because the extension prevents the separate five-year holding periods from going into effect in 2009 and 2010. On the other hand, the extension of the lower rates for dividends will continue requiring dividends to be classified as qualified dividends and nonqualified dividends in 2009 and 2010 and will continue to require the tax to be computed using the capital gain forms.

Increase in the AMT exemption amount (sec. 301 of the conference agreement)

SUMMARY DESCRIPTION OF PROVISION

The alternative minimum tax exemption amounts for 2006 are increased.

Number of affected taxpayers

It is estimated that the provisions will affect approximately 19 million individual tax returns.

Discussion

Many individuals will not have to compute their alternative minimum tax and file the IRS forms relating to that tax.

TITLE XI—UNFUNDED MANDATES

The staff of the Joint Committee on Taxation has reviewed the tax provisions in the conference agreement for H.R. 4276, the “Tax Relief Extension Reconciliation Act of 2005” as agreed to by the conferences. This information is provided in accordance with the requirements of Public Law 104-4, the Unfunded Mandates Reform Act of 1995, which provides that if a conference agreement contains (1) a mandate that was not previously considered by either the House or the Senate, or (2) an increase in the direct cost of a program or activity considered by the committee of conference is to ensure, to the greatest extent practicable, that a mandates statement is prepared.

We have determined that the tax provisions of the conference agreement contain two unfunded private sector mandates that were not previously considered by either the House or the Senate: (1) repeal of PSC-ETI grandfather rule, and (2) amend section 911 housing exclusion. In addition, the provision relating to withholding on certain government payments imposes an intergovernmental mandate not previously considered by either the House or the Senate.

The costs required to comply with each Federal private sector mandate generally are no greater than the aggregate estimated budget.
effects of the provision as indicated on the enclosed revenue table. Benefits from the provisions include improved administration of the tax laws and a more accurate measurement of income for Federal income tax purposes.
### ESTIMATED REVENUE EFFECTS OF THE CONFERENCE AGREEMENT FOR THE "TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005"

**Fiscal Years 2006 - 2015**

**[Millions of Dollars]**

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<td><strong>I. Extension and Modification of Certain Provisions</strong></td>
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<td>1,222</td>
<td>826</td>
<td>476</td>
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<td>b. Dividends (sunet 12/31/10)</td>
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<td>-4,431</td>
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<td>3. Controlled foreign corporations:</td>
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<td>a. Exception under subpart F for active financing income</td>
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<td>b. Look-through treatment of payments between related CFCs under</td>
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<td><strong>Total of Extension and Modification of Certain Provisions</strong></td>
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<td>-1,012</td>
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<td>376</td>
<td>364</td>
<td>-33,367</td>
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<td><strong>II. Other Provisions</strong></td>
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<td>2. Modify active business definition under section 355</td>
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<td>3. Expand the qualified veterans’ mortgage bond program</td>
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<td>4. Provide capital gains treatment for certain self-created</td>
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<td>-14</td>
<td>-20</td>
</tr>
<tr>
<td>5. Expand the eligibility for the tonnage tax election</td>
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<tr>
<td>(minimum of 6,000 deadweight tons) (sunet taxable</td>
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<tr>
<td>years ending before 1/1/11)</td>
<td>tyba 12/31/05</td>
<td>-2</td>
<td>-3</td>
<td>-4</td>
<td>-4</td>
<td>-4</td>
<td>-4</td>
<td>-4</td>
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<td>-17</td>
<td>-20</td>
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<td>6. Modification of certain arbitrage rules for certain funds</td>
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<tr>
<td>(include 20% State limitation) (sunet 8/31/08)</td>
<td>bia DOE</td>
<td>---</td>
<td>---</td>
<td>-1</td>
<td>-2</td>
<td>-1</td>
<td>-1</td>
<td>-3</td>
<td>-5</td>
<td>-5</td>
<td>-2</td>
<td>-3</td>
<td>0</td>
</tr>
<tr>
<td>7. Amortization of song rights (sunet 12/31/10)</td>
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<td></td>
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</tr>
<tr>
<td>ppsi tyba 12/31/05</td>
<td>1</td>
<td>3</td>
<td>2</td>
<td>1</td>
<td>-1</td>
<td>-3</td>
<td>-5</td>
<td>-5</td>
<td>-2</td>
<td>-3</td>
<td>6</td>
<td>-13</td>
<td></td>
</tr>
<tr>
<td>8. Modification to small issue bonds - accelerate effective</td>
<td></td>
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<tr>
<td>9. Modification of treatment of loans to qualified continuing</td>
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<tr>
<td>care facilities (sunet 12/31/10)</td>
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<tr>
<td>[5]</td>
<td>[1]</td>
<td>-3</td>
<td>-2</td>
<td>-2</td>
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<td>-1</td>
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<td>---</td>
<td>---</td>
<td>---</td>
<td>-10</td>
<td>-10</td>
</tr>
<tr>
<td><strong>Total of Other Provisions</strong></td>
<td></td>
<td>-4</td>
<td>-22</td>
<td>-38</td>
<td>-48</td>
<td>-54</td>
<td>-54</td>
<td>-52</td>
<td>-46</td>
<td>-41</td>
<td>-41</td>
<td>-167</td>
<td>-403</td>
</tr>
</tbody>
</table>
### III. Individual AMT Provisions

<table>
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</tr>
</thead>
<tbody>
<tr>
<td>1. Increase individual AMT exemption amount for 2006 to $42,500 ($62,550 Joint) (sunset 12/31/06)</td>
<td>tyba 12/31/05</td>
<td>-12,419</td>
<td>-18,628</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>-31,047</td>
<td>-31,047</td>
<td></td>
</tr>
<tr>
<td>2. Treatment of nonrefundable personal credits under the individual alternative minimum tax (sunset 12/31/06) [6]</td>
<td>tyba 12/31/05</td>
<td>-565</td>
<td>-2,260</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>-2,825</td>
<td>-2,825</td>
<td></td>
</tr>
<tr>
<td>Total of Individual AMT Provisions</td>
<td></td>
<td>-12,984</td>
<td>-20,888</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>-33,872</td>
<td>-33,872</td>
<td></td>
</tr>
</tbody>
</table>

### IV. Corporate Estimated Tax Provisions

<table>
<thead>
<tr>
<th></th>
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</tr>
</thead>
<tbody>
<tr>
<td>1. Increase corporate estimated tax payments due July through September for corporations with assets in excess of $1 billion in certain years (increase to 105% in 2006, 106.25% in 2012, and 100.75% in 2013 of the otherwise required amount)</td>
<td>DOE</td>
<td>2,209</td>
<td>-2,209</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
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</tr>
<tr>
<td>2. Delay due date until October 1 for a percentage of corporate estimated taxes that are otherwise due on September 15 in certain years (20.5% in 2010 and 27.5% in 2011)</td>
<td>DOE</td>
<td>---</td>
<td>---</td>
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</tbody>
</table>

### V. Revenue Offset Provisions

<table>
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<tr>
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<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Application of earnings stripping rules to partners which are C corporations</td>
<td>tybo/a DOE</td>
<td>2</td>
<td>23</td>
<td>25</td>
<td>27</td>
<td>29</td>
<td>31</td>
<td>33</td>
<td>35</td>
<td>38</td>
<td>41</td>
<td>106</td>
<td>284</td>
</tr>
<tr>
<td>2. Reporting of interest on tax-exempt bonds</td>
<td>ipa 12/31/05</td>
<td>[7]</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>2</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>9</td>
<td>24</td>
</tr>
<tr>
<td>3. 5-year amortization of geological and geophysical costs for major integrated oil companies</td>
<td>apola DOE</td>
<td>5</td>
<td>28</td>
<td>49</td>
<td>48</td>
<td>30</td>
<td>10</td>
<td>3</td>
<td>4</td>
<td>6</td>
<td>6</td>
<td>160</td>
<td>189</td>
</tr>
<tr>
<td>4. Treatment of distributions attributable to FIRPTA gains (including application of FIRPTA to RICs, and prevention of avoidance through wash sales) [6]</td>
<td>various</td>
<td>1</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>3</td>
<td>13</td>
<td>28</td>
<td></td>
</tr>
<tr>
<td>5. Section 355 not to apply to distributions involving disqualified investment companies</td>
<td>da DOE</td>
<td>2</td>
<td>9</td>
<td>11</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>12</td>
<td>15</td>
<td>15</td>
<td>16</td>
<td>46</td>
</tr>
<tr>
<td>6. Loan and redemption requirements on pooled financings (30% first-year loan origination requirement)</td>
<td>bia DOE</td>
<td>16</td>
<td>35</td>
<td>39</td>
<td>40</td>
<td>42</td>
<td>44</td>
<td>46</td>
<td>49</td>
<td>52</td>
<td>54</td>
<td>172</td>
<td>417</td>
</tr>
<tr>
<td>7. Require partial payments with submissions of offers-in-compromise (permanent 24-month rule)</td>
<td>osoa 60a DOE</td>
<td>---</td>
<td>160</td>
<td>172</td>
<td>185</td>
<td>199</td>
<td>214</td>
<td>230</td>
<td>247</td>
<td>265</td>
<td>285</td>
<td>715</td>
<td>1,955</td>
</tr>
<tr>
<td>8. Increase in age of minor children whose unearned income is taxed as if parent's income</td>
<td>tyba 12/31/05</td>
<td>56</td>
<td>145</td>
<td>203</td>
<td>219</td>
<td>153</td>
<td>204</td>
<td>242</td>
<td>260</td>
<td>298</td>
<td>349</td>
<td>776</td>
<td>2,128</td>
</tr>
<tr>
<td>9. Withholding on government payments (including payments under certificate or voucher programs) for property and services</td>
<td>prna 12/31/10</td>
<td>---</td>
<td>---</td>
<td>---</td>
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<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>6,977</td>
</tr>
<tr>
<td>10. Eliminate the income limitations on Roth IRA conversions; taxpayers can elect to pay tax on amounts converted in 2010 in equal installments in 2011 and 2012</td>
<td>tyba 12/31/09</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>---</td>
<td>-154</td>
<td>-293</td>
<td>2,541</td>
<td>4,929</td>
<td>1,756</td>
<td>-1,080</td>
<td>-1,267</td>
<td>-447</td>
</tr>
<tr>
<td>11. Repeal of FSC/ETI binding contract relief</td>
<td>tyba DOE</td>
<td>6</td>
<td>209</td>
<td>144</td>
<td>72</td>
<td>36</td>
<td>18</td>
<td>9</td>
<td>5</td>
<td>2</td>
<td>1</td>
<td>467</td>
<td>502</td>
</tr>
<tr>
<td>12. Modify wage limitation for section 199 to include only wages allocable to domestic production gross receipts and repeal special rule limiting amount of W-2 wages allocated by pass-thru entities</td>
<td>tyba DOE</td>
<td>1</td>
<td>7</td>
<td>8</td>
<td>9</td>
<td>19</td>
<td>24</td>
<td>26</td>
<td>28</td>
<td>29</td>
<td>31</td>
<td>43</td>
<td>181</td>
</tr>
<tr>
<td>13. Amend section 911 housing exclusion and impose a stacking rule and provide regulatory authority to allow for geographic differences</td>
<td>tyba 2005</td>
<td>15</td>
<td>261</td>
<td>199</td>
<td>206</td>
<td>222</td>
<td>228</td>
<td>234</td>
<td>239</td>
<td>254</td>
<td>268</td>
<td>903</td>
<td>2,126</td>
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<td></td>
</tr>
<tr>
<td>Total of Revenue Offset Provisions</td>
<td></td>
<td>104</td>
<td>900</td>
<td>886</td>
<td>704</td>
<td>494</td>
<td>9,457</td>
<td>6,036</td>
<td>2,826</td>
<td>182</td>
<td>100</td>
<td>3,086</td>
<td>21,787</td>
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<tr>
<td>NET TOTAL</td>
<td></td>
<td>-10,757</td>
<td>-23,231</td>
<td>-6,765</td>
<td>-18,458</td>
<td>-10,745</td>
<td>147</td>
<td>105</td>
<td>85</td>
<td>121</td>
<td>423</td>
<td>-69,960</td>
<td>-69,084</td>
</tr>
</tbody>
</table>

Legend for "Effective" column:
- sa = accounts and funds established after
- ap = amounts paid or incurred after
- bi = bonds issued after
- da = distributions after
- ipa = interest paid after
- os = offers submitted on and after
- pm = payments made after
- pp = property placed in service in
- so = sales or exchanges in
- ty = taxable years beginning after
- 60da = 60 days after
- 30da = 30 days after

[1] Loss of less than $500,000.
[2] Effective for taxable years of foreign corporations beginning after December 31, 2006, and before January 1, 2009, and to taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.
[3] Effective for taxable years of foreign corporations beginning after December 31, 2005, and before January 1, 2009, and to taxable years of U.S. shareholders with or within which such taxable years of such foreign corporations end.
[4] Modification of definition of a qualified veteran is effective for bonds issued on or after the date of enactment. New State volume limitation is effective for allocations of State volume limits after April 5, 2006.
[5] Effective for calendar years beginning after December 31, 2005, with respect to loans made before, on, or after such date.
[6] The "Economic Growth and Tax Relief Reconciliation Act of 2001" provides that the child tax credit and adoption tax credit are allowed for purposes of the alternative minimum tax for 2002 through 2010. For purposes of the alternative minimum tax, the proposal does not treat the alternative motor vehicle credit and the alternative fuel vehicle retueling property credit as nonrefundable personal credits.
[7] Gain of less than $500,000.
[9] Effective for taxable years ending after the date of enactment, with respect to transactions before, on, or after such date, except that no tax applies to income or proceeds that are properly allocable to the period ending 90 days after the date of enactment; effective for disclosures due after the date of enactment.
The House was called to order by the Speaker pro tempore. Pursuant to clause 12(a) of rule I, the Chair announced the House in recess until approximately 6:30 p.m. today. Accordingly (at 4 o’clock and 26 minutes p.m.), the House stood in recess until approximately 6:30 p.m.

RECESS

The Speaker pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess until approximately 6:30 p.m. today. The second vote in this series will be on the motion to suspend the rules and pass the bill, H.R. 5037.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The Speaker pro tempore. Pursuant to clause 8 of rule XX, proceedings will resume on motions to suspend the rules temporarily postponed.

VOTES WILL BE TAKEN IN THE FOLLOWING ORDER:

- H. Res. 803: by the yeas and nays;
- H.R. 5037: by the yeas and nays;
- H.R. 3829: by the yeas and nays.

The first and third electronic votes will be conducted as 15-minute votes. The second vote in this series will be conducted as a 5-minute vote.

PROVIDING FOR CONCURRENCE BY HOUSE WITH AMENDMENT IN SENATE AMENDMENT TO H.R. 1499, HEROES EARNED RETIREMENT OPPORTUNITIES ACT

The Speaker pro tempore. The pending business is the question of suspending the rules and agreeing to the resolution. H. Res. 803.

The Clerk read the title of the resolution.

The Speaker pro tempore. The question is on the motion offered by the gentleman from Texas (Mr. Sam Johnson) that the House suspend the rules and agree to the resolution. H. Res. 803, on which the yeas and nays are ordered.
(Roll No. 129)  

**YEAS—408**

---

**NAYS—3**

Frank (MA)  Paul  Wu

---

**NOT VOTING—21**

Andrew  Barrett (SC)  Senghor  Vinson
Brown (VA)  Cornyn  Nunn  Osorio
Brown-Waite  Corzine  Osborne  Payne
Burton (NJ)  Crocker  Peterrson  Smith (WA)
Butlerfield  Cummings  Millender-  Strickland
Buyer  Davis (FL)  Davis (GA)  Taucher

---

**HONORING IKE SKELTON**

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

Mr. CLEAVER. Mr. Speaker, on this past Friday evening, our colleague, Ike Skelton, joined an elite group of Americans as he was presented with the Harry S Truman Public Service Award. He joins Colin Powell, Madeline Albright, Henry Kissinger and Tom Eagleton, just to name a few; and so I stand before you, Mr. Speaker and colleagues of Ike Skelton, to say that we are proud of what he has done over his career and fact that he has now been recognized by the body that salutes Harry Truman.  

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**JACK C. MONTGOMERY DEPARTMENT OF VETERANS AFFAIRS MEDICAL CENTER**

The Speaker pro tempore. The pending business is the question of suspending the rules and passing the bill, H.R. 3829.

The Clerk read the title of the bill. The Speaker pro tempore. The question is on the motion made by the gentleman from Indiana (Mr. BUYER) that the House suspend the rules and pass the bill, H.R. 3829, on which the yeas and nays are being ordered.

The vote was taken electronically, as there were yeas 407, nays 0, not voting 25, as follows:

(Roll No. 130)  

**YEAS—407**

---

**1910**

So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated for: Mr. BARRETT of South Carolina. Mr. Speaker, on Roll No. 123, an unanimous Delad. Had I been present, I would have voted "yea."
PERSONAL EXPLANATION

Mr. GUZIERREZ. Mr. Speaker, I was unavailable to vote from this Chamber today. I would like the RECORD to show that, had I been present, I would have voted “yea” on rollcall votes 128, 129 and 130.

PERSONAL EXPLANATION

Mr. DAVIS of Kentucky. Mr. Speaker, on Tuesday, May 9, 2006, I was absent from the House. Had I been present I would have voted: Rollcall No. 129—“yea”; rollcall No. 129—“yea”; rollcall No. 130—“yea.”

PERSONAL EXPLANATION

Mr. GREEN of Wisconsin. Mr. Speaker, I was absent from Washington on Tuesday, May 9, 2006. As a result, I was not recorded for rollcall votes No. 128, No. 129 and No. 130. Had I been present I would have voted “yea” on rollcall No. 128, No. 129 and No. 130.

PRIVILEGED REPORT ON RESOLUTION OF INQUIRY TO THE PRESIDENT

Mr. SHAYS, from the Committee on Government Reform, submitted an adverse privileged report (Rept. No. 109-457) on the resolution (H. Res. 752) requesting the President to transmit to the House of Representatives not later than 14 days after the date of adoption of these resolution documents in the possession of the President relating to the receipt and consideration by the Executive Office of the President of any information concerning the variation between the version of S. 1992, the Deficit Reduction Act of 2005, that the House of Representatives passed on February 1, 2006, and the version of the bill that the President signed on February 8, 2006, which was referred to the House Calendar and ordered to be printed.

REMOVAL OF NAME AS COPSONSPOR OF H.R. 5289

Mr. BOREN. Mr. Speaker, I ask unanimous consent that my name be removed as cosponsor for H.R. 5289.

The SPEAKER pro tempore (Mr. Kuhl of New York). Is there objection to the request of the gentleman from Oklahoma?

There was no objection.

MILITARY RECRUITMENT TACTICS

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

Mr. BLUMENAUER. Mr. Speaker, this weekend the Portland Oregonian reported a troubling story of an 18-year-old high school student with autism in my district who, despite his disability, was recruited into the Army as a cavalry scout, over the strong objection of his parents, and in violation of military rules.

To place somebody with his disability in a combat role would create an entirely unnecessary risk of harm, not just to him, but other members of his unit who would have to rely on him.

I have written to the Secretary of Defense calling for an investigation in this case, which does not appear to be an isolated incident. Accusations of recruitment abuse are at record levels as recruiters face extreme pressure to meet enlistment targets and quotas.

I also believe that the military has created a situation where recruiters are pressured to act in unethical and possible illegal ways in order to successfully fulfill their orders.

I believe we need a real investigation into the breadth of such requirement practices, and that new safeguards must be put in place to ensure that what happened to my young constituent doesn’t happen to any other young man or woman.

Our Nation cannot produce the finest fighting force in the world without also demanding the most rigorous standards of conduct in all ranks of the military.

THE SLY FOX OF MEXICO

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

Mr. POE. Mr. Speaker, let me recite to you an immigration policy.

1. If you migrate to this country you must speak the native language.
2. You have to be a professional or an investor. No unskilled workers are allowed.
3. There will be no special bilingual programs in the schools, no special ballots or elections, and all government business will be conducted in one language.
4. Foreigners will not have the right to vote.
5. Foreigners will never be able to hold public office.
6. Foreigners will not be a burden to taxpayers. There will be no welfare, no food stamps, no health care or other government assistance programs.
7. If foreigners come and want to buy land, that is highly restricted.
8. Foreigners may not protest. No demonstrations, no foreign flag, no political organizing, no criticizing the President or the policies. If you do, you will be sent back to your country.
9. If you come to this country illegally, you will be arrested by our Federal police and sent to jail.

Mr. Speaker, this is not U.S. immigration policy, but the alleged policy of President Vicente Fox and Mexico. President Fox is a hypocrite for trying to dictate to America what we should do in this country, letting his illegal citizens into the United States, while I apparently demanding tougher immigration laws in my own country. Fox is nothing more than a fox in fox clothing. And that’s just the way it is.

<table>
<thead>
<tr>
<th>Name</th>
<th>State</th>
<th>District</th>
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So (two-thirds of those voting having responded in the affirmative) the rules were suspended and the bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

PERSONAL EXPLANATION

Mr. MURPHY. Mr. Speaker, I regret that I was unable to be present for today’s rollcall votes due to a death in the family. Had I been present, let the RECORD reflect that I would have voted “yea” on H.R. 1499, “yea” on H.R. 5037, and “yea” on H.R. 3829.
Mr. Speaker, I rise today to honor the memory of a young woman whose life tragically was cut short by her decision not to wear her seatbelt.

Katlyn Marie Marchetti, known as Katie to her family and friends, was a vibrant, loving, community-oriented high school junior who dreamed of a career in fashion or interior design. She encouraged other young women through her participation in the Oprah Project, a nonprofit group dedicated to empowering and inspiring high school girls to believe that an individual’s true beauty comes from within.

As a junior at Durant High School in Valrico, Florida, Katie planned to take college courses. Her commitment to academic achievement and hard work guaranteed that she would succeed in whatever field she chose. Katie’s entire future was ahead of her, and what a bright one it would have been. But it was not to be. On March 3, 2006, Katie was involved in a car accident that ended up claiming her life early the following morning. To the devastation of her loving parents, Vincent and Laura, and her younger brother, Andrew, she was not wearing her seatbelt. Had she buckled up, March 4 may have been one day closer to realizing her dreams. Instead, it was the day when they were ended.

Unfortunately, Katie’s decision to forego wearing a seatbelt is not uncommon. Among the entire population, teenagers are the most likely to neglect this important lifesaving measure. A study conducted by the National Highway Traffic Safety Administration in 2002 indicated that only 69 percent of teens killed in crashes were not wearing safety belts.

Data also reveals insights into why teens neglect to fasten up when they get in a vehicle. According to a 2003 survey, only 79 percent of teen drivers reported that they wear a seatbelt all the time. About 47 percent indicated that safety belts were as likely to harm as to help, and 30 percent said that crashes close to home were usually not as serious. Approximately 30 percent affirmed that they would feel self-conscious if they were going against the group norm in wearing safety belts.

Mr. Speaker, these statistics are troubling. Seatbelt use has proven effective time and again in saving lives. According to NHTSA, the wearing of safety belts saved an estimated 14,164 lives in 2002. Choosing to buckle up is the best protection against drunk, tired, or aggressive drivers. And yet people choose not to take this precaution. What can be done to encourage them to do so?

Studies have shown that highly publicized and visible enforcement of safety belt laws have increased seatbelt use. Peer-led education and awareness particularly effective for teenagers. Because teens tend to forget to fasten their seatbelts and are less likely than adults to disengage warning systems, they may be more likely to be persuaded to buckle up by these announcements.

Mr. Speaker, I encourage the automobile industry to help address this problem by increasing and expanding the manufacture of vehicles with warning systems that do not disengage until the seatbelt is fastened. These systems may save precious young lives.

Republican playbook. Attack anyone who disagrees— I know those tactics firsthand.  

But the cracks are beginning to show in the Republican wall of silent acquiescence.

\[45\]

A rubber stamp is still being used in this Congress by the Republicans, but many of my colleagues, my Republican colleagues, know that their mandatory vote at the discretion of the President is not in the best interest of the American people, and the people are beginning to listen to other voices, when they hear them above the clatter of the Republican noise machine. Here is the proof.

David Wise in the Los Angeles Times recently wrote an article entitled, "Secrecy's Shadow Falls on Washington." I must agree. The administration has the American people in the RECORD. To help the American people understand how pervasive secrecy in the administration is, let me read a short excerpt from Mr. Wise's article, quote, The National Archives and Records Administration have been embarrased by the revelation that at least 55,000 documents formerly available to researchers have been withdrawn and reclassified under secret agreements with the military and the CIA. The deals were so secretive that the documents simply disappeared from the shelves. That is the end of the quote.

At least temporarily the head of the National Archives has suspended the disappearance of American history. It doesn't mean the threat has passed; it just means someone is fighting to keep America free. We have two choices, the free flow of information or the outright control of information. The free flow of information is so strong because of the protections within the free flow of information. It is guaranteed by the first amendment.

But the President and his majority want to think through the outright control of the information. Geoffrey Stone, author and law professor at the University of Chicago wrote an article in the New York Times the other day called, "Scared of Scoops." Again, I ask to enter it in the RECORD.

As the writer points out, the administration's primary tactic is intimidation. When in doubt, they try to make you afraid. When unpopular, they try to make you afraid. When they are losing their hold on power because of their record, they tend to make you afraid. The only reason you know this President has no energy policy for America is because he can't hide the price of gasoline at the pumps. He would make it a secret if he could. Don't be surprised if the President tries to classify the price of gasoline as a national security matter. That is his method of accountability to the American people. None. In a Nation where free speech is an absolute power, they don't want you to know because the more you know, the worse they look.

\[From the Washington Times, May 8, 2006.\]

CHILLING FREE SPEECH
(By Nat Hentoff)
Beyond the firing of CIA officer Mary O. McCarthy for leaking classified information to the press is a much larger story of the administration's increasing investigation of other such press leaks as a possible prelude to an American version of Britain's stringent Official Secrets Act. In February, CIA Director Porter Goss's Intelligence Oversight Committee of the need for a grand jury investigation including reporters who receive those leaks.

The charge against Miss McCarthy, which she denies, is that she was a source of highly classified information for Dana Priest's report in "The Washington Post" on CIA secret prisons in Eastern Europe. Miss Priest, a 2006 winner of a Pulitzer award for the story, has been writing about the CIA's "black sites" since late 2002; and Sen. Pat Roberts, chairman of the Senate Intelligence Committee, continually refuses to authorize an investigation of the CIA's violations of American and international laws in its prisons wholly hidden from public view.

Miss Priest is already subject to a Justice Department investigation, as are New York Times reporter Eric Lichtblau for their disclosure of the president's secret approval of the National Security Agency's warrantless surveillance of Americans. (Americans have also not received Pulitzers this year, despite the president's characterization of their reporting as "shameful.")

The administration's position has been clearly stated by FBI spokesman Bill Carter (The Washington Post, April 19): "Under the law, no private person (including journalists) may possess that which was illegally provided to them. These documents remain the property of the government.

The law Mr. Carter cited is this administration's expansion of the Espionage Act of 1917, which is now before the courts in a case that can greatly diminish the First Amendment rights of the press—and the right of Americans to receive information about such lawless government practices as the CIA's secret interrogation centers and the president's violation of the Foreign Intelligence Surveillance Act in unleashing the National Security Agency.

This espionage case—United States v. Lawrence Anthony Franklin, Steven J. Rosen, and Keith Weissman—is the first in which the federal government is charging violations of the Espionage Act by American citizens—who are not government officials—for being involved in what until now have been regarded as First Amendment-protected activities engaged in by hundreds of American journalists.

Messrs. Rosen and Weissman, former staff members of the American Israel Public Affairs Committee (AIPAC)—who have since fired—an American lobbyist receiving classified information from Defense Department analyst Franklin regarding U.S. government Middle East and terrorism strategy. Messers. Rosen and Weissman charged with then providing that classified information to an Israeli diplomat—and a journalist.

Government official Franklin has pleaded guilty and been sentenced to prison. But defense attorneys for Rosen and Weissman declare: "Never (until now) has a lobbyist, reporter or any other nongovernment entity available to receive oral or written information the government alleges to be national-defense material as part of that (accused) person's normal First Amendment-protected activity been charged.

In an amicus brief to the U.S. District Court for the Eastern District of Virginia, the Reporters Committee for the Freedom of the Press (with which I am affiliated) says:

"These charges potentially eviscerate the primary function of journalism—to gather and make public information of concern—particularly where the most valuable information to the public is information that the government wants to conceal" so that the public cannot "serve as a check on the government." (That's why the First Amendment's freedom of the press was added to the Constitution in 1791.)

That the judge now hearing this espionage case, T.S. Ellis III, already said in March:

"Persons who come into unauthorized possession of classified information must abide by the law. That applies to lawyers, journalists, professors, whatever. Recently, the judge appears to be backing off.

However he decides, and it's uncertain, some Bush administration officials are counting on the United States having a similar law, their reasoning goes, the reporters who revealed CIA-run prisons in Eastern Europe and the National Security Agency's warrantless wiretapping of terrorism suspects would be prosecuted instead of receiving Pulitzer Prizes.

The U.S. Constitution remains a barrier to those who would restrict the flow of the information to the media—and thus to the public. But administration policies are chipping away at its protections. The nation is in danger of having an Executive that, not through passage of a law—although that is a possibility—but through incremental steps.

The evidence is mounting; Judith Miller, as a reporter for The New York Times, spent 85 days in jail after refusing to name a confidential source in the investigation by Special Prosecutor Patrick J. Fitzgerald into the leak of the name of CIA officer Valerie Plame. Miller and half a dozen other reporters have been questioned by the prosecutor. Two former senior staff members of the American Israel Public Affairs Committee, AIPAC, a pro-Israel lobby, are on trial in federal court on charges of conspiring to violate espionage statutes by obtaining defense information from a Pentagon official. Both lobbyists are civilians, and the government does not claim they received any documents, classified or otherwise.

The National Archives and Records Administration has been embarrassed by the revelation that at least 55,000 documents formally available to researchers have been withdrawn and reclassified under secret agreements with the military and the CIA. The deals were so secretive that the documents simply disappeared from the shelves. That is the end of the quote.

At least temporarily the head of the National Archives has suspended the disappearance of American history. It doesn't mean the threat has passed; it just means someone is fighting to keep America free. We have two choices, the free flow of information or the outright control of information. The free flow of information is so strong because of the protections within the free flow of information. It is guaranteed by the first amendment.

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As the writer points out, the administration's primary tactic is intimidation. When in doubt, they try to make you afraid. When unpopular, they try to make you afraid. When they are losing their hold on power because of their record, they tend to make you afraid. The only reason you know this President has no energy policy for America is because he can't hide the price of gasoline at the pumps. He would make it a secret if he could. Don't be surprised if the President tries to classify the price of gasoline as a national security matter. That is his method of accountability to the American people. None. In a Nation where free speech is an absolute power, they don't want you to know because the more you know, the worse they look.
The First Amendment, has refused the agency’s request. It is unclear how far the FBI plans to push the matter, or whether the government will next to examine the files of other journalists, dead or alive.

Porter J. Goss, director of the CIA, has testified that he and it is my hope that reporters who receive leaked intelligence subjects are hauled before a grand jury and forced “to reveal who is leaking this information.” The CIA dismissed Mary O. McCarthy, a senior official, for allegedly having unauthorized contacts with the media and disclosing classified information to reporters. The agency let stand the impression that she had leaked the story of the CIA secret prisons for terrorists in Eastern Europe to Dana Priest of The Washington Post, who won a Pulitzer Prize for her account. McCarthy’s attorney says she was not the source of the story and has never leaked classified information.

Congress is considering legislation that would enable intelligence agencies to revoke the pensions of employees who make unauthorized disclosures. The measure also would allow the government to arrest people outside their gates without a warrant.

Although the indictment of the two lobbyists for the American Israel Public Affairs Committee, with reference to “classified information,” the espionage laws, with one narrow exception, refer only to “information relating to the national defense.” The law was passed in 1917 during World War I. A 1951 presidential executive order created the current system of classifying documents.

There is no law prohibiting leaks, so the government has used the espionage laws to combat the practice. President Clinton vetoed anti-leak legislation passed in 2000 that would have made it a crime for a government official to disclose classified information.

To criminalize leaks of government information, unless the information is marked “classified” is absurd. In 2004, the most recent year for which figures are available, the government classified over 15.3 million documents, third only likely to be accessible to the government has that many real secrets to withhold from its citizens.

Unnecessarily classifying documents is a fact of life in Washington. Many bureaucrats know that unless they stamp a document “secret” or “top secret,” their superiors may not even bother to read it. One agency classified the word “America” does not rate up. During World War II, the Army labeled the bow and arrow a secret, calling it a “silent flash less weapon.”

The government’s theory in the lobbyists’ prosecution could, if it stands, change the nature of how news is gathered in Washington. Media lobbyists and academics interact with the government.

“What makes the AIPAC case so alarming,” said Steven Aftergood, director of the Project on Government Secrecy of the Federation of American Scientists, “is the defendants are not being charged with being agents of a foreign power but with receiving classified information without authorization. Most Americans who read the newspaper are also in possession of classified information, whether they know it or not. The scope is incredibly broad.”

Officials in Washington talk to reporters every day about matters that may, in some government file cabinet, in some agency, be stamped with a secrecy classification. How would a journalist be expected to know that he or she was a “recipient” of classified information if he or she was not present to prosecute anyone, even a journalist, who published a railroad timetable. The act was made less draconian in 1989, but still carries tough provisions and can apply to journalists.

Until recently, the U.S. government applied the espionage laws to officials who leaked, not to criminals who sold secrets. “Otherwise,” Aftergood said, “Bob Woodward would not be a wealthy, bestselling author. He would be serving a life sentence.”

[From the New York Times]

SCARED OF SCOOPS

(By Geoffrey R. Stone)

While tensions between the federal government and the press are as old as the Republic itself, presidential administrations have never been inclined to criminally prosecute the news media for publishing information they would have liked to have kept secret. In the recent weeks, however, the Bush administration and its advocates, including Attorney General Alberto Gonzales, have spoken of proscribing the press for publishing The New York Times for publishing Pulitzer Prize-winning exposés of the administration’s secret prisons in Eastern Europe and secret National Security Agency surveillance of Americans.

Specifically, the president and some of his supporters say reporters and publishers have violated a 1917 Espionage Act, which provides in part that anyone in unauthorized possession of “information relating to the national defense, which information the possessor has reason to believe could be used to the injury of the United States” willfully communicates it to any person not entitled to receive it “shall be fined under this title or imprisoned not more than 10 years, or both.”

But for at least three reasons, such threats are largely empty. First, the provision was not designed for journalists and is not applicable to them.

When the Espionage Act was proposed by President Woodrow Wilson, it included a section that would have expressly made it a crime to disclose to the press any information that the president had declared to be of “such character that it is or might be useful to the enemy.” Congress overwhelmingly rejected that proposal, with members of both parties characterizing it as “un-American” and “an instrument of tyranny.”

Second, if the 1917 Act were meant to apply to journalists, it would unquestionably violate the First Amendment. Laws regulating speech must be precisely tailored to prohibit only speech that can actually be proscribed. This requirement addresses the concern that overbroad laws will chill the willingness of individuals to speak freely.

Not surprisingly, because the act was drafted before the Supreme Court had ever interpreted the First Amendment in a relevant manner, it does not incorporate any of the amendments that the Constitution requires. For example, the provision of the act is not limited only to published accounts that pose a “clear and present danger” to the public interest; nor could the administration show that such disclosures created a clear and present danger of serious harm to the national security.

I do not mean to suggest that the government has no interest in keeping military secrets or that it may never punish the press for disclosing classified information. To the contrary, the government may take many steps to keep such information secret, including (in appropriate circumstances) firing and even prosecuting public employees who unlawfully leak such information.

Moreover, in narrowly defined circumstances, the government may prosecute the press for disclosing classified national security information. Such a prosecution might be consistent with the First Amendment, for example, if a newspaper revealed that the government had broken an important Qaeda code, thus causing that group to change its cipher. But revelations like those in The Times and Post revealed significant government actions and therefore are essential to effective self-governance; they are at the very core of the First Amendment.

Although the threats of the White House are largely bluster, they must nonetheless be taken seriously. Not because newspapers are really in danger of being prosecuted, but because such intimidation is the latest step in this administration’s relentless campaign to control the press and keep the American people in the dark.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. MCENHY) is recognized for 5 minutes. (Mr. MCENHY addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

DON FRANCISCO

Ms. ROS-LEHTINEN. Mr. Speaker, I ask unanimous consent to claim Mr. MCENHY’s time.

The SPEAKER pro tempore. Without objection, the gentlewoman from Florida (Ms. ROS-LEHTINEN) is recognized for 5 minutes.

There was no objection.

Ms. ROS-LEHTINEN. Mr. Speaker, I am proud to rise today to honor the 20th anniversary of the television personality Don Francisco and his wildly popular show Sabado Gigante.

This show was created and is still hosted by Mr. Mario Kreutzberger, better known as Don Francisco, and is watched by every family around the world, by, get this, more than 100 million people worldwide.

Don Francisco’s Spanish language international television show Sabado Gigante was recognized by the Guinness Book of World Records as the world’s longest-running variety program.

After a successful 24-year run in Chile, the show’s operations were
Mr. EMANUEL. Mr. Speaker, with Mother’s Day coming up, I had come across a document on the Internet that was sent around to a number of women, including some in my office. In honor of all the mothers across America, I would like to congratulate one of them.

A woman, renewing her driver’s license at the county clerk’s office, was asked by the woman recorder to state her occupation.

She hesitated, uncertain how to classify herself. “What I mean is,” explained the clerk, “do you have a job or are you just a . . .?”

“Of course I have a job,” snapped the woman. “I’m a Mom.”

“We don’t list ‘Mom’ as an occupation, ‘housewife’ covers it,” said the recorder emphatically.

I forgot all about her story until one day I found myself in the same situation, at my own town hall. The clerk was obviously a career woman, poised, efficient and possessed of a high sounding title like, “Official Interrogator” or “Town Registrar.”

“What is your occupation?” she probed.

“Why did you say it? I do not know. The words simply popped out. I’m a Research Associate in the field of Child Development and Human Relations.”

The clerk paused, ball-point pen frozen in midair and looked up as though she had not heard right. I repeated the title, slowly emphasizing the most significant word, “Research Associate.”

“What is your occupation?” she asked again.

“I don’t know,” I answered.

The clerk snapped the file closed and then in a mix of Spanish and English, asked by the woman recorder to state her occupation.

She hesitated, uncertain how to classify herself. “What I mean is,” explained the clerk, “do you have a job or are you just a . . .?”

“Of course I have a job,” snapped the woman. “I’m a Housewife.”

“We don’t list ‘Housewife’ as an occupation, ‘mother’ covers it,” said the recorder emphatically.

I forgot all about her story until one day I found myself in the same situation, this time at our own town hall. The clerk was obviously a career woman, poised, efficient and possessed of a high sounding title like, “Social Services Coordinator” or “Family Services Coordinator.”

“What is your occupation?” she probed.

“What made me say it? I do not know. The words simply popped out. I’m a Home Health Aide and have been in this field competitive determination.”

As I drove into our driveway, buoyed up by my newfound knowledge, I was greeted by my lab assistants, ages 13, 7, and 3. Upstairs I could hear our new experimental model (a 6-month-old baby) in the child development program, testing out a new vocal pattern. I felt I had scored a beat on bureaucracy. And I had gone on the social records as someone more distinguished and indispensable to mankind than “just another Mom.”

Motherhood. What a glorious career, especially when there is a title on the door.

Does this make grandmothers “Senior Research Associates in the Field of Child Development and Human Relations,” and great-grandmothers “Executive Associate Professor in Geriatric Research?” I think so. I also think it makes aunts “Associate Research Assistants.”

Please send this on to another mom, grandmother, aunt and any friends you know.

To all those mothers who will be celebrating Mother’s Day, who have the most important profession, the most satisfying profession and probably the only title that says in three words what all of us rely on, to those mothers out there, thank you for what you do every day making sure our children have a home, a place of warmth and a place of great values in honor of all mothers on Mother’s Day.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. JONES) is recognized for 5 minutes.

Mr. JONES of North Carolina addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

KARA POE ALEXANDER, PH.D.

Mr. POE. Mr. Speaker, I request permission to take Mr. JONES’ place.

The SPEAKER pro tempore. Without objection, the gentleman from Texas (Mr. Poe) is recognized for 5 minutes.

Mr. Poe. Mr. Speaker, when born in the hot humid heat of a Texas August in 1976, she was called a bicentennial baby in honor of America’s 200th birthday. She was the second of four children and grew up with that second child competitive determination.

She was strongly serious as she went to elementary school. While enjoying playing with her siblings, Kim, Kurt and Kellee Lyn, she also liked Irritating the older next-door-neighbor boy.

While growing up, Kara learned and liked to plant vegetables and to take care of a large family garden. But upon entering elementary school, she spoke some words with difficulty, and her speech patterns were not really satisfactory. This began to affect her socially and really bruised her young self-image.

Her third grade teacher at the Oaks Elementary School in Humble, Texas, was determined to help this little girl and worked with her in pronouncing those English words correctly. This little girl, Kara, overcame this issue and speaks perfect English with an exceptional Texas accent, another of America’s dedicated school teachers helping one child at a time.

Anyway, Kara played on soccer teams and was on the swim team with her brother and sisters. They spent
those long Saturdays competing at swim meets all over North Houston. Kara not only took to sports but academics in high school. She lettered 4 years in basketball, was the team captain, high scorer her senior year and played in the Texas State playoffs. Volleyball and cheerleading were also activities she enjoyed and participated in.

After doing some babysitting jobs at 15, Kara applied to work at a local Target store while in school. On her job application, she was asked about her job experiences and reason for leaving her previous job. So she put, quote, "last job, baby sitting." Reason for leaving, quote, "Kids were brats." Blunt truth got her the job.

She continued to tell it like it was, even to this day. At Target, Kara Poe learned how to deal with real people in the real world by working as a cashier. She doesn't like to admit it, but she even held the long-time record as the fastest scanner. She has continued her studies and studied endlessly. She played on the team, and has continued to work and save as much money as she possibly can.

By the way, Mr. Speaker, Kara graduated valedictorian from her high school, Northland Christian High School in Houston, Texas. Kara, like all that attended Abilene Christian University, and she worked while in college and still was able to graduate with a grade point average of 3.88 with a B.S. in interdisciplinary studies, English and history.

Quite opinionated on all subjects, especially politics and sports, being an avid Astros fan, she loves the freedoms and loves this country.

She went on to get her Master's degree at Abilene Christian University in English, and her GPA was a perfect 4.0. She got married to a guy by the name of Shane. When I was home to perform that wedding. She has a 10-month-old daughter named Elizabeth.

Mr. Speaker, this Saturday that little girl who had trouble with speech in third grade will receive her doctoral degree from the University of Louisville in rhetoric and composition. She has a GPA of 3.92.

At 29, she obtained her doctoral degree in less than 4 years, a marvelous amount of time and a short time for obtaining a doctorate.

She already has a job at Baylor University in Waco, Texas, and she will be teaching on the tenured track. She will be teaching English, Mr. Speaker, and she will be a teacher like her mother, both her grandmothers and her sister, Kim.

So, Kara, as your dad, I am proud of your determination, commitment and attitude. Congratulations to you for your field and noble field of education and being a teacher. Congratulations to you for your success in life.

That's just the way it is.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

LOSING GROUND ON THE WAR ON TERRORISM

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from California (Ms. WOOLSEY) is recognized for 5 minutes.

Ms. WOOLSEY. Mr. Speaker, the so-called war on terrorism has been going on for more than 4½ years, and it looks like terrorism is winning.

The U.S. Government released its annual survey of global terrorism two Fridays ago. Of course, they always save the bad news for Friday, when they hope everyone will have checked for the weekend. The number of terrorists attacks worldwide quadrupled from 2004 to 2005, climbing over 11,000. That is 30 strikes by terrorists every day, an average of more than one an hour.

Of the 11,000, nearly one-third took place in Iraq, and those Iraqi attacks led to 8,300 deaths. Keep in mind, these numbers don't even include the number of American troops who have been killed at the hands of the insurgency.

Thank goodness there have been no more attacks on American soil and nothing on the order of 9/11. Then again, if violent extremists want to kill Americans, they don't have to infiltrate our borders. They can make a much easier trip to Iraq, where 130,000 American soldiers are fighting a war.

The dirty little secret that you won't find in the report is that the Iraq war is responsible for the proliferation of terrorism in recent years. Our preempive invasion strike on Iraq inspired vicious animosity towards the United States, the likes of which we have never seen and the likes of which we will be dealing with for years and years to come.

The continued occupation is a rallying point for bin Laden and everyone who already dislikes America. The war has given jihadists the best possible propaganda tool, turning Iraq into a holy war of terrorism. And the way we have conducted the war has only exacerbated the problem. The abuses at Abu Ghraib, the detention camps at Guantanamo, the secret gulags around the world, all of these have eroded U.S. moral authority and further radicalized the Muslim world.

The President has sold the Iraq campaign as some kind of antidote to terrorism. The truth is just the opposite. Our presence in Iraq is pouring gasoline on the fire instead of putting it out.

Peter Bergen, a terrorism expert at the New America Foundation, put it this way: he said, "The President is right that Iraq is the main front in the war on terrorism, but this is a front we created."

There was one part of the terrorism report that I just could not believe. The Washington Post's poll indicating that bin Laden and al-Zawahiri are frustrated by their lack of direct control over terrorist operations. Here is a man who is American public enemy number one, a sadistic killer who President Bush promised to hunt down and capture, if possible, and the best we can say 4½ years later is that we have got him frustrated?

There is only one answer. Mr. Speaker: we must bring our troops home, and we must do it at once. Every day that we persist with this occupation is another day that the insurgency gathers strength and further justifies itself. Every day that we stay in Iraq is a day that we lose ground in the war on terrorism.

It is time for a new counterterrorism strategy like the one I have outlined in my SMART Security proposal; one that is based on strong intelligence and cooperation with our allies and multilateral organizations; one that invests in homeland and security efforts to cut off financing for terrorist organizations.

Defeating terrorism will require more brains and less brawn. It demands, first and foremost, that we bring our troops home.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Hampshire (Mr. BASS) is recognized for 5 minutes.

(Mr. BASS addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

MAINTAINING AIR SUPERIORITY

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Utah (Mr. BISHOP) is recognized for 5 minutes.

Mr. BISHOP of Utah. Mr. Speaker, in 1781, George Washington, even though he had lost the Revolutionary War, kept the Army intact and on alert for 2 more years until the signing of the peace treaty, saying, "There is nothing that will so soon produce a speedy and honorable peace as a state of preparedness for war.

"This week, we will be voting on the Defense Authorization Act, which is not talking about our military in this year or the next year, but 10 and 15 years from now, because those who have our positions 10 and 15 years from now will have their military and their diplomatic options defined by what we do on the Defense Authorization Act this week.

The United States is superpower because of the quality of the individuals we have in our military and the technology and weapons system that back them up. As former general and Secretary of State Colin Powell said, "If
we go to war, we don't want to be in a fair fight."

Now, Operation Desert Storm in the early 1990s illustrated the awesome air superiority we have. Afghanistan and Iraq clearly illustrate our air superiority. In the United States we had air superiority since the Korean War. However, we have flown a military sortie every day for the past 15 years, and it is starting to take its toll on our equipment.

A Defense Department study recently said that there has been a 10 percent decline in the mission capable rates of our aircraft since Desert Storm in the 1990s. Now, this 10 percent reduction is not because we have maintenance deficiencies or trained personnel deficiencies. It is because we are still flying the same aircraft, this time, though, much older and with hundreds of more flight hours on the same airframe.

In the 1990s, we took a procurement holiday in Congress and wanted to cash in on the so-called "peace dividend," which simply meant in practical terms the defense budget was cut in favor of other Federal spending and the new generation of fighters, the F-22s, the F-35s, and the F-22s. The cross-hairs of that spending practice and shoved to the outside years, which meant we are now starting to fall behind. We were ignoring the leapfrog of technology that is available to our systems. We are now realizing that the F-22 and the F-35 are going to be that which closes gaps and helps us to ensure air dominance for the foreseeable future.

Both the 22 and the 35 employ stealth technology, which provides our warfighters with a critical edge in any conflict, even in low intensity battles like Iraq. Those responsible for planning the air campaign need the protections provided by stealth fighters in protecting other non-stealth aircraft, as we were able to do.

The flight range of the 22 is three times the combat radius, and the 35 is projected to have more than double the unfueled combat radius of the fighters they would hope to replace. The avionics would allow them for a longer stand-off, which simply means we, the good guys, can see, detect, and shoot down the bad guys before they recognize we are in the area, which is what we want to have in any type of combat.

The problems we are facing in the air are incorporating high-tech advances in composite technologies which result in more durable aircraft parts, reduced corrosion, and lessen the needs of maintenance in the future. What we are doing, Mr. Speaker, is planning for the future.

In 2004, we had a program called Cope India, which revealed that pilots outside the United States are certainly capable of achieving very high levels of proficiency. While we don’t count India as a likely enemy, this exercise was an eye-opener for the United States in the sense that it demonstrated the United States can no longer take for granted that it will always be facing an inferior air adversary, even amongst Third World nations.

Fifteen years from now we do not know whether we will be fighting a war of terror or a conventional war. But, as Washington said, we must be prepared for whatever circumstances may be there. Because at the end of the day when we are compelled to take up arms to defend our freedom, we don’t want to be in a fair fight. We want our sons and daughters to have the very best capabilities available to prevail.

We must recommit as a Nation to provide the support and the resources to properly field the next generation of fighters, the F-22 and the F-35. We have an oversight responsibility to make sure that these programs are carried out in a responsible manner. We need to work together to ensure that they succeed, because they are one of the most important foundation blocks of our future national defense.

Terrorism does not take a holiday. Terrorism we are dealing with now is the cross-hairs of our fighting, and the 22 and the 35 are going to be that which closes gaps and helps us to ensure air dominance for the foreseeable future.

A NEED FOR SELF-MADE LEADERS, NOT DERIVATIVE LEADERS

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, I have been asking myself why the President of the United States really can recognize for 5 minutes. The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, I have been asking myself why the President of the United States really can recognize for 5 minutes.

Mr. Speaker, I have been asking myself why the President of the United States really can recognize for 5 minutes.

The SPEAKER pro tempore. The previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

Ms. KAPTUR. Mr. Speaker, I have been asking myself why the President of the United States really cannot get a grip on policies that would help America become energy independent here at home. Last week, as we were looking at rising gasoline prices all across our country, he suggested that we import more ethanol.

I thought about that comment and his whole administration’s lack of attention to the economic needs for our country, and I sort of sat there at my desk and thought, why would the President behave this way? And I thought a lot about how we form our personalities and when we take whatever occupation we get into as adults, why we behave the way we do.

There are some personalities that result from experiences that make you self-made, and then there are those personalities that I call derivative personalities, but the behavior result from a different set of experiences, so when they get in a job they really can’t command and direct, because they have never really done it themselves.

Here is an example. I grew up in a family where our mother made our clothes. We didn’t have a lot of money, so we learned how to scrimp, and we learned how to invent and to create. And those are learned skills.

The President grew up in a family that was extraordinarily wealthy. I would guess that they bought most of their clothes. In fact, I can remember when the President, his father, didn’t even know how much socks cost in the store during one of his Presidential races. They always bought everything. They never made. They had enough assets, he inherited enough, that they really didn’t have to learn how to be self-made. So he doesn’t have a mind that lends itself to creativity necessarily.

We came from a family where we ran our own small business. Our dad made his own products. We made our own sausages, our own meatloafs, our own pickles. Dad had to do everything himself, but he had to figure out how to finance his business.

We have a President who inherited his wealth. Everything that he did, he had this soft landing pad. He failed a number of times in businesses that he inherited from his own family, but he never really paid the consequences, because someone was always there to catch him and to refinance him, even in the purchase of the baseball team that he owned, which then he eventually sold and used to get re-elected President of the United States. Most American families don’t have that kind of landing pad.

In our family, we had to earn our way to go to college, and we had to get good grades and then leave there that was going to save you. Nobody in our family had ever gone to college before. I had to keep good grades to keep a scholarship up for the scholarship I did receive.

The President’s education was paid for by his family. In fact, he was admitted to schools based on his grades, that most Americans could never get admitted to.

I think what these kinds of experiences do is create a different kind of personality, a personality of people who are self-made and they know how to create, versus a personality that is more derivative and sometimes can’t solve problems, and they look to somebody else to solve them.

So if we have an energy problem in America, the President would look to somebody else. And he says, well, let’s import the ethanol. He doesn’t really think about creating a whole new industry here at home and using the Government of the United States to help create that industry.

That is why he has proposed cutting programs. At the same time out of one side of his mouth he talks about energy addiction, but then is trying to use the funds that he cuts the programs that would lead us to address that addiction, but then is trying to use the funds that he cuts the programs that would lead us to address that addiction.

It was actually Congress that adopted the first energy title to a farm bill. It didn’t come from the administration. And if you look at every single budget that he has offered, he talks about energy independence, and then he cuts the programs that would lead us in that direction.

What America really needs is a new biofuels industry as a complement to other forms of power that we can create. But we need self-made people to
help move America in that direction. Many of our farmers are figuring it out. We need programs to help them finance the development of the new infrastructure and the production facilities that are necessary to green up this industry. They need the President’s help. And they are not bought out by Big Oil and by companies that really don’t want them to bring up this new industry. But the President really doesn’t know how to create it. His Secretary of Agriculture isn’t doing it.

We need programs like Title IX in USDA funded at $1 billion. We struggle to even get $25 million or $23 million in our committee, which is laughable in terms of a trade deficit in oil of over $60 billion and counting.

The President’s Cabinet members are not energy-focused. The Secretary of Defense said energy isn’t his job. He runs the largest instrument in this country that uses fuel, and energy independence isn’t his job? He said that to us in committee.

Mr. Speaker, we need people in our country and the Presidency and this Congress who are self-made, not derivative, to lead America to a new independent energy age.

Mr. GINGREY. Mr. Speaker, I ask unanimous consent to speak out of order for 5 minutes.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. DREIER) is recognized for 5 minutes.

(Mr. DREIER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

SENATE HEALTH WEEK

Mr. GINGREY. Mr. Speaker, I ask unanimous consent to speak out of order for 5 minutes.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. GINGREY) is recognized for 5 minutes.

There was no objection.

Mr. GINGREY. Mr. Speaker, I rise tonight to applaud the United States Senate for bringing to the floor this week three critical pieces of health care legislation. Unfortunately, only one of the three still stands a chance to see an actual up-or-down vote on the Senate floor.

The rising cost of health care is an issue. The Federal Government can no longer afford to ignore. The Department of Health and Human Services reports the cost of medical liability coverage and defensive medicine alone increases the amount taxpayers must pay for Medicaid, Medicare and other Federal health programs by as much as $56 billion a year. So much more than the increased cost of malpractice premiums is the astronomical cost of defensive medicine.

Mr. Speaker, the Federal Government is doing, as is every business and State legislature across America, their budget being crowded out by the skyrocketing costs of health care. We no longer have the luxury to pretend that this is not a national crisis, and it demands not only our full attention, but our resolve to find real solutions.

Each and every year, the House of Representatives has tackled the tough issue of containing health care costs. In this body, we have passed medical malpractice liability three times in the last 2 years. Each and every time, that piece of legislation has fallen victim to the inaction of the Senate, and each year our health care crisis continues to grow.

When someone we love brings a child into this world, we do not feel relieved that there was a trial lawyer close by. And yet unless we do something soon to fix our medical liability system, we might discover it is far easier to find a lawyer in our community than to find a doctor.

Guaranteeing access to quality health care should be what drives this debate. Just think: The best medical care in the world goes to waste if there are not doctors in our community to deliver it.

There are many stories, Mr. Speaker, too numerous to tell, of quality physicians hanging up their stethoscopes to pursue other careers. When they are faced with soaring medical malpractice premiums and decreasing reimbursement, the brightest and the best are pursuing other career paths.

Ask your neighborhood physician if they would encourage their children to follow in their footsteps and to become a doctor. All too often you would get a resounding “no.”

Unfortunately, there were not enough Senators yesterday who stood on the side of patients. There were not enough Senators yesterday who put quality health care above partisan politics. Once again, sensible medical malpractice reform legislation died in the Senate.

This sensible legislation is based on a proven system that is saving health care in Texas. H.R. 5, the Health Act, common-sense reform legislation for which I was the lead sponsor last year in this House is also based on a successful reform model from the State of California, that was enacted in 1976, called MICRA.

What we know, looking at these precedents is that reform works. Mr. Speaker, look at the medical malpractice premiums in 2003 for OB/GYNs in two different cities. In San Francisco, a city in a reform State, California, an average OB/GYN physician would pay $40,000 a year for an annual policy. However, an OB/GYN physician practicing in Chicago, Illinois, a non-reform State, would pay an annual premium of $39,000.

This is not a situation that can be righted overnight, but there are sensible reforms that provide necessary steps to transform the American health care system, and medical malpractice reform is certainly one of them.

Mr. Speaker, another good step toward transforming health care is Senate bill 1955, which the Senate is currently debating. The Health Insurance Marketplace Modernization and Affordable Coverage Act is legislation similar to H.R. 525, the Small Business Health Fairness Act, that we passed in this body.

This bill was introduced by Representative SAM JOHNSON, and as I say, it passed the House last year. This legislation will reduce the cost of health benefits for small business and the self-employed by establishing the new national Association Health Plans, or AHPs, as they are known.

AHPs currently exist, but they are severely hampered by the administrative burden and the high cost of having to comply with 50 different sets of State insurance laws and regulations. These barriers have made it virtually impossible to start new plans, and they have forced many of these plans to close, thus greatly limiting the availability of affordable health insurance to small businesses.

Allowing an environment that will permit association or small business health plans to flourish will strengthen our health insurance markets by creating greater competition and more choices of health plans for small business. Greater competition will benefit consumers by driving down premiums and expanding access to coverage.

H.R. 525 is just another example of how Republicans showing the American people they get it done when it comes to healthcare reform. In regards to decreasing the cost of health care, expanding private insurance coverage to all Americans, and increasing the quality of the healthcare delivery system; patients across our country deserve our undivided attention and it’s time for the Senate to act, or stand accountable.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from North Carolina (Mr. EBERHARDT) is recognized for 5 minutes.

Mr. EBERHARDT. Mr. Speaker, I rise this evening to celebrate Asian Pacific American Heritage Month.

Mr. Speaker, I would like to thank a great leader, our colleague, Congressman HONDA, and the Asian Pacific American Caucus, of which I am a very proud member, for organizing later this night a special order to honor the contributions of Asian Pacific Americans.

Mr. Speaker, I cannot help but first recall and remind us of the great leadership of our beloved Congressman Bob
Matsui, whom we all knew so well, who led the fight for justice and reparations for Japanese Americans who were interned in our own country.

And it is in his memory tonight that I hope we will all reflect on the legacy and contributions of not only Congressman Matsui, but so many Asian Pacific Americans who played a tremendous role in the development of our Nation.

I would like to acknowledge the late Congresswoman Patsy Takemoto Mink, our first woman of color to serve in the United States House of Representatives. She was a trailblazer for Asian Pacific Americans and women and all people of color. And it is wonderful to see that her impact is felt and that her legacy continues. We miss her tremendously.

APA Heritage Month is especially important to my congressional district. The API community has a very large impact in the cities in my district. My district is the birthplace of Amy Tan, a Chinese American woman, and the New York Times best-selling author of the Joy Luck Club, which has read the novel and its subsequent film adaptation. She has received countless acknowledgments, including the Bay Area Book Reviewers Award. Tonight, Ms. Tan’s novels and short stories are part of high schools and universities literacy curricula nationwide.

My district is also the birthplace of Fred Korematsu, born in Oakland to Japanese immigrants who challenged the internment order of Japanese American citizens. As an American citizen, Mr. Korematsu refused, he refused to go to an internment camp, but he was arrested. He was sent to one in 1942 and branded a spy by newspapers. He opposed the internment policy in the Supreme Court, but in its 1944 decision, the Supreme Court upheld that policy. Unbelievable.

In 1983, Mr. Korematsu, appealed his conviction which a Federal court overturned, recognizing that the Government’s case at the time had been based on misleading and racially biased information.

President Bill Clinton awarded Mr. Korematsu the Presidential Medal of Freedom in 1998, honoring Mr. Korematsu for fighting for human rights and ensuring the very liberties that created this great Nation.

Today, the legacy of Asian Pacific Americans such as Ms. Tan and Mr. Korematsu, Congressman Matsui, Congresswoman Patsy Mink is apparent in the numerous and remarkable programs and initiatives in our communities and especially throughout my district.

There are several that I would like to recognize, including Oakland’s Asian Students Educational Services, also known as OASES. As the City of Oakland is one of three cities in the Bay Area that has the lowest high school graduation rates for Asian students, this organization works to decrease cultural gaps in education.

I would also like to recognize the Oakland Asian Cultural Center. This center works by employing the belief that upholding cultural traditions and honoring cultural heritage are the core of maintaining healthy and liveable communities.

My district is also home to several of the Nation’s leading health care providers for the APA community. Asian Community Mental Health Services, for example, is an organization that offers access to and increases community acceptance of care, in which many APA communities remain taboo. Lastly, I would like to bring special attention to Asian Communities for Reproductive Justice and its executive director, Ms. Eveline Shen. Founded in 1989, ACRJ has been a long-time leader in ensuring that APA women and girls are equipped with the tools to make important decisions about their reproductive health. I commend Ms. Shen and the ACRJ’s dedication to assisting women to obtain America’s promise of liberty and justice for all.

Mr. Speaker, again I would like to thank Mr. Honda and the APA Caucus for inviting me to participate later tonight in this special order. Let us continue to unite and pay tribute to Asian Pacific Americans and remember the importance of their outstanding contributions to our Nation.

ASIAN PACIFIC ISLANDER AMERICAN HERITAGE MONTH

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Ms. ROYBAL-ALLARD) is recognized for 5 minutes.

Mr. ROYBAL-ALLARD. Mr. Speaker, I am proud to stand with my colleagues as we celebrate Asian Pacific American Heritage Month. I thank Congressman Honda and the Congressional API Caucus for organizing Asian American Heritage Month. I thank Congressman Honda and the Congressional API Caucus for organizing this API community celebration.

Our theme for this year’s festivities, Dreams and Challenges of Asian Pacific Americans, speaks to the many generations of Asian Pacific Americans who worked hard to overcome economic hardship, racism and other barriers in their pursuit of the American dream.

The theme reminds us of the Chinese who endured inhume conditions to build our western railroads, and the Japanese who broke our sugar plantations in Hawaii. And it reminds us of the Filipinos who fought bravely for our country, and the courageous Japanese Americans who fought for their country despite the shameful treatment toward their families in internment camps during World War II.

This year’s theme also reminds us that in spite of these hardships, the API community has successfully met the challenges it faced and has enhanced greatly the richness and strength of our American society.

The contributions and cultural imprint of the API community is especially impressive in Los Angeles where many of the first Asian American immigrants made their home.

I have the pleasure of representing the Los Angeles communities of Little Tokyo and parts of Chinatown, and Filipinotown. As is true for all Angelenos, my life has been enriched by the magnificent culture of Asian Pacific Islanders and their positive impact on our city and on our Nation.

Asian Pacific Islanders have contributed to our economy in many ways. They are leaders, for example, in our international trade. They are pioneers in our fashion industry. They are non-profit community leaders, restaurateurs and small business owners. They are patriots who continue to defend our Nation and our American way of life through the distinguished service in our Armed Forces.

The API community also enhances our lives throughout the year with its many cultural celebrations. In my own district of downtown Los Angeles, I look forward to riding in the annual Nisei parade in Little Tokyo and the Chinese New Year’s parade in Chinatown.

Mr. Speaker, Asian Pacific American Heritage Month is a wonderful opportunity for our country to honor our community’s API community and its many worthy contributions. And it is a wonderful time to explore their rich and diverse culture, customs and history.

I thank my API constituents who continue to enrich my life, the life of Angelenos, and our Nation. I am proud to join my congressional colleagues in paying tribute to the API community as we celebrate Asian Pacific American Heritage Month.

REPORT ON RESOLUTION WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 4297, TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

Mr. GINGREY, from the Committee on Rules, submitted a privileged report (Rept. No. 109-2030) waiving points of order against the conference report to accompany the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, which was referred to the House Calendar and ordered to be printed.

REPORT ON RESOLUTION PROVIDING FOR CONSIDERATION OF H.R. 5122, NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

Mr. GINGREY, from the Committee on Rules, submitted a privileged report (Rept. No. 109-459) on the resolution (H. Res. 805) waiving points of order against the conference report to accompany the bill (H.R. 4297) to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006, which was referred to the House Calendar and ordered to be printed.
Defense, to prescribe military personnel strengths for fiscal year 2007, and for other purposes, which was referred to the House Calendar and ordered to be printed.

SUBURBAN CAUCUS AGENDA

The SPEAKER pro tempore. Under the Speaker's announced policy of January 4, 2005, the gentleman from Illinois (Mr. KIRK) is recognized for 60 minutes as the designee of the majority leader.

Mr. KIRK. Mr. Speaker, I want to thank the House and my colleague from Georgia for arranging for this time to talk about a new suburban agenda for the country, one that addresses key issues before families in America and reflects the new suburban reality of the way we live our lives.

This Congress is well known for being home to a Rural Caucus and an Urban Affairs Caucus. To date we have never had a Suburban Caucus addressing the needs of suburban families. For us at this time we should recognize not how Americans lived in the 20th century but how they live now in the 21st century.

In the most recent election, over half of all voters were from suburban families, and suburban communities are under attack. They are under attack from gangs moving to the suburbs and taking on suburban police departments. Gun attacks and cyber attacks are now a part of suburban life. Over 50,000 of them online at any one time attempting to contact our kids. We see a growing wave, a disappearance of green and open space that need to be protected. And there is a general fear held by three-quarters of the American public that it may be more difficult for their kids to enter the middle class than it was for them.

Five dozen Members of Congress have gathered together to put together a suburban agenda to address these needs. And one of those Members is representing the Atlanta suburbs, Congressman Tom Price, and a member of Suburban Agenda Caucus, and I yield to him.

Mr. Price of Georgia. I thank the gentleman for yielding. I thank the gentleman for his leadership. I appreciate the leadership allowing us to bring this agenda forward.

When I go home, I am often times asked, How often do you get back? How do you get that touchstone? How do you make certain that you are staying in touch with your district? And most Members do go home every weekend and that is important because it is important that we keep in touch with our constituents and hear their views and their concerns. Like most Members, I go home every week, most of us go home every weekend, to my district which is the Sixth District of Georgia. It is a wonderful place to represent. It is the northern suburban Atlanta area. It is kind of the quintessential suburban district. It is full of active and productive families, patriotic Americans, hardworking folks.

And when I am at home, yes, my constituents are concerned about the war on terror, and, yes, they are concerned about the crisis of illegal immigration; but, Mr. Speaker, they are also concerned about school safety; and they are also concerned about easing the difficulty of obtaining health care for themselves and their family and their parents. And they are also concerned about increasing conservation of our nation's natural resources. They are also concerned about being able to afford a college education for their children. So tonight I am honored to join the gentleman from Illinois. I appreciate his leadership in this area, for what has been coined the Suburban Agenda.

I am pleased to support this agenda and this activity. I look forward to assisting the gentleman from Illinois and others in shepherding this legislation through the House. I am so honored to work with. I look forward to the discussion this evening. Mr. KIRK. I thank the gentleman.

One of the critical problems we have is from powerful social networking sites like MySpace.com and other sites that literally explode with powerful tools to reach children. Our leader, the author of the Delete Online Predators Act, is a Congressman from Pennsylvania, Mike Fitzpatrick and I want to yield to him.

Mr. Speaker, I yield to Mr. Price of Pennsylvania. Mr. Speaker, I am proud to join my colleagues tonight as we unveil the Suburban Caucus' agenda for America. Tonight we bring to the House floor strong forward-looking legislation that would help America's families in some of the fastest growing areas of our country.

I, along with our fellow caucus members, understand the issues that suburban families face each day because each one of them are suburban. I grew up in a place called Levittown, Pennsylvania, which sits just a few miles north of Philadelphia. The majority of my district is situated only 2 hours from New York City. My district borders the Delaware River right across from Trenton, New Jersey, and I am proud to represent neighborhoods in Northeast Philadelphia.

These are all suburban areas, places removed from cities, but impacted by the concerns in the neighboring cities. The suburbs have held a sentimental sway in America since the fifties. Thousands of my constituents have migrated away from New York and Philadelphia to live in my district in search of a change of pace, the purchase of a new home, more space, to raise a family, a new economic opportunity. However, increased urbanization has blurred the line between city and suburb, creating new challenges that were unheard of only a decade before.

My constituents, like millions of other suburbanites, face transportation challenges, threats from increased crime, environmental concerns, financial worries, and concern over the state of their children's education. In many ways they share the same concerns their neighboring cities have, and those concerns need to be met with attention from Congress.

The Suburban Caucus is dedicated to addressing these issues, and I am proud to be a member of the caucus and to take part in tonight's discussion.

Mr. Speaker, my most important job is my role as a father of six children. In a world that moves and changes at a dizzying pace, being a father gets harder all the time. Technology is one of the key concerns I have as a parent, specifically the Internet and the sites like MySpace, Friendster, and Planet Hollywood are a staple in every household.

The Internet is a wonderful invention. It has opened a window to the world right in our homes. However, with the limitless possibilities that window offers, we must be mindful of what we view and let into our homes. One of the most interesting developments of late has been the growth in what are called "social networking sites." We have all heard of them in one way or another. Sites like MySpace, Friendster, and Planet Hollywood have literally exploded in popularity in just a short few years. MySpace alone has just over 76 million users and ranks as the sixth most popular English language Web site and the eighth most popular site in the world. Everyone can connect with others, teachers and students, young and old all make use of networking sites to connect with people electronically, to share pictures, information, course work, and common interests. These sites have torn down the geographical divide that once prevented long distance social relationships from forming, allowing instant communication and connections to take place and a virtual second life to take hold.

For adults, those sites are benign. For children, they open the door to many dangers, including online bullying and exposure to child predators that have turned the Internet into a virtual hunting ground for children.

Mr. Speaker, the dangers our children are exposed to by these sites are clear and compelling. A Department of Justice survey found that one in five children have received an unwanted sexual solicitation from online interlocutors in the past year. Mr. Speaker, one in five children.

The FBI reports that child pornography cases have increased more than 2,000 percent over the past decade. And MySpace, which is self-regulated, has removed an estimated 200,000 objectionable profiles since it started in 2003. Look closely at local and national news stories and you will see a troubling increase in cases of child sexual assault where sites like MySpace and Friendster were a key component in the crime.

That is why just this evening I introduced the Deleting Online Predators Act, H.R. 5319, as part of the Suburban
Caucus agenda. Parents have the ability to screen their children’s Internet access at home, but this protection ends when their child leaves for school or for the library. The Deleting Online Predators Act requires schools and libraries to implement commercial applications and implement technology to protect children from accessing commercial networking sites like MySpace.com; and chat rooms which allow children to be preyed upon by individuals who would do harm to our children; and visual depictions that are obscene or child pornography. Additionally, the legislation would require the Federal Trade Commission to design and publish a unique Web site for parents, teachers, and children for information on the dangers of surfing the Internet. The Web site would include detailed information about commercial networking sites like MySpace.com and chat rooms that have shown to allow sexual predators easy access to personal information of and contact with our Nation’s children.

In addition, the bill would require the Federal Communication Commission to establish an advisory board to report and report commercial social networking sites like MySpace.com and chat rooms that have shown to allow sexual predators easy access to personal information of and contact with our Nation’s children. 

Make no mistake, our children on the Internet are at risk. Predators will look for any way to talk to children online, whether through sites like MySpace, instant messaging, or even online games. The best defense against these predators is to educate parents and children of the dangers that come along with the Internet and by protecting our children during the school day. There may be no one silver bullet for the protection of our children, but the electronic records made it so was that there was not the portability of health care for those individuals. But the electronic records for veterans were fully protected and available at any VA hospital.

This is just a case in point for how much advantage we could gain as a Nation having health records available in an electronic form. Over 60 percent of Americans support this, and it is imperative that we move in this direction for safety reasons, for access reasons, and for ease of availability of health care for all citizens across this Nation, and especially in our suburban areas.

As you mentioned, right below those top button issues for folks all across this Nation, but especially in the suburban area, if you ask them what is important to them, education and health care are truly right there. They are concerned about being able to have access to health care. They are concerned about being able to afford health care. They are concerned about their health care for their parents, and they are concerned about the accuracy of the records that are kept regarding health care and the portability, moving those records around.

As a physician, I practiced medicine for over 20 years; and so many things have changed in medicine, the different medications that we use, the different surgical procedures that we perform. The vast majority of those were not around 20 years ago, but what is around still, not just from 20 years ago but from 40 years ago and 60 years ago is the paper record of one’s health care. Most of us go into the doctor and the paper chart shuffles through the office. This was then, but today we can cut down on the errors in health care. We can cut down on the cost of health care. We can improve health care access to folks, to go from a primary care physician to a specialist physician by the use of health information technology.

Our colleague, NANCY JOHNSON from Connecticut, is introducing, along with the Suburban Caucus, the Health Information Technology Promotion Act. It will result in a remarkable incentive for medical records that will cut the costs and reduce medical errors by over 80 percent is what the statistics will tell you. Civilian patient records in New Orleans were wiped out. One of the things that made it so was that there was not the portability of health care for those individuals. But the electronic records for veterans were fully protected and available at any VA hospital.

This is just a case in point for how much advantage we could gain as a Nation having health records available in an electronic form. Over 60 percent of Americans support this, and it is imperative that we move in this direction for safety reasons, for access reasons, and for ease of availability of health care for all citizens across this Nation, and especially in our suburban areas.

As you mentioned, right below those top button issues for folks all across this Nation, but especially in the suburban area, if you ask them what is important to them, education and health care are truly right there. They are concerned about being able to have access to health care. They are concerned about being able to afford health care. They are concerned about their health care for their parents, and they are concerned about the accuracy of the records that are kept regarding health care and the portability, moving those records around.

As a physician, I practiced medicine for over 20 years; and so many things have changed in medicine, the different medications that we use, the different surgical procedures that we perform. The vast majority of those were not around 20 years ago, but what is around still, not just from 20 years ago but from 40 years ago and 60 years ago is the paper record of one’s health care. Most of us go into the doctor and the paper chart shuffles through the office. This was then, but today we can cut down on the errors in health care. We can cut down on the cost of health care. We can improve health care access to folks, to go from a primary care physician to a specialist physician by the use of health information technology.

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that if the probation officer knew of this record that he never ever would have allowed the predator to work in that school.

We need to make sure that we have this information out there and available; and we need to protect our children from those who would do them harm, those who really are the lowest of our society, is so very, very necessary; and I know that all of the members of the Suburban Caucus are very, very supportive of protecting our children.

Then, like Dr. Price and many of you all here tonight, I, too, go home every weekend. People are surprised to see me, but I tell them that I do not ever want to start thinking like the Beltway mentality up here. For that reason, I was delighted to participate and was a bit encouraged that the Senate passed a version of the bill that we passed here, actually that we passed to protect children. Whether there is a conference committee or whether it is just something that is worked out between the two chairs of the Judiciary Committees, the Senate chairman and our chairman here, certainly remains to be seen. But let us make no mistake about it, we want to make sure that we protect our children.

I am so glad that you have included that issue in this suburban agenda. My hat is off to you, and I am sure that all of the suburban areas that we represent, and yours will be very, very happy that we have taken these issues on.

Mr. KIRK. Mr. Speaker, I thank the gentlewoman who lost Jessica Lunsford in her own district.

Our leader on this issue is Congressman Jon Porter from Nevada, the author of the School Safety Acquiring Faculty Excellence Act, and I want to yield to him.

Mr. PORTER. Mr. Speaker, I want to thank my colleague and friend from Illinois (Mr. KIRK) for bringing us to together as a caucus that is focused on, I think, issues that are impacting a lot of moms and dads across this country, especially in a part of America, the suburbs, where a lot of these folks are busy taking their kids to school, getting off to work and do not necessarily have a lot of time to show up for congressional hearings.

If we look back through the history, our leadership has been very supportive. I appreciate Mr. HASTERT and Mr. BOEHNER for allowing us this time tonight on these key issues.

If we look back in time, about 40 some years ago, when I was a young man in a small Catholic grade school in the Midwest, in the community of Humbolt, Ohio, a number of challenges for teachers and challenges for parents and students had a lot to do with spitwads. Maybe showing up on time for class, making sure we are on time and not getting a detention of course, was a priority; but think how things have changed. In those days, in my little Catholic grade school, we could not wear blue jeans with rivets because we were afraid we would scratch the desks.

Let us fast forward today into suburbia. Today, we have children in the classroom that are trying to deal with drive-by shooting drills. They have drive-by shooting drills in certain schools across the country. We have children that need our special help more than ever, with an environment that is ever-changing, and it is not about rivets and blue jeans. It is about predators, worrying about predators, worrying about predators that stalk our students, that hang around the playgrounds.

If you look at suburbia and inner city and communities around the country, if you look at police files, you will see that on maps they put dots and marks where sexual predators live and they frequent schools and hang around classrooms and hang around the ball fields.

Well, being a parent myself, and having two children that graduated from the public school system in the community of Nevada and southern Nevada, I trust that when our schools open and when our schools hire teachers, they are going to have the best tools available to screen teachers, to make sure that we hire the best and the brightest to take care of our children.

We are very fortunate that the bulk of all of our teachers across this country are absolutely some of the finest. They care about their children, they care about the school, and they care about educating our precious resource, that is, our kids.

I cannot imagine the pain of a parent or a child that has been molested or taken advantage of by a teacher or a faculty member at a school somewhere across the country. We pick up the paper every day, and there is a story about someone that slipped through the system, a teacher or a faculty member somewhere that has applied and has found a job and is employed with our children and teaching our children. I will be honest with you; I cannot imagine the pain if my child or a friend of mine’s child was molested or assaulted.

In the late 1990s, 1998, this Congress in its wisdom passed legislation to allow for complete background checks on teachers. That was in 1998. Unfortunately, as we fast forward, that bill which was to provide, again, complete knowledge, complete background checks to make sure that our teachers are safe, to date, to 2006, only 26 States are able to use the law that we passed in 1998. Again, that law was passed as a reason to make sure our principals, our administrators have the right tools to check the backgrounds of teachers. Like I said, fortunately, 26 States today are using it; 24 are not. So almost half are not using this tool that is available.

We use Nevada as an example. Clark County School District in southern Nevada hires around 2,000 new teachers a year, another 3,000 or 4,000 faculty members, close to 6,000, 7,000 people a year. You go across the State, you look at our growth, we are one of the fastest growing States in the country. We need to pass H.R. 4894, the 2½ new schools each month. We also need about 2,500 new teachers, but we have run into some problems.

Unfortunately, since 1998 only 26 States are using the background check that is available due to constitutional challenges within their States, due to some way mentality up here. For that reason, I am so glad that you have included this information out there and available.

Well, again, unfortunately, that tool has not been available to all the States. So I proposed legislation, and it is H.R. 4894, the School Safety Acquiring Faculty Excellence Act, and what it does is allows every State to have access to information, both Federal and State information, on criminal background checks on teachers. Again, unfortunately, some of the States that we checked with, and we are trying to hire new teachers, due to different reasons, are not able to provide the information that we need. So I encourage that we pass H.R. 4894.

It does a couple of things. One, it gives the tools to all the States to check backgrounds through the Federal Bureau of Investigation, through all that information so they can feel comfortable that they are getting the latest up-to-date information. Number two, it streamlines the process. Some States now, although they are doing background checks, it could take weeks or months to get information on hiring a new teacher. The bill really does two things. It provides immediate access so there are fewer barriers so our administrators can have the proper information to make sure our students are safe, and it provides for those States that cannot currently follow the act of 1998 to gather that information.

Mr. Speaker, I appreciate this opportunity. There is no more precious resource than our children. We want to make sure that our parents, our administrators and our teachers and, most certainly, our children have the best available to them through the teachers that we are hiring; and with that, again, I appreciate the time.

Mr. KIRK. Mr. Speaker, I thank the gentleman from Nevada because he is the author of the lead bill of the suburban agenda, and that will be coming up shortly in the Congress here.

We know that, for example, in the State of Michigan, schools unwittingly hired 2,500 people convicted of sexual assault, murder and other felonies, exactly because these predators fell below the cracks of the teacher or school registries which have been established and were not brought together in a single Federal register.
One of the great problems that we have is also the emergence of international drug gangs moving into suburban communities. There are over 800,000 members of drug gangs now in America. It would be the seventh largest army in the world, and we need action that these gangs, sometimes suppressed inside large urban cores by capable police departments like the Chicago Police Department, are now moving into the suburbs. This is a phenomenon that we are not only seeing in Chicago, but it is happening all over the country, and I yield to my colleague from Atlanta to talk about the law enforcement situation that they face with gangs in that community.

Mr. PRICE of Georgia. Mr. Speaker, I thank my colleague for yielding. I tell you, one of the things that excites me so about this suburban agenda is that it addresses real issues of real people, in real life, in real-time. Oftentimes, we do not deal with that. These people seem kind of out there. They are far away, and they are issues that are difficult to get your arms around; but I tell you, in my community, the issue of gangs and gang violence has reared its head.

When we have neighborhood meetings or you get together with PTA groups and you talk about this, folks just shake their head. They say, It doesn’t make any sense. How can this be going on?

That is why I am so excited about the suburban agenda because what it does is bring issues that people are talking about every single day in our districts back at home and saying, Why can’t we do something about that? That is what Congressman REICHERT has brought forward. H.R. 3291 is the Gang Elimination Act of 2006.

Will it eliminate the gangs? No, but it will go a long, long way because what it does is charge the Attorney General with identifying those gangs that are the most egregious, that are the most violent, that are the most threatening to our communities all across this Nation, a lot of suburban areas, but all across this Nation and says, Let’s get a strategy down to make certain that we address these and start knocking these gangs down, start making it so that these gangs are not able to function in the way that they are able to function right now and not able to threaten our families and our children.

Mr. KIRK. One of the critical problems we have, we have heard of gangs like the Latin Kings and the Vice Lords and the Gangster Disciples, but we have a new gang emerging called Lords and the Gangster Disciples, but like the Latin Kings and the Vice Lords, we have heard of gangs who understands well law enforcement challenges east of the Cascades in Seattle.

One of the big issues we are also dealing with is a fear among families in American neighborhoods that it is difficult for their children to reach the middle class than it was for them. Another key item of the suburban agenda would establish 401-kids, a tax-deferred savings account for each child.

I want to yield to my colleague who shares Florida with the author of that legislation, CLAY SHAW.

Ms. GINNY BROWN-WATIE of Florida. I thank the gentleman for yielding.

CLAY SHAW has introduced a bill called 401-kids. What it does is it gives young families the opportunity to save for college for the education expenses of their children tax-free. It is an awfully good idea and one that many, many people are looking forward to taking advantage of.

You know, when children are first born, you tend to think, Oh, it’s going to be so long, but as those of us whose children have grown now, the time does fly by. Kids grow up, certainly whether it is a parent or a grandparent, is by using a system similar to that which many working people use, a 401(k) program.

Mr. SHAW’s bill is one that allows you to set aside money tax-free so it can grow, so it can help to pay for the education of our children. And it is one that I have heard a lot of support for in my district. We want to make sure that not only parents, but grandparents also can participate in setting aside some money for the future education of the generation who will be in college 18 years from now, or sooner.

One of the things that I wanted to also comment on, if you would allow me, is if you put in the word ‘gang,’ and your State into a search engine, it is absolutely astonishing. Coming from Florida, people may think that AARP is the only gang in town. I can assure you that it is not. When we put this information in, we got three-and-a-half pages of gang names that were listed. This is a problem for local law enforcement.

Yesterday, I actually spoke to a man whose son was killed by a gang in Pasco County. I assured him, and he hasn’t heard anything from law enforcement, this happened within the last month, that law enforcement is not sitting by idly. Certainly they are involved with it, because it also goes over into the hate crimes area. And the Sheriff and the FBI were all involved in this.

Unfortunately, these gangs have no morals, they have no respect for life, and they are taking the lives and terrorizing many, many communities. These are in all areas that we have heard of, and they are taking the lives and terrorizing many, many communities.

Mr. KIRK. I thank the gentlelady. We have seen a number of gangs morph from the view that we had of them in the 1950s coming out of cartoon images like West Side Story of the Jets and the Sharks, a group of local toughs that no longer exist. These gangs are all connected to international drug cartels, many times having weapons and contacts far exceeding local law enforcement, especially suburban law enforcement.

And now the view that they have is that they merely need to move outside of cities where they take on smaller departments or high school officials and security officials that are not well experienced with these groups to continue their operations.

Congressman Reichert’s Gang Elimination Act of 2006 makes common sense. It simply says to the Attorney General, identify the top three national drug threat gangs and put forward a plan to the Congress to take them down within 4 years. It sets an example of those gangs that if you represent a near and present danger to the homeland security of the United States, that the U.S. Government is going to take effective action.

The suburban agenda is very much about the security of families from gang violence. It is also about financial security. It is building a nest egg for each child with 401-kids family savings accounts. The Congress should build success upon success. The creation of the 401(k) program transformed the culture of the country to promote much greater savings and investment for people’s retirement. In 2001, the Congress created 529 college savings plans, and over 7 million Americans have saved over $75 billion in these accounts.

The 401-kids accounts expands the tax-free savings for each child’s college education to also allow the first-time purchase of a home. This is something that much more greatly ensures access of our children into the middle class. The opportunity is not just to build a nest egg for the child, it also gives an opportunity for each parent to sit down with that child and review how their
The suburban agenda also contains two pieces of legislation, one by Jim Gerlach and the other by Mr. Fitzpatrick, both of Pennsylvania, that encourages donations of open space for conservation purposes and also protects farmland from being gobbled up in communities. I think it is critical that we embrace a future in this country of rapidly expanding suburban communities in which families 10 and 20 years from now also see green and open space and that the decision by the government or a climate which does not encourage the donation of these areas, to let these key properties go.

I yield to my colleague from Georgia. Mr. Price of Georgia. I thank the gentlelady for yielding.

You are absolutely right. As the suburban areas expand, they often eat up the green land and the open space that is available. Before you know it, there is not enough parkland or open space that is left. It doesn’t come back.

I, like so many of my colleagues here in Congress, had the privilege of serving in the State legislature. One of the bills that I was so very proud of in the State legislature was called the Green Space bill. What it does is provide State resources to set aside on future developments a certain percentage of land for open space, green space.

I am so proud and privileged to be able to join my colleagues here in the Suburban Caucus and my two colleagues from Pennsylvania, Mr. Gerlach and Mr. Fitzpatrick, for promoting these bills that will provide encouragement for the purchase of conservation easements, as it does with Mr. Gerlach’s bill, and increase tax easements to encourage charitable contributions of real property for conservation and open space purposes, which is Mr. Fitzpatrick’s bill.

These are common-sense solutions. They are not mandates. They aren’t requirements. They aren’t the heavy hand of the law. But what they are are conservative principles being used for conservation.

I am so pleased to be able to stand with my colleagues and support these positive steps forward.

Mr. KIRK. I thank the gentleman.

It was decisive action of this kind that saved the Wagner Farm in Glenview, Illinois. With the community, the cows in that suburban community, now intensely built up, but because of forethought and foresighted action by the local community, that farm was preserved and it is helping educate a number of kids in the area about different ways to live and to preserve green space in their community.

I want to speak for a second about another bill, a bill that is later on in the suburban agenda that defends the rights of teachers to be able to search for their classroom to be drug-free. Mr. Price of Georgia. Thank you so much. This is another one of those items, as you mention, it is just common sense. When moms and dads at home wonder why their kids are subjected to the kinds of threats that they are at school, when a teacher stepping in at an appropriate time could have solved that problem, it just doesn’t make any sense to them.

I would mention that it needs to be done at the Federal level. When individuals have access to Federal courts for these kinds of issues, then it is imperative that Congress step in and act because the threat of liability of a teacher ought not get in the way of the safety of our children.

When you and I were going to school, our parents would say, look, I don’t care what you do, but you ought not upset the teacher. The teacher is right. The teacher is, in essence, your parent. And it’s not just at school. I am not an attorney, but what that means is that the teacher can act as the parent while the child is at school. When
the child is at home, the parent certainly is able to search the child. So that ought to be the case at school as well. And it is important because of the day and time that we live in. Our children are subjected to risks that you and I never thought about so it is imperative that adults that can get on the scene, the teachers in the classroom, administrators in the school, be trusted to make the right decisions in these areas and not be exposed to liability, not have to think in the back of their mind what if I do that, will I get sued. That’s just foolishness, and it threatens our children.

So I am proud once again that you brought that forward.

Mr. KIRK. What we want is to give a message to the country’s teachers that when it comes to an issue of the safety and security of kids in the classroom, do not hesitate. Do not worry about some impending lawsuit. Make sure that your classroom is secure. We are going to trust your judgment as a certified teacher, as a full-time employee of the school, to make that call and to make sure the classroom is secure.

When you look at all of this, we know that the House has long been a forum for issues on rural issues, and those are very important issues. We have also been a forum for issues on urban communities, and those are vital to the future of the country.

But there is a reality in the 21st century. There is a majority of them, live in suburbs. Suburban families face a number of critical problems. There are drug gangs moving into suburbs that are seeking to take on suburban law enforcement communities that do not have the experience of big-city departments.

There are thousands of online predators who are trying to contact our kids using powerful engines like MySpace.com. We are watching as green and open space disappear in the suburbs. And millions of Americans worry that it may be tougher for their children to enter the middle class than it was for us.

Suburban families are under attack, and they need a voice in the Congress; and that is why this agenda is coming forward.

These are critical issues in my district of Libertyville, Illinois. They represent and it is that American, grassroots solutions coming from the communities to the Congress in a way that we welcome Republicans and Democrats coming together to move this agenda forward.

We will be outlining all of this in detail tomorrow: a School Safety Acquiring Faculty Excellence Act, which helps us screen and make sure that everyone coming into contact with kids is safe and appropriate; a Delete On-Line Predators Act to make sure that these engines are not put in the service of online predators; a Gang Elimination Act, making the commonsense step forward of identifying the top gangs that are a threat to kids and the Homeland Security of the country and to take them down; a Health Information Technology Promotion Act to accelerate high technology, health information technology to make sure that your medical records, when appropriately available, is appropriate to every doctor that you see and is in a survivable form in case there is a fire or other catastrophe. And, last, a 401-Kids Tax Deferred Savings Account to have guaranteed access of children, not just in the suburbs, but also in cities and in rural communities into the middle class with tax deferred savings from the day a child is born.

I yield to my colleague from Georgia to wrap up.

Mr. PRICE of Georgia. I thank you so much for yielding and for your leadership on this issue. I want to also thank once again our leadership, the Speaker pro tempore, majority whip, conference Chair, for allowing us to share with the House and with the American people tonight this exciting, commonsense suburban agenda. And it’s not just an exciting idea, but the problems and challenges that we have in suburban America oftentimes precede those that we see elsewhere. And so it is so very important that we move this forward, the commonsense suburban agenda.

As I mentioned before, folks in our districts are concerned about all the big issues, the huge issues, the war on terror, the crisis of illegal immigration; but they are also concerned about the issues of school safety. They are also concerned about the issues of making certain that their children are safe when they go on the Internet. They are also concerned about the importance of having private personal medical records and the ability of being able to take them from one doctor to another. They are terribly concerned about making certain that we preserve our Nation’s open space and green space. And they are concerned about the ability of our kids to assist their children in succeeding, whether it be through starting a business or providing a college education for them.

So I commend the gentleman from Illinois so highly for his leadership on this issue. He has been a champion for the entire length of time, short time, that I have been in the United States Congress. It is a privilege to stand with you this evening, and I look forward to shepherding with you these issues through the United States House and Congress.

Mr. KIRK. I thank the gentleman.

Tomorrow, then, five dozen Members of Congress come together to unveil the agenda for suburban America, these pieces of legislation already with bipartisan support, and it represents commonsense solutions addressing real issues before the country, important issues for all families, and it represents a critical agenda of key items in legislation addressing problems before American families that can be done in this session of Congress.

CONGRESSIONAL ASIAN PACIFIC CAUCUS

The SPEAKER pro tempore (Mr. Inslee of South Carolina). Under the Speaker’s announced policy of January 4, 2005, the gentleman from California (Mr. Honda) is recognized for 60 minutes as the designee of the minority leader.

Mr. HONDA of California. Mr. Speaker, I would like to recognize the gentleman from Texas, Congressman Al Green.

Mr. AL GREEN of Texas. Mr. Speaker, I rise to celebrate the contributions of the Asian Pacific Islander American community and to announce Asian Pacific American Heritage Month.

I also want to take this opportunity to thank and commend my good friend from California, Congressman Honda, for his strong leadership as Chair of the Congressional Asian Pacific American Caucus.

Mr. Speaker, for over 200 years, Asian Americans have played a pivotal role in the development of our great Nation. When it was time to build the transcontinental railroad, they were the Chinese American workers who paid $28 a month to do the very dangerous work of blasting and laying ties over treacherous terrain. It was their labor under harsh working conditions, for meager wages, that helped in the development and progress of our Nation.

When our Nation was drawn into war, they were there. From World War II through the current wars in Iraq and Afghanistan, Asian Americans have been on the front lines in our battle to defend and protect our Nation. There are 32 Asian American Medal of Honor recipients, and thousands of others who have served and continue to courageously serve our Nation.

When hundreds of thousands of people were evacuated from Louisiana and Mississippi after Hurricane Katrina, they were there. The Asian American community in my home city of Houston joined all Americans around the country in welcoming Katrina evacuees and assisting the relief efforts. In Houston, the Asian American community raised more than $200,000 for the Katrina Relief Fund and took in over 15,000 displaced Americans.

And the contributions of this community will continue far into the future. Tomorrow, when it is time to cure the diseases of the future, they will be there. There are more than 165,000 Asian American doctors in the United States.

Tomorrow, when new worlds are to be explored, they will be there. There are thousands of Asian Americans working in the space program.

And tomorrow, when it is time to elect the leaders that will guide our great Nation, they will be there, in Congress, on the Supreme Court, and as President. If our country is to live up to the Declaration of Independence and the Constitution, every ethnic group will have one of its own to serve as President.
This is why we must protect the voting rights of Asian Americans and others to vote under the Voting Rights Act. We must win this battle now, so that the 14 million Asian Americans, together with all Americans, can have the equitable input that they justly deserve in our political process.

They helped to make America great. The greatness of America rests on the shoulders of all Americans, none more so than our Asian American brothers and sisters.

Mr. HONDA. I want to thank the gentleman from Texas for his wonderful words, and we shall be there.

Mr. Speaker, I would like to bring up now the gentlewoman from California, Congresswoman JUANITA MILLENDER-McDONALD.

Ms. MILLENDER-McDONALD. Mr. Speaker, let me thank my dear friend and colleague, Congressman MIKE HONDA, who is just a great leader, not only for the great State of California, but for this great Nation. He is our chairman of the Congressional Asian Pacific American Caucus, and I thank him for being here tonight.

It is with great pride and pleasure that I rise as a proud member of the Congressional Asian Pacific American Caucus, and on behalf of the over 80,000 Asian Pacific Americans who reside in my district in commemoration of the Asian Pacific American Heritage Month. I am so pleased to call him my friend, and all of my Asian friends, and I am here to celebrate with them this great heritage month because they have provided so much to this country.

Since the early 1800s, Asian Pacific Americans have played a significant role in the development of our Nation. They have joined hands with the many who came to our shores in search of opportunity, freedom of expression and adventure to make this country what it is today. Their work has made this country a proud country.

This year marks the centennial celebration of the first wave of Filipino immigrants to the United States. In 1850, Filipino workers came to the United States, particularly to Hawaii, and later California, to work in the fields as laborers.

Many Chinese and Japanese laborers who arrived in the mid-19th century were instrumental in the completion of the transcontinental railroad on May 10 of 1869.

These workers and those who followed in their footsteps have thrived in various fields of endeavor through their work ethic and ingenuity. They are proud Americans. They have done extraordinary things by showing us what work ethic is all about.

Today, the U.S. Census reports an estimated 14 million or more U.S. residents classify themselves as Asian Pacific Americans or having Asian Pacific origins, and many of whom have made extraordinary contributions to our Nation.

Additionally, the United States Census reports 1.1 million businesses are owned by Asian Pacific Americans; 312,700 military veterans have contributed in protecting our democracy and our democratic ideals around the world. Our Filipino veterans are still working for our benefits, having served in World War II.

Furthermore, 46 percent of total Asian Americans and 23 percent of Pacific Islanders' population works in management, professional and related occupations. We know that they are in our legislatures. They are judges. Of course, they are business people. They are teachers. They have made profound progress and extraordinary contributions to this country.

The figures show that Asian Pacific Americans have attained high levels of education, employment and high median household incomes. However, Mr. Speaker, many Asian Pacific Americans have yet to achieve their American dream. Twenty-three percent of the Asian Pacific population lives in poverty.

Attention needs to be given to Asian Pacific Americans who, because of inadequate skills like my Cambodian constituent, find themselves working just to make ends meet. We must work to provide job training and other community-based programs that will allow all of our citizens to fulfill their potential.

Asian Pacific Americans also face significant health disparities. They account for over half of the 1.4 million chronic hepatitis B cases in the United States, and they also suffer from high rates of diabetes, cervical and liver cancers.

Furthermore, the incidence of HIV/AIDS is on the rise in Asian Pacific communities. The work that I do on my HIV/AIDS and my 5K AIDS Walk with various Asian Pacific organizations seeks to address this.

Some progress has been made in addressing Asian Pacific American health issues, the availability of Asian and Pacific Islander cancer education materials; Web tools that provide cancer information materials in Asian and Pacific Islander languages for those with limited English is a good start, but more needs to be done to address access to affordable health care.

For example, 50 percent of Asian Pacific Americans are medically uninsured since the cost of health insurance is a major barrier to Asian Pacific Americans who are either self-employed or working for small businesses that do not provide employee-sponsored health coverage.

As we celebrate May as Asian Pacific American Heritage Month, we must celebrate the legacy, the culture, the rich traditions and achievements of our Asian Pacific Americans, as well as reflect on the challenges faced by their community. There is so pleased to have the opportunity, Mr. Speaker, for all of us here in this House to celebrate these rich cultures, as well as to strive to address the health and education challenges that confront them in our great Nation.

My commendation to all Asian Pacific community groups, especially those in my district, that have worked tirelessly to promote, assist and improve the lives of all Asian Pacific Americans and all Americans.

Mr. Speaker, I would like to thank my dear friend, Congressman MIKE HONDA, for putting together this special order tonight and his outstanding leadership representing Asian American Pacific Islanders across this country and the profound group of people whom I call my sisters and brothers. He is the chairman of our caucus, and I am pleased to be a part that caucus.

Mr. HONDA. I thank my gracious colleague from California for your wonderful words.

Mr. Speaker, I would like to rise today to recognize the Asian and Pacific Islanders of our Nation on this occasion to commemorate Asian Pacific American Heritage Month.

As Chair of the Congressional Asian Pacific American Caucus we call CAPAC, I feel privileged to be here tonight to speak of the immense contributions of the Pacific Islander history and accomplishments. Additionally, I will be highlighting those issues affecting our communities and the priorities for CAPAC.

Mr. Speaker, I would like to take a moment to acknowledge and remember extraordinary community leaders, long-time friends of the APIA community that we have lost this year, Judge Delbert Wong and journalist Sam Chu Lin.

Sam Chu Lin, who began reporting in the 1960s, worked as a correspondent for CBS and Fox. Sam Chu Lin was also a respected print journalist, writing columns and articles on Asian Pacific affairs for Asian Week. Rafu Shimpo and the San Francisco Examiner.

Judge Delbert Wong was the first Chinese American judge in the continental United States. Delbert Wong was a fourth generation American of Chinese heritage. After earning his undergraduate degree in business at U.C. Berkeley, Wong served in World War II as a B–17 navigator and was awarded numerous medals.

After the war, Judge Wong faced a choice between joining his family's grocery business or entering law school. This was not met with much support from his parents, who would say, Who would hire you, a Chinese, they would constantly say. Undeterred, Wong completed his law degree in 1948, becoming the first Chinese American graduate of Stanford Law School.

After graduation, he was appointed deputy legislative counsel, serving the California State legislature in Sacramento and later appointed deputy attorney general, becoming the first Asian American to hold those positions.

In 1992, Congress passed a law that officially designated May of each year as...
Asian Pacific American Heritage Month.

I want to thank the following people who have worked to designate May as Asian Pacific Heritage Month: the late Congressman FRANK Horton from New York; my good friend, Secretary of Transportation, Norman Mineta; Senators Daniel Inouye and the late Senator Spark, or Sparky, Matsumaga.

Some important dates include the first 10 days of May, which coincide with two important anniversaries, the arrival of Japanese American immigrants on May 7, 1843 to California, setting in El Dorado County; and the completion of the transcontinental railroad on May 10, 1869, by the Chinese laborers.

The first APIA settlement in this country dates to 1763 when Filipinos escaped imprisonment aboard Spanish galleons and established a community near New Orleans.

Today, the APIA community is one of the fastest-growing populations in the country, with over 13 million APIAs living in the U.S. and representing 4.5 percent of the total U.S. population.

My home State of California has both the largest APIA population, approximately 4.6 million, and the largest numerical increase of APIAs since April of 2000.

Mr. Speaker, this year’s theme for Asian Pacific American Heritage Month, Dreams and Challenges for Asian Pacific Americans, reflects hardships overcome by the APIA community while highlighting the hope we maintain as we contribute to the prosperity of this great Nation.

This year, I would like to particularly honor the centennial celebration of Filipinos in Hawaii and the 50th year since Dalip Singh Saund became the first Asian American Sikh to be elected to the U.S. Congress.

On May 8, 1906, a group of Filipino plantation workers arrived in Hawaii aboard the Doric, leading the first wave of Filipinos to migrate to Hawaii. The first group of Filipinos was followed by subsequent waves of Filipino immigrants who came to settle in Hawaii and, also, other parts of the United States, contributing to a migration pattern that continues up to this day.

Today, Filipinos with their rich culture and heritage have become a positive influence on mainstream life in Hawaii, with many of them succeeding prominently in their respected professions, in business, politics, government, the academy and the arts.

2006 also marks the 50th years since Dalip Singh Saund became the first Asian American to be elected to the U.S. Congress. While in office, Dalip Singh Saund forged a measure that allowed South Asians to become U.S. citizens.

As our community expands, we must also continue to educate our fellow citizens about the uniqueness of our experiences.

The APIA community is often misperceived as monolithic. Our community is extremely diverse in our languages, ethnicities and culture. Aggregating such a large and diverse group makes it difficult to understand the contributions of APIAs as an individual and subgroups, such as the Southeast Asian Americans, who are refugees that fled their home countries in the late 1970s and the early 1980s.

As a country, we need to better address and overcome the APIA community’s complicated and multicultural identity when we discuss disaster preparedness, comprehensive immigration reform, voting rights, education, health issues and veterans.

APIA Americans, such as the September 11th terrorist attacks, Hurricane Rita and Hurricane Katrina, exposed serious gaps in the delivery of public services to limited-English proficient communities, or LEP communities. In fact, the lack of linguistic and culturally competent services within FEMA and related Federal agencies prevented many LEP individuals from accessing critical disaster relief services such as cash assistance, health care, food, housing and small business loans.

As a result, at least 15,000 families from the Gulf coast suffered unnecessarily hardships. Many of the Asian Americans in the Gulf coast region, hit by Katrina, were both APIA and fisherman and were significant contributors to the local economy and fishing industry for years.

Plaquemines Parish in southern Louisiana is one of the locations of the main fishing and shrimp sites. Plaquemines Parish commercial landings average $441,181,891 in retail annually. Plaquemines Parish has an average annual landing of 28.8 million pounds of shrimp valued at $238.3 million in retail value.

Extensive reports from FEMA community relations and local fishermen determined that all but 20 percent of the fishing boats were destroyed in the hurricanes. These families had to go back to their old way of life, approximately 430 boats must be repaired and in the water before shrimp season begins May 15.

Many of the fishermen, due to cultural and linguistic barriers, were not accustomed to the American way of accessing public assistance, navigating the intricacies and bureaucracies of public agencies and commercial transactions. The fisherman have been denied Small Business Administration loans, which would help them rebuild their boats, due to the fact that they need to buy insurance prior to getting a loan. But one cannot buy insurance for a boat until it is in a working order.

Fishermen must also prove that they can pay back the loan. But without income, SBA is reluctant to give loans. Due to these complications of the system and the linguistic and cultural barriers that are posed to them, the Asian Pacific community faces an even bigger struggle.

This month, I will introduce legislation to improve disaster relief and preparedness services for individuals with limited English proficiency by requiring the Federal Emergency Management Agency to bolster Federal resources to outreach to community organizations that serve the limited-English population.

Mr. Speaker, our Nation was founded by immigrants who valued freedom and liberty, who sought to be free from persecution from a tyrant government. Families fled their home countries to seek refuge in this great Nation, because they too believed in liberty, justice and freedom for all.

APIA families would seek to be reunited with their family members overseas have not seen their dreams come true because of our broken immigration system. Over 1.5 million Asians are caught in the family immigration backlog, and immediate family members overseas wait as long as 10 years to reunite with their families in the U.S.

Mothers and fathers wait to reunite with their children. But due to the long time they have already reached the age of 18, and their families will have to start the process all over again.

As we honor the 41st anniversary of the Immigration Nationality Act of 1965 and the 31st anniversary of the Refugee Act of 1975, we need to remember that our country was founded and created to protect our freedom and civil liberties.

I believe we need comprehensive immigration reform to fix our broken immigration system.

Mr. Speaker, I would like to take a break in my presentation to offer the microphone and the floor to our Democratic leader, a great leader from the State of California, from the great City of San Francisco, someone where you always leave your heart, our leader, NANCY PELOSI.

Ms. PELOSI. Thank you very much, my colleague, Congressman HONDA, the distinguished Chair of the Asian Pacific American Caucus. I am pleased to join you, and I thank you for your leadership in calling this Special Order to acknowledge Asian Pacific American Heritage Month. It is a time when we can focus on and sing the praises of the contributions of the Asian Pacific American community to our great country. I wish to associate myself with your extensive remarks and praise of the proud community that you are a part of and thank you for your leadership in the Congress.

Mr. Speaker, I wish to associate myself with your comments, where you talked about Katirn and what happened at a time of natural disaster. As you acknowledged, I represent the great City of San Francisco in the Congress, and their children in our community with a large Asian Pacific American community. They have built our city. They have been part of its growth and its success.
This year, we observed the 100th anniversary of the 1906 earthquake. At that time, it was a sorry, sorry sight to see, San Francisco.

A black mark on that time, but one that was averted, but was suggested, was the earthquake that of course, the city burned, thousands of people were displaced in downtown San Francisco's Chinatown. It was a horrible thing. There were those in the press who suggested, who wrote in the daily metropolitan journals which were published almost immediately, they suggested that now might be a good time to get rid of Chinatown, get rid of foreigners and everything that went with it. Of course, they had their eye on this prime real estate that was Chinatown right in the heart of downtown San Francisco. But their motivation was not only commercial; it was also racist, quite frankly.

Fortunately, the city leaders at the time rejected that unfair notion and Chinatown was preserved, and we reaped a magnificent part of our community to this day. It attracts visitors from all over the world and all over California because it is such a magnificent place. It is so invigorating to go there. When you get down to it, it was or is now. And they bring a contribution that our Asian Pacific American community makes to America.

We talk about family values. The Asian Pacific Americans take the lead. Their coming to our shores, whether it is a few days ago, or over a century ago to build the railroads, whether it is a few days ago, one of them brings to our community family values, this wonderful optimism and determination for a better future for their children, this courage. Imagine the courage to leave home to come to America, no matter when it was or is now. And they bring a commitment to community, to academic success. They make America stronger, and we owe a great debt of gratitude to the Asian Pacific Americans in this regard. As I say, I see it firsthand in my own community.

But how similar it was in 1906, when the earthquake came and there were those, for whatever reason, who thought this was a good idea to change the community that was San Francisco. Fortunately, it was rejected.

Sadly, it resembled some of the rhetoric following Katrina in New Orleans; and hopefully those notions will be rejected as well, because as we rebuild these cities, we must always remember to rebuild the communities that strengthen them.

I am proud to pay tribute to AAPI leaders in my City of San Francisco who have recently passed away since we had this meeting last year, but leave their legacies. George Wong was a pioneer in the labor movement who worked until his death to ensure that workers' rights were protected.

The Governor of San Francisco's Japantown and a leading community activist, "Sox" Kitashima, she was just fabulous, Sox was, a driving force behind the Japanese American redress movement.

The late Joe Yuey distinguished himself during his 100 years of life as Asian art enthusiast, amassing a collection that is part of the world-renowned San Francisco Asian Art Museum.

Jade Snow Wong was a famous author, ceramicist and businesswoman, whose book "Fifth Chinese Daughter" is included on school reading lists across our Nation.

The legacy of all these outstanding people is one that must be carried on as an example for other Americans to follow.

And let us also remember this year as the centennial of Filipino immigration to the United States. My colleague Mr. Honda has referenced the magnificent contributions of the Filipino American community.

The first arrived on the shores of Hawaii to work on the sugar plantations in 1906, again, 1906, a year fraught with meaning, with the belief that a better life could come from hard work and determination. Filipinos continued to migrate to the United States, as they are now the second largest API population, making remarkable contributions to our country.

My colleagues have referenced the great contributions, not only the Chinese, the Filipinos, Cambodians, people from Laos, from South Asia, from India and Pakistan and from so many places in Asia, to different one to the next of these groups, the Korean Americans, the list goes on. They all make a wonderful contribution, and we should acknowledge all of it.

I am very pleased to share in this Special Order with you, Mr. Honda, because you, frankly, laid out some of the problems and challenges that were faced by the community over time.

I am proud to serve with you, and I am proud to serve with Eni Faleomavaega and our colleagues Congresswoman Anna Eshoo and David Wu, with you and others.

I also want to acknowledge the loss of our dear friend, Bob Matsui, whom we served with. Over a year-and-a-half ago he left us, but his inspiration is still with us here, And Patsy Mink. There can be no discussion of Asian Americans in Congress without mentioning the exceptional leadership of Congresswoman Patsy Mink, who served from Hawaii.

The list goes on and on, and the legacy does too. But the future is brighter because of the contributions of the Asian Pacific American community, and it is appropriate that this heritage month be established and be commemorated.

Mr. HONDA. Thank you, madam leader.

Mr. Speaker, if I may just suspend my remarks and invite my colleague from American Samoa to share his conclusions. My great Congressman who has been here for quite a few years, Congressman Eni Faleomavaega.

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

Mr. Faleomavaega. Mr. Speaker, I would like to thank my colleague and dear friend, the gentleman from California, Mr. Honda, for bringing this Special Order, but more especially also as an outstanding leader in our Asian Pacific American community and currently serving as chairman of our Asian Pacific Congressional Caucus.

I want to also commend our Democratic leader, Ms. Nancy Pelosi, for her outstanding remarks. The fact that she also is a Member who has one of the largest constituencies in not only the State of California of our Asian Pacific American community, but, as Ms. Pelosi was making her statement, I recalled also her predecessor, someone whom I have had the highest admiration and respect for, a giant of a man not only in his ways but as an example, who by the way, two-thirds of compassion for the needs of the Asian Pacific American community people, none other than the late Congressman Phil Burton.

I would also like to commend my colleague Congresswoman Juanita Millender-McDonald and Congressman Al Green, for their outstanding remarks this evening in this Special Order.

Mr. Speaker, I rise today in celebration of the Asian Pacific American Heritage Month to acknowledge the contributions of our Asian Pacific American individuals and communities to the success of our great Nation. I commend my colleagues who founded this celebration in 1977 by introducing a resolution calling upon the President to proclaim the first 10 days in May Asian Pacific Heritage Week, former Representatives Norm Mineta and Frank Horton, and Senators Daniel K. Inouye and Senator Spark Matsunaga.

I think we need to also understand, Mr. Speaker, the dynamics. Those of us who are Americans, and we are very, very proud of being Americans, but whose roots are from the Asian Pacific region, and the dynamics of why the Asian Pacific region is so important, it is in our national interests, not only our national security, the economics, just about every phase of what is really critically important in our Nation in dealing with this region of the world with the way the world's population is the Asian Pacific region. Six of the 10 largest armies in the world are in the Asian Pacific region. Our trade with the Asian Pacific region is four times greater than any other region in the world, including especially that of Europe.

I am reminded a couple of years ago what Senator Inouye said, for every one 747 that flies between the Atlantic and the United States, four 747s fly between the Asian Pacific region and our country.

Mr. Speaker, the Asian Pacific American community is vibrant and growing
with an estimated 14 million Asian American residents and another 975,000 Pacific Americans. I am proud to be a member of this Asian Pacific American community, a community that has produced so many inspiring individuals. In government, military, in the sciences, sports, entertainment, business, you name it, we have it.

In government, for example, especially from the great State of Hawaii, among the first, I guess you might say, U.S. Senator Daniel Inouye, Secretary of Labor by President Bush. Senator Daniel Akaka, the first elected Asian American Governor of any State, Governor George Ariyoshi, our first native Hawaiian Governor, Governor John Waihee, our first Filipino American Governor, Governor Ben Cayetano.

We also have Mayor Neal Blaisdell, and the newly elected mayor of the city and county of Honolulu, Mufi Hannemann. We have Lieutenant Governors Jimmy Kealoha and Duke Aina. Norm Mineta, a good friend of mine who is not only partly responsible for initiating this Heritage Month, but was always the first Asian Pacific American major in the military, like San Jose, he was also the first Asian Pacific American to be a member of a Presidential Cabinet when he was appointed as Secretary of Commerce in the year 2000 by former President Clinton and now is U.S. Secretary of Transportation appointed by President Bush.

Elaine Chao, another first. Secretary Chao is the first female Asian American Cabinet member, appointed Secretary of Labor by President Bush.

Gary Locke, first Asian American Governor on the mainland United States, elected Governor of the State of Washington in 1996. And I could never forget and my dearest respect to the late Congresswoman Patsy Mink, first Asian American female elected to the U.S. Congress since 1964. Then our late colleague and friend, my dear friend, the late Congressman Bob Matsui, who was and mentored throughout our time here together as a senior member of the House Committee on Ways and Means.

As a Vietnam veteran, Mr. Speaker, it would be ludicrous for me not to say something to honor the hundreds of thousands of Asian Pacific Americans who have and continue to serve in all the branches of the armed services of our Nation. I would like to share with you the contributions of tens of thousands of Japanese American soldiers who volunteered to fight our Nation.

Our national government immediately implemented a policy whereby over 100,000 Americans of Japanese ancestry were forced to live in what were called, supposedly, "relocation camps". I call them "concentration camps". Their lands, their homes, and their properties were confiscated without due process of law.

It was also a time in our Nation's history that there was so much hatred and bigotry and racism against our Japanese American community. And yet despite all of this, leaving their wives, their parents, their brothers and sisters behind barbed-wire fences in these prison camps, the White House accepted the requests from tens of thousands of Japanese Americans who volunteered to join the Army, and as a result, two combat units were organized.

One was called the 100th Battalion, and the other was known as the 442nd Infantry Combat Group. Both were sent to Europe to fight. And I might say that I am very, very proud to have been associated and been a former member of the 100th Battalion, 442nd Infantry Combat Group out of the State of Hawaii.

Mr. Speaker, in my humble opinion, history speaks for itself in documenting that none have shed their blood more valiantly for our Nation than the Japanese American soldiers who served in those two combat units while fighting for the forces in Europe during World War II.

The military records of the 100th Battalion and the 442nd Infantry are without equal. Those Japanese American units suffered an unprecedented casualty rate of 314 percent, and received over 18,000 individual decorations, many awarded posthumously for bravery and courage in the field of battle.

For your information, Mr. Speaker, 52 Distinguished Service Crosses, 560 Silver Stars, and 9,480 Purple Hearts were awarded to the Japanese American soldiers of the 100th Battalion and 442nd Infantry Group. I find it unusual, however, that only one Medal of Honor was given. Nonetheless, the 442nd Combat Group emerged as the most decorated combat unit of its size in the history of the United States Army.

President Truman was so moved by their bravery in the field of battle, as well as the tremendous sacrifices of the African American soldiers in World War II, that he issued an executive order to finally desegregate all of the branches of the armed services.

Senator Inouye was over engaged in battle against two German machine gun posts, and he was awarded the Distinguished Service Cross. After a congressional mandate to review again the military records of these two combat units some 5 years ago, I was privileged to be at the White House ceremony where President Clinton presented 191,919 Congressional Medals of Honor to the Japanese American soldiers who were members of the 100th Battalion and 442nd Combat Infantry. Senator Inouye was one of those recipients of the Congressional Medal of Honor.

I submit, Mr. Speaker, these Japanese Americans paid their dues in blood to protect our Nation from its enemies. It is a shameful mark on the history of our country that when the patriotic survivors of the 100th Battalion and the 442nd Infantry returned to the United States to be reunited with their families, who were locked up behind barbed wire fences, living in prison camps, and could not even get a haircut in downtown San Francisco, simply because they looked Japanese, they were Japanese, and for that reason alone, even with their uniforms on, they were not given the privilege of getting a haircut.

My former colleague and now U.S. Secretary of Transportation, Norm Mineta, and the late Congressman Bob Matsui, from Sacramento, spent some of the early years of their lives in these prison camps. Secretary Mineta told me one of the interesting features of these prison camps was posting of machine gun nests all around the camps and everyone told he these machine guns were posted to protect them against rioters. But then Secretary Mineta observed, if these machine guns were posted to guard us, why is it that they are all directed inside the prison camp rather than outside it?

I submit, ladies and gentlemen, my good friends, my colleagues, the wholesale and arbitrary abolishment of the constitutional rights of these loyal Japanese Americans should forever serve as a reminder and testament that this must never be allowed to occur again.

When this miscarriage of justice unfolded during World War II, Americans of German and Italian ancestry were not similarly jailed en masse. Some declared the incident as an outright example of racism and bigotry in its ugliest form.

After viewing the Holocaust Museum in Washington, I understand better why the genocide of some 6 million Jews has prompted the cry "Never again, never again.” Likewise, I sincerely hope that mass internments on the basis of race alone will never again darken the pages of the history of this great Nation.

Now, to those who say, Well, that happened decades ago, we must say that we have to continue to be on our guard for this kind of thing to happen again. Remember years ago the case of Bruce Yamashita, the Japanese American born and raised in the State of Hawaii, who was discharged from the Marine Corps after a training program as an officer candidate and an ugly display of racial discrimination.

As a Vietnam veteran, I understand better why the genocide of some 6 million Jews has prompted the cry “Never again, never again.” Likewise, I sincerely hope that mass internments on the basis of race alone will never again darken the pages of the history of this great Nation. Now, to those who say, Well, that happened decades ago, we must say that we have to continue to be on our guard for this kind of thing to happen again. Remember years ago the case of Bruce Yamashita, the Japanese American born and raised in the State of Hawaii, who was discharged from the Marine Corps after a training program as an officer candidate and an ugly display of racial discrimination.

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situation was made worse when a leading officer of the Marine Corps made a statement on the 60 Minutes program who said, Marine officers who are minorities do not shoot, swim or use compasses as well as white officers.

The Commandant later apologized for his remarks, which was a little too late. And I am really happy to know that after all of the investigations that the Secretary of the Navy finally awarded Mr. Yamashita his commission as an officer and a captain in the United States Marine Corps.

The tradition continues today of the thousands of Asian Pacific Americans who served in the armed services. Retired General Eric Shinseki was the first Asian American soldier of any rank to serve in the military.

Our Asian American Pacific Island soldiers are fighting for freedom in Iraq even as I speak. Just this past weekend I was privileged to witness in Germany the swearing in of a Samoan soldier by the name of Command Sergeant Major Iuniasolua Savusa as the Command Sergeant Major for U.S. Army Europe and the 7th Army.

I am very proud of Command Sergeant Major Savusa for his accomplishments. He is an inspiration and a great role model for our youth and other Asian Pacific Americans who currently serve in the military.

Mr. Speaker, I think at this point I want to defer to my good friend, the gentleman from California (Mr. HONDA) the manager of this special order this evening. And I am sure that he may want to continue portions of his statement as well.

Mr. HONDA. Mr. Speaker, I thank the gentleman from American Samoa for adding so much information to this presentation, because I think that when people listen and hear what it is that we are sharing with this country, there may be many, many people out there that say, I did not know that.

Although we talk about many firsts, accomplishments from members of our communities, I am sure also, that those who are first expect never to be last, that they would continue, that we would continue to contribute to this country. And in order to contribute to our country, we have to also defend the Constitution.

Defending the Constitution and defending our country entails the voting rights. This past week, H.R. 9, the Voting Rights Act reauthorization was introduced.

The right to vote is keenly felt by the Asian and Pacific Islander American community. Chinese Americans could not vote until the Chinese Exclusion Acts of 1882 and 1892 were repealed in 1943. First-generation Japanese Americans could not vote until 1952 because of the racial restrictions contained in the 1790 naturalization law.

With this upcoming Judiciary Committee tomorrow, we need to ensure that important provisions such as section 203, which has been very vital to the API community's ability to participate in the electoral process, gets reauthorized in this Congress.

Language-minority citizens were often denied needed assistance at the polls. In the 1975 amendments to the Voting Rights Act, such assistance became required in certain situations, and we need to ensure that these provisions continue to remain in current law.

Mr. Speaker, as Americans, we need to ensure that all children receive a quality education, but also provide adequate teacher training, funds for after-school and extracurricular activities and ensuring that college is affordable for every student that deserves to receive a higher education.

According to the U.S. Census, 50 percent of Asians age 25 and over have a Bachelor's degree or higher level of education. However, I would like to emphasize that when we disaggregate the data, when we tease apart the information by the API subgroups, we find that the model minority stereotype is in fact a myth.

Only 9.1 percent of Cambodian Americans, 7.4 percent Hmong Americans, 7.6 Lao Americans, 19.5 percent Vietnamese Americans, and 28.6 percent of native Hawaiians and Pacific Islanders who are 25 years and older have a Bachelor's degree. These numbers show that we must do a better job of disaggregating data and information about APIs to address the needs of those hard-working Americans who still falter behind. To address the disparities between subgroups of the larger API community, we need Congress to pass the Asian American and Pacific Islander Serving Institutions bill, which my colleague from Oregon, Congressman DAVID WU, will be introducing later this month.

This legislation will provide Federal grants to colleges and universities that have historically served underrepresented Asian American and Pacific Islander students that is at least 10 percent APIA and at least 50 percent of its degree-seeking students receive financial assistance.

As a caucus, we will work to increase the availability of loan assistance, fellowships and programs to allow APIA students to attend a higher education institution; to ensure full funding for teachers and bilingual education programs under the No Child Left Behind Act; to support English language learners; and to support full funding of minority outreach programs for access to higher education, such as the TRIO programs to expand services to serve APIA students.

More specifically, a common misperception of APIAs is that, as a group, we face fewer health problems than other racial and ethnic groups. In fact, APIAs as a group and specific populations within this group do experience disparities in health and health care.

For example, APIAs have the highest hepatitis B rates of any racial group in the United States. APIAs are also five times more likely to develop cervical and liver cancer than any other ethnic and racial group.

According to the Census Bureau, 18 percent of APIAs went without insurance for the entire year in 2000. This means that the uninsured are not only less likely to go without care for serious health problems, they are also more likely to go without routine care, less likely to have a regular source of care, less likely to use preventive services and have fewer visits per year.

At the same time, without appropriate language translation services or properly translated medical-English proficient immigrants cannot receive adequate care, as well as State and Federal benefits for which they may be eligible.

In the APIA community, 76 percent of Hmong Americans, 61 percent of Vietnamese Americans, 52 percent of Korean Americans and 39 percent of Tongans speak limited English. Therefore, eliminating health care disparities in the API community must include data collection, linguistically appropriate and culturally competent services, and access to health insurance.

CAPAC has been working with both the Congressional Hispanic and Black Caucuses on the Health Care Equality and Accountability Act to eliminate ethnic and racial health disparities for all of our communities.

I have introduced the Health Care Equality and Accountability Act, which will address expanding the health care safety net by diversifying the health care workforce, combating diseases that disproportionately affect racial and ethnic minorities, emphasizing prevention and behavioral health and promoting the collection and dissemination of data and enhanced medical research.

Mr. Speaker, I would also like to extend my gratitude to the patriotic men and women serving our country in the military, including the 60,813 APIAs serving on active duty in the U.S. armed services, as well as the 28,066 in the Reserves and the National Guard.

I also commend and thank the 351,000 APIA veterans who fought for this country. I would like to highlight and honor the Filipino veterans as my colleague had done who have not been compensated and recognized for their service, which I believe is a national disservice to these brave veterans.

As a country, it is our duty to ensure that those veterans have access to all the benefits and treatment that other veterans receive. We believe that our troops should be taken care of when we send them into battle and that they should be given the respect when they return home. Therefore, I stand with my colleagues, Congressmen ISSA and Congressman PILNER, to support their bipartisan legislation, H.R. 4574, to restore full benefits to
these veterans who fought for our Na-
tion during World War II. With Con-
gressman Issa taking the lead and Con-
gressman Filner in a leadership posi-
tion in the Veterans’ Affairs Com-
mittee, we have a great chance to get
this bill to the House floor to honor the
centennial celebration of Filipinos in
Hawaii and to keep the word of Con-
gress that we gave to these brave vet-
erans of World War II.

I am proud of our community’s ac-
complishments. Mr. Speaker, and I
would like to recognize many of the APIA
firsts in areas of art, film, sports,
sciences, academia, and politics. In
each effort, these folks, who were first,
expect that they are not the last.
In 1977, Yungh Wang, the first Chinese
American graduated from Yale Univer-
sity and the first APIA to graduate
from a U.S. college;
In 1983, William Ah Hang, who was
Chinese American, became the first
APIA to enlist in the U.S. Navy during
the Civil War;
In 1944, An Wang, a Chinese Amer-
ican who invented the magnetic core
memory revolutionized computing and
served as a standard method for mem-
ory retrieval and storage;
In 1946, Wing F. Ong, a Chinese Amer-
ican from Arizona, became the first
APIA to be elected to State office;
In 1948, Victoria Manalo Draves, a
Filipino American diver, became the
first woman to win Olympic gold med-
als in both the 10 meter platform and
the 3 meter spring board events;
In 1966, Dalip Singh Saud, the first
Indian American to be elected to Con-
gress;
In 1965, Patsy Takemoto Mink, the
first Japanese woman and woman of
color elected to Congress who cham-
pioned little IX;
In 1985, Haing Ngor, a Cambodian
American, became the first APIA to
win an Academy Award for his role in
the movie “Killing Fields”;
In 1985, Ellison Onizuka, a Japanese
American, the first APIA astron-
aut whose life was lost in a launching
tragedy.

In conclusion, Mr. Speaker, the Asian
American Pacific Islander American
community continues to fight for our
civil liberties and our civil rights as
Americans.

Even after the internment of the Jap-
anese Americans during World War II,
we as a community did not grow embitter-
ed or cowered by discrimination; in-
stead we progressed and moved for-
ward. I am proud to be a member of the
APIA community because we continue
to serve as positive contributors to our
many communities by investing in edu-
cation, business, and cultural opportu-
nities for all Americans.

In closing, this Asian Pacific Ameri-
can Heritage Month we take pride in
our history, accomplishments, and the
promise of our future as we continue to
pave the way for a better tomorrow in
the name of dreams and challenges of
Asian Pacific Americans.

Mr. Speaker, the 6 years I have
served here I learned that Asian Ameri-
cans have a unique contribution to
make to this body and to this country,
and that we because of our history in
this country uniquely understand and
recognize that our Constitution is
never tested in times of tranquility.
Our Constitution is always tested in
times of tension and tragedy. And to the
point where we can internalize the principles of our Bill
of Rights and our Constitution, and to the
point where we understand that defend-
ing this Constitution and its people
will we as Members of this body, face overwhelming public
approval which could be wrong and
stand up to them, say it is wrong be-
cause it does not follow the Constitu-
tion.

These are the kinds of heritage and
contributions Asian Americans have
made, will make and continue to make
in this country so that we may fulfill
the phrase in the preamble of our Con-
stitution that says “to form a more
perfect union.”

In the words of Congressman Al
Green, “There will be a tomorrow.”
Mr. Speaker, I yield to my friend.
Mr. F.ALEOMAVAEGA. Mr. Speaker,
how much time do we have remaining?
The gentleman from California, Mr. Ing-
lis of South Carolina, The gentleman
has 3 minutes remaining.
Mr. F.ALEOMAVAEGA. Mr. Speaker,
I would like to offer my closing com-
ments. I say, Mr. Speaker, when I envi-
sion America, I see a melting pot
designed to reduce or removal racial
differences. The America I see is a bril-
liant rainbow, a rainbow of ethnicities
and cultures with each people proudly
contributing in their own distinctive
and unique way a better America for
generations to come.

Asian Pacific Americans wish to find
a just and equitable place in our soci-
ety that will allow, like all Americans,
to grow, to succeed, to achieve and to
contribute to the advancements of this
great Nation.

I would like to close my remarks by
asking all of us here this evening, What
is America all about?
I cannot think of it said better than
on the steps of the Lincoln Memorial
in the summer of 1963 when an African
American minister by the name of
Martin Luther King, Jr., poured out his
heart and soul to every American who
could hear his voice when he uttered
these words: “I have a dream…”
My dream is that one day my children
will be judged not by the color of their
skin, but by the content of their charac-
ter.”

That is what I believe America is all
about, Mr. Speaker. Again, I thank my
colleagues and my good friend, the gen-
tleman from California, for his man-
agement of this Special Order honoring
all of the Asian Pacific American com-
munity in our country and the con-
tributions that they have made to
our country to form a more per-
fected union.

I rise today in celebration of Asian Pacific American Heritage Month, to acknowledge the
contributions of our Asian Pacific American indi-
viduals and communities to the success of
our great Nation.

I commend my colleagues who founded this
celebration in 1977 by introducing a resolution
calling upon the President to proclaim the first
ten days in May Asian Pacific Heritage week—
Representative Norm Mineta and Frank Hor-
ton, and Senators Daniel K. Inouye and
Spark Matsunaga.

The Asian Pacific American community is vi-
brant and growing, with an estimated 14 mil-
lion Asian American residents and another 91
Asian-Pacific American communities.

I am proud to be a member of this Asian
Pacific American community, a community that
has produced so many inspiring individuals in
government, the military, the sciences, sports,
entertainment, and business. In government,
for example: from Hawaii

Senators Hylorum Fong, Daniel Inouye, Dan-
iel Akaka.

Governors George Ariyoshi, John Waihee,
Ben Cayetano.

Mayors Neal Blaisdell and Muli Hannemann,
Lt Governors Jimmy Kealoha and Duke Aiona.

Norm Mineta—my good friend was not only
partly responsible for initiating APA Heritage
Month, but was also the first Asian Pacific
American mayor of a major U.S. city (San
Jose) who was also the first Asian Pacific
American to be a member of the Presidential
Cabinet, when he was appointed as Secretary
of Commerce in 2000 by former President
Clinton and five years ago Mr. Mineta was ap-
pointed by President Bush as U.S. Secretary of
Transportation.

Elaine Chao—another first, Secretary Chao
is the first female Asian-American cabinet
member, appointed Secretary of Labor in 2001,
also appointed by President Bush.

Gary Locke—the first Asian-American gov-
ernor on the mainland U.S., elected governor
of Washington, 1996.

Patsy Mink—the first Asian-American female
elected to Congress, in 1964 from Hawaii.

Bob Matsui—my dear friend and colleague
who inspired me and mentored me throughout
our time together here as a senior member of
the House Committee on Ways and Means.

As a Vietnam Veteran, it would be ludicrous
for me not to say something to honor the hun-
dreds of thousands of Asian-Pacific Americans
who have and continue to serve in all the
branches of armed services of our Nation. I
would like to share with you the contributions
of the tens of thousands of Japanese-Americ-
nian soldiers who volunteered to fight our Na-
ton’s enemies in Europe during World War II.

Mr. Speaker, we are well aware of the fact
that it was the surprise attack on Pearl Harbor
on December 7, 1941, by the Imperial Army of
Japan—there was such an outrage and cry for
all-out war against Japan, and days afterward,
our President and the Congress formally de-
clared war—but caught in this cross-fire were
hundreds of thousands of Army-Americans—Per-
sons mind you who happened to be of Japa-
nese ancestry.

Our national government immediately imple-
mented a policy whereby over one-hundred
thousand Americans of Japanese ancestry,
were forced to live in what were called reloca-
tion camps— but were actually more like pris-
ion or concentration camps. Their lands,
homes and properties were confiscated with-
out due process of law.
It was also a time in our Nation's history that there was so much hatred, bigotry and racism against our Japanese-American community—and yet despite all this—leaving their wives, their parents, their brothers and sisters behind barbed wire fences in these prison camps. The White House accepted the request from tens of thousands of the Japanese-Americans who volunteered to join the Army.

As a result, two combat units were organized—one was the 100th Battalion and the other known as the 442nd Infantry Combat Group. They were sent to fight in Europe in my humble opinion, history speaks for itself in documenting that none have shed their blood more valiantly for our Nation than the Japanese-Americans soldiers who served in these two combat units while fighting enemy forces in Europe during World War II.

The military records of the 100th Battalion and 442nd Infantry are without equal. These Japanese-American units suffered an unprecedented casualty rate of 314 percent and received over 18,000 individual decorations, many awarded posthumously, for bravery and courage in the field of battle.

For your information, Mr. Speaker, 52 Distinguished Service Crosses, 560 Silver Stars, and 9,480 Purple Hearts, were awarded to the Japanese-American soldiers of the 100th Battalion and 442nd Infantry Group. I find it unusual; however, that only one Medal of Honor was ever given. Nonetheless, the 442nd Combat Group emerged as the most decorated combat unit of its size in the history of the United States Army.

President Truman was so moved by their bravery in the field of battle, as well as that of African-American soldiers during World War II, that he issued an executive order to finally desegregate all branches of the Armed Services.

Senator INOUYE lost his arm while engaged in battle against two German machine gun units and he was awarded the Distinguished Service Cross. After a Congressional mandate to review again the military records of these two combat units 5 years ago—I was privileged to attend the White House ceremony where President Clinton presented nineteen Congressional Medals of Honor to the Japanese-American soldiers who were members of the 100th Battalion and 442nd Infantry group. The Commandant of the Marine Corps, a four star general, who appeared on television's "Sixty Minutes" and stated: "Marine officers who are minorities do not shoot, swim, or use compasses as well as white officers." The Commandant later apologized for his remarks, but it was a little too late.

After years of perseverance and appeals, Mr. Yamashita was vindicated after proving he was the target of vicious racial harassment during his officer training program. The Secretary of the Navy's investigation into whether minorities were deliberately being discouraged from becoming officers resulted in Bruce Yamashita receiving a commission as a Captain in the Marine Corps.

The tradition continues today of the thousands of Asian-Pacific Americans who serve in the armed services. Retired General Eric Shinseki was the first Asian-American four-star general who served as U.S. Army Chief of Staff. Our Asian-American and Pacific Island soldiers are fighting for freedom in Iraq even as I speak.

Just this past weekend, I was privileged to witness the swearing in of the Samoan soldier CSW Iuniasolua Savusa as the Command Sergeant Major for U.S. Army Europe and the 7th Army. I am very proud of Command Sergeant Major Iuni Savusa for his accomplishments. He is an inspiration, a model for our youth and other Asian-Pacific Americans who currently serving in the military.

Other outstanding Asian-Pacific Americans who have made significant contributions to our nation:

Dr. David Ho—pioneered treatment for HIV/AIDS and named by Time Magazine as its "Man of the Year" in 1996.

Dr. Hideyo Noguchi—isolated the syphilis germ in 1911, leading to a cure for the deadly disease.

Dr. Subrahmanyan Chandrasekhar—Nobel Prize winner, evolution of stars, led to modern astrophysics.


Kalpana Chawla—Astronaut, first Indian American woman in space.

News, Sports, and Entertainment: Dr. David Ho, Internationally renowned doctor and researcher. Dr. David Ho, Internationally renowned doctor and researcher.

Ms. BORDALLO. Mr. Speaker, I rise today in honor of Asian Pacific American Heritage Month and to recognize the role that Asian and Pacific Islander
Americans play in our nation. I want to thank Mr. HONDA, the Chairman, and Mr. PALEOMAVAEGA, the Vice Chairman, of the Congressional Asian Pacific American Caucus for their commitment to and leadership of the Caucus and their efforts on behalf of our community.

Asian Pacific Islanders are leaders in academia, in the arts, in all levels of government and the military, and in the private sector. They contribute to all aspects of American life and, in doing so they enrich the lives of all Americans and make this country stronger. This month is set aside to honor their successes and contributions.

As we celebrate Asian Pacific Islander traditions this month, we must remember those pioneers who forged the path on which we walk today. Their work, their sacrifices, and the impacts they made on America provided the foundation of understanding of Asian and Pacific Islander cultures, traditions, and heritage, all of which have opened doors for current and future generations. True to this record, Asian Pacific Islander American achievements today will inspire and support future generations of Asian Pacific Islanders.

This year’s theme is “Dreams and Challenges of Asian Pacific Americans.” It is through these strong dreams that the Asian Pacific Islander community has progressed. As we come together this month to celebrate another Asian Pacific American Heritage Month, I am reminded of the many contributions and successes of our community. The importance of our community has been recognized by the White House. On May 13, 2004, President Bush signed Executive Order 13339, which created the President’s Advisory Commission on the White House Initiative on Asian Americans and Pacific Islanders. This was a significant step in voicing the special needs of the APA community through the Executive branch of government. One of Guam’s very own was chosen to serve on this Commission.

Martha Cruz Ruth is one of fourteen APAs appointed by the President to serve on the President’s Advisory Commission for the White House Initiative on Asian Americans and Pacific Islanders. The Commission was chosen based on their history of involvement with the APA community and for their expertise in a specific field. Mrs. Cruz’s specialties range from media affairs and marketing to local political involvement in Guam’s Legislature in 1987, and she brings a unique voice to this Commission.

Asian Pacific Americans have demonstrated a long and distinguished history of service to this country. Many have served in our armed forces. On Guam, our rate and women volunteers for military service at higher rates per capita than any state in the union. We owe each and every one of these servicemen and women a debt of gratitude for their service and sacrifice.

Through hard work and dedication, Asian-Pacific Americans have risen through the ranks to the top levels of military leadership. General Eric K. Shinseki, holds the distinction of being the highest-ranking APA in the U.S. Army. Major General Antonio Taguba, who served as the chief investigator during the Abu Ghraib prison scandal, is only the second Filipino American to rise to the position of General in the U.S. Army. Brigadier General Vicente Tomas (Ben) Blaz, of Guam, had a distinguished career with the U.S. Marine Corps, and he made our island proud when he was promoted to Brigadier General in 1977. In 1984, after retiring from the Marines, General Blaz came here to Guam’s Delegate to the U.S. House of Representatives and served in that capacity for eight years.

Among those who have served in the military, I especially want to remember those who have given their lives to protect our freedom, including those who lost their lives in the Global War on Terrorism. Specialist Christopher Jude Rivera Wesley, Lieutenant Michael Aguon Vega, Specialist Jonathan Pangelinan Santos, Specialist Richard DeGracia Naputi, Jr., and Specialist Kasper Alan Camacho Dudkiewicz are five of Guam’s sons who were killed in the war. But the Micronesian region has lost six of its own sons. Though their deaths sadden us, their courage reminds us that freedom is never free.

The Asian Pacific American communities have embraced America as our home and have thrived here in the limitless opportunities this country has to offer.

Today, as we go forward celebrating “Dreams and Challenges of Asian Pacific Americans,” let us celebrate the unique histories and stories of our people. This year’s theme of Guam will commemorate the 62nd anniversary of our liberation from enemy occupation by U.S. armed forces during World War II. As the only American territory with a civilian population occupied by the enemy during World War II, the people of Guam risked their lives to protect American servicemen from capture and endure great hardships and suffering. I want to recognize the people of Guam for their steadfast loyalty during these trying times.

Guam continues to play an important role in our national security. Recently, Secretary Donald Rumsfeld announced the re-location of marines from Okinawa to Guam as part of a major realignment of forces in Japan. With the impending arrival of 8,000 Marines from Okinawa, our island is planning for a period of tremendous growth. We look forward to making a significant contribution to peace and security in the western Pacific and Asia, and we hope that the realignment of forces will strengthen the U.S.-Japan alliance.

As we celebrate Asian Pacific American Heritage Month, let us honor the contributions of all Asian and Pacific Islanders. Recently, Secretary Donald Rumsfeld announced the re-location of marines from Okinawa to Guam as part of a major realignment of forces in Japan. With the impending arrival of 8,000 Marines from Okinawa, our island is planning for a period of tremendous growth. We look forward to making a significant contribution to peace and security in the western Pacific and Asia, and we hope that the realignment of forces will strengthen the U.S.-Japan alliance.

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Americans. This year’s theme, “Dreams and Challenges of Asian Pacific Americans,” reflects the Asian and Pacific Islander American community’s commitment to fairness and equality.

I represent California’s 33rd congressional district, which is one of the most ethnically and culturally diverse congressional districts in the U.S. It is emblematic of the emerging “majority minority” demographic of the state of California.

California is home to the largest Korean American population in the country. More people of Korean heritage live and work in Los Angeles than in any place in the world outside Korea; and more Korean Americans live and work in the 33rd congressional district than in any other congressional district in California.

I want to comment briefly on the recent and, in many ways, historic visit of Super Bowl MVP Hines Ward to Korea last month. His visit, I believe, embodies this year’s theme of fairness and equality. The NFL hero, who is of mixed Korean and African-American ancestry, traveled to his native country to express pride in his heritage and to show the world that side of his heritage after he faced prejudice as a child. His Korean mother accompanied him.

By all accounts, South Korea warmly embraced Hines Ward and received him as a hero. His visit made him an honorary citizen. Moreover, his visit not only galvanized the Korean community but also brought attention to the plight of Koreans of mixed ancestry.

Korea has 35,000 people of mixed race, and many are subjected to discrimination. 22 percent are unemployed, and only 2 percent have administrative jobs. The rest are laborers. Statistics suggest that 9.8 percent of mixed-race Koreans leave primary school and 17.5 percent middle school. The average drop-out rate for Korean middle school students is 1.1 percent. The Pearl Buck Foundation notes that international marriages between Koreans and non-Koreans are on the rise and that the mixed-race population in Korea is estimated to grow to 2 million by 2020.

My home state of California is a leader in the growth of mixed-race populations in the U.S. In the 2000 Census, 7 million people self-identified themselves as multiracial. Historically, the West has always been very multiracial due to high immigration levels, the rich mix of different ethnic groups, and the historical absence of legal barriers to interracial marriage. Much work, however, remains to be done as mixed-race children in the U.S. and their counterparts overseas suffer from stigmas and discrimination.

Hines Ward’s visit to Korea has made a positive difference. The government and the ruling Uri Party recently agreed to grant citizenship to people having mixed-race backgrounds and their families. The Ministry of Justice is now reviewing a plan to grant citizenship or residency status to those who marry “dreams.” All acknowledge the impact and importance of Hines Ward’s visit.

I want to congratulate Mr. Ward on his triumphant return to his homeland. He has used his celebrity status to bring attention to an issue of profound importance to both the U.S. and Korea. I also want to congratulate the Korean government for taking positive steps to address an issue that until now has been largely ignored.

Finally, Mr. Speaker, as we celebrate Asian Pacific Heritage Month, let us not overlook those Asian-Americans of mixed race who have also made significant contributions to our nation.

Mr. BACA. Mr. Speaker, I rise today in celebration of Asian Pacific American Heritage Month and to honor the more than 14 million Asian Pacific Americans that contribute to the success of our great nation.

I am proud to be a Representative from the state of California, which is home to the largest Asian American community in the United States. I truly believe diversity is what makes our country great and California benefits greatly from the API community’s presence there.

The theme for this year’s Asian Pacific American Heritage Month is “Dreams and Challenges of Asian Pacific Americans” and it is an idea that resonates especially for those of us from the Golden State. Indeed, much of California’s earliest infrastructure and railways were built by the sweat and labor of Chinese and Japanese immigrants. Despite grueling working conditions and exploitative labor, these law abiding citizens played a vital role in developing California’s early economy and today, Chinese and Japanese Americans are among the largest, most successful API groups in the state.

The API community has also been at the heart of California’s saddest and darkest hours. During World War II, our state was home to most of the internment camps that unjustly imprisoned more than 112,000 Japanese Americans between 1942 and 1948. Government-sanctioned racism forced many of these law abiding citizens to lose everything they owned and many families remain seared by the memory of this injustice.

However, the suffering and struggle of the API community didn’t stop there. As recently as 1992, Americans witnessed a milestone in Asian Pacific American history as the streets of Koreatown exploded in violence during the Los Angeles Riots. Thousands of Korean Americans watched their American Dream go up in flames and they, too, had no choice but to rebuild and rise again.

And the story of America is the home of Vietnamese, Cambodian, Hmong, Filipino, Thai, Malaysian, Native Hawaiian or other API communities. Each of these groups has overcome heartache, oppression, discrimination, and intolerance to achieve their goals in America. They are proud to be Americans and grateful for the opportunity to live freely and pursue their dreams.

The API community is among the fastest growing minority groups in our country and is succeeding in every arena. Asian Pacific Americans proudly serve in our military; they are among some of the most successful entrepreneurs; and some of them are my esteemed colleagues here in the halls of Congress.

I am proud to honor the Asian Pacific American community today not only for their persistence, but also for their accomplishments, contributions and leadership to our community.

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I’d like to thank the gentleman from California for putting together this Special Order to celebrate Asian Pacific American Heritage Month.

Mr. Speaker, I proudly represent one of the largest Vietnamese communities in the world outside of Vietnam in Orange County, California.

Many of them came to the United States only about thirty years ago, seeking refuge from an oppressive regime in an unknown land and facing an uncertain future.

These individuals risked everything for a chance to live freely and provide better opportunities for their children and for their families.

Since their arrival, these Vietnamese refugees have become Americans in the finest and truest sense of the word—hard working people trying to create a better future for themselves and their families.

One success story that I love to mention is that of Mr. Chieu Le, founder and chief executive officer of Lee’s Sandwiches in Orange County, California.

In 1981, one year after immigrating to the United States from Vietnam, Mr. Le and his family bought their first catering truck and began serving sandwiches in the community.

Twenty years later, they opened the first Lee’s Sandwich Shop in Garden Grove, California.

Today, Lee’s Sandwiches is the fastest-growing restaurant chain in the West with over 35 stores in operation or development.

And Mr. Le and his family have given back to the community as well, raising hundreds of thousands of dollars for victims of the 9/11 attacks and the South Asia tsunami.

But Mr. Le and his family are only one example. Dr. Nguyen-Lam Kim Oanh of the Garden Grove Unified School District is the first Vietnamese-American woman elected to a school board in Orange County.

Or actress Kieu Chinh, who has appeared in numerous movies and TV shows including E.R. and The Joy Luck Club, and was the subject of the Emmy-award winning 1996 documentary “Kieu Chinh: A Journey Home.”

And groups such as the Vietnam of Vietnamese Student Associations—a non-profit, volunteer-run organization that puts together the annual Tet Festival in Orange County, which draws twenty to thirty thousand attendees.

Or the Orange County Asian and Pacific Islander Community Alliance—the largest Pan-Asian Pacific Islander organization in Orange County. Their health outreach programs, after-school programs, and policy advocacy programs make a real difference in the lives of Orange County residents.

Through their hard work and dedication, Vietnamese Americans and other Asian-Pacific individuals and groups like these have become an integral part of the Orange County family—as entrepreneurs, as community leaders, and as activists for worthy causes at home and abroad. On behalf of all of my colleagues in the House, I offer them our praise and our gratitude.

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, I rise today to honor Asian Pacific American Heritage Month and to pay tribute to the struggles and enormous contributions of Asian Pacific Americans to our Nation’s culture.

It is an honor to pay tribute to the many achievements and honor the countless unique contributions to the United States made by Asian Pacific Americans across our Nation.

May commemorates the arrival of the first Japanese immigrants in 1843. Therefore, it is appropriate that during the month of May we recognize the contributions made by Asian Pacific Americans to our communities.

May 10, 1869 marks the completion of the transcontinental railroad and its completion is...
greatly credited to the labor of the Chinese immigrants. Today, there are over 14 million Asian Pacific Americans living in the United States and this represents 5 percent of the population.

The rich history associated with the Asian Pacific American community has greatly benefited from the many contributions of its immigrants.

The Greater Dallas Asian American Chamber of Commerce (GDAACC) is the largest Asian American Chamber in the United States with 1,200 members currently enrolled.

Located in the Asian Trade District in North-west Dallas, GDAACC, is the focal point of Asian American economic development and cultural exchange.

In recent years, due to great efforts to expand the number of programs that provide assistance to sponsors and partners, the GDAACC initiated the Asian Festival and approximately 15,000 people were in attendance.

GDAACC is also responsible for initiating the Leadership Tomorrow Program; the Multi-Ethnic Education and Economic Development Center; and the Texas Asian American Business Symposium in Dallas, Texas.

The Asian Pacific American community is well deserving of the many accolades they receive because their contributions have greatly enriched the culture and history of our Nation.

IMMIGRATION REFORM

The SPEAKER pro tempore. Under the Speaker’s announced policy of January 4, 2005, the gentleman from Iowa (Mr. KING) is recognized for half the time remaining before midnight.

Mr. KING of Iowa. Mr. Speaker, as always, I very much appreciate the privilege to address you, Mr. Speaker, and in speaking addressing this great United States of America House of Representatives.

I am a bit breathless because I hustled over here to arrive at the appointed time; and I thank my colleagues, hopefully, they filubstered a few minutes on my behalf as good friends likely would.

Mr. Speaker, I would like to speak to you about a few issues about border control especially on the southern border and primarily on the southern border. I have long spoken about the policy that I think we need to have with regard to the immigration policy across the Nation, about domestic enforcement and shutting off the jobs magnet, and also about the need to stop the bleeding at our southern border.

And so I had gone down to the border about a year ago and spent a long weekend down there, at least 3 days on the ground and in the air, as a guest of the Border Patrol and some of the other agencies that operate the security along the border. And I was given a very good tour and a few rides in helicopters at night and also in the daytime, shining the night sun down along our border to identify where there might be illegals that have come across or future illegals preparing to come across. And I stopped and visited at the Border Patrol and talked to the agents and talked to the equipment and talked to the helicopter. I was impressed with the quality of the team that people that they had assembled, the equipment they had assembled, and the tactics they had. Yet in that full long weekend that I did not actually see activity which I which would indicate to a reasonable person that there was not activity to be seen.

In spite of all of those hours in the air and on the ground and the night vision equipment, I did not again see any illegal activities, although I got many reports of the success of the interdiction of our border patrol and our other agencies.

Well, as I listen to the debate here in the House of Representatives, Mr. Speaker, and the testimony that comes before the immigration subcommittee which I sit upon, and I sit in those hearings two, three, four even times a week and we will have four, sometimes eight witnesses giving us credible data and information on this issue from both sides of the issue, Mr. Speaker, and always the years, the cumulative information has built in me after those years of sitting on the immigration subcommittee, I began to think that I have a pretty decent background on the subject. And yet there was a gap. Mr. Speaker, there was a gap in that subject because I had not gone down and spent time on the border more or less unguided, more or less outside the scope of the Border Patrol, but gone ahead and gone down to the border and looked under all the stones and met with the people that were actually more likely to be more frank with me.

So I decided my mission this past weekend where I spent perhaps as much as 4 days on the ground in Arizona. And the goal was to meet with the people that are enforcing our laws down there, the ones that are out in the night and those people who have seen this bleeding, this hemorrhaging at our border firsthand, that can describe to me the scope of the bleeding in our southern border.

Mr. Speaker, I am here to say tonight of one fence. It is far worse than I had imagined and my imagination was fairly strong. My predictions and the numbers that I put out were fairly aggressive, at least viewed by some of my critics. But there is nothing I saw down on the border over the weekend, Mr. Speaker, that would cause me to believe that I have overstated the numbers of people who are illegally crossing our border or the amount of drugs, illegal drugs, that are coming across the border, or the amount of violence that is visited because of the drug problem both south of the border, north of the border, and the violence that goes throughout the drug culture in America and the collateral damage to the victims that may not be associate with that at all, but happened to be in the wrong place at the wrong time and are victims of murder, victims of negligent homicide generally in the form of a car accident that was under the influence of alcohol or drugs.

So what I did, Mr. Speaker, was go down to visit in a region, starting out on Friday, in a region south of Tucson, Arizona, and a little bit east of Tucson. I first met with a special agent who briefed me on a lot of information that had been coming by this individual on a consistent basis. And then I went to Bisbee, Arizona, where I went on down then to the border there to Naco, Arizona, right on the border with Mexico. That is a location that has seen a fair amount of violence and a lot of concentration of illegal traffic going along the border. They finally decided to establish and build a fence, Mr. Speaker. I was guided to that location by a retired Border Patrol officer and a rancher from that region, both with a passion of patriotism for America, both that have a memory of growing up in an America and that part of Arizona that I don’t think as different from this country than it is today. It was then a place that they could feel safe in their streets and safe in their homes and walk the streets and not lock their homes. And today that region has been filled with just thousands of thousands of thousands of thousands of thousands of thousands of illegals, many of them carrying illegal drugs through that region.

And cars drive across the border where sometimes there had been an existing fence that was built originally to contain livestock, that fence has essentially been systematically broken down, and vehicles with drugs and illegals in them would drive right through the gaps. And sometimes drive through the fence, and take off across the desert or cut across over to a highway and get up on the highway. And once they were on the highway, for a little ways they were gone, they were free, they were in America, not ever to be captured again, not ever to be accountable again unless they were just simply victims of bad luck.

They realized the magnitude of this problem at Naco, Arizona, and went in and built this fence. Mr. Speaker. It is built out of interlocking steel that sometimes can be 10 feet high or higher and then above that in some cases they have welded a kind of wire mesh that goes up another 4 to 6 feet. And when they originally built the fence they just said it would not work. It cannot work. People will go over it. They will go through. They will go under it, or they will go around it. In fact, they do go around it, Mr. Speaker.

At the point they picked up a cutting torch and cut a hole through it and made their own gate in that solid steel fence, and that was a pathway by
which people and drugs traveled into the United States, and some went back through that gate. And the patrol went there and welded the gate shut, and as they kept some maintenance up on the fence, the other side essentially gave up on trying to breech the fence.

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Now, the illegal traffic goes around the end as one reason, rather than trying to find a way through a barrier that is a good solid barrier that has been very, very effective.

The Border Patrol officer whom I was there with and the rancher whom I was with said look at this, and they described the problem they used to have about the thousands of people pouring across there. They said: We do not have that problem anymore. This community is safer than it was. It is more secure than it was. There is far less illegal traffic going through here.

There is far less crime of all kinds, far less violence, and far fewer illegal drugs in this community because we built a barrier that kept the elements out that were eroding our quality of life in Naco, Arizona.

That was an interesting trip, and they took me out along the border where that fence essentially stops and diminishes in some locations. There is nothing there, not even a way to define where the border is between the United States and Mexico, but simply open places where illegals can walk across the border and one location just in a dry river bed or they would not be seen by night vision. They were protected by the shrubbery and vegetation. They could simply walk down from Mexico into the United States unimpeded, unobserved and become shadow people here in the United States doing whatever they do.

They were strong advocates of the border barrier and one that is solidly built and can be examined and is becoming a tool that could very much support our law enforcement and let them focus their energy on plans that could be more effective than riding herd on a broad length of an unprotected border. It is ridiculous to think that we could ever hire enough people to sit along the border, especially at night, and watch people come across and then catch them rather than put in a fence that would not allow them to come across in the first place.

That was Naco, Arizona, and again, I learned a lot about the culture and the level of corruption on the south side of the border. It was an interesting conversational piece.

From there, I went down then to the reservation and was a guest of a number of the Shadow Wolves who are part of the Customs and Border Patrol. Actually, today, they are a part of the Border Patrol. They have been appointed to work on the Tohono O’odham Reservation, and on the reservation the Native Americans control that land. They have support of the Border Patrol, but they have had an organization there called the Shadow Wolves. They are Federal employees and their responsibility is to guard the border and interdict illegal drugs and illegal aliens. They are focusing on illegal drugs and illegal immigration, and the top numbers there, Mr. Speaker; were 22, and when they were 22 strong, in fact, that does not sound like a very large group given the size of the reservation and given the miles of border that they have to protect, and I believe that number is 76 miles of border protected and controlled by 22 Shadow Wolves, members of the Tohono O’odham tribe on the reservation; but those 22, in the period of a year, I have got to dig up the statistics so I will be able to release those and publish those, Mr. Speaker, but the information I received, that they had interdicted more illegal drugs in a 12-month period of time with 22 of their Shadow Wolves than all 2,000 Border Patrol agents did in that entire sector for the same period of time.

That is an extraordinary example of effectiveness and efficiency, Mr. Speaker; and it is the kind of thing that we here in Congress need to endorse and support and encourage and fund and authorize and protect and encourage and enhance, do all of things that we can do to identify the best among us, to encourage them, to grow that culture off beyond the border of the reservation, into that same culture of efficiency and enforcement on to the other reservations, whether Native American tribes that control land on our national boundaries with our neighbors, and the level of success that has been there has not been rewarded. It has not been encouraged. It has not been enhanced by the Border Patrol who seems to want to be seeking to undermine their efforts and absorb them into the broader Border Patrol, in which case, if they did that, the Shadow Wolves would lose their identity.

These people have an extraordinary amount of character and courage and conviction and pride in what they do; but like anyone, if they do not see some kind of encouragement, if they do not understand that here in Congress we are supporting them, eventually they will be assimilated into the Border Patrol and their level of efficiency will be assimilated into the broader overall level of efficiency in the Border Patrol.

Now, I do not mean to imply that the Border Patrol is not efficient or that they may not have the kind of personnel that I would like to see. In fact, they have some very extraordinarily brave, noble, hardworking officers, and many of them. The structure has become big and it has become difficult to be efficient. So I am not here to discourage them. I am here to encourage them, and I do shake their hands and tell them that they do because they are the last line of defense along our border to protect us from the incursions of millions that take place in this country every single night, Mr. Speaker.

But what I saw from the Shadow Wolves was not only some of the history in their legacy and their efficiency and effectiveness, but I went out in the field with them and was told the way that they follow the border. When they see that there has been a border crossing there, they will pick up that sound, that track if you will, and they will follow that track and hunt down the illegals. Sometimes they are carrying backpacks of illegal drugs. Sometimes they are just people entering the United States illegally, but they will find that track and get on a trot and follow that track and trace them to where they are, pick them up and detain them and then process them in a fashion in accordance with law.

Again, their effort has been extraordinary in some of the things that they showed and taught me, too much to go in depth here, Mr. Speaker, on the floor of the House of Representatives, but quite a lot of extraordinary skill that appears to me would be very constructive if it could be placed in other agencies out there, particularly the broader Border Patrol.

But the culture is there as well as more important the skills to protect the culture of the Shadow Wolves. It is extraordinary. It was impressed, again, I have been extraordinarily impressed, but they handled it.

From there, I traveled outside the reservation and went over then to the Cabeza Prieta National Wildlife Refuge and met with some people there, some national parks people and Department of the Interior forest rangers. Seventy-five percent of their work, which they signed up to do, would be to protect our natural resources, preserve our parks, enhance our parks, let Mother Nature be enhanced there so that the public could go in these locations, like the Cabeza Prieta National Refuge, and be able to appreciate Mother Nature in its purest form. That is why our forest rangers and our park officers got into the business, because they appreciate our plant life. They appreciate how the species of nature have balanced in these regions and how they have grown, and they try to enhance that.

They find that 75 percent of their time, their Border Patrol officers even, 75 percent of their time is spent protecting the border, 75 percent of the
time keeping illegals and illegal drugs out of the park, not a successful effort I might add, and perhaps a futile effort, but an effort that needs to be attempted nonetheless.

With dozens and dozens of abandoned vehicles across the national wildlife refuge, vehicles that have blazed a trail through there and hundreds of miles of roads have been carved through that national wildlife refuge because that was the most expeditious route for smugglers to drive their Suburbans and their 4-wheel drive pickups and you name your vehicle, there, and there will be somebody else behind you, and the next night another and another and another. That formerly pristine desert turns into sometimes a 200-foot wide path after it has been pounded in the desert with traffic enough times it turns into what they call moon dust, just loose dust that lays there in a rut in a way that you can get stuck in that dust, 200 feet wide perhaps.

Before, this was a few less than 10 years ago, in fact, starting about 1998, when these border incursions began and when they began to create these roads and these trails and tear up our magnificent natural resources. The people that are dying in an attempt to get across the desert have gone from a couple of years ago or 3 years ago 150, 175 a year, now across our southern border, as many as 450 a year do not make it across them and they are not very well prepared. They are not very forgiving, and some of them die of dehydration, more dehydration than anything else. The desert is not very forgiving, and some of them are not very well prepared. They are not very well-guided, and that human tragedy is exacerbated by the damage to our natural resources which I had a, I will say, less than enhanced appreciation for.

Mr. Speaker, I really learned to respect and appreciate the work that is done by our Department of the Interior, as well as the value of the resources that are seeking to protect. A case in point I think illustrates this better than anything else would be a rare species of a bat, a long nose bat, and this is an endangered species. It only lives and reproduces in four caves, and those caves are all down in that region.

One of those caves was a cave that was frequented consistently by the illegals who would go up into the region, and then their guide and their track would take them to this cave where the baby bats were born. They began taking a stop off and temporary residence in the cave to the point where they scared the bats off and they would not come back in.

The long nose bat, the lesser long nose bat, left the cave, would not come back to reproduce, and so our National Park Service at that situation, said we have to protect this resource; and if this happens in the other three caves, there will be no place for these bats to reproduce, who knows if they will become extinct.

So they put up a wrought iron fence around the opening to this cave, cost $75,000, and there is other labor that was not tallied in, put the wrought iron fence around that cave, and it was built in 3 ways to keep the illegal traffic out of the cave. Fortunately, the lesser long nose bats returned to the cave, and they are in there now living there and reproducing, but think about it for a moment if you would, Mr. Speaker, the effect of building a fence that has the entrance to the cave. That allowed the bats to come back and live there again and reproduce and fly out, and they are really essential. They are essential then to the pollination of certain cactus out there in the desert, without which the cactus would not survive. It has a whole set of chain reactions.

I am submitting that we build a fence on the border because it is a lot cheaper, but as a matter of fact, around everything that is threatened from the illegals and the drug trade that comes from our southern border.

That was the lesson there at the Cabeza Prieta National Wildlife Refuge, that being a second stop or actually a third stop along the way; and then from there I went on over to Organ Pipe National Cactus Monument. Organ Pipe is another national monument location, and that is the location where the National Park Service Ice officer, his name was Chris Eggle, was killed in a shootout with drug lords near the Mexican border in the park property.

I went there with his father, Bob. I visited the location where the shooting took place, where he stood, where the shooter laid, where he fell, where there was a monument there today that was built and placed by his father, Bob, and his mother, Bonnie. Well, they brought stones from their farm in Michigan down to that monument, and there is a cross and a picture and a place to remember where this happened, where it happened that Chris was killed by a drug lord or at least an employee of a drug lord who had driven across the Mexican border where there was no barrier. When he was being under hot pursuit by the Mexican police and his vehicle broke down and collapsed and stopped across the border into the United States and Chris Eggle and his partner were called in on that scene, as they split up and converged on the location where the drug smuggler was, Chris was ambushed with an AK-47 that had been brought into the United States, illegal, of course, on a vehicle that was illegal, with drugs that were illegal, across a border that was undefined, let alone defined with a barrier.

Had there been a vehicle barrier there, had there been a fence there, Chris Eggle would be alive today. He is not.

There is a memorial there at the Organ Pipe Cactus National Monument that memorializes him as well. I talked to many of his coworkers that were there. His spirit is alive and his spirit is strong today. The happy Chris Eggle is the one that is remembered. Although the tragedy is with us and his sacrifice is something we need to remember.

He is not the only one. He is not the first one. I pray he will be the last one, but I saw nothing down there that would indicate to me, Mr. Speaker, that he will be the last one.

That tragedy taught them something at Organ Pipe after the tragedy of Chris’ death at the hands of the drug runner whom the Mexicans were chasing into the United States; and by the way, that drug runner was subsequently shot and killed by the Mexican police department. He was in the United States and shot from their side of the border. That is not an issue with this spirit. It is not with this spirit. I point that out, Mr. Speaker. The lesson learned from that was to close the border, at least shut off the vehicle traffic.

So they have built a vehicle barrier at Organ Pipe and it is most of the way along the Organ Pipe National Monument. It is perhaps 32 miles altogether. As I look at that and travel along the side of that border, it is built so that steel posts full of concrete set in the ground and then they have horizontal barriers, about two of those, one about eye height and one about half-way up, designed so that vehicles can’t drive through it, but the desert pronghorn can run through it and jackrabbits can run through it and any kind of wildlife can go back and forth through there.

They had trouble with cattle moving in from Mexico, so they stretched a couple of barbed wires in there to keep them on the park. Of course those barbed wires were cut because the people who were jumping the border thought it was an obstruction to have to climb over one barbed wire, so they cut the fence.

We drove through and picked a place where the illegal traffic was going across and they were demonstrating how that tracking takes place as they did with the Shadow Wolves on their reservation. What I saw in a number of places, it got to where you could pick it out. It is literally, every little bit traffic coming into the national monument and paths that are beaten so smooth, one of the officers said, Well, one day we’ll shut off this illegal traffic and it will be a nice path for citizens to come down here and walk our path, because it is already smoothed out, it is kind of graded out by all the foot traffic.

In fact, in one of those locations, Mr. Speaker, the traffic goes across the fence and right by a sign and the sign says Do not enter into the United States. This is a dangerous place. The sun is hot. You can die in the desert.
isn’t water for you. There are snakes. There are scorpions. It’s dangerous. Turn back. Cynically, the path goes right by the sign. The sign is in Spanish. If they can read, they can read that. But in a way, I think it is cynically wise to pay that sign just to send us a message.

Fifty-eight percent of Mexicans believe there is a right to come to the United States. Mr. Speaker, they are utterly wrong, but we need to convey that much about 40 percent. You can’t do your job, but not to tell anyone what that job is, what the statistics are in your area. So they sent me to an individual there who is near retirement and that individual was willing to speak.

In fact, numbers of those individuals were willing to speak with me, some ready to quit, some ready to retire, some retired. They would talk to me straight up and open. They didn’t care about the consequences for that. They care about this country. They care about our border security and our border control and they understand that you can’t be a nation if you don’t have a border. You can’t call it a border if you don’t defend your border, Mr. Speaker.

I hear the testimony here in Congress as the Border Patrol testifies before the Immigration Subcommittee, and consistently answers that they have reached the limit of answers that they can give about the consequences for that. They care about this country. They care about our border security and our border control and they understand that you can’t be a nation if you don’t have a border. You can’t call it a border if you don’t defend your border, Mr. Speaker.

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The level of corruption is astonishing. It runs deep. I would add to this that in spite of all the statistics that I have performed extraordinarily well. In America, give them this opportunity for success. If you have too many illegal immigrants in America, I suppose the quickest and cheapest and the most guaranteed solution one could have, Mr. Speaker, is simply legalizing them all, give them all amnesty, give them a path to citizenship, voila, we have fixed the problem because we have legalized them all by a version of amnesty.

The American people, Mr. Speaker, reject amnesty in this country. They reject it because they have a rule of law, that citizenship must be precious, that you must respect the rule of law. There is more to being an American than having somebody stamp automatic citizenship on your green card or on your matricular consular card.

There is more to being an American than that, Mr. Speaker. Being an American is rooted in and based upon a common culture, an understanding and a common sense of experience and history, of reverence and respect for our borders, for the sovereignty of the United States of America, for the destiny of this country, for the assimilation that has made it possible that we have been able to take immigrants in from all over the world, bring them into this giant giant melting pot of America, give them this opportunity and let them reach out and earn and succeed in this opportunity.

The legal immigrants in America have performed extraordinarily well. In fact, the vigor that they bring to our society and our economy surpasses much of the vigor that we find in the native-born Americans that are here.

All of us in this Congress, Mr. Speaker, support a rational immigration policy that is designed to enhance the economic, social and cultural well-being of America. But if we have an open border policy and the people that advocate for an open border policy are really advocating for an unlimited amount of immigration, everyone who might want to come here to the United States could come here; and if all 6 billion people on the planet want to arrive here in the same year, that is fine with them.

They don’t take a stand that there is such a thing as too much immigration, or too much illegal immigration. They will not stand up for one of them. They will not stand up and say, The best thing you can do for your country is to stay in your country, grow its economy, be part of the solution, bring reform to the governments of places like Mexico and points south, places that are so utterly corrupt that the economy is strangled, places that are so corrupt that there has to be protection paid at every stop along the way, that you can’t get a birth certificate when you go to your country. If you happen to be born into a family that has the connections and maybe is willing to pay the kind of funds to pay off the Madrina network that is there so that you can get your birth certificate and somebody identify who you are and be able to move around in this society or that society.

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was escaping from the ground people. They followed the vehicle and got it trapped up into a dead-end road and the driver took off and ran and they followed him and finally apprehended him.

They brought him and the pickup, the small truck as I would say to some of my other friends in America, Mr. Speaker, into the compound there where the Shadow Wolves headquarters is and looked the vehicle over. It looked like it had been reworked, that they had taken it through a body shop and created a false floor underneath the bed of that pickup. The bed itself had a plastic liner in it so you couldn’t see the bodywork that had been done. We looked that over and they pointed out to me how that work was done. It was done in a chop-shop in Mexico.

Once they got the clearance to go ahead and search the truck, they went in with the jaws of life and peeled the bed of that vehicle up and apart. In there were not 18 large bales of marijuana, about 10 pounds or more per bale, at least 180 pounds of marijuana lying underneath that 6- to 8-inch false floor of that vehicle. The alleged perpetrator, and I did lay eyes on him and evaluated him, I guess, for my own perspective, he had a 13 tattooed on his arm, many other tattoos all over his chest and arms. It was clear to the people there that he was MS-13. Mara Salsatrucha 13, the most dangerous gang that we have ever seen in this continent.

That dangerous gang, of course, is smuggling drugs up into the United States. They had collared one of their members, one of their perpetrators who was then in that holding cell. I was there to help unload the drugs from the pickup, there to observe this entire process. There recorded and there to burn it into my memory, Mr. Speaker, that we think of a large quantity of drugs where I come from, it might take them a few pounds. Occasionally we get larger loads coming up through Iowa, of course. But when somebody says a lot of illegal drugs, we are thinking of a quantity substantially smaller than 180 pounds. They think of 180 pounds or 200 pounds of illegal marijuana as a decoy, a decoy that might be designed to draw the law enforcement down another path so that when the path clears, when all the law enforcement pounces on the decoy, then the larger loads can come through. The 1,000-pound loads, the 2,600-pound loads, the full semi loads can start up the road.

It is a fact that on those drug routes, those highways that flow from the southern part of Arizona up into the rest of the United States, on those small mountains that are there, there are lookouts on every strategic point.

Those lookouts are manned by two people, and they are supplied regularly and they stay on that mountain for 2-week stretches at a time. They are well armed. They have good equipment. They have night vision goggles. Infrared equipment. For daylight they have top-notch optical equipment, and they have automatic weapons of all kinds, and they have good food and good support, and they sit up there. And they have the positions so that they can radio from mountaintop to mountaintop and be able to tell each other where our drug enforcement people, where our Border Patrol are, where the ICE people are, where the Special Purpose Air Operations Service people are, so that when the coast is clear, they can run their large load of drugs up through the corridors.

Now, this is an astonishing thing to be able to see that military positions in the United States are occupied by the drug lords and their troops, and that they are well equipped and well armed and well maintained and well supplied, and they are manned 24/7 by two people, and we are sitting down in the lobby of this Congress, Mr. Speaker, thinking we can get a handle on this some other way. But the numbers coming across the border, the numbers coming on those mountaintops where the lookouts are and looking around, I went down on the Tohono O’odham Reservation.

That is one incident, the interdiction of about 180 pounds of marijuana by the Shadow Wolves during a later afternoon down on the Tohono O’odham Reservation.

But the following evening, as I was looking forward to going down to a place called Sasabe, and that again is on the border with Mexico. I visited a port of entry there that is manned by the Border Patrol. They didn’t expect that I was coming, I didn’t call in advance. I just drove down there and got out of the vehicle and began to talk to them. Good people, they are doing their job there, and they are doing it well as far as I can see.

As I began to have a conversation with them, they got an emergency call. There had been a drug deal that had gone bad on the other side of the border in the Mexican community just on the south side of that port of entry.

Usually, it is a shooting, Mr. Speaker, but this was a knife. And the subject who was knifed had a large wound in his abdomen about 3⁄4 inches wide, entered in below the ribs on the right side and up through and it did end up lacerating his liver. It didn’t get his life there.

But the word came that the ambulance was going to cross from Mexico into the United States. And they prepared for that. They called in a Maverick from the hospital in Tucson. And the Medivac, by the time it arrived, there had been two U.S. ambulances that had arrived. The Mexican ambulance didn’t have any oxygen, didn’t have bandages, had only surgical gloves on it was a paramedic that was with me lent himself right to the task and began to stabilize the patient. When the oxygen came, they put oxygen on the patient and held him stable until they could load him onto the helicopter and airlift him out to the Tucson University Hospital in Tucson.

It was a real eye opener for me to see this individual who had been knifed in this fight, covered with tattoos and substantially pierced and inebriated with alcohol and cocaine, at his own admission, as part of the contributor, I think, to the violence on the other side.

And I am advised that that kind of incident wasn’t just a fluke. And I kidded the Border Patrol officer, you staged this for me. Of course he didn’t. He didn’t know I was going to be there. But it happens about four times a quarter in that location alone, roughly 16 times a year. More shootings than stabblings, when we evacuate people out from Mexico into United States hospitals.

And so I followed up yesterday, Mr. Speaker, and visited the hospital and visited the patient. And he had been stabilized and his life had been saved. Without that extraordinary effort, it is likely he would not have survived the next few hours. But his life appears now that it has been saved, and I am grateful for that.

But I also met with the hospital administrators and they are eating millions of dollars of costs in funding the people who are generally illegals in the United States. They don’t separate those deaths for those that are evacuated from an injury or a wound that takes place on the Mexican side of the border.
But the American taxpayers fund this. The American ratepayers fund this. And the hospital swallows a fair amount of it. And there have been occasions where residents and American citizens of Tucson aren’t able to be treated because all the beds are full, full of people who are in the United States illegally. And so that health care for the Tucson residents, the Americans occasionally will go to Phoenix, and then the family members that live in the city have to drive to Phoenix to visit the person. And just the travel time puts their lives at risk as well.

That’s two incidents, Mr. Speaker. And I did follow up on those, and I will follow up on the information that comes from it.

I would add the third incident was I went down to the border last night, down to the San Miguel Gate on the reservation, sat in the dark for 3 hours and listened. And it wasn’t difficult to hear the vehicles bring the illegals down near the border, drop them off and hear them talking, hear them hush up and then single file, go through the desert brush, cross the border into the United States and be off to points unknown.

I used to believe that it was the illegal traffic into the United States that was the biggest problem, and that illegal drugs was a problem that was part of that. And I am informed that when we put the barriers in there, the vehicle barriers, that since they can’t drive across the border with illegal drugs any longer, Mr. Speaker, in some of the locations there are many places where they can, they simply put 50 pounds of marijuana in a backpack, on one young male Mexican or Central American, generally Mexicans, and each one takes a backpack of 50 pounds each. Maybe 10 of them at a time, maybe 25 at a time. They have caught as many as a hundred at a time, walking each with 50 pounds, can walk through 10 or 15 or miles of desert on the Mexico side, 25 or more miles of desert on the U.S. side, and arrive up at a transportation predetermined location, and then drop off their illegal drugs there. And many of them turn around and walk back to Mexico where they pick up another load.

So the illegal crossings, many of those illegal crossings are people coming into the United States with illegal drugs around and driving back into Mexico to get another load of illegal drugs. Sometimes I wonder if we wouldn’t be better off in this country if they would simply stay here and get a job, illegal or not, Mr. Speaker. And I don’t advocate that, certainly.

So as I listened and was there while illegals were crossing across our border in the dead of the night, not even 24 hours ago, Mr. Speaker, and it is another dimension entirely, to see the drugs, the interdiction of the drugs, the violence on the border, the knife, the blood, the lack of health care that is there, the incursions on our border, the volume that is backpacked up into the United States, the volume that is trucked into the United States, and to understand that if we can seal this border and seal it with confidence, we could shut off 90 percent of the illegal drugs that get by in the United States, at least until they find another route to go around.

But we can build an effective barrier. And as I submitted that to the people down there working on the border, consistently, they realize that if we build a good solid barrier, one that couldn’t be cut through, one that couldn’t be driven through, one that would make it easy for them to drive the trail and enforce it, that it could be the most effective tool that we could have.

It costs us $6 billion a year, Mr. Speaker, to incarcerate the illegals here in the United States. Twenty-eight percent of our prison population are criminal aliens.

That is our city, our county, our State and our Federal penitentiaries, 28 percent criminal aliens, $6 billion a year. We can build one tremendous barrier with $6 billion and a one-time expenditure.

Of course, we wouldn’t get it all built in 1 year, so we could spread it out over 3 or 4 years, and we could concentrate on the areas that needed it the most. We must do that, stop the bleeding, stop the bleeding first. Shut off the leaky pipe, and then we can begin to have a legitimate debate in this country on what to do about the mess it has left.

But I submit that we shut off the jobs magnet, and we end birthright citizenship.

Another interesting little anecdote down in that same hospital was a Mexican national who was pregnant with multiple births. They took care of her mother in the hospital in Tucson, and they also set up the provider in Mexico so that they could have the equipment to arrange for and give her good care for multiple births.

Instead, she waited until she went into labor, waited close to the border, came into the United States, went into the hospital in Tucson and delivered five children there to the tune of six figures times X. Those children all have birthright citizenship. They all have now the right and the ability to work, the right and they have a legitimate debate in this country on what to do about the mess it has left.

But I submit that we shut off the jobs magnet, and we end birthright citizenship.

The 2006 deficit, $372 billion. Not counting the Social Security surplus, Social Security surpluses, is $318 billion; if you don’t count the Social Security trust fund, the real deficit for fiscal year 2007 is $348 billion.

The first bill I filed as a Member of Congress was a bill to tell the politicians in Washington to keep their hands off the Social Security trust fund.

The projected deficit for fiscal year 2007, not counting the Social Security surplus; in other words, if the politicians in Washington kept their hands off the Social Security trust fund, the real deficit for fiscal year 2007 is $348 billion.

The SPEAKER pro tempore (Mr. INGERSOLL) is recognized for the time remaining until midnight.

Mr. ROSS. Mr. Speaker, I rise on behalf of the 37-member Blue dog coalition, fiscally conservative Democratic Blue Dog Coalition. There are 37 of us that are Democrats. We are fiscal conservatives and we are concerned about the debt and the deficit that plagues this great Nation of ours.

In fact, you can see here, the Blue Dog coalition today, the United States national debt is $8,361,683,340,530 and some change. Now, for every man, woman and child, including those born today, their share of this enormous national debt is about $28,000. It is what we call the debt tax, d-e-b-t. That is one tax that cannot go away until we get our Nation’s fiscal house in order.

Mr. Speaker, I submit to you, it is directly related to this debt, the largest debt ever in our Nation’s history, this deficit, the largest deficit ever in our Nation’s history.

You know, the projected deficit for fiscal year 2007 is $348 billion. But the reason it is $348 billion is because they are borrowing, our government is borrowing from the Social Security trust fund. The projected deficit for fiscal year 2007, not counting the Social Security surplus; in other words, if the politicians in Washington kept their hands off the Social Security trust fund, the real deficit for fiscal year 2007 is $348 billion.

The first bill I filed as a Member of Congress was a bill to tell the politicians in Washington to keep their hands off the Social Security trust fund. Now I am beginning to understand why the Republican leadership would not give me a vote, even a hearing, on this bill, because they are now using the Social Security trust fund to run our government to pay for tax cuts to those earning over $400,000 a year in this manner of reckless spending that we are seeing going on, in fact, for the sixth year in a row.

The 2006 deficit, $372 billion. Not counting the Social Security surplus, it was $365 billion. In fiscal year 2005, it was $318 billion; if you don’t count the Social Security surplus, Social Security trust fund, it was $494 billion. Fiscal year 2004, $412 billion deficit, and it goes on and on.

My point is this, Mr. Speaker, our Nation is borrowing $1 billion a day. We are spending $279 million every day to Iraq. But don’t ask this administration for a plan on how that money is...
Mr. Speaker, I submit to you this week.

I told her, “Ms. Smith, you hit four little points right there on the button.”

When I got here today and I went to Hot Springs National Park, Arkansas.

My point is that whether it is education, health care, roads, whatever it might be, America’s priorities continue to go unmet until we get our Nation’s fiscal house in order.

Now, in a little bit, we will be talking more about our foreign debt and about the Blue Dog 12-point plan to budget reform, which includes a balanced budget amendment. We will be talking more about the budget that may come to the floor of this Chamber this week.

But at this time, I am pleased to turn this microphone over to a real leader within the Blue Dog Coalition, someone that really understands fiscal discipline and someone that I am very pleased and honored to have join me this evening. That is the gentleman from Georgia, my friend, David Scott.

Mr. SCOTT of Georgia. Mr. Ross, it is always a pleasure to come down on the floor and talk with you about the pressing issues facing our Nation and the world today.

You know, Mr. Ross, you talked about the debt, and you talked about the budget. It is the budget that provides us with the blueprint.

Just this morning, before I got on the airplane to get up here, I was talking with one of my constituents out in Cobb County, a town called Austell.

I was talking to Ms. Winnie Smith, putting in a yard sign in her yard. She came up to me and she said, “Congressman, our country is moving in the wrong direction. If you could just do four things. The four things I wish you all could do something about right away, one is secure our borders. We have a terrible problem with our borders. If we could just protect this country and our borders.”

Then she said, “Bring down these gas prices. Please do something about the gas prices.”

Then she asked me, she said, “Lord, if you could just do something and get your arms and your mind out of this mess in Iraq. And then, Congressman, if you could just do something about this debt.”

I told her, “Ms. Smith, you hit four things right there on the button.”

I want to just talk, if I can just take a few brief moments on each of these little points, and I want to use the budget that we probably will vote on. I hope we don’t, because I truly believe that there are enough Republicans who are able to look through this smoke and mirrors of this budget and see that it is not the blueprint, it is not the direction that we want to go.

Mr. Ross, if we could just take the first item that Ms. Smith, my constituent down there on Clay Road in Cobb County talked to me about this morning, and that is our borders. I thought I would get here and I would try to go through the budget here for a moment, because it is the blueprint.

There is a howl and a cry the likes of which I have never seen in my whole 30-year history of being an elected official. For 32 years, every other year my name has been on the ballot somewhere in Georgia. Thank God the people of Georgia have voted me in each of those 30-some years, and I appreciate what the people of Georgia have done.

But the cries from the people of Georgia and all across this Nation, nothing is as piercing and as meaningful as what they feel about the insecurity of the borders. Immigration issues, one of the things that we do with the 11 million or 12 million illegals that are here, how we deal with that, all registers with folks, but the most important thing is what are we going to do about the borders?

So I got here today and I went to work, and I want to report on exactly what this Congress, what the President, is proposing to do to secure the borders.

You can have a lot of talk. I just listened intently to our friend Mr. King here a few minutes ago talking eloquently and very passionately about the border and the need to do so, and I concur with him. But the point is, what are we doing about it?

Well, the American people need to know. I want to point out tonight what shows the shortcoming in this budget for four of the most pressing issues facing the American people today.

The 9/11 Commission has given this Congress and this President a D on collaboration on border security. The 9/11 Commission December 2005 report card, Washington Republicans got a D on international collaboration on border security. The commission points out that there has been no systematic, diplomatic effort to work with other countries on shared terrorist watch lists to ensure terrorists cannot get across our borders.

I start off with the motive of terrorism rather than immigration so the people understand that the insecurity of our borders is paramount in our war on terror.

But as we get down to the immigration fight, and we just look at the one most important area, there are 1,000 fewer additional Border Patrol agents there were promised in the 9/11 act. This Congress, under the leadership of Republicans, and I must say that, not to be partisan, because I want to correct something immediately here. There are Republicans and Democrats who are equally concerned about this issue. That is why that budget has not passed yet. So I don’t want this to be just purely partisan. This is not a Republican or a Democrat issue. This is an American issue, and this President and Republican leadership of this Congress, not all the Republicans in the Congress, are clearly out of step, for they have broken the promise made on funding for additional Border Patrol agents. Quite honestly, Mr. Ross, we need at least three times as many agents.

Immigrant enforcement agents and detention beds. Specifically in 2004 Congress enacted the 9/11 act, the Intelligence Reform Act, giving C-SPAN and want to check it, it is Public Law 108-458, which mandated an additional 2,000 Border Patrol agents being hired over each of the next 5 years. Yet for this fiscal year 2006, this Republican-led Congress funded only 1,000 additional agents.

Is it any wonder that our own citizens are taking it upon themselves, called Minutemen, to patrol our borders, because our government is letting them down, and it is clearly in this budget. We funded only 1,000. The 9/11 act also mandated an additional 800 immigration enforcement agents over the
next 5 years. Yet in this FY 2006 budget the Congress has funded only 350 additional agents. It mandated an additional 8,000 detention beds, yet in the 2006 budget the Congress funded only 1,800 additional beds. So it is no wonder that they are having difficulty getting this bill through.

Now, let me just say on this point of immigration, because I want everybody to understand exactly where this Congressman is coming from, earlier tonight I was watching on TV the Asian Pacific Caucus on this floor. It was a very moving presentation by them about the contributions that the Japanese Americans and Asian Americans have made, and particularly the Japanese Americans, particularly during World War II as their people were being interned in camps. Yet, similar to African Americans, they still fought for this country in the face of tremendous bigotry and odds, because they wanted to show we are Americans.

The other immigration fight is about, yes, we want to secure the boarders, but it is about being Americans.

I was just in Miami, Mr. Ross, this past weekend with my wife. I was down there with the Congresswoman and her foundation. I took it upon myself to visit and to do a little field work there.

While I am at it, I want to give congratulations and kudos to the hospital where I stood up behind and showed the leadership KENDRICK MEKER, and his wife provided for us as the host. It was wonderful.

But the one interesting thing about Miami Beach that I found was most everybody is from somewhere else. If you want to see a melting pot, really want to see immigration and America at work at the same time, visit Miami Beach. I haven’t been there for a while. I spent 3 days there this weekend. I talked to everybody. Whether they were Cuban or Mexican or Latin American or Caribbean or Jamaican or Haitian or Asian, they are all there in different ways.

One of the things I did, Mr. Ross, was the first time I would say thank you, I would add the phrase when I said thank you, I said thank you, I want to see America, to understand this is America, to understand this is America, to understand this is America. And these Republicans, they have got to work to get that through.

This is America. We must translate that to some of those who are slapping and sneaking into this country to understand that there is one language, English, there is one flag, there is one National anthem, there is one set of values. We have got to work to get that through.

The one thing that the story today earlier today with the story of the contributions of the Japanese Americans, because it says we are a country of immigrants.

But on this issue, we want people to be legal, to pay their taxes and work hard the American way, learn our language, learn our values, as everybody else did. But the most important thing before all that is to secure our borders.

I want to just mention quite quickly what we Democrats are doing, because a lot of times when we come up here and we talk, we talk about what the Republicans are doing. Here is what I want the American people to understand, what we are doing on border security.

On border security, since 9/11 House Democrats have repeatedly tried to increase appropriations for border security. For example, Representative DAVID OBETT, our senior Member on Appropriations, motion to recommit the conference report on the fiscal year 2005 supplemental appropriations bill with instructions to add $284 million to fund an additional 550 border patrol agents. That is securing your border.

And also an additional 200 immigration agents. That is dealing with the immigration problem where it counts, and border aerial vehicles, using our technology. But Republicans defeated that motion to recommit by a vote of 201-225.

Senate Democrats on the other side, as far as border security, Senate Democrats have also repeatedly fought to increase the border security appropriations. Senator ROBERT BYRD of West Virginia offered an amendment to the fiscal year 2006 supplemental appropriations bill to increase funding for border security by $390 million, providing for the hiring of additional border patrol agents and the operation of unmanned aerial vehicles.

With support from 21 Republicans, Democrats succeeded in adopting the Byrd amendment by a vote of 65-34. That is what I said earlier. It is not just a Democratic fight, there are Republicans who are working with us on this.

However, most of this additional border security funding was removed by the Republicans in conference. That is why when you look at the polls, when you look at people in the American people are seeing, it is not just us here, The American people are not dumb. They know who is running this place. They know who is responsible for these high gas prices. They know who is responsible for the lack of appropriations and a lack of a budget with a proper blueprint that shows the vision this country ought to have on these critical areas.

And these Republicans, they have got to plan for the blame for this bad situation that we are in.

On the other hand you are borrowing money from the very same people who are holding you hostage for oil, that is a bad situation to be in. And the American people want us to address those issues. And they realize it takes resources to do that.

Furthermore, we have to pay for these tax cuts, Mr. Ross. It is so disheartening to me that to pay for those

his leadership within the 37 Member strong fiscally conservative Democratic Blue Dog Coalition. We are here on the floor talking about the budget, the debt, the deficit late into the evening on Tuesday because America, America has a debt that is out of control.

It has a deficit out of control. Mr. Speaker, it is time to restore some common sense and fiscal discipline to our Nation’s Government.

Mr. SCOTT just talked about priorities, about how this Republican Congress is clearly in the majority for the first time in well over 50 years. They control the White House, the House, the Senate, and now the Supreme Court. And they voted against funding border security.

And yet the budget that will be presented on this floor this week calls for $229 billion, that is with a B, in tax cuts that primarily benefit those earning over $400,000 a year.

Mr. SCOTT, I do not know about in your district, but I do not have a lot of people earning over $150,000 and all the square miles that I represent that earn over $400,000 a year.

Mr. SCOTT of Georgia. And the people are not asking for these tax cuts. They are not demanding these tax cuts. They are demanding that the borders be secure. They are demanding that gas prices come down. And it is a shame that this budget is not addressing this.

And the President is about tax cuts. Well, they are not really tax cuts. They are deferred tax increases. Somebody has got to pay for those. And the tragedy is, Mr. Ross, that we are at the mercy in borrowing money from foreign governments.

And not just any foreign governments. It is very important that we take a look at the major players on the international stage now as far as our basic fiscal insecurity is concerned.

Ten percent, 90 percent, of everything we are spending to run this Government of the United States today is on borrowed money. From China, nearly $300 billion. From Japan, nearly $700 billion. From Taiwan, $118 billion.

From Hong-Kong, $127 billion. From the OPEC nations of Saudi Arabia and others in the Middle East, staggering, over $200 billion.

You look at those countries, Mr. Ross, and you must realize that those are some of the same countries that are eating our lunch on this oil. The other countries that are eating our lunch on oil, Iran, Iraq, where we are mired, Saudi Arabia, again, where we are, and the Middle Eastern countries underneath have about 30 to 40 percent of all of the known oil reserves at this time.

On the one hand you are borrowing money from the very same people who are holding you hostage for oil, that is a bad situation to be in. And the American people want us to address those issues. And they realize it takes resources to do that.

Furthermore, we have to pay for these tax cuts, Mr. Ross. It is so disheartening to me that to pay for those
tax cuts on the backs of our veterans. We are cutting veterans programs by $1.2 billion. We are raising their copay for their insurance that they use to buy their medicines over 100 percent.

That is wrong, Mr. Ross. That is not what the American people are after. And that is why they are expressing it. As I said before, the American people have had it up to here.

Mr. ROSS. Mr. Speaker, the gentleman makes an excellent point. And look, I am not against tax cuts. I voted for the biggest tax cut in 20 years back before 9/11. It was back before Iraq, Afghanistan. It was back when we had a surplus. We were really giving people some of their money back.

But this notion that you can give tax cuts in times when you do not have a surplus, in times of deficit spending to provide tax cuts for those earning over $400,000 a year, and to accomplish that and pay for that by cutting programs like Medicaid and Medicare and student loans—borrowing the worst from places like China and Japan, that may be a tax cut on these earning over $400,000 a dollar a year today, but it is a tax increase on our kids. It is a tax increase on our children and our grandchildren.

Mr. Speaker, it is about priorities. We have $3 dollar gasoline. There is a lot of talk from the Republican leadership. Well, there was one proposal where they want to give us $100 close to election time, but we want to give us $100 and tell us to get over it and get used to it.

Mr. SCOTT of Georgia. Mr. Speaker, under today’s prices, that $100 would get you two fill-ups if gas is at $3.25.

Mr. ROSS. Let me tell you, as a Member of the House Energy and Commerce Committee, I can tell you that these are the facts. The Republican leadership talks a lot about alternative and renewable fuels. Biomass refineries are going to be biomass refineries for all of America for the next 365 days totals $100 million.

We will send nearly three times that much money to Iraq in the next 24 hours. It is about priorities. This President has announced already that if this supplemental appropriations bill includes funding for disaster payments for our farm families here in America who have suffered through one of the worst droughts in this Nation’s history that they will veto it, the first veto of this administration after 6 years.

Again, it is about America’s priorities, and America’s priorities are found all over this Republican budget for fiscal year 2007. A budget that should reflect the priorities and values of our Nation, a budget that may very well be debated and voted on the floor of this chamber sometime this week.

Well, Mr. Speaker, the Republican majority has had a difficult time bringing a proposal to the floor for 9 months. This is because they cannot find consensus within their own party about the choices made to cut programs that are essential to the most vulnerable in our Nation, while increasing record deficits by providing tax cuts to those making over $400,000 a year.

If they fail to pass a budget, it will be the first time in three decades that the House has not adopted a blueprint, a budget blueprint. But if they succeed, the damage to our Nation and those we represent will be devastating.

Since this administration took office, it has requested and this Republican-controlled Congress has provided four increases, four increases in the statutory debt ceiling totaling $3 trillion. Under this budget, the statutory debt by 2011 will increase by another $2.3 trillion for a total increase of $5.3 trillion. As you can see, as of tonight our national debt, $8,351,683,340,530 and some change.

While Republicans say their objective is to restore fiscal discipline to our Nation, this budget does not lead us in that direction. While tremendous cuts are made to programs that serve a majority of Americans, the Republican budget includes $228 billion in new tax cuts for those making less than a small few, with mostly those earning over $400,000 a year. As a result, their budget resolution continues to deficit spend over $100 billion for the next 5 years.

These deficits mean that under Republican policies, the five largest deficits in history will have occurred in the five consecutive years that they have controlled this Congress, the White House, this Senate, and the Supreme Court. This is not how the American people want our government to function.

The American people want a good dose of common sense. They want an end to all this partisan bickering. They want to see one America again. Cutting vital programs for those who are most in need to provide a tax cut to the wealthiest among us is morally unconscionable.

The Republican proposal eliminates 42, 42 education programs including those that support vocational education, college-readiness programs for low-income students, and family literacy programs. Overall, both the President’s budget and the House Republican resolution cut funding for the Department of Education by $2.2 billion below the comparable 2006 level.

This is the second year in a row that the Republicans will cut Federal education funding despite the need for school districts to meet demanding standards under the federally mandated No Child Left Behind law. This funding level does not meet the educational needs of America’s students. It fails to provide assistance to nearly 4 million children eligible for title I services and 2 million children eligible for afterschool services that enhance student achievement.

For the many families that are trying to send their children to college, their proposal cuts aid for students to help pay for college. It freezes the maximum Pell grant award at $4,050 right where it has been since 2003, while the average tuition and fees at 4-year public colleges have risen nearly $1,400. As a parent with a child who will be attending college in the next couple of years, I understand the increasing costs of tuition and the need to provide assistance to those seeking higher education.

Some of the most egregious cuts in the Republican budget adversely impact the most vulnerable Americans. The Republican proposal is largely consistent with the President’s budget in its effect on safety net programs such as housing, child care, and nutrition assistance. The President’s budget eliminates over $100 million for the commodity supplemental food program which provides nutrient-rich food packaging for low-income women, infants, children, and senior citizens. The program serves 42,000 elderly and 50,000 child care providers and their children each month.

The House Republican budget imposes even deeper cuts to these type of programs than the President’s budget. Like the President’s budget, the Republican proposal frees child care for 2007 at the 2006 level and cuts funding for the following years. These are just a few examples of the misplaced priorities that this Republican-controlled Congress has for our country and why it is important to oppose these cuts.

I urge my colleagues to reject these cuts and take action to begin an honest dialogue to pass legislation that will provide needed resources for the majority of our Nation. It is time to pass a budget that reflects America’s priorities. Not the priorities of a divided America, but the priorities of a united America.

Mr. Speaker, I am convinced we can do that. We can do that, and we can have a balanced budget and fulfill our priorities. It is about making the difficult decisions that will allow us to pay down this debt, to stop this deficit spending. We can do it. We can do it by beginning with one of the Blue Dog proposals which requires our Nation to have a balanced budget, something 49 States are required to do, something I helped do as a State senator in Arkansas for 10 years.

With that, I yield to my friend, Mr. Scott, of Georgia.

Mr. SCOTT of Georgia. Again, Mr. Ross, we must repeat because it is very important, we are here to do America’s business. Every waking moment this Congress should be preoccupied with the three of our four basic concerns that are threatening the quality of life in this country and very well threatening our own security, our borders.

We have not heard enough of what we are going to do to secure our borders. We need to hear from this leadership, from this Republican majority and the Democrats: I assure you, Democrats will control our border. Democrats will put the military on our borders.
Let me tell you something, Mr. Ross. I worked for a while as a teacher, and my favorite subject to teach was history because it taught you so much. And one of the things that you look back on history is that history teaches us a couple of things. It teaches us that if you forget your history, you are doomed to repeat it. And if you forget the bad parts of your history, they will certainly reoccur.

We are at a very, very serious point in our history. We are having a very, very significant time of keeping our progress moving forward on each level of security.

Let us first of all talk about this Nation’s security. History shows us when we look back and we evaluate how we came about to formulate what is now called the National Guard was a need to do exactly what the National Guard was set up to do, guard our Nation. The first order of business to secure our borders is, number one, to put in the process of hiring and tripling the number of agents, putting forth the technical surveillance on our borders. But until we can get up to speed on that, we need to put our military strategy on our borders. And we need to send a message.

We cannot take any more illegal immigrants coming into this country. It threatens the country. Even our immigrants who are here are saying the same thing. We can no longer not have our borders secure because of the war on terror.

CNN is doing a wonderful report on our borders, and I am not just talking about the Mexican border. I am talking about the Canadian border as well, and if I am watching CNN and you are watching CNN, and Anderson Cooper is doing this wonderful special on CNN, I hope people will watch it because it is very revealing. I saw it this weekend.

It showed about this little area up in Canadian border somewhere north of Minnesota or something where the border is so porous up there that a guy comes in, goes into a little shack, opens the shack, speaks into a microphone, looks into a camera, and says I am so and so, I am crossing the border. Thank you very much, and that is it, for those who will stop.

I am scratching my head and I am saying, in this time of terror, if I am watching this, surely al Qaeda’s watching this, surely al Qaeda is saying, in this time of terror, if I am watching CNN and you are watching CNN, and Anderson Cooper is doing this wonderful special on CNN, I hope people will watch it because it is very revealing.

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complex that the poor American people do not even have a clear angle with which to attack it and go out and purchase the automobiles. We need to clear that up.

We need to put in this budget that we will give a 50 percent increase at least on the tax incentives and make that a going up scale so that we can get more hybrid cars running. We need to go and start giving incentives to farmers who are producing corn and soybeans, creating a new industry with which to produce ethanol, and mix that with our gasoline to be able to carry our fuel much like Brazil is doing. We need to enrich conservation programs to conserve our energy, and then, finally, we have got to do all we can to get the American people out of their automobiles, the commuter rail and with mass transit.

But where is the will? Where is the direction? Where is the encouragement? Where is the inspiration to say let us go, America, we can do it? That is what the American people are waiting on, and we have got to provide the direction for them to do it. It is not this budget, and that is why it is not passing.

Mr. ROSS. Mr. Speaker, I thank the gentleman from Georgia. Mr. Speaker, if you have any comments or concerns or questions for us, you can e-mail us at bluedog@mail.house.gov. That is bluedog@mail.house.gov.

Next Tuesday night, Mr. Speaker. I will return to this House floor to talk about the plight of our farm families across this country, the disasters they face this year ranging from droughts in parts of the country to the needs in other parts of the country, to the hurricanes, a real concern among the Blue Dog Coalition about the plight of the family farmer. It is every bit as critical to our Nation's security so that our farm families can provide us with a safe and secure source for food and fiber. That is just as critical to us as our energy sources are. We will be talking more about that on the floor next Tuesday night.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:
Mr. CARDOZA (at the request of Ms. PELOSI) for today and the balance of the week on account of a death in the family.
Mr. DAVIS of Kentucky (at the request of Mr. BOEHNER) for today on account of his wife's surgery.
Mr. MURPHY (at the request of Mr. BOEHNER) for today and May 10 on account of a death in the family.
Mr. OSBORNE (at the request of Mr. BOEHNER) for today and until 5:00 p.m. May 10 on account of business in the district.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:
Mr. DEFRANCO, for 5 minutes, today.
Mr. MCDERMOTT, for 5 minutes, today.
Mr. PALMONE, for 5 minutes, today.
Mr. BROWN of Ohio, for 5 minutes, today.
Ms. WOOLSEY, for 5 minutes, today.
Ms. KAPTUR, for 5 minutes, today.
Mr. EMANUEL, for 5 minutes, today.
Mr. ETHERIDGE, for 5 minutes, today.
Ms. LEE, for 5 minutes, today.

The following Members (at the request of Mr. FITZPATRICK of Pennsylvania) to revise and extend their remarks and include extraneous material:
Mr. MCHENRY, for 5 minutes, May 10 and May 11.
Mr. POE, for 5 minutes, today and May 10 and 11.
Mr. DREIER, for 5 minutes, today and May 10 and 11.
Mr. KENNEDY of Minnesota, for 5 minutes, May 10.
Mr. NORWOOD, for 5 minutes, May 11.
Mr. BURTON of Indiana, for 5 minutes, today and May 10 and 11.
Mr. GUTKNECHT, for 5 minutes, May 10.
Mr. BILIRAKIS, for 5 minutes, May 10 and 16.
Mr. HUNTER, for 5 minutes, May 16.
Mr. BISHOP of Utah, for 5 minutes, today and May 11.
Mr. DAVIS of Kentucky, for 5 minutes, May 10.
Mr. GINGREY, for 5 minutes, today.
Mr. BASS, for 5 minutes, May 11.
Mr. GILCHREST, for 5 minutes, May 10 and 11.

The following Member (at her own request) to revise and extend her remarks and include extraneous material:
Ms. ROYBAL-ALLARD, for 5 minutes, today.

ENROLLED BILL SIGNED

Mrs. Haas, Clerk of the House, reported and found truly enrolled a bill of the House of the following title, which was therupon signed by the Speaker:
H.J. Res. 83. Joint resolution to memorialize and honor the contribution of Chief Justice William H. Rehnquist.

ADJOURNMENT

Mr. ROSS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at midnight), the House adjourned until today, Wednesday, May 10, 2006, at 10 a.m.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

7336. A letter from the Assistant Secretary for Legislative Affairs, Department of State, transmitting a copy of the Department's "Country Reports on Terrorism: 2005," pursuant to 22 U.S.C. 2656e to the Committee on International Relations.

7337. A letter from the Deputy Director, Drug Enforcement Administration, transmitting pursuant to the reporting requirements of Section 36(b)(1) of the Arms Export Control Act, as amended, Transmittal No. 06-03 concerning the Department of the Air Force's proposed Letter(s) of Offer and Acceptance to Japan for defense articles and services; to the Committee on International Relations.

7338. A letter from the Chairman, United States Sentencing Commission, transmitting a report of amendments to the sentencing guidelines together with the reasoned findings for these amendments, pursuant to 28 U.S.C. 994(o); to the Committee on the Judiciary.

7339. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Parthian's Beach Public Safety Zone, Erie, PA [CGD09-05-105] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7340. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting Department of the Department's final rule — Safety Zone; Toleda, OH, Maumee River [CGD09-05-106] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7341. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Erie Bayfront Ground Breaking Fireworks, Presque Isle Bay, Erie, PA [CGD09-05-107] (RIN: 1625-AA00) received May 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7342. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Carly's Crossing, Buffalo Outer Harbor, Buffalo, NY [CGD09-05-119] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7343. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Menominee, MI [CGD09-05-111] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7344. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Menominee, MI [CGD09-05-111] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7345. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone; Calumet-Saginaw River, Chicago, IL [CGD09-05-116] (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1); to the Committee on Transportation and Infrastructure.

7346. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department's final rule — Safety Zone;
Fairport Harbor, Fairport, Ohio (CGD09-05-121) (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7347. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Safety Zone; Port Canaveral Entrance Channel (COTP Jacksonville 05-120) (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7348. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Safety Zone; Bonneville Power Administration Over Water Cable Operations 

7349. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Safety Zone; Port Canaveral Entrance Channel to Trident Basin, Port Canaveral, FL to the Sea Buoy at the Entrance of the Port Canaveral Channel (COTP Jacksonville 05-120) (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7350. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Safety Zone; Port Canaveral Entrance Channel (COTP Jacksonville 05-120) (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7351. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Safety Zone; Port Canaveral Entrance Channel to Trident Basin, Port Canaveral, FL to the Sea Buoy at the Entrance of the Port Canaveral Channel (COTP Jacksonville 05-120) (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

7352. A letter from the Chief, Regulations and Administrative Law, USCG, Department of Homeland Security, transmitting the Department’s final rule — Safety Zone; Port Canaveral Entrance Channel to Trident Basin, Port Canaveral, FL to the Sea Buoy at the Entrance of the Port Canaveral Channel (COTP Jacksonville 05-120) (RIN: 1625-AA00) received March 16, 2006, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.
PUBLIC BILLS AND RESOLUTIONS
Under clause 2 of rule XIII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. YOUNG of Alaska (for himself, Mr. HAYWORTH, Mr. RENZI, Mr. COLE of Oklahoma, Mr. RABALL, Mr. OBERS-STAR, Mr. PALLONE, Mr. BACA, Mr. CASE, Mr. BORDALLO, Mr. HONDA, Mr. UDALL of New Mexico, Mr. KILDARE, and Mr. WAXMAN):

H.R. 3512. A bill to amend the Indian Health Care Improvement Act to revise and extend that Act; to the Committee on Energy and Commerce.

H.R. 3513. A bill to reserve a small percentage of the surplus made available to the Secretary of Agriculture for the farmland protection program to fund challenge grants to encourage the purchase of conservation easements and other interests in land to be held by a State agency, county, or other eligible entity, and for other purposes; to the Committee on Agriculture.

By Mr. BERLAGH (for himself, Mr. KINK, Mr. MILLER of Michigan, Mrs. ROGERT, Mr. WELDON of Pennsylvania, and Mr. REICHERT):

H.R. 3514. A bill to provide for the Con- current Resolution requesting the President to transmit to the Congress a report on the budget for fiscal year 2006 (Rept. 109-459). Referred to the House Calendar.
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CAPUANO, Mr. KUHL of New York, Mr. WEINER, Mr. POE, Ms. CARSON, Mr. BISHOP of New York, Mr. DAVIS of Tennessee, Mr. CHANDLER, Mr. HIGGINS of Pennsylvania, and Mr. FORD:

H.R. 5316. A bill to reestablish the Federal Emergency Management Agency as a cabinet-level independent establishment in the executive branch that is responsible for the Nation's preparedness for, response to, recovery from, and mitigation against disasters, and for other purposes; to the Committee on Transportation and Infrastructure, and in addition to the Committees on Homeland Security, and Government Reform, 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. HAYES (for himself, Mr. KELLY, Mr. MCHENRY, and Mr. WILSON of South Carolina):

H.R. 5317. A bill to amend the Internal Revenue Code of 1986 to increase the incentives for E-85 fuel vehicle refueling property; to the Committee on Ways and Means.

By Mr. SENSENIBRENNER, for himself, Mr. COLE, Mr. SMITH of Texas, Mr. FRENESY, Mr. SCHIFF, and Ms. PYECE of Ohio:

H.R. 5318. A bill to amend title 18, United States Code, to better assure cyber-security, and for other purposes; to the Committee on the Judiciary.

By Mr. FITZPATRICK of Pennsylvania (for himself, Mr. KIRK, Mrs. MILLER of Michigan, Mr. WELDON of Pennsylvania, Mr. ENGLISH of Pennsylvania, Mr. DAVIS of Kentucky, and Mr. CASTLE):

H.R. 5319. A bill to amend the Communications Act of 1934 to require recipients of universal service funds for schools and libraries to protect minors from commercial social networking websites and chat rooms; to the Committee on Energy and Commerce.

By Mr. ANDREWS:

H.R. 5320. A bill to amend the Occupational Safety and Health Act of 1970 to provide for coverage under that Act of employees of States and political subdivisions of States, and for other purposes; to the Committee on Education and the Workforce.

By Mr. MCDERMOTT, and Mr. SAM JOHNSON of Texas:

H.R. 5321. A bill to establish a pilot project to demonstrate the impact of paying for more frequent hemodialysis treatment 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 Ms. GINNY BROWN-WAITE of Florida:

H.R. 5322. A bill to amend the Internal Revenue Code of 1986 to increase the contribution limits for individual retirement plans, and for other purposes; to the Committee on Ways and Means.

By Mr. FARR (for himself and Mr. HOSKINSON):

H.R. 5323. A bill to require the Secretary of Homeland Security to provide for ceremonies on or near Independence Day for administering oaths of allegiance to legal immigrants, if the application for naturalization has been approved; to the Committee on the Judiciary.

By Mrs. CUBIN:

H.R. 5324. A bill to amend title XVIII of the Social Security Act to provide for the coverage of marriage and family therapist services and mental health counselor services under part B of the Medicare Program, and for other purposes; to the Committee on Energy and Commerce, and in addition to the Committees 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. DOOLITTLE:

H.R. 5325. A bill to direct the Federal Trade Commission to revise the do-not-call telemarketing rules to permit individuals to opt out of receiving telephone calls from certain political organizations; to the Committee on Energy and Commerce.

By Mr. MILKINER (for herself and Mr. FILNER):

H.R. 5326. A bill to amend title 10, United States Code, to authorize the Secretary of Defense, from, and mitigation against disasters, to the Committee on Homeland Security.

By Mr. ROYCE (for himself, Mr. SHERMAN, Mr. WELLER, Mr. LANTOS, Mr. ROS-LEHTINEN, Ms. WATERSON, Mr. ISRA, Mr. CARDOZA, Mr. POE, Mr. MCCOTTER, Mr. WILSON of South Carolina, Mr. ISRAEL, and Ms. BRAN):

H.R. 5327. A bill to reduce the threat of terrorists acquiring shoulder-fired missiles; to the Committee on International Relations.

By Mr. SWEENEY:

H.R. 5328. A bill to provide for low-interest disaster loans when a small business concern is affected by a small-scale disaster; to the Committee on Small Business.

By Mrs. JOHNSON of Connecticut:

H. Res. 802. A resolution encouraging all eligible Medicare beneficiaries who have not yet elected enroll in the new Medicare Part D benefit to review the available options and determine whether Medicare prescription drug plan best meets their current and future needs for prescription drug coverage; 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 Ms. FOXX:

H. Res. 803. A resolution providing for the concurrent resolution on theReporter with amendments in the amendments to the Senate to H.R. 1499; considered and agreed to.

By Mr. ENGLISH of Pennsylvania (for himself, Mr. SHERMAN, Mr. LIVNERSKI, Mr. ROHRABACHER, Mr. KENNEDY of Minnesota, Mr. MCCOTTER, Mr. WOLF, Mr. CHABOT, Mr. SOUDER, Mr. BORDALLO, Mr. HYDE, and Mr. RADA-NOVICH):

H. Res. 804. A resolution condemning the unauthorized, inappropriate, and coerced ordination of Catholic bishops by the People's Republic of China; to the Committee on International Relations.

By Mr. TOM DAVIS of Virginia (for himself, Ms. LORRETA SANCHEZ of California, and Ms. ZOE LOFDOREN of California):

H. Res. 805. A resolution endorsing reforms for freedom and democracy in Vietnam; to the Committee on International Relations.

By Mr. KELLER (for himself and Mr. McKOWN):

H. Res. 806. A resolution expressing the sense of the House of Representatives in support of the goals of National One-Stop Month; to the Committee on Education and the Workforce.

By Ms. SLAUGHTER:

H. Res. 809. A resolution directing the Secretary of Homeland Security to transmit to the House of Representatives not later than 14 days after the date of the adoption of this resolution documents in the Secretary's possession relating to any existing or previous agreement between the Department of Homeland Security and Shrinling Limousine and Transportation, Incorporated, of Arlington, Virginia; to the Committee on Homeland Security.

PRIVATE BILLS AND RESOLUTIONS

Under clause 3 of rule XII,
Mr. SHERMAN introduced a bill (H.R. 5335) for the relief of Tarveen Kaur Anand; which
Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 9: Mr. Rush, Ms. Millender-McDonnell, Mr. Larson of Connecticut, Mr. Wilson of South Carolina, Ms. Shays, Mr. Holt, Mr. Keller, Mr. Hayes, Mr. Barrow, Mr. Forbes, Ms. Maloney, Mr. Carden, Mr. Waxman, Mr. Serrano, Mr. Davis of Florida, Ms. Wasserman Schultz, Mr. Hodgins, Ms. Berkley, Mr. Peterson of Minnesota, Mr. Pence, Mr. Melancon, Mr. Lantos, Mr. Reyes, Mr. George Miller of California, Mr. Filner, Mr. Hinojosa, Mr. Udall of Colorado, Ms. Velázquez, Mr. Price of North Carolina, Mr. Etheridge, Mr. Israel, Mr. Kucinich, Mr. Davis of Tennessee, Mr. Pallone, Mr. Schuerman, Mr. Kennedy of Rhode Island, and Mr. Ruppersberger.

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was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 9: Mr. Rush, Ms. Millender-McDonnell, Mr. Larson of Connecticut, Mr. Wilson of South Carolina, Ms. Shays, Mr. Holt, Mr. Keller, Mr. Hayes, Mr. Barrow, Mr. Forbes, Ms. Maloney, Mr. Carden, Mr. Waxman, Mr. Serrano, Mr. Davis of Florida, Ms. Wasserman Schultz, Mr. Hodgins, Ms. Berkley, Mr. Peterson of Minnesota, Mr. Pence, Mr. Melancon, Mr. Lantos, Mr. Reyes, Mr. George Miller of California, Mr. Filner, Mr. Hinojosa, Mr. Udall of Colorado, Ms. Velázquez, Mr. Price of North Carolina, Mr. Etheridge, Mr. Israel, Mr. Kucinich, Mr. Davis of Tennessee, Mr. Pallone, Mr. Schuerman, Mr. Kennedy of Rhode Island, and Mr. Ruppersberger.

May 9, 2006
CONGRESSIONAL RECORD — HOUSE H2339

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was referred to the Committee on the Judiciary.

ADDITIONAL SPONSORS
H. Res. 793: Mr. Kennedy of Minnesota, Mr. Aderholt, Mr. McHenry, Mr. Gingrey, Mr. Poe, Mr. Dreier, Mr. Sam Johnson of Texas, Mr. Forbes, and Mr. Miller of Florida.

H. Res. 795: Mr. Saxton, Mr. Foley, Mr. Cole of Oklahoma, Mr. Pence, Mr. Chocola, Mr. Barrett of South Carolina, Ms. Hart, Mr. Sullivan, Mr. McHenry, Mr. Shuster, Miss McMorris, Mr. Kuhl of New York, Mr. Pearce, Mr. Bonner, Mr. Hayes, and Mrs. Kelly.

DELETIONS OF SPONSORS FROM PUBLIC BILLS AND RESOLUTIONS

Under clause 7 of rule XII, sponsors were deleted from public bills and resolutions as follows:

H.R. 5289: Mr. Boren.

AMENDMENTS

Under the clause 8 of rule XVIII, proposed amendments were submitted as follows:

H.R. 5122

OFFERED BY: MR. COLE OF OKLAHOMA

AMENDMENT No. 1: At the end of section 346 (page 98, after line 11) insert the following new subsection:

(e) EXCEPTION FOR NON-LINE-OF-SIGHT CANNON SYSTEM.—This section does not apply with respect to the obligation of funds for systems development and demonstration of the non-line-of-sight cannon system.
The Senate met at 9:45 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

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

Let us pray.

O God, our Father, the way, the truth, and the life, lead us to Your truth. Keep us from twisting the truth to conceal our mistakes. Keep us from evading the truth we do not wish to see. Keep us from silencing the truth because we are afraid of people.

Infuse Your Senators today with a passion for truth that will save them from false words or cowardly silence.

Teach us all to speak Your truth in love.

We pray in Your holy Name. Amen.

PLEDGE OF ALLEGIANCE

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

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

RESERVATION OF LEADER TIME

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

RECOGNITION OF THE MAJORITY LEADER

The PRESIDENT pro tempore. The majority leader is recognized.

SCHEDULE

Mr. Frist. Mr. President, in just a few minutes, at 10 a.m., the Senate will proceed to the vote on invoking cloture on the motion to proceed to the small business health plan bill. Chairman Enzi is here, and there will be a few minutes for closing remarks before that vote. If cloture is invoked, I hope we will be able to proceed to the bill today and begin debate on the substance of the legislation.

Today, the two party policy luncheons will occur between the hours of 12:30 and 2:15 p.m. Once we determine when we will be able to proceed to the small business health plan bill, we will then set up a recess to accommodate those two meetings.

HEALTH INSURANCE MARKET-PLACE MODERNIZATION AND AFFORDABILITY ACT OF 2006—MOTION TO PROCEED

The PRESIDENT pro tempore. Under the previous order, the Senate will resume consideration on the motion to proceed on S. 1955.

The legislative clerk read as follows:

Motion to proceed to Calendar No. 417, a bill (S. 1955) to amend title I of the Employee Retirement Income Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace, and for other purposes.

The PRESIDENT pro tempore. Under the previous order, the time until 10 a.m. shall be equally divided between the Senator from Wyoming, Mr. Enzi, and the Senator from Massachusetts, Mr. Kennedy, or his designee.

The Senator from Wyoming is recognized.

Mr. Enzi. Mr. President, I am here this morning to ask this body to support the motion to proceed to the debate. All we are voting on is whether we are going to get to debate, not whether we are going to have health insurance for small businesses. But if this vote does not get 60 votes, we will not have the opportunity in this Congress to see whether we can help out small businesses across this country.

The bill before us will provide for small businesses to be able to join across State lines to negotiate against the insurance companies with enough power to make a difference. This is something which the small businesses have been asking for for almost 15 years. In the last 12 years, it has passed the House eight times but has never even gotten out of committee in the Senate until this year. The reason it got out of committee is because we have drastically changed the bill. We are not talking about the old association health plans we had in the past. This is one which has had some modifications that have been helped with insurance companies and State insurance commissioners. It still keeps the power of oversight and consumer protection in the hands of the State insurance commissioners, but it does allow the ability to unify things so that we can get across State lines.

How is it doing? Well, the Washington Post says it went too far. The Wall Street Journal says it didn’t go far enough. So maybe we are somewhere right there in the middle. But unless we get to debate this issue, we will never know until we can get through the motion to proceed and possibly 30 hours of still debating whether we are going to debate before we ever get to a motion. So I am hoping that this morning we can pass this motion to proceed.

I can’t believe that any Senator here hasn’t heard from enough small businessmen that he wouldn’t allow us to proceed to the debate. I am hoping that following that motion to proceed to debate, we can limit the hours of debating that particular motion and get on with the substance of trying to perfect a bill.

In my 9 years in the Senate, I have never seen a perfect bill. I am not saying this is a perfect bill. I am saying it is one that has come out of compromise, long discussions, and has moved away from the point of huge objection on the Senate side to less objection on the Senate side. It is a bill that can be worked out, can be passed, and can have a significant difference for

○ This “bullet” symbol identifies statements or insertions which are not spoken by a Member of the Senate on the floor.
small companies across the United States.

Will it make a difference? There are several surveys that say it will make a difference. I am saying that from the amount of advertising which was done before the motion to proceed, there must be a lot of big bucks in savings in this thing to have the kind of opposition we have already had on it. But we will never know unless we get the right to debate. So I am asking my colleagues to vote aye on the motion to proceed, after which we had hoped to go to a debate, sometime within the next 30 hours, hopefully.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I ask the Chair to let me know when I have 1 minute remaining.

Mr. President, this should be a historic week. The Senate has the opportunity at last to have a debate on the basic questions of health care. Senator ENZI has put forward a proposal that deserves debate and the opportunity for amendment, and I commend him for his courage in putting forward this proposal. But after careful study and debate, I believe the Senate will conclude that the course laid out in this proposal is the wrong one for health care.

The legislation will make health care coverage less affordable and less accessible for millions of Americans. It will raise premiums for Americans when they are older or when they fall ill. It will mean the end of laws to guarantee health priorities for too long. Next week, seniors will be forced to pay a steep penalty if they are unable to navigate through the tangle of drug fraud and abuse, and it will give no real help to the self-employed.

The Republican Medicare law also includes a provision so contrary to common sense that people hardly believe you when you tell them it was included. The legislation makes it illegal for Medicare to bargain for discounts on drugs for the disabled on stem cell research, on proposal to end that shameful prohibition, and we should vote on that proposal.

The Medicaid, we should take action to end the cruel cuts imposed on the poorest of our fellow citizens by the Deficit Reduction Act, which paid for tax cuts for the wealthy through health cuts for the poor.

We have been promised and promised that the Senate would vote on drug importation, but the vote never comes. Senator DURBIN, Senator SNOWE, Senator MCCAIN, and I have a proposal that will allow safe importation of lower cost medicines from Canada and elsewhere. Surely, Health Week is the time for a vote.

Before the week is out, the Senate should see that the promise of stem cell research—stem cell research—is no longer denied to the millions of patients and their families who look on anger and bewilderment as the bill of exchanges for month after month after month in the Senate. And we have failed year in and year out to fulfill the promise of this century of the life sciences by making quality care a right for every American. Let us at last long take action to extend quality care to every American.

So I say to my colleagues: Vote for cloture on this motion. Vote for a health care debate. Vote for a chance to go on record with your answer to these important questions on Medicare, on Medicaid, on stem cell research, on drug importation, on coverage, and on many other health priorities. Let's have a debate, and let's let the Senate decide where it stands.

Mr. President, I reserve the remainder of my time.

The PRESIDENT pro tempore. Who yields time? Each side has 1 minute remaining.

Mr. KENNEDY. Mr. President, I will mention at this time some of the organizations. We will have a chance during the course of the debate to get into the reasons why. The American Academy of Pediatrics; the American Cancer Society; the Diabetes Association; the Nurses Association; Families USA; the list of Governors—and I will include those—more than probably 15, 18 Governors; the attorneys general. I think there are probably close to 40 of the attorneys general representing States North, South, East, and West who have opposed this bill. The Insurance Commissioners of the States—a whole list of those. At the appropriate time, I will include those in the RECORD.

I hope our colleagues will put their ear to the ground and find out what people are saying back home, what your cancer society, diabetes, pediatric nurses and doctors are saying about this, what the attorneys general are saying about this, and what those in the medical profession are saying against this. We think that this better way to help small business, and during the course of the debate, we will show how that can be done.

Mr. President, I yield the floor.

The PRESIDENT pro tempore. The Senator from Massachusetts.

Mr. ENZI. Mr. President, I thank the Senator from Massachusetts for listing those 200 organizations. I have never done a count on them, and I am not familiar with quite that many; I am only familiar with about 40 that I have expressed some concern that I suspect will be taken care of in amendment if we can get to the amendment process.

Today, there are 45 million people in the United States who are without health insurance in this country. Twenty-two million people own or work for small businesses or live in families that depend on small business wages, and another 5 million are unemployed. Those are the 27 million people we are talking about whom this health care bill will be making decisions for in the next few days. It is long past time for Congress to take some action. The American people aren't going to accept excuses any longer. It has been a long time getting to this debate. I am pleased that it sounds like we will be able to have it. I welcome any amendments that are alternate approaches or improvements to this bill. I know what the complaints are out there, I know what the numbers are—important that when we walk away from this week, we walk away with a plan which will help the small business people of the United States, the ones working for small businesses, the ones owning them, and their families who need the help.

Mr. President, I reserve the remainder of my time.
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I would like to mention that there are over 200 business organizations that are looking forward to being able to unite these people across State lines to get lower rates for their people. There are actually 80 million employees in these businesses, in those organizations. The reason for going to be here with 9,000 people next week, expecting that we will have already taken action. The National Federation of Independent Businesses is another big one that is supporting this. I could mention a lot more. Every one of the associations that have concerns about it want to be sure that this bill passes so their employees can be covered. I yield the floor.

CLOTURE MOTION

The PRESIDENT pro tempore. By unanimous consent, pursuant to rule XXII, the chair sheets before the Senate, pending cloture motion, which the clerk will report.

The legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of rule XXII of the standing rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 41, S. 1955, Health Insurance Marketplace Modernization and Affordability Act of 2005.


The PRESIDENT pro tempore. By unanimous consent, the mandatory quorum call has been waived.

The question is, Is it the sense of the Senate that debate on S. 1955, the Affordable Health Care Act of 2005, shall be brought to a close? The quorum call has been waived.

The PRESIDENT. By unanimous consent, pursuant to rule XXII, the mandatory quorum call has been waived. The yeas and nays are 96, the nays are 2. Three-fifths of the Senators duly chosen and sworn having voted in the affirmative, the motion is agreed to.

The PRESIDENT. Mr. President, I ask unanimous consent to dispense with the remainder of the debate on the motion to proceed, to Calendar No. 41, S. 1955, Health Insurance Marketplace Modernization and Affordability Act of 2005.

Mr. Frist, Johnny Isakson, Sam Brownback, John Thune, Thad Cochran, Wayne Allard, John Ensign, Richard Shelby, Jerry Craig, Ted Stevens, John McCain, Lamar Alexander, Norm Coleman, Judd Gregg, Pat Roberts, Craig Thomas, Richard Burr.

The PRESIDENT. Mr. President, I thank virtually all Members in the Senate for their help in getting the motion to proceed. That will allow us to do more hours of debate before we actually get into the substance of making any changes in the bill. I hope we can work out a unanimous consent agreement that will shorten that time and get us into the meat of the debate. I will push for some rapid consideration of some amendments that the CBO says this bill will reduce health insurance costs for three out of every four small businesses. The CBO also said the bill will extend private health coverage insurance to 750,000 more people than have it today.

Is that a comprehensive solution to the problem of health care costs and the uninsured? Of course not. I understand this is not a comprehensive solution to the problem of health care costs and the uninsured, but it is definitely a step in the right direction and a building block for the future.

I have more comments about statements made about the bill in ads and in editorials, but at this point, I release the remainder of our time until 11 o'clock to the Senator from Missouri who has been working on this in the House for years in a totally different version but has brought his expertise, talent, and knowledge to this side of the building. He has been a strong advocate for doing something for every four small businesses. He has been extremely cooperative in finding ways to do things so we can have something for small businesses.

I relinquish the floor to the Senator from Missouri, Mr. TALENT.

Mr. TALENT. Mr. President, I thank the Senator from Wyoming for his kind words and his great work and his comments regarding my involvement with the idea of small business health plans. What he said is true regarding my involvement. I am not the father of this idea, but I think I probably midwifed it years and years ago when I served in the House. It has passed the House on a regular basis ever since and, as the chairman knows, on a very strong bipartisan basis because the idea of small business health plans is fully within the mainstream of both parties’ thinking which is one of the very powerful arguments for it.

The No. 1 issue facing small businesses today as a whole is not energy costs, although certainly they are too high. It is not immigration, although that is definitely an issue. It is not taxes, although we all hear our share of complaints from small business people about that. It is the rising cost of health insurance and the number of
people who do not have health insurance. That is largely a small business problem.

There are 45.8 million Americans who are uninsured today, 4 million more than 2001. That number has grown every year in a trend even worse than the recession. The vast majority of those uninsured people are working people. And most of those working people are people who work for a small business. They work for a small business, they own a small business, or they are dependents of someone who works for or who owns a small business.

The smaller the business is, the worse the problem gets. Only 40 percent of businesses with 5 to 6 employees today have health insurance for their employees and that number is down from 52 percent in 2004 and 58 percent in 2002.

We are entitled to ask ourselves, why? Why have a history of medical illness, and you have to spend more to get the same benefits because the administrative costs of some benefits are almost 14 times more for the smallest firms than for their largest counterparts.

According to the Government Accountability Office, from 20 to 25 percent of smaller employers typically go toward expenses other than benefits compared with about 10 percent for large employers. The small business people are paying more to get the same benefits because they have higher overhead costs and higher administrative costs. It is inevitable to enjoy the same economies of scale the big companies enjoy.

The American people know this. I have a lot of stories from Missouri I could tell. I do not have the time. But the American people are living with this every day.

Jim Henderson is the president of Dynamic Sales in St. Louis. It is a third-generation family business that sells lighting accession and other products. It is a small business. He has eight employees. Health insurance has been a problem for 16 years for Jim. He spoke with his insurance agent, who suggested raising the deductible to keep the premium the same, so he has done this. It has gone from zero to a $1,000 deductible in the last 10 years. So despite that huge increase in the deductible, to this day, he experiences huge increases each time he tries to renew the policy. When he asked his agent about the administrative increase, and why they are raising his premiums so much, the carrier responded: Well, because we can.

Tammy Herbert is a certified optician from Farmington, MO. She is a breast cancer survivor. She had breast cancer. She is a single, working mom. She is an inspiration when you talk to her. She told me because of her history of breast cancer, 2 years ago her employer’s insurer canceled all the individual policies for her and her colleagues.

People talk about small business health plans resulting in cherry-picking. They ought to see what is happening today in the small group market.

Renee Kerckhoff is the second generation owner of Rudroff Heating & Air Conditioning, in Belton, MO. She can only afford to cover a small portion of employee insurance premiums—about $150 a person per month. As a result, and despite the increasing administrative costs, she and her employees are having to drop their health insurance because they cannot afford the copays and the premiums they have to make and are going on public assistance.

These stories are happening all over Missouri and all over the country. Sometimes I will get with a group of people and ask them: Look, if you had a history of medical illness, and you had the choice of working for a big company or a small company, and all you knew about was health insurance, and all you knew about the companies was that one was a big Fortune 500 company and the other was a small company, which one would you work for? I have never had anybody raise their hand and say: I would work for the small company because the assumption is I am going to get better health insurance from the small business.

They know, because it is a matter of common sense, insuring a large pool of people is more efficient, more economical and, therefore, less expensive than insuring a small group of people.

Just look at the people who are in insured in the country. Virtually everybody who has health insurance, except for the employees of small business people, have it as part of a big national pool. It may be public, it may be private, but it is a big national pool. They work for a big company. They are in a labor union. They are on Medicare or Medicaid or they are a Federal employee or a retired Federal employee or in the VA. Well, these other organizations could insure on a small group basis if they wanted to. The Federal Government could go out and take each section of Federal employees in different cities and divide them all up and insure them in a small group. There is no law against that. Microsoft could do the same thing. Hallmark in Missouri could. Anheuser-Busch in Missouri could. They could insure each little section if they wanted to. Well, they do not because it does not make any sense. It would cost them more money to do it. Yet small business people have to do that every day.

So what is the answer? Well, there is a simple answer that is out there. Everybody tries to make it more complicated than it is, but it is simple: Empower the small business people to do what the big business people can already do. Allow them to pool together through their trade associations and get health insurance as part of a big, tax-deductible, efficient, economical pool.

I give an example: I think it is the best way to describe it. Take a restaurant owner such as my brother, who owns a little restaurant. It is kind of a tavern restaurant. It is a great place. It has great chicken sandwiches. And I highly recommend it to you if you get to Missouri. He does not have health insurance for his people. It is too expensive. It is complex and foreboding for him. He does not want to wrestle with big insurance companies. They are afraid if something goes wrong, they could get sued. He would like to have health insurance. Then he could get it through the business, too.

The problem is, if the National Restaurant Association could contract with big insurance companies? They could be his employee benefits section, just like big companies have an employee benefits section. By joining the National Restaurant Association, he automatically would have the right to join the big pool. They would send him the papers. They would show him the options he
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by the State mandates or a little company that is, which do you think has the better health insurance? The folks I have talked to over the years say: Well, we would go with the big company.

But I think we are going to be able to see that circle that Senator Snowe is going to offer an amendment which will represent progress in this area. It will provide that if 26 States cover a mandate, that mandate applies to small business health plans, and it is passed in the State. So this is progress. It is not just net progress; it is absolute progress for these various groups that have sought these protections because they are going to have, if that amendment passes—and, certainly, I am going to support it—they will have protections on the Federal level for the first time for these various coverages.

So I am very hopeful they will take a look at this. I believe with the amendment Senator Snowe is offering, the concerns they had not only do not apply anymore, but actually they are going to be better off because for the first time we are going to have national pools set up under Federal law with certain basic protections and coverages that are guaranteed. As I said, I do not think those would be necessary because I think the pools would cover them, anyway. Most of those are pretty common sense. But we can put them in the law and reassure everybody. And I think we can make the bill better if we do that.

I see my time is running out, Mr. President.

So what is left? Why should we oppose this? I do not want to be presumptuous. I have lived with this bill for so long that maybe there are weaknesses I do not see. But this is something we can do for people. It passes the House regularly. They like it over there. It has a strong measure of bipartisanship, anyway. There is no real downside to it.

Let's debate the bill, and let's resolve that we are going to debate it with a view toward actually voting on it.

I hope nobody filibusters this bill. We can work out agreements about debate, work out agreements about amendments, and have a chance to help people. This is a problem. This is a case where people are hurting. I know politics is important here; I know this is an election year; I know all of that. But we can make a difference for real people on the ground every day who are worried about losing their health insurance or who do not have health insurance and are worried about getting sick. We ought to do it.

I thank the Senator for yielding. It looks as though my time has expired. I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Connecticut.

Mr. DODD. Mr. President, I yield myself 20 minutes. Senator KENNEDY is

has, and he could decide how much he wants to pay. He could let his employees pay the rest and join the pool. He could have health insurance as part of a big pool. It would be must-offer, must-carry. They would have to let him and all Regional Restaurant Association and would have to offer the health insurance to him.

When I chaired the Small Business Committee in the House, we studied this issue. And I have seen a lot of other studies since then. The best estimates I saw were that it would reduce premiums for small employers by 10 to 20 percent; a recent study came out and said 12 percent. There would be a million less people uninsured.

It costs the taxpayers nothing. It is not a Government program. It is empowering small business people to do what we have been able to do. And I did not get to work with all sorts of excuses over the years. Remember, the big companies already can do. I think the impact would be much greater than the studies have shown because right now the psychology of health insurance, if you are a small business, is so negative. I think you would have more of the small businesses that are not under the microscope, which traditionally have not provided health insurance to their employees, begin to provide health insurance.

And the restaurant business is one of them. It is one of the reasons the National Restaurant Association is so strongly in favor of this concept.

Now I have talked about this for almost 10 years. I lay it out for people, and they say to me: Well, who would oppose this? I actually get that question a lot. Who is opposed to it? And that is a good question. It is fully within the mainstream of both parties' philosophy. It is empowering the little guy, just like farm co-ops. It passes the House with a strong, bipartisan majority every year. And why shouldn't it?

What is the downside of it? The downside is: It does not work as well as we hope it is going to work. Not as many people are going to get it as we hope and believe will go into it.

It is not as though the taxpayers are going on a limb. So who is opposed to it? Well, nobody will be surprised to hear that the insurance companies have opposed it, and they have come up with all sorts of excuses over the years. I am not going to go heavily into it because the chairman has worked very hard to get as much consensus as he can get. But I will say that I think they oppose it not because they are afraid it will not work but because they believe it will work. And they control most of the small group market now. I do not have time to go through those figures. But the concentration of the small group market within the five largest carriers has grown and grown and grown. And small business health plans would be a powerful new competitive force in that market.

The State insurance commissioners have been concerned because these small business health plans would be nationwide, and the State would not be able to regulate it. In fairness, I have to say, I have never agreed with that. Remember, the big companies already operate free of State regulation. That has been the law for 30 years. And we have not had any disasters as a result of that. I do not believe anything that has happened in the last 10 years or so is proof that we can trust the big companies. And I think we can trust the small companies.

If I had to decide who was going to be free of State regulation, I think I would rather have the small businesses free of that. And it is not as though the market, the States have regulated never has any problems. There are a lot of insurance companies that go bankrupt, and the States have to take them over.

But the good news is that the chairman has squared this circle. He has worked out an arrangement for the regulation of small business health plans where many of the State regulations and much of the State regulatory authority will still apply. I am not saying the State insurance commissioners are standing up for his bill, but I think it is safe to say that many of their objections have been ameliorated, and the chairman has made much progress on that front.

Folks who tend to be sincerely on the ideological extreme on health care issues—and maybe extreme is the wrong word, but they want to go one way or the other—have been lukewarm about small business health plans. There are some who wish to eliminate the employer system and take the Federal tax deduction and pass it through to individuals to exist out of them go out and buy health insurance on their own, and there are others who want a total Government solution. And this is not any one of those things.

It is a substantial and important and meaningful but incremental change in the world we are in. It makes things better for people on a day-to-day basis who are out struggling in the real world. It does work out agreements about amendments that we are going to debate it with a view toward actually voting on it.

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The PRESIDING OFFICER (Mr. SUNUNU). The Senator from Connecticut.

Mr. DODD. Mr. President, I yield myself 20 minutes. Senator KENNEDY is
not here right now, but pursuant to previous agreement, I would like to be notified when 15 minutes expires so I can conclude my remarks in the 20 minutes.

I spoke yesterday about this legislation. I want to begin by saying to my friend from Wyoming, the chairman, I have a great deal of regard for him. I have enjoyed working with him on the HELP Committee. We do a lot of work together. I have enjoyed that relationship. We try to have a cordial sadness that I disagree with him about this bill. We had a lengthy markup. He was very patient to listen to all of our ideas and the amendments we offered during the markup. I appreciated his willingness to do so. But as happens from time to time, we have disagreements. They are not personal. They are ideas on which we have a different point of view. Today is one of those occasions. These remarks are in no way intended to denigrate the work of the chairman of the committee or those who agree with him.

There are those of us who believe strongly that this proposal would do a lot more harm than good, that, in fact, the cure being proposed with this legislation will be worse than the problem presently exist, as bad as the present situation is. We know, as a matter of fact, that over the last 3 years, the premium cost for health care has risen: 9 percent in 2005, 11 percent in 2004, 14 percent in 2006. These costs continue to rise. A family of four today is paying about $11,000 in premiums for health care coverage. The problem is significant.

I regret in some ways—and this is not the fault of the chairman of the committee—that we are not debating in a broader sense how we might address the far more significant issue, as important as this one is, when we have 45 million fellow Americans with no health care coverage at all. I regret that we are not having a larger debate on that issue.

Secondly, I believe it is a legitimate issue to raise the issue of how small business is dealt with when it comes to insurance. In the next 2 days, we will offer a substitute to the proposal authored by the chairman of the committee, the Senator from Wyoming, that we believe will deal far more thoroughly with the legitimate issues that small business raise. In fact, what we define as small business to mean businesses not with 50 employees or less but 100 employees or less, thereby covering more small businesses than would be covered by the legislation before us.

The problems are huge in the area of health care. If you do surveys of the American public and ask them to identify what are the largest concerns they have, if not the No. 1 issue—from time to time other issues may be more important to people—consistently year in and year out, people will tell you their great concern is about the fear of watching a family member or themselves be hit with a major health care crisis and not having the resources to pay for it, not being able to get the doctors, not being able to have the kind of care they would want for their families because they cannot afford the premiums that would provide them broad-based coverage of any kind of coverage at all. They may not have any kind of health care. This is a major problem. We ought to be spending a lot more time addressing this issue than we are.

Having said that, let me talk about this proposal. I am deeply worried about it. It isn't just my concern. Many Governors, more than three-quarters of the attorneys general of the States which we represent, not to mention the health insurance commissioners of many States, have raised very serious concerns about this legislation. They are very worried about what this bill will do to their constituents, the States that we represent as Senators.

Let me share a letter from the Connecticut Business and Industry Association. This association represents 5,000 small employers in my State. This is not an organization that is known for liberal tendencies. Quite the contrary, it is a very conservative business group. Listen to what my business group that represents the small businesses of my State has to say about this bill.

We believe that in Connecticut federally certified AHPs would destabilize the small business insurance marketplace, erode carefully crafted consumer protections and raise premium rates for small businesses with older, less healthy workers and those that employ people with chronic illnesses or disabilities.

The letter goes on to say:

Although the passage of AHP legislation would present us with opportunities to expand and our CBIA's growing regional customer base as a regional offering, we do not believe that the proposed legislation represents a sound public policy for providing more affordable or access to health care benefits. The proposed legislation does little to address the underlying causes of health care inflation, which is the most important barrier to small employers providing health care benefits.

That is a strong letter from an organization that represents 5,000 small employers in the State of Connecticut. They are worried about what this bill will do to smaller employers in my State in terms of their costs. They are deeply worried about this legislation and what it may mean.

Let me also share with my colleagues a second chart. This was a chart that was produced by Families USA, with estimates from the Agency for Healthcare Research and Quality, a medical expenditure panel, and from the U.S. Census Bureau. It tells us the number of people that will be losing State regulatory protections if this bill is passed. What we are doing is shrinking the amount of coverage that is offered.

In my State, we offer a range of 30 different benefits—that was passed by my State legislature—that insurance companies must cover. If you are going to do business in my State, then you have to provide coverage for these 30 areas that we believe are important.

I note this morning an editorial in the Wall Street Journal that criticizes us who have raised issues about this bill. They say in one paragraph:

Some provider groups are opposed for nakedly self-interest reasons since it would allow plans to bypass state regulations mandating coverage for, say, chiropractors.

Chiropractors provide some decent services to people. But with all due respect, I would suggest that it is a lot more than chiropractors who get bypassed with this legislation. It is things such as diabetes, cancer screening, infant health care, mental health care, pregnancy, Lyme disease, to mention a few. I know several of my colleagues have had family members affected by Lyme disease. My State and others that is an area to provide coverage. This bill would eliminate coverage for Lyme disease because this legislation would mandate that Federal law would supersede State law. Regardless of what your State thinks is important, this bill will decide what policy this State will follow. Nothing else goes. That is an overreach, in my view. As a result, the analysis of the legislation presented on this chart suggests that in the State of Alabama, 1.7 million people who would be adversely affected by this legislation. In Connecticut, more than a million people would lose benefits that the State legislature requires the insurance industry to cover. In State after State, the numbers are at least in the six-figure category. In California, 12 million people would be adversely affected. Kentucky over a million people, Illinois almost 4 million people, and the like.

I will leave this chart so my colleagues will be able to see how many people will be affected in their States, according to data collected by those who have examined what it would mean to a Federal mandate that tells every State in the country: We don’t care what you have done, we don’t care what benefits you think are important, this bill will tell you what kind of coverage you are going to have.

We also prohibit the States by preempting their ratings rules, which is thrusting health care into a marketplace. This preempts the States from having rating rules that will actually determine what the difference in cost would be between young and healthy workers and older, sicker workers, to make sure they are not going to price the product so beyond the reach of an older, less healthy person that it would be unaffordable. It is de facto exclusion if you allow the insurance industry to set that price by preempting the States from determining whether there ought to be a cap or a limit to what a company can charge. By limiting benefits and by preempting the States from determining rates and holding them down,
we make it very difficult for literally millions of people to be positively affected by this legislation.

Those are the two major concerns we have. There are other areas that we will certainly raise. I mentioned earlier that more than a million people will lose access to cancer screening, well childcare, diabetes supplies, alcoholism treatment, mental health care, the treatment for Lyme disease, to mention some. The list goes on with my State.

In addition to seeing their benefits disappear, millions of Americans will see their health insurance premiums skyrocket as well. This bill preempts State insurance commissions currently protecting older workers, those with serious illnesses such as diabetes, cancer, and heart disease, even expectant mothers, from seeing their premiums increase. This bill will allow the insurance industry to charge people more based on the fact that they are sick or pregnant or simply older.

I have many insurance companies in my State, as my colleagues know, that do a wonderful job in many ways. But don’t have any illusions about this. They are going to be offering as few benefits as they can get away with and charge as much as they can. That is what they are in business for. This is not the Vista Program or AmeriCorps. These are private companies. If we give them a green light to limit the benefits you can provide and take the caps off what they can charge, then, obviously, they are going to take advantage of it. I am greatly concerned, as the major business organization in my State warns. When the Connecticut Business and Industry Association says this bill would hurt the businesses in my State, we ought to take note of it. This organization has a strong record of protecting the interests of smaller businesses.

It doesn’t take an expert to predict what will happen. Insurance companies are going to offer plans with minimal or no coverage to attract young and healthy workers. Older, sicker people are going to be left without a plan that meets their needs. Every analysis of this bill reaches the same conclusion.

Listen to what the Congressional Budget Office says. They found the bill “would tend to reduce health insurance premiums for small firms with workers who have relatively low expected costs for health care and increase premiums for firms with workers who have relatively high expected costs.”

In other words, instead of attacking the real problem, the rising cost of health care, this legislation would simply shift costs to small businesses with older and less well workers.

In fact, another study commissioned by the supporters of this legislation concluded this bill “is not going to address the underlying causes of high health insurance premiums, which are high health care costs.”

Again, Governors, State attorneys general, the State insurance commissioners have all reached the same conclusion, as have an enormous number of groups representing health care providers and patients. All of them say the same thing. They all can’t be wrong.

When your Governors, attorneys general of the States, insurance commissioners, and the CEOs of every single health care group in the country warns about the passage of this bill, then we ought to take note of it. When you hear that you will have literally millions of people losing benefits passed by State boards that require the insurance industry to cover them, then we ought to take note of that as well.

I know my colleagues will be offering amendments to allow lifesaving stem cell research to go forward, to strengthen Medicaid, reduce prescription drug prices, and ensure access to mental health care. I look forward to having an opportunity to debate those amendments, many of which I will be supporting. We should consider an amendment to extend the Medicare prescription drug plan enrollment deadline which is causing a huge problem. These are the kinds of issues that ought to be part of our debate today. Medicaid becomes effective only until this coming Monday, May 15, to enroll in a prescription drug plan, if they are to avoid financial penalty. Why don’t we take that as an amendment and extend that time to allow people to come forward. As we are all aware, for many of the nation’s 41 million Medicare beneficiaries, the new prescription drug plan offers more confusion than assistance and, frankly, extending that date would make sense.

I intend to offer an amendment to protect newborns and children from the damage inflicted by this legislation. Right now, 25 states have enacted mandates requiring insurers to provide benefits to the children of their enrollees; 31 States require insurers to cover the cost of childbirth. I am going to ask my colleagues to support language that would see to it that newborns and children are protected in every State, instead of allowing the insurance industry to pick plans that would exclude child immunization and well-child care.

This legislation would completely preempt these State laws, leaving babies and children unprotected. That is a major step backward. Families will be faced with health insurance that doesn’t cover routine care for children. They might be forced to pay out of pocket, drastically driving up health care costs, or to forego care entirely. My amendment would ensure that those State laws not be preempted by this Federal mandate that we are about to adopt.

I will also offer an amendment that would prevent health insurers from deciding how much to charge a person for health insurance based on how healthy they are. That is something we have done across the country in State after State.

Many States, including my own, have laws preventing the insurance industry from charging more based on health status. Unfortunately, this legislation would remove those State protections. It would allow the insurance industry to charge more based on health status. We ought to make sure we don’t allow that to occur in this bill.

Without these protections in place, it just makes good business sense for an insurance company to charge small premiums for people for people with diabetes, HIV/AIDS, cancer survivors, pregnant women, or anybody with health needs that are outside of the ordinary. As a result, the people who need insurance the most will find they would be the first to lose it.

Finally, I will offer an amendment to protect those patients that admirably choose to participate in clinical trials from undue costs resulting from their option care. Currently, 19 States, including my State of Connecticut, have enacted mandates requiring insurers to provide coverage for routine patient care costs while those patients are participating in potentially lifesaving clinical trials. But this legislation, as written, would completely preempt these State laws, leaving patients without needed coverage for items such as blood work and physician visits. And this legislation would remove State laws like mine that provide benefits for people who are willing to become part of a clinical trial.

Clinical trials save lives. Just 50 years ago, less than one in four women with breast cancer survived 5 years or more. Compare that to today when 96 percent of women with localized breast cancer reach the 5-year mark. This legislation would create a powerful disincentive to patients weighing the option of whether to participate in a clinical trial. Tragically, we know that only 3 percent of adults suffering from cancer participate in clinical trials. Compare this to the 60 percent of children with cancer that enroll in a trial.

Mr. President, there are a number of amendments we would offer to try to improve this piece of legislation. While I respect the intent of the authors, the bottom line is that it would do great damage to the gains that have been made in State after State across the country, by controlling the costs of premiums and seeing to it that benefits are offered to people out there. The State legislature and the insurance industry, if they want to do business in their States, should comply.

This legislation would mean that the Federal Government would wipe out protections in State after State that have provided for the protection of its people—listen to your Governors, your attorneys general, your health commissioners, insurance commissioners; listen to the groups out there that pay attention to this kind of legislation. Listen to the business groups that have warned what this would do to smaller businesses across the country.
Mr. President, I hope that when the appropriate time comes, we will either adopt amendments that will improve the bill substantially or, more important, adopt the substitute that will be offered by Senator Lincoln of Arkansas and Senator Durbin, which would allow the same kind of benefits each and every one of us have as Members of Congress, as part of a Federal health benefit program here that allows for the pooling of people, that would cover 100 employees or less, far beyond what this bill would cover with 50 or less. It would not mandate that benefits provided by States be eliminated, and it would not preempt the States from setting caps on premiums when it comes to older and sicker workers. That is the way to go.

If you really want to make a difference, why don’t we adopt this alternative. That would be a major gain for smaller businesses and people who work with them. I understand this is an issue. Small businesses could use help, but we are not helping them with this bill, with all due respect. We can help them if we take the right steps.

I urge my colleagues to adopt the alternative. I urge my colleagues to improve the bill with the amendments we will be offering in the next few days.

I yield the floor.

The PRESIDING OFFICER. The Senator from Massachusetts is recognized.

Mr. KENNEDY. Mr. President, I understand it, we are rotating back and forth. Could the Chair tell us how much time we have on this side?

The PRESIDING OFFICER. Nine minutes remain.

Mr. KENNEDY. Well, Mr. President, I thank my friend from Connecticut for an excellent presentation and summation of the principal concerns about this legislation. I ask the Chair to let me know when there is 1 minute remaining.

The PRESIDING OFFICER. The Chair will do so.

Mr. KENNEDY. Mr. President, I thank the chairman of our committee, Senator Enzi, for his diligence in the development of the legislation. It is legislation that I cannot support. But the chairman of our committee has put his finger on an area of health policy, which is enormously important for us to consider, and that is the general kind of threat that is out there for small businesses in this country. By and large, they pay two or three times higher premiums than many of the very large businesses in their States, and they are also seeing a turmoil in the market.

More often than not, they are changing companies every year, or every other year, and increasing numbers of those small businesses have to drop coverage. This is a real problem.

If the proposal that is before us, the Enzi bill, is left alone to deal with that particular issue, it ought to be given focus and attention and full debate and support. But his bill goes far beyond that. Fortunately, we have an alternative, as the closing remarks of my friend and colleague from Connecticut pointed out, in the Durbin and Lincoln legislation, which addresses the small business needs. It does it creatively and effectively, and it does it without the dangerous aspects of this legislation that are there for States. The message and word ought to go out to all those who support the Durbin-Lincoln proposal that workers in those small businesses will effectively have the same kind of health coverage that we have in the Senate of the United States. That has been certainly a goal of mine for all Americans in the time I have been in the Senate, and it still is.

We have an opportunity for the small business community, and for the workers in those companies of 100 or less, to provide for them the same things that we have for the Members of the U.S. Congress and Senate. That statement cannot be made by the Senator from Wyoming. His bill does not do that. It has all kinds of adverse impacts in terms of workers and health care protections.

So as we start this debate, we ought to recognize that there is an alternative which we on this side strongly support which will focus and give attention to the small business community. The other proposal by Senator Enzi does not do that.

Mr. President, I am going to take a few minutes, because that is all I have, to review what I think are the most dangerous aspects of this legislation. The fact is, today, as has been pointed out, there are some 85 million Americans who have protections that will be effectively lost with the Enzi proposal. Those are protections for screening on cancer, for help and assistance in terms of diabetes, for medicines. There are different protections that are given to other diseases that are threatened, and it threatens American families. Those have been discussed in local communities and are now providing those protections; and effectively, under the Enzi bill, those will be prohibited. There are a number of groups.

First of all, this is what the State insurance commissioners say, and why they are important is because they have a responsibility in terms of protecting consumers. This is what they have pointed out, Mr. President:

Standardizing the rating laws among States will do little or nothing to reduce health insurance costs.

And also:

S. 1955 will result in older and less healthy employees being priced out of the market as a result of expanding the rate bands.

Small New Jersey employers with older and sicker employees would see a dramatic rise and increase under the Federal approach, effectively driving them from the insurance market and leaving them vulnerable citizens without adequate health coverage.

They are talking about ratings. Insurance companies are going to be able to charge for the proposal that the Senator from Wyoming has talked about. They are going to have a flexibility of up to 26 percent difference—26 times the difference in terms of premiums. Do you understand that? If you are an older worker and have had sickness in your family, you will pay a rating that will be up through the roof.

That is not true in Massachusetts. In Massachusetts, no matter how sick or young you are, you are still within a 3-point or 3 times rating increase. That has worked very effectively. That is something every older worker, every family that has had some kind of health challenges ought to recognize—that they, under the Enzi bill, could well be priced out of the market.

This is what the attorneys general have said:

The Health Insurance Marketplace Modernization and Affordability Act should be more appropriately labeled the Health Insurance Cost Escalation Act.

That was the attorney general from Minnesota.

The attorney general of New York said:

This legislation is not the answer here. It eliminates many of the protections that consumers enjoy, without addressing the underlying problem of cost containment.

They are also eliminating protections, as we have mentioned, for breast cancer and diabetes.

Another one by the attorneys general:

There are no legitimate grounds for exempting the type of insurance plan for State laws that provide essential safeguards for persons covered by insurance.

It is not just Democrats, but Democrats and Republicans; 41 out of the 50 attorneys general charged with protecting consumers are saying this bill doesn’t get it.

Mr. President, this is very interesting by the New Hampshire Governor on S. 1955:

In 2003, New Hampshire passed a law establishing rating rules similar to those contemplated under S. 1955.

New Hampshire passed almost the identical bill that is now being considered in the Senate.

With the rules allowing insurance companies to discriminate against businesses with sick workers, or based on geography, this law sent small business health insurance costs skyrocketing across New Hampshire. Small business could not grow, could not hire new workers, and some considered ending existing health insurance plans altogether.

They have done it. It is rare around here when you have a new proposal that you have had experience with—and the State of New Hampshire has it—and they ended up withdrawing that proposal.

Finally, we have the various patient groups. Here is the American Diabetes Association:

S. 1955 would result in millions of Americans with diabetes losing their guarantee of diabetes coverage.

The Cancer Society said:

 Passage of this legislation would represent a retreat in this Nation’s commitment to defeat cancer.
The National Partnership for Women and Families said:

Instead of making health care more affordable for those who need it most, S. 1955 would roll back the reforms adopted by many States to require fair pricing.

We find on this side to debating these issues—the Durbin-Lincoln proposal and the Enzi proposal—and we also look forward to debating stem cell research, the real Medicare alternative in the prescription drug debate. Medicare to be able to negotiate lower prices for our senior citizens, and drug importation. If we are going to have a health care debate, let’s make sure we are going to deal with many of the issues that people in our country want us to deal with.

Mr. President, I yield the floor.

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

Mr. ENZI. Mr. President, as we wait on a couple of people to speak, I would like to make a few comments on some of the comments that have been made. I do appreciate the spirit in which they have been made. I know there are amendments waiting to modify several of the things that have been suggested, but my biggest concern is that there were some false statements about the States and the insurance companies who are against it, and even the Connecticut business associations who are apparently saying they are against the bill.

But when you look at something like the comments they are making are not on this bill. What they are talking about is the bill that the House has passed eight separate times: the associated health plans bill. Associated health plans are different than this bill. It would be nice if some of the people who are going national and public on this would actually check with us on some of their comments to see if they are remotely right.

We have put forward a solution which they said that 85 million people would lose their benefits from. That would be just as ridiculous as me saying that all 27 million people who are uninsured who work for small business would be covered by this bill. Neither of those things is going to happen. There is a medium in there where there will be more people who are insured. The difficult parts that were talked about concerning things being taken away from people I am confident are not going to happen. There are a couple of reasons why they are not going to happen.

First of all, there are experiments across the country which in a small way have done what we are talking about in the small business health plans, and in those experiments, they have worked: Taking away the mandates that States have and actually making a point of mandating that we take away the mandates. Around here, “mandate” is a bad word. Mandates mean that you have something and you are not paying for it. You are saying you have to have this, and whether you can afford it or not, we are going to make you do it. So your choice is to take the mandate or drop your insurance.

When we are talking about these mandates, a lot of them we are talking about are regular maintenance of your body. You can’t do those. It wouldn’t matter whether they are covered by insurance or otherwise. In fact, in Wyoming, we have gone to great lengths to have more things done by public health for free. That means that your insurance doesn’t have to pay for it. And you don’t have to pay your insurance company for it and you don’t have to pay your insurance company for the administration of that service. But you can get that service. Then we have some other screenings that are covered in a very reasonable way. We have a program in Wyoming trying to get everybody to have mammograms, and it is focused on Mother’s Day, which is coming up this weekend. Get a mammogram now for what you care. And thousands of people in Wyoming do exactly that.

I will cover some of the other issues, but I see that Senator HATCH, the Senator from Utah, has arrived and has some comments on the record and has been a very diligent worker on all of the small business problems. So I yield time to the Senator from Utah.

Mr. HATCH. Mr. President, I thank my distinguished chairman who I think has a great handle on this. I understand the distinguished Senator from New Hampshire needs about 3 minutes, so I ask unanimous consent that he be given 3 minutes, and then the time be returned to me.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

Mr. SUNUNU. Mr. President, I wish to speak to the legislation before us and in particular to address some of the concerns that were discussed earlier by Senator KENNEDY from Massachusetts. He raised concerns about the State of New Hampshire and suggested that this legislation would be bad for the State of New Hampshire and that the State of New Hampshire had already enacted legislation identical to this. I think it is wrong for someone to provide information that is not entirely accurate. I think that is inaccurate, and it is not inaccurate in some very key areas.

First, there were discussions that were enacted that were in the State of New Hampshire were much smaller than the rating bands contemplated in this legislation, and they did it in New Hampshire without any transition period. Those are two very significant, specific differences between this legislation and what was attempted in New Hampshire.

Second, as with any legislation, it cuts both ways. There were some employers that saw increases in their premiums 2 and 3 years ago that some claimed were a result of the legislation in New Hampshire, but many businesses—in fact, the NFIB would suggest the majority of businesses—in New Hampshire saw some great relief because they are the smaller businesses that we are talking about, those who would be allowed to improve their negotiating position through the provisions that are in this bill. It is a debate about one State. This is a debate about providing increased access—increased access—to plans that are negotiated by associations, by the members of small businesses and, as a result, reducing the accessibility and availability of health insurance to those who might need it most.

It is a dramatic, unintended consequence, and that is the exact outcome that will be the result of the policies that are being suggested by the other side. We need to be accurate in what we represent. This is a good bill for small business and, as a result, it is an excellent bill for New Hampshire because in New Hampshire, small businesses make up over a hundred firms with employees. If we want to do something about the uninsured, the majority of whom are working as self-employed or for small businesses, we need to take up the exact kind of provisions that are in this bill: Increased access of health insurance for those working in the smallest firms.

Mr. President, I yield the floor.

The PRESIDING OFFICER (Mr. SUNUNU). Mr. President, I rise in support of S. 1955, the Health Insurance Marketplace Modernization and Affordability Act. This is a good bill, with good intentions. The Health Insurance Marketplace Modernization and Affordability Act, particularly for employees of small businesses, is a significant problem in Utah and throughout the Nation.

We cannot afford to sit by the sidelines and bemoan this problem, taking little action while millions of American families suffer. The House of Representatives has acted and we should do the same.

Immediately upon its passage through, we were besieged by complaints about House legislation, principal among them the complaint that it overrides State insurance law.
I give the Health, Education, Labor and Pensions Committee Chairman MIKE ENZI a lot of credit.

Chairman Enzi didn’t sit idly by.

He studied the House bill, he held extensive hearings, and then he drafted a compromise that resolved many of the concerns expressed about the House bill. This was no easy job.

Immediately, the HELP Committee effort—a solid effort I might add—was besieged by criticism. Much of this criticism I must hasten to add, is not valid.

“It isn’t going to cover cancer care,” the naysayers decry.

“It isn’t going to cover diabetics and their supplies,” they allege.

“It isn’t going to cover pre-natal care or OB/GYN care for women,” is a recent complaint.

“It is going to run chiropractors, pediatricians and optometrists outside of business, say hundreds of form letters that have flooded our offices.

These complaints aren’t even true. While the standard plan employees must be offered under this bill may not cover all those things, S. 1955 clearly provides an alternative. Employees must be offered an enhanced plan based on the coverage that public employees receive in the five most populous States, if their employer’s standard plan is not consistent with State law.

Most, if not all, of these services would be included in those enhanced plans that employers must offer under S. 1955.

But, let’s talk about our basic goal here.

We want to provide affordable health insurance coverage to those who currently do not have coverage.

If we could afford to give them coverage for every possible illness, condition, or procedure, if small businesses could afford to give them coverage for every possible illness, condition or procedure, don’t you think it would have been done by now?

Of course it would.

That is the genius of the Enzi bill. It allows a basic level of coverage—perhaps not every single service imaginable, but good solid health care insurance—and for those who want to pay more, there is a plan with more coverage.

In that way, the millions of Americans without health insurance will have access to coverage.

You may ask yourself, “Who doesn’t have health insurance coverage?”

Today, over 45 million Americans do not have health insurance.

Over 25 percent of self-employed individuals are uninsured.

Over 30 percent of people who work for small businesses with fewer than 25 employees are uninsured.

Over 20 percent of the people who work for small businesses with fewer than 25 employees are uninsured.

Something clearly needs to be done.

And that’s why we are here, today, debating S. 1955.

I want to illustrate why passage of this legislation is necessary.

Ramona Rudert and her husband, Michael, have owned Professional Automotive Equipment in North Salt Lake for 28 years. They have 12 employees and they offer health insurance to them.

The Ruderts contribute $200 per month to their employees’ health care premiums.

Their employees have to pay approximately $500 per month for family coverage.

Their health insurance plan has a $1000 deductible.

So at least there is potential coverage. But here’s the kicker: only one of Professional Automotive Equipment’s 12 employees decided to be covered by their company’s health policy, besides the Rudert family. The rest of their employees cannot afford it.

The interesting twist about this story is that Ramona and Michael have a daughter with juvenile diabetes. They recognize that the basic plan may not cover all the services their daughter needs.

But when asked why she supports S. 1955, Mrs. Rudert replied that she is “always looking for ways to improve her employees’ access to health care” and that while she has a daughter with Type 1 diabetes, her greatest concern is about the affordability of insurance premiums for her employees.”

Passage of this bill is the top priority for Mr. and Mrs. Rudert, and thousands of Utah businesses. They recognize that affordability is a key component to making that happen.

Let us not make perfect the enemy of the good.

It is an economic fact of life that a Federal requirement for small businesses to cover every small business employee for every possible health care-related service is neither appropriate nor affordable.

Those who decry this bill because it does not guarantee small business employees a comprehensive plan, must be reminded that most employees of small businesses do not have a choice today, if they are fortunate to have health insurance coverage. The legislation before the Senate will create new options for small businesses and, the potential for more choices.

Today, smaller employers do not have the purchasing power of larger employers. If they offer different types of health plans to their employees, the administrative costs of offering these choices are much higher for small employers.

But by leveraging their combined purchasing power, some local small business associations are offering plans that give employers more choice. I believe that similar models could be created regionally and nationally through S. 1955 through regional and national associations.

The goals of S. 1955 are simple. We want to create more affordable health insurance options through choice and competition.

And we want to end the decades-long deadlock and give real relief to America’s small businesses and working families.

Who can argue with that?

And small business and health care reform support the freedom to band together across state lines, even without self-funding. Insurance companies support the creation of a level playing field with Small Business Health Plans.

Most important, according to a Mercer study released on March 7, 2006, it is predicted that costs will go down 12 percent for small employers and coverage of the working uninsured will go up 8 percent, approximately 1 million more working Americans.

An added benefit is that the Congressional Budget Office, CBO, believes that passage of S. 1955 will reduce net spending in the Medicaid Program. This is due to the enrollment in employer-sponsored insurance plans of people, who under current law, would be covered by Medicaid.


CBO estimates that by 2011, approximately 600,000 more people would have health insurance coverage. The majority of these newly covered individuals would be employees of small companies and their dependents.

S. 1955 has been endorsed by a host of organizations: The Small-Business Health Plan Coalition; the National Association of Realtors; the Chamber of Commerce, the National Federation of Independent Business; the National Restaurant Association; the National Association of Manufacturers; the Associated Builders and Contractors; the National Association of Manufacturers; the Motor & Equipment Manufacturers Association; the Precision MetalForming Association; the American Council of Engineering Council; the American Insurance Association; the National Association of Realtors; the Chamber of Commerce; the National Federation of Independent Business; and the American Public Health Association.
over a decade report small business health legislation out of the Senate HELP Committee.

For months, Chairman Enzi spearheaded meetings with the major stakeholders of this legislation the insurance industry, the small business groups, and the insurance commissioners. These meetings produced the bill that we are considering today.

Again, my colleagues may ask themselves, is this bill really needed? Will it truly make a difference?

Just last week a 42-year-old woman from Provo, Utah called my office. Both she and her 9-year-old daughter are diabetics. And she had heard from the American Diabetes Association that S. 1955 would hurt their health coverage.

But as my staff explained the bill’s important role in allowing small businesses to provide insurance for their employees, including diabetics, she became emotional. She recalled how, several years ago, she had her own small business. And buying health care for her employees was forcing her toward bankruptcy. So my constituent had to take away their health insurance. This was extremely difficult for her because herself had a chronic illness and fully understood the implications. She ended up with an individual health insurance policy. And she found that for the same insurance coverage that she had had in her group insurance policy, she had to pay nearly twice as much.

This happened for two reasons. First, as an individual, she was not eligible for the tax benefit that supports the cost of insurance paid through employers. And, second—because she had diabetics, a chronic illness, her insurance rating caused her to pay significantly more than someone without that disease. There was no risk pool for her to join.

Passage of S. 1955 could have prevented these problems. I urge my colleagues to think about the health care needs of small business employees in their states before voting on this legislation. This legislation will improve their health care options. Today, they rarely have options when it comes to health insurance and when they do, it is extremely expensive.

Let me conclude by sharing the sentiments of Chris Kyler, the CEO of the Utah Association of Realtors.

Small business owners in Utah are facing a growing crisis with health care availability and affordability. Our profession represents the small businesses groups, the small business groups, and the insurance commissioners. These meetings produced the bill that we are considering today.

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Small business owners in Utah are facing a growing crisis with health care availability and affordability. Our profession represents 17% of Utah’s gross state product and yet we’re among the most uninsured working segment in our state simply because we’re small business people. As productive contributors to the economy, as young, healthier populations, we’re supportive of S. 1955 because it will provide us with the opportunity to purchase affordable health insurance.

I believe that Mr. Kyler’s sentiments sum up why the Senate needs to pass this legislation as soon as possible. I urge my colleagues to support this legislation so that employees of small business will have access to affordable health care.

I yield the floor.

Mr. ENZI. Mr. President, I yield the remainder of the time to the Senator from Maine.

The PRESIDING OFFICER (Mr. BURR). The Senator from Maine.

Ms. SNOWE. Mr. President, how much time will that be?

The PRESIDING OFFICER. The majority has 9 minutes remaining.

Ms. SNOWE. Mr. President, thank you. I thank Chairman Enzi for yielding the time as well as for his leadership in bringing this legislation to the floor, legislation that is so critical and vital to the future well-being of small businesses, I know in my State and across America.

As chair of the Small Business Committee, I know firsthand that this crisis is real. It is an undue burden on entrepreneurs throughout this country, and it certainly didn’t develop overnight. This week I introduced S. 1955, and if we are all willing to forge the consensus necessary to make it happen.

This issue is all the more critical when you consider the fact that today nearly 46 million Americans are uninsured, 15% of over 4 million people since 2001. According to the Employee Benefit Research Institute, of the working uninsured, who make up 83 percent of our Nation’s uninsured population, 60.6 percent either work for small business with fewer than 100 employees or are self-employed.

There should be no doubt or question that the time has long since come to address that issue. First, we have held hearings on this question. Small Business and Entrepreneurship, I headed meetings with the major stakeholders of this legislation the key component of Health Week in the Senate.

I also thank my friends on both sides of the political aisle, Senator BYRD, who has cosponsored my initiative originally, Senator TALENT, who initiated this effort when he was chair of the Small Business Committee in the House, and the same is true for my predecessor, Senator BOND, when he was chair of the Small Business Committee, for helping to move this issue to the Senate HELP Committee.

I thank the majority leader for making this legislation the key component of Health Week in the Senate.

We are trying to do everything we can to resolve some of the issues. I know there are some concerns, as there were with my initial legislation and as there is with Chairman Enzi’s bill now before the Senate. A couple of those issues are, of course, preemption of State laws, and State plans. We are able to address that question with an amendment so, hopefully, we can reconcile some of the differences across party lines, across philosophical perspectives, so we can get the job done.

There are some concerns about the changes in community ratings. I know that is a particular issue for my State as well. I understand the chairman will address that issue in his managers’ amendment. Here we are all here about today is what can we do to address the underlying concern that small businesses have across America. This is a summary of their foremost concern—increasing health insurance costs for their employees and for their employees and their families so they can get the job done.

If they can afford it, it is catastrophic coverage, it is a $5,000 or $10,000 or $15,000 deductible at best that
they are able to offer. That is why I introduced the initial association health plans, to give fairness to the market, especially to the small group markets such as the State of Maine. The State of Maine is a small group market and, guess what, there is no competition. It is going to cost them higher prices. Higher prices means virtually no health insurance.

That is why I offered the association health plan. That is why Chairman ENZI is doing this. He is doing this here today, to try to bridge the differences so we can move and advance this process forward because it is good for all of America.

Small business is the engine that is driving the economy. Two-thirds of the job growth occurring in America today is emanating from small businesses. So it is important to ensure their well-being.

By offering the mechanisms that are proposed in Chairman ENZI’s legislation, the small business health insurance plan will help with uniformity as well. Because 50 States have 50 sets of administrative rules, regulations, and mandates, it is virtually impossible to have a uniform standard nationwide. This will allow small businesses to be basically on par with Fortune 500 companies and unions. After all, no one is ever complaining about Fortune 500 companies and unions’ plans. In fact, they are the most generous in America. So if they are good for Fortune 500 companies, if they are good for unions, why can’t they be good for small businesses? That is what it is all about.

Now people say these associations will not design good plans. If you want to attract members to the plan, if you want people to join your plan, obviously you are going to ensure that you design these plans which will be the most attractive to the greatest number of people who join up in these associations. If they want to be in the interest of small businesses to have attractive plans for their employees because they have to compete with large employers to get good employees, to get skilled employees. If they don’t have this crucial and vital benefit, they do not attract the kind of employees they need to make their business successful. That is what it is all about.

I hope we can reconcile our differences through the amendment process. Before I hope to offer as amendments and what others offer, that can lead us to our goal of addressing the fundamental question for small businesses in America that ultimately will help mitigate the problem of the uninsured that is ever growing in America well as well.

As we engage in this debate this week, in the end I hope we can come to a conclusion with a reasonable compromise that will become law. That is what it is all about. I know people have differences of opinion. But I don’t think there ought to be a difference of opinion in the final analysis when we address all the issues—the ones that Chairman ENZI addressed to bridge the gap, the ones that my amendment will do, and others might do—which will ultimately get us to the point of beginning to resolve this crisis.

The fact remains that we are seeing fewer and fewer employers that are providing health insurance for their employees.

If you look at this chart, only 47 percent of the smallest businesses in America under ten workers—offer health insurance. It is on a declining trend—down to 52 percent, and down to 58 percent in 2002—in sharp contrast to the 98 percent of larger businesses with 200 or more workers that are offering health insurance as a benefit.

For small businesses, things are trending in the wrong direction. Then you look at the small group marketplaces in States such as Maine, which is what this legislation is about. As we learned from the Government Accountability Office study that Senator TAFT and I requested, Blue Cross-Blue Shield is actually consolidating their market share in a number of States across the country. In fact, 44 percent are in group markets.

I hope we can begin to reconcile these differences and do what I think this Congress can do for the first time in our history, which is to have the opportunity to do. Let us not deny small businesses and their employees this one chance to do it. Time has long since passed for action.

The PRESIDING OFFICER. The Senator from Oregon.

Mr. WYDEN. Mr. President, before she leaves the floor, I want to express my thanks to the distinguished Senator from Maine for working so closely with me on health care issues. I expect that what I think is what this legislation is about. I will be offering our bipartisan amendment to lift the restriction on Medicare that bars Medicare from bargaining to hold down health care costs. Senator SOWE and I have worked on this for over 3 years. We recently got 54 votes in the Senate to win passage of this bipartisan effort. I thank her for all the good work she is doing in the health care field and look forward to when she offers our bipartisan amendment before too long and to prosecuting this cause on behalf of senior citizens and taxpayers alike.

Mr. President and colleagues, no other health policy in America is more objectionable to the people of this country than preventing Medicare from bargaining to hold down health care costs.

This restriction that bars Medicare from bargaining to hold down health care costs is contrary to the needs of the people of this country and to what goes on in the private sector of this country every single day. It is especially important that Medicare, which is what this essentially is all about, as we are not going to allow price controls, we are not going to allow the establishment of a one-size-fits-all formulary, but we are going to say that the Government, if they could, would not allow price controls. That would be a real difference.

I know some colleagues think any effort by the Government to allow bargaining to hold down costs will lead to price controls. The amendment which Senator SOWE and I expect to file before long is very clear. It does not permit price setting or the creating of a formulary. It is the Federal Government and, in effect, the seniors of this country, who would be able to go into the market and use their clout just like any other big purchaser and could to hold down the cost of medicine using marketplace forces.

I hope our colleagues call this a particular approach I hope—I know the distinguished President of the Senate has a great interest in pharmaceuticals and prescription drugs—that colleagues will look at what Senator SOWE and I have worked on. In page 3, lines 2 through 8 make it clear that we are opposed to price controls. We have continually tried to address this. We are not in favor of price controls. We are not in favor of establishing a one-size-fits-all plan that institutions a uniform price structure of any kind. All we are saying is that the Federal Government ought to have a
chance to do some hard-nosed bargaining the way everybody else does to hold down the cost of prescription drugs.

Secretary Tommy Thompson, former Secretary of Health and Human Services, did have a plan as he left office and was denied by the Congress was the opportunity to negotiate when necessary to hold down the cost of prescription drugs.

This amendment would ensure that the prescription drug benefit is sustainable without interfering with marketplace forces and would simply say that the Federal Government could leverage the marketplace just as any other big buyer of a product does.

To date, millions of seniors have enrolled in this program and, of course, they are realizing some savings on their prescription drugs. We are glad to see that, but it has come about primarily through the infusion of taxpayer money. What I and Senator SNOWE would like to do is bring about some savings—not just by pouring more and more taxpayer money into this program but by using marketplace forces to protect the interests of seniors and our taxpayers.

I am glad we are discussing Medicare this week. I think it is high time. I tell colleagues that no other health policy in America is more objectionable than the one that prevents Medicare from bargaining down health care costs. It is time to inject some common sense into the Medicare drug benefit. Giving Medicare bargaining power to millions of senior citizens through Medicare is economics 101. If it is important to the seniors of this country, it is important to taxpayers.

We expect to bring a bipartisanship proposal to the floor of the Senate this week. We all know we could sure use some bipartisanship around here at this stage of the game. If colleagues will, as they did a few weeks ago, show strong bipartisan support for our proposal. If we are serious about reining in health costs, and the American people say it is at the top of their agenda, you have to lift this restriction that bars Medicare from bargaining. We expect to be filing the bipartisan Snowe-Wyden amendment before long.

We hope, as we did on the last occasion when we voted on this, we will have a strong majority in the Senate in support of a commonsense, practical way to protect senior citizens who are buying prescription drugs and are taxpayers at the same time.

I yield the floor.

The PRESIDING OFFICER. The Senator from Michigan, Mr. President, I thank my colleague from Oregon for his incredible leadership on something that makes so much sense, negotiating group prices under Medicare. Why in the world wouldn’t we want to get the best price? Taxpayers want us to get the best price. Seniors want us to get the best price. The disabled want us to get the best price. Why in the world wouldn’t we want to do every possible to have a Medicare prescription drug benefit that offers the very best prices so we can offer as much coverage as possible? One of the things we know, the gap in coverage is partly because we are paying so much for the whole plan. We could give people more coverage and spread it out differently if we were, in fact, negotiating group prices.

In my colleague who has come to the Senate floor on so many occasions. He always makes so much sense. I know the people in Oregon are proud of what he has done.

To add to the discussion on Medicare, I am pleased we have Health Week. Even though I will speak at some later time in terms of the concerns I have about the underlying bill, we all chose to vote to proceed to debate on health care. Right now, it is important to the people we represent, whether it is the manufacturers I represent who are having to compete in a global economy and figure out how to do that while paying so much of the cost of health care or small businesses, self-employed people who cannot find coverage at affordable prices, whether it is our seniors or whether it is women and children who need care.

We have a serious issue when we spend twice as much on health care in this country than any other country and still have 46 million people with no insurance, 80 percent of them working. It is an important debate. Part of that debate, I believe because of the timing, needs to be to address what is happening with Medicare prescription drug coverage. Unfortunately, we are 6 days away from a Medicare prescription drug deadline. Right now, it is important to the people we represent, whether it is the manufacturer I represent who are having to compete in a global economy and figure out how to do that while paying so much of the cost of health care or small businesses, self-employed people who cannot find coverage at affordable prices, whether it is our seniors or whether it is women and children who need care.

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This is not because people are not bright. In Michigan alone there are at least 79 different plans to choose from. Each plan has a different premium, a different copay, covers different medications. Under the current law, as I indicated before, those who do not go through the 79 plans, or whatever number they have in their State, by next Monday will find themselves paying a lifetime penalty, more for prescription drugs than they would if they signed up before then.

A Doctor’s advice is something that is so fundamental to a person’s health as their medicine should not be rushed. We should not be scaring seniors into picking a plan that may not work for them because of a penalty they will receive after next Monday. Unfortunately, that is exactly what is happening.

Unfortunately, I continue to believe the “D” in Medicare Part D stands for disaster. That does not mean some people are not helped and they want people to be helped. We want people who have not otherwise had help to be able to receive it. That is a very important point in this process because the administration has been talking about the 29 million, 20 million already had coverage. They were covered under Medicare, they were covered under private insurance, under a Medicare HMO. We are talking about less than 30 percent of those who have not had any help with their medicine, less than 30 percent, have actually signed up so far.

Is it because they do not want help? Of course not. It is because they are having challenges getting through the bureaucracy and trying to figure out what works for them and what does not work for them?

I want to share a story of a woman who called me yesterday. This exemplifies the thousands of calls and stories I receive in Michigan. A member of my staff spoke with Shirley Campbell from Midland, MI, yesterday, not far from my hometown. Shirley told my staff about the experience she and her sister had enrolling in Part D. First, they had a terrible time getting through to the so-called “help” line.

By the way, the Government Accountability Office says almost 60 percent of the time folks trying to get through to the 1-800 Medicare number are getting incomplete or inaccurate information. That is stunning. We have to get our act together before we penalize people for not signing up for a program.

She kept trying. Shirley kept trying. Once she got through, in response to her question, she was told, “I can’t answer that question because the site is down.” She did not give up. She called back the next week and she called back the following week. Each time she had the same experience. She could not get an answer to her question because “the site is down.” This is the administration’s idea of a “help” line? It is not much help.

Because Shirley could not get the information she needed from the administration, she called several plans and asked them to fill her in on the information. Imagine how big that mailbox was. Then she and her sister sat down and spent more than 10 hours sifting through all the information they had received. They narrowed it down to six plans and began an analysis of what they would do.

What did they find? From the six plans, all of the plans would cost Shirley more than she is currently paying for the medications necessary for her rheumatoid arthritis. Shirley narrowed it down to, and all of them would cost her more than what she is currently paying. Shirley currently does not have any coverage. Yet she would end up paying more under any of the six plans she does have.

Think of that. We are trying to help people who do not have any coverage, and less than 30 percent of the folks who have signed up have been people who did not have help before. Maybe it is because, when they tried to find someone to help them, they found out they would be paying even more under this privatized scheme that has been set up than they currently are paying.

She also told my staff that most of the plans would have cost her twice as much as she is now paying. But she ended up choosing a plan that would cost her more than what she is currently paying. She says she signed up because she was worried about the looming May 15 enrollment deadline and the prospect of paying a penalty for the rest of her life.

What sense does this make? Folks are seeing the clock count, 6 days away, until the May 15 deadline and penalty. And Shirley is so worried about what that means down the road, the cost she would be paying and a lifetime penalty for a plan, that costs her more than she is currently paying. I don’t believe Shirley or any senior should be rushed into a premature decision because of an arbitrarily determined deadline. That is all this is. There is nothing magical about May 15, nothing at all.

Shirley worked in middle management all her life. She had the ability to seek the best information, in the right manner, at the right time. Shirley was not going to be penalized because the Government has been slow to get its act together. She was not going to be penalized because the Government cannot get its act together. People should not be penalized when almost 60 percent of the time when they call a hotline they cannot get the information they need, it is inaccurate or incomplete, that is unacceptable.

The whole point of this was to make sure we were helping people who were choosing between food and medicine, people who were choosing between medicine and paying the rent, the electric bill or gas prices right now. If that is not happening, why are we moving full steam ahead with some arbitrary deadline? Six days from now, folks are going to be penalized because the Government has been slow to get its act together. Folks are going to be permanently penalized by paying more.

Less than 30 percent of the people who do not currently get help paying for their medicines have actually signed up. That should say something. The folks either said it was not a good deal, and they found out they would be paying more, and they said forget it or it says to us that maybe we need to go back to the drawing board and make sure the right information, in the right manner, is given out to those people so they can make the best decision for themselves.

I am also extremely concerned that in my home State of Michigan only 22 percent of the 256,000 seniors eligible for low-income help, only 22 percent of those whom we said we wanted to help the most by waiving the premium and the copay, only 22 percent have signed up to get that extra help.

Unfortunately, our low-income seniors are caught twice because they try to pick a plan to be, similar to Shirley, wade through all kinds of plans. Then they have to sign up separately to be able to get low-income help.

I am pleased the administration has said they will allow low-income seniors to be able to sign up after May 15. I appreciate that. That is a good start. Unfortunately, the penalty is not waived. Our lowest income seniors, even though they may be able to sign up in June, July or August, is going to be a good thing and I appreciate the administration doing that—I urge them to waive that penalty. It makes no sense if you allow people to sign up for extra help and then take it away through a penalty for signing up late.

The final issue is our poorest seniors, our lowest income seniors in Michigan and individuals making less than $14,700 a year, our lowest income seniors or the disabled, in too many instances are actually paying more under this plan than they were before. Why? Because they were on Medicaid before for the low-income health care. In Michigan, that meant paying a $1
Mr. BURR. Mr. President, I am going to be here numerous times this week. This legislation is too important to have it shortcut. There is not enough time in the debate to say it all at one time.

Last night, this body had the opportunity to vote on proceeding to changes to the liability crisis that exists in health care today, but the minority denied us the ability to move forward. They denied the ability of the American people to hear an honest debate. They did not even consider amendments, and then to judge up or down on the content of the legislation.

They had two opportunities: liability that was reform for all medical professionals; and, then, liability that was only changed for those who are OB/GYNs—that next generation of medical professionals who are going to deliver our grandchildren and our great-grandchildren, that profession that is going to regenerate the population of this country and, in fact, is suffering today because of the high rate of liability costs for the premiums they have to have.

Now we are here. We are in debate—30 hours of debate—to see if we can proceed on a bill to bring small business group health insurance reforms into law, to enable small businesses in America to be able to price insurance for their employees in the same way large corporations are able to produce products for their employees.

Today, small businesses' choice is between nothing and nothing. It is not something and something. It is nothing and nothing. And what will we do? We will debate, for 30 hours, whether we should proceed. Some don't believe this is important enough or, if it is important enough, that there ought to be all sorts of changes to it that are unrelated to these millions of Americans for whom their employer cannot afford to provide health care today? Because they are not big. The marketplace discriminates because they are small.

Let me give you some statistics about North Carolina. In North Carolina, 98 percent of firms with employees are small businesses. Ninety-eight percent of my employers are shut out of the ability to negotiate a reasonable cost of health care for their employees. Because of that, their employees have a choice between nothing and nothing.

We will have 30 hours of debate to see if we can proceed. In this body to provide something versus nothing—not something and something. How can anybody object to providing a choice of something for those who do not have an option to choose?

Additionally, in North Carolina, we have 1.3 million uninsured individuals. And 896,000—almost 900,000—North Carolinians are uninsured individuals in families or on their own with one full-time worker. Those are all individuals who potentially could be covered under an individual or a family plan.

Of the 1.3 million who are uninsured in North Carolina, 900,000 could be affected with this one piece of legislation in the Senate. But for the next 30 hours, we will debate whether we proceed or never get to the process of an up-or-down vote; in other words, it is a choice as to whether we keep them with nothing and nothing and the uninsured or, in fact, we are going to provide something for North Carolina—900,000 people who today have nothing provided for them.

Later today, I am going to come to this floor, and I am going to read for the colleagues real letters, handwritten letters—from people who live in North Carolina, whose choice is nothing and nothing. These are individuals who have the same health needs, individuals who would like to have health insurance but whose employers cannot afford it today, who want the opportunity in employer-based health care, but because of the way the system is designed today, it is not achievable because it is not affordable for the American people or we will walk away; whereby, once again, the American people will be denied because some in this body do not believe there is a responsibility to move to a point where they can make an up-or-down vote. Truly, people can look and say: You have my future in your hands. My health security is in the hands of the Senate, the Members of the Senate, and whether they are going to, in fact, respond to that.

Well, I think people in North Carolina desperately want choice. They think they desperately want this bill. They want their employers to have the opportunity to be able to look at health care reform. What will this historic institution provide that for the American people or we will walk away; whereby, once again, the American people will be denied because some in this body did not believe there is a responsibility to move to a point where they can make an up-or-down vote. Truly, people can look and say: You have my future in your hands. My health security is in the hands of the Senate, the Members of the Senate, and whether they are going to, in fact, respond to that.

Recess

The PRESIDING OFFICER. Under the previous order, the hour of 12:30 p.m. having arrived, the Senate stands in recess until 2:15 p.m.

Thereupon, the Senate, at 12:32 p.m., recessed until 2:15 p.m. and reassembled when called to order by the Presiding Officer (Mr. Voinovich).

Mr. MENENDEZ. Mr. President, today we are here in the middle of what is being called Health Week in the Senate. But rather than debating important lifesaving, life-enhancing
legislation that has bipartisan support and could actually deliver hope and promise to millions of Americans, the Republican leadership in the Senate has, instead, decided to continue their political posturing, business-as-usual approach to governing.

It is no wonder that the American people have become disillusioned with the leadership in Washington. Instead of debating and passing stem cell legislation that will end suffering and extend lives, we are again focusing on a partisan dispute over patient optimism, even when they are harmed, for example, through medical malpractice.

Instead of passing stem cell legislation that will provide new treatments and cures for debilitating diseases, such as Alzheimer’s, juvenile diabetes, spinal cord injuries or cancer, we are debating a bill that would actually eliminate—the health coverage that many States currently provide to cover some of these very diseases—pitting the healthy versus older workers or those who have some chronic disease or illness. And where there is no insurance regulation, prices go up, insurance companies pick the healthy, and they discriminate against older workers and those who are less healthy.

And they can deny coverage that States have thought important to have to meet the challenges of their individual States, sometimes very uniquely so.

So instead of wasting an entire week debating legislation that I believe ultimately has no chance of passing, we owe it to the American people—to the millions of Americans and their families suffering from life-altering disabilities and diseases—to demonstrate our commitment to the health of millions of Americans and to lend my support as a co-sponsor.

This bill means so much more than policy at the completion of their fertility treatments. Why shouldn’t they be allowed to donate those embryos to Federal research to save lives? We allow people to donate organs to save lives. Why couldn’t a couple, if they so chose, donate their frozen embryos instead of simply discarding them?

The great State of New Jersey offers more scientists, engineers, and techni-"
Denise Breasen from Lawrence, KS, is also facing the same crunch to find affordable health care. Even though Denise is a hard-working small business employee, she has been without health insurance for over a year and a half and had to stop taking all of her medications because she could no longer afford them without health insurance.

Denise Hulse and her husband went without health insurance for their family for years. They prayed their children would remain healthy so they would not have to make a visit to the doctor or the emergency room. In the end, her husband was forced to let his small business go and take a low-paying job, just because it came with health insurance. To quote Denise: It is sometimes very hard just making it in the small business community, and very few small business owners are rich enough to be able to afford the high costs of health insurance for their families.

Another small business owner in Kansas told me he is paying over $2,000 a month each month in premiums alone for health insurance for his family. This is more than his house payment, more than his utility bills and grocery expenses all combined.

These stories go on and on, not limited to my home State of Kansas. I heard these stories when I had the privilege of serving in the House of Representatives. Eight times we approached the Eight that passed a bill. Now it is our turn in the Senate, and it is long overdue. I hear these stories from small business owners and employees across the country. Small businesses all share one main concern: finding affordable health care insurance.

This is why I am asking my colleagues today to support and pass the Health Insurance Marketplace Modernization Act. The real question is, Do we take it up? Do we vote for cloture? Or do we let the Senate pass the bill the ninth time while we sit in the Senate, and do nothing for those who cannot afford health insurance? I cannot imagine doing that at this particular time.

This legislation allows small businesses to pool together through an association and offer health insurance. Everything has to have an acronym in Washington. This one does, too. It is SBHP, small business health plan. Some may wonder why an acronym will be called, but it stands for small business health care plan. It is going to give small businesses an affordable choice for health care.

The legislation is built on the fact that small businesses, unlike large companies such as Microsoft or others, or unions, do not have the power to negotiate affordable prices for health care.

The concept of small business pooling together is not new. I supported legislation when I served in the House. In fact, the association health plan legislation has passed the Senate numerous times over the years without any action in the Senate. Now we finally have a solution that will provide meaningful relief to small businesses across Kansas and the country. We all know small businesses face many pressures in running the businesses. I believe we must enact comprehensive policies which offer affordable health care, and that is where this legislation comes in to help. We should allow the local farm implement dealer to pool together with other dealers in Kansas and across the Nation to purchase affordable care.

Kimberly Breason should no longer have to worry about finding affordable health insurance for her children. Denise Breasen should not have to stop taking her medications just because she works for a small business and cannot afford her care. Denise Hulse and her husband should not have been forced to let go of their small business, their dream they loved, just to find affordable health coverage. Instead, we need to find these hard-working folks affordable options that allow them to continue to serve in our small communities, rural and small town America. This is why I support the legislation.

As I stand before my colleagues today, I know there have been strong concerns expressed about this and previous association plan proposals. However, the small business health plans that are created under this bill have the necessary protections in place to address these concerns. I would like my colleagues to have concerns to please pay attention to the small business health plans will be regulated by the States, not the Federal Government. The small business plans will have to play by the same set of rules as other small group health plans. They must purchase their insurance through the regular insurance market. They cannot self-insure. Finally, the SBHPs may offer coverage that varies from State benefit mandates to offer a comprehensive plan that provides comprehensive coverage. This gives the consumer a choice in choosing a health plan that best fits their needs, and that is the key.

I have heard from organizations and individuals who fear this bill will take away their coverage for cancer screenings, mental health benefits, or any other mandates required by State law. However, I stress that this is simply an opportunity for a small business to have that option. However, he should not be forced by law to buy benefits that may be beyond what he can afford or beyond what he and his employees really need. I ask my colleagues, why shouldn’t small businesses be able to enjoy these same opportunities?

Today, there are more than 1,800 State mandates, making it nearly impossible for associations to offer uniform and affordable options to workers. I ask my colleagues, why shouldn’t small businesses be able to relax these burdensome mandates to offer affordable health insurance to small businesses across a regional or national basis. Together, these benefit mandates create a confusing web, an unfunded mandate that prices many Americans out of the health insurance market. The Congressional Budget Office and the Government Accountability Office have found that State-imposed benefit mandates raise the cost of health insurance anywhere from 5 to 22 percent. In addition, the mandates that every 1 percent increase in insurance costs results in 200,000 to 300,000 more uninsured Americans. In reality, benefit mandates represent an unfunded mandate on employers because insurance companies simply pass the cost of each mandate along. When the cost goes up, the coverage goes down. You have more uninsured.

The legislation we are debating today simply provides an opportunity for a small business to have that option to relax these burdensome mandates to offer affordable health insurance to small businesses on a regional or national basis, just like the big businesses and unions currently do. We should not be asking small businesses to choose between staying in business or offering health insurance to their employees. Boy, that is a Hobson’s choice. Instead, we need to give them more affordable health insurance choices and be willing to consider legislation that makes the most sense for themselves, their families, their employees, and the future of their businesses.
I know this bill is not perfect. Sometimes we or the other body pass a bill that is perfect. I have long said that we usually achieve the best possible bill, but sometimes must settle for the best bill possible.

I appreciate the concerns that have been expressed with this legislation. However, I express to my colleagues that I think this bill is the best opportunity we have for easing the burden on our small businesses and allowing them to fix a broken affordable health care insurance to their employees. I am proud to support this legislation. I urge my colleagues to do the same and vote for cloture. Eight times in the House, zero in the Senate. That should not be a moment of pride for this body. Let us vote for cloture and let us support this bill.

I yield back my time.

The PRESIDING OFFICER. The Senator from Kansas is recognized.

Mr. GREGG. Mr. President, I rise to associate myself with the remarks of the Senator from Kansas, and especially with the efforts of the Senator from Wyoming who brought this bill to the floor. This is the most significant piece of legislation in our efforts to try to make sure more Americans have the opportunity to get fair, affordable, and good health care insurance. It is a piece of legislation about people insured at people who work in what is termed “small business.” That is the person who works as a cook in a local family restaurant or a person who works as a mechanic in a garage or a person who runs a mom-and-pop real estate agency.

Literally, there are tens of thousands, millions of these small entrepreneurial centers throughout this country. Most of these folks don’t make a great deal of money. They work very hard, and they take care of their families. One of their biggest concerns is whether they can get health insurance so if somebody should get sick who works with them or should somebody in their family get sick, they will be able to have adequate care. But too many of them are not able to afford health insurance. Approximately 22 million people who are in these small businesses, these small retail businesses, small manufacturing businesses, small entrepreneurial shops, don’t have insurance. Another 5 million people, who are sole proprietors and work by themselves, do not have a number of employees working with them, also don’t have insurance. That is 27 million people who fall into this category. So Senator Enzi has brought forward a bill to try to address that problem. It is going to try to make it possible for these people who work so hard and who would like to have insurance policies that are affordable to get them. By allowing them to band together to come together, and form a large enough group so that they can create enough of a mass of interest and buying power so that they can go out and purchase insurance. That is something they cannot do today as individuals. This bill allows the group to band together.

It is hard to understand how anybody could oppose this concept. But people do oppose it, and I think most of the opposition comes from folks who either misunderstand the bill or who are using the bill as a way to erode their constituencies with information that is at the margin of believable, to be kind. The biggest opposition today to this bill, other than insurance companies who might see this as a competitor, comes from these groups that represent various different diseases and have compelling stories to tell about their diseases. They have gone to the State legislatures and they have gotten them to put in place what is known as mandates so any policy sold in that State has to cover them.

As was pointed out by the Senator from Kansas, every time that happens it increases the cost of the insurance in that State. For every one percent increase in the cost of insurance—and some of these mandates are expensive enough so they by themselves represent a 1-percent increase in insurance premiums. But there are 200,000 to 300,000 people who cannot afford insurance because the insurance bills go up and 200,000 or 300,000 people fall off the rolls.

What this bill tries to do is address the issue of the person who has fallen off the rolls, the person who hasn’t been able to get the insurance, by giving them an option that they can buy, which they feel is adequate to their needs—it may not have a specific mandate in it because maybe they don’t need those mandates to be covered, but at least it gives them the basic coverage they might get through their health insurance risks.

The flip side of this coin, which isn’t talked about much but which is fairly obvious, is that these people have no insurance at all. When these mandate groups argue, if you pass this bill, you are going to undermine the capacity of people to get insurance for this disease group, that is a totally misleading presentation because the people this is focused on don’t have insurance to begin with. You cannot take something away from somebody who doesn’t have it. If a person doesn’t have an insurance policy, he doesn’t have the mandates that the insurance policy requires.

If a cook working in a restaurant or a garage attendant working at a gas station or a realtor working in a small mom-and-pop real estate agency doesn’t have any health insurance, you cannot take away from them mandated coverage for health insurance because they don’t have it to begin with.

What this bill tries to do is allow that individual to participate in a group where they will have health insurance as an option. And if they have that option of health insurance, without mandates, they also have to have—that group, that restaurant, that real estate agency, that garage the option to purchase a fully mandated policy. In other words, it is a policy that is, for lack of a better term, an option policy, where you have everything covered. It has to track the five States in this country which have the most mandates on their insured. So the bill is balanced in that area of mandates.

A second opposition to this bill has been the fact that it moves from community rating to a different system. What does that mean? It essentially means that on a community rating you basically force everybody to be rated the same, no matter their health risk or age group or occupation. With a rating system, you adjust marginally for some other variable which is expressed in what we or what age it is. Adjustments can be made, but they are limited by the State. If you have a community-rated system, you inevitably have a much higher cost going in for a lot of those people who are banding together in a group who maybe have much more risk as others. But if you have a rating system, some people are going to be lower in insurance costs and some people will be higher. They are going to be within a relatively narrow band.

So this bill allows these policies to be offered with a rating system, with a base in New Hampshire which has been referred to on the floor by the Senator from Massachusetts—they had a very bad experience because, regretfully, New Hampshire did it the wrong way. We had a community rating system and then we went to a band rating system. This bill is because we recognize this was a better policy. I congratulate the State for that, but they didn’t go to it correctly. They went sort of cold turkey. The practical effect was that one day people got one type of bill, and the next day they got a different type of bill. For some people it went down, and it was a rather startling event for them. We looked at that experience in committee and said we don’t want to emulate what happened in New Hampshire. We want to make this a much more responsible approach. We put into place a glidepath, 5-year phasing, so there will be plenty of time to adjust and to be able to handle this.

That type of opposition to this bill, clearly, in my opinion, has been addressed. It has been addressed specifically because of the New Hampshire experience. So it is a misrepresentation to say that continues to be a major issue with this bill. As a practical matter, there are about 83 million people in this country who work in small businesses. That is a huge number. They are going to be affected, but this type of insurance made available to them. They should have the same opportunity as big businesses—the IBMs,
the Microsofts, the major manufacturers—in our country, if for no other reason than they happen to be the engine of economic activity in this country. Most of the new jobs are created by small businesses, the moms and pops who are willing to build that res- taurant, the one that excites opportunity, start small and grow. When they do that, they ought to have the opportunity to also have an insurance option available. But many of them don’t because it is not affordable, be- cause the way the States work the system, and because of that these small groups, as individuals, have no buying power. So this bill has ad- dressed that need.

It is not the answer. This isn’t a magic wand, but it is another oppor- tunity put on, let’s say, the cafeteria line of insurance that gives a small businessperson the chance to go down that cafeteria line and say: Yes, this plan works for the five people who work for me. I am going to buy into the plan because I can afford it. Today, most people who walk down that cafeteria line, if they are small businesspeople, don’t choose anything because they cannot afford the price of anything, and many of them are in that capacity, that 22 million. This will take a fairly significant number of those folks and give them the oppor- tunity to purchase health insurance.

So it will take people from a non- insurance status to an insured status from a situation where if they get sick, they don’t know how they are going to pay for it, to a situation where if they get sick, they will have coverage. It is very important financially to most people and, obviously, it is important psychologically to everybody. So it is a good bill, something we should support. I do think much of the opposition to it is misguided because it doesn’t rec- ognize that the basic goal is to take people from a non-insurance status.

Today, there was an editorial in the New York Times that said we should not extend the tax cuts put into place in 2003. They say those tax cuts should not extend the tax cuts put into place in 2003. They said, “We should highlight the gains and dividends. That argument is not be extended in the areas of capital gains and the fact that we have reduced the rate on capital gains which causes people to free up assets. Over the last 3 years, revenues have jumped dramatically—in fact, last year by 14 percent, and the year before by 7 percent, and this year we have pro- jected to jump again. Why is that? It is because we are seeing an economic boom which has created 5.3 million new jobs since those tax cuts were put into place. There have been more jobs added in the United States in that period than Europe and Japan combined have created. And those jobs have led to eco- nomic activity and, in turn, have led to revenues to the Federal Government.”

Revenues to the Federal Government are the engine of growth for the economy. The economy is growing, and the econ- omy is growing because the burden on those people who go out and are willing to take risks through capital invest- ment, dividend activity, through in- dividuals and businesspeople are doing what is right and fair, and offering what we see as fair access to the same quality product of health care and health insurance that we as Mem- bers of Congress get.

The small business health care crisis is undoubtedly one of the issues I hear the most about when I return home to Arkansas. In fact, in every community in our Nation, as well as millions of working families across this country, we are seeing the difficulty of having access to quality health care and health insurance and the ability to pay for that. There are approximately 46 million Americans currently without health insurance, including 456,000 Arkansans whom I am responsible for in terms of producing a product that is worthy of those individuals. Small businesses are the No. 1 source of those Arkansans. Yet only 26 percent of the busi- nesses with fewer than 50 employees offer health insurance coverage. Work- ers at these businesses, which again are the engine of our economy, are most likely to be uninsured. In fact, 20 per- cent of working-age adults are uninsured in Arkansas. This number is alarming, and addressing this problem should be a national priority, and we should approach it as if we are going to do the best job that we are capable of doing. That is why we are here today, to talk about that.

Mr. President, 224 major organiza- tions are opposed to the proposal that

Ronald Reagan when he put in place the tax cut of 1980. And it has been proven wrong again.

In fact, in the first 6 months of this year, tax revenues jumped 11 percent, $134 billion, and a large percentage of that increase in tax revenues came from capital gains and the fact that we have reduced the rate on capital gains which causes people to free up assets. Over the last 3 years, revenues have jumped dramatically—in fact, last year by 14 percent, and the year before by 7 percent, and this year we have projected to jump again. Why is that? It is because we are seeing an economic boom which has created 5.3 million new jobs since those tax cuts were put into place. There have been more jobs added in the United States in that period than Europe and Japan combined have created. And those jobs have led to economic activity and, in turn, have led to revenues to the Federal Government. Revenues to the Federal Government are the engine of growth for the economy. The economy is growing, and the economy is growing because the burden on those people who go out and are willing to take risks through capital invest- ment, dividend activity, through in- dividuals and businesspeople are doing what is right and fair, and offering what we see as fair access to the same quality product of health care and health insurance that we as Mem- bers of Congress get.

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Mr. President, 224 major organiza- tions are opposed to the proposal that
Senator ENZI has brought before us. Two hundred-and-twenty-four is a huge number: everywhere from diabetes to mental illness to hospital federations. These individuals understand how important the years have been in allowing the individuals to come together to be able to set mandates in order to cover what is important to individuals in their States, and what is important to small businesses and everyone in those States. Those States have the right and the ability to give what is important to them, and the majority of them have agreed on many of these major issues.

Those who lack health insurance do not get access to timely and appropriate health care. We know that, and we see it. We see it in the cost of Medicare when people don’t get health care for 20 or 25 years when they are in the working marketplace as a small business owner or employee, and then they become more costly to us when they hit Medicare. Because they haven’t received the screenings, the timely visits to the doctor, and they haven’t been getting the kind of health care they truly need. They have less access to these important screenings. They don’t have the state-of-the-art technology that exists or prescription drugs, which is another piece of what can help keep down the cost of health care.

Working families need help with this problem. The Institute of Medicine has reported that 18,000 people die each year because they are uninsured. The fact is, being insured does matter. It makes a big difference. It makes a difference in our health care costs. It makes a difference in whether you are going to survive—longevity, the ability to care for your family. It makes a big difference. We have reached a juncture where we are going to debate how we deal with those who are uninsured, whether we are able to give them what standard coverage or whether we are going to give them the coverage that we have.

Again, I commend my colleagues, Senator ENZI from Wyoming and Senator NELSON from Nebraska, for their leadership. I appreciate their hard work on this issue. But I do disagree, because I believe that the devil is in the details on this issue, and I am deeply concerned about the very harsh and unintended consequences that will occur if S. 1955 were to become law.

Senator DURBIN and myself have been working together for several years to come up with what we believe is a better health care plan for America’s small businesses. What we have done is looked to a 40-year-old tested delivery system, and it is the one that we ourselves use. It is a Federal plan that takes the best of what Government can do and combines it with the best of what private industry can do. The private marketplace and the competition that it can create allows the Government to pool all of its Federal employees and use that pool as a negotiating tool to bring us greater choice at a lower cost.

About 3 years ago, I suppose it was, my staff and I were discussing the way we could help small businesses, and I thought about the way my Senate office goes about running like a small business in my home State and here. As I looked at my employees, I saw that I had two employees, one with 26 years with the Federal Government, another with 30 years with the Federal Government. I have two women who had delivered babies and were on maternity leave. I had some, such as myself, with small children and a husband that is on my plan, and then I had a host of young, healthy staffers who were single. But I had a whole array of different individuals who needed a tailor-made insurance plan for their needs. While there are similarities in our Senate office and small businesses, there are also some obvious differences. One of the most glaring contrasts is access to affordable and quality health care. I saw what my office went through and realized that is what small businesses are going through. I knew we could do better. I knew we could take the plan of what we have and apply it to small businesses.

Last year, more than 8 million people were banded together in the Federal employees purchasing pool, and that gave us choices among 10 national health plans, a variety of local insurance plans, and a total of 278 private insurance plans from the private marketplace. Not government-run—not government-run health care at all—but health care from the private industry, health insurance from the private industry that was created by competition of the multiple Federal employees across the country. It offered us greater access, greater choices at a lower cost.

So I am here to ask this question: Why don’t we try to give small businesses access to that same type of private health insurance option that Members of Congress and Federal employees enjoy today? Rather than re-invent the wheel, why don’t we create a program for small businesses that is based on our Federal Employees Health Benefit Plan, through the FEHBP, by pooling them, the small businesses, together in one nationwide pool. That is exactly what Senator DURBIN and I have done. It is the Small Employers Health Benefit Program. By pooling small businesses across America into one risk and purchasing pool similar to the FEHBP, our program will allow employers to reap the benefit of group purchasing power and streamline administrative costs as well as access to more plan choices. The SEHBP, as we have introduced, lowers costs for small businesses in two key ways: It pools them into one national pool across the country, therefore spreading the risk across the country; the second is that an employee making $25,000 or less. And if the employer contributes 60 percent or more to the health insurance premium of an employee making $25,000 or less, the employer will receive a 25-percent tax credit. And the tax credits increase with the number of people covered and the proportion of premium the employer chooses to cover. Also, the employer receives a bonus tax credit for signing up in the first year of the program, because we know from the example of the Federal employees that the more employees who are in the pool, the greater advantage to everyone concerned. Small businesses will save thousands of dollars—even more—under our plan.

Segmenting the market into different association pools, as S. 1955 does under Senator ENZI’s bill, will not achieve these savings that would be created by instituting one large pool with all of those small business and self-employed individuals. Each association will be administering to a separate group with a different administrative structure and different costs, obviously. More funds would be going to administrative costs as opposed to serving the people with a quality health plan. Our SEHBP would have one administrative structure and could pool approximately 53 million workers together, therefore balancing the risk of sick and healthy, young and old, rural and urban, for affordable rates for everybody. Why wouldn’t we want to make our pool as big as it possibly could be, as we do with the Federal workers?

I believe our plan takes a real moderate and balanced approach that combines the best of what the private sector can do, and preserving important coverage for preventive health...
care treatment such as diabetes supplies, mammograms, prostate screening, maternity and well-baby care, immunization, things that States themselves have decided are important enough to mandate coverage for and ensure that the people of their State are going to have that important coverage of illnesses that are critical to them in their State.

Like the FEHB Plan, our program does not promote Government-run health care, but it harnesses the power of market competition to bring down health insurance costs using a proven Government negotiator in the Office of Personnel Management, OPM, which is the negotiator for our plan. We, once a year, as Federal employees, can choose among 270-plus plans. We are able to actually benefit from that proven Government negotiator and the harnessing of that power.

Our legislation, S. 2510, has been endorsed by many organizations—the National Association of Women Business Owners, Small Business Majority, the American Medical Society, the American Diabetes Association, the National Mental Health Association, the Cancer Society, and many more that have realized how important it is to use a proven bargaining technique, a proven structure that maintains quality but helps by pooling and bringing down those costs.

The Mental Health Liaison Group, representing over 35 national mental health organizations, wrote to us and said about our bill:

S. 2510 does not sacrifice quality of coverage for affordability or allow the offering of second class health insurance to small businesses. Within the FEHB program, small business owners, employees and their family members would be covered by all the consumer protections in their home states—hard-won state mental health parity laws and mandated benefit laws.

The American Academy of Pediatrics, writing to us on behalf of over 60,000 primary care pediatricians and pediatric specialists, wrote:

Through the benefits of pooling small businesses, tax cuts to small employers, small pediatric practices will be assisted in the health insurance market without sacrificing health care services for children.

The American Diabetes Association wrote to us and said:

While other proposals seeking to provide health benefits for small businesses . . . have exempted or eliminated coverage for important diabetes care protections, [our bill] S. 2510, will allow individuals with diabetes to receive the important health care coverage they require to remain healthy and productive members of the workforce.

This is not just about quality of life, although many of us believe that is very important. We as Members of Congress enjoy a quality of life because of the very healthy health insurance program we are offered. We want our small businesses to be vital to our economy to enjoy that same opportunity. But it is also about economics. It is about making sure we keep our workforce, particularly our small businesses and their workforce, healthy and thriving and productive and in the workplace. It is about making sure America’s working individuals and working families get the health care they need before they reach 65. When they hit 65 and they are in the Medicare program they are going to be more costly to Government because they are not going to have gotten the health care they needed and deserved in their working years. I believe the FEHB plan is better in so many ways. I am proud we are having this debate, and I hope so many people will realize we can do better. We can do better and make sure we truly elevate small businesses and self-employed people to the same level we hold ourselves, in providing them the access to the same quality type of health care.

Our SEHBP bill offers tax cuts for small employers. Senator Enzi’s bill does not. SEHBP relies on a proven program. It is based on the successful Federal Employees Health Benefit Program which has efficiently and effectively provided extensive benefit choices at affordable prices to Members of Congress and Federal employees for decades. For decades, we have had a proven program. If you prove you can harness the competitive nature of the marketplace, and with the oversight of Government and the State mandates, you can actually provide that quality of health insurance at a price the employees and employers can agree to. No, together and allowing OPM to negotiate with private health insurance companies on their behalf, they, too, could have access to this wide variety.

On the other hand, Senator Enzi and Senator Nelson’s bill establishes a new set of responsibilities at the U.S. Department of Labor, to administer an untried and an untested program. We don’t reinvent the wheel. What we do is use what is already exists. To invent a new welfare system is to invite the Department of Labor to administer Senator Enzi’s bill is going to take time and money. We are not going to know how it needs to be administered through the Department of Labor. They have never done it before. Even the Department of Labor employees currently enjoy benefits from the health insurance program that is negotiated by the Office of Personnel Management. So it is hard to believe they are going to want to go to another system.

SEHBP allows individual self-employed workers the same access to health insurance that is offered to group businesses. SEHBP defines small businesses as groups of 1 to 100, so an individual self-employed person will be treated exactly as a business with 2 or more people. Any business with 1 to 100 employees is eligible to participate in what we are trying to do.

Under Senator Enzi’s bill, the self-employed people are not part of the small businesses unless they are mandated by State law. And there are not that many State laws that actually mandate that. But the self-employed people in 36 States, including Arkansas, will not have access to the same negotiated rates of businesses with 2 or more people. They will be pulled out of that pool and rated on their own. That means, if they are younger women of childbearing years or perhaps they are diabetic, they will be rated completely separate from the pool, which means they will be segregated and treated differently. They don’t get to enjoy the benefit of a larger risk pool which will lower the costs and offer them greater choice.

Our bill also ensures access to health care specialists. Many States have passed laws requiring insurers to cover certain health care providers, including dentists or psychologists or chiropractors. All three of these and many more are required by our State of Arkansas law. I know the people of my State enjoy the assurance they have of knowing that their State regulator, their State insurance commissioner, is looking out for their needs. They can do that better on a State level. That is why we have always left those types of regulatory issues up to our State—because they know and can work.

Can you imagine being a small business, or better yet an employee of a small business, having to call some big, huge, Federal bureaucratic office to request or to complain or to have your concerns heard about what is not covered by your insurance? No. They call the State insurance commissioner today, and that is the way it should be. The State insurance commissioner can then respond to the concerns of their constituency and has done so very well over many years.

The coverage for diabetes supplies, mammography, and other important screenings are mandated by State law which would be preempted by what Senator Enzi is trying to do. Many passes the responsibility for requiring health insurance companies to cover these benefits because insurers simply were not doing it. It did not happen because the insurance commissioners just decided on a whim to do it; it is because the insurers were not covering it. Why do we have to go back and relearn that lesson?

For 40 years, the Federal Government has used the effectiveness of the pool of the 8 million Federal employees and been able to enjoy the protections that are there, provided by State insurance commissioners.

Our bill also prevents unfair rating on gender and health status. Under our bill, health insurers will be prohibited from ratings based on health status—whether you happen to be diabetic, or whether you happen to have eating disorders—your gender, or the type of industry in which the employees are working. Under Senator Enzi’s rules, that will be all preempted, even for the 15 States that don’t allow ratings on these factors.

Our bill also levies fees on employers to focus on running their businesses. They don’t
have to go and negotiate these plans through their association or with their association. They are going to get sent a booklet just as we do, once a year, to review all that is available to them, and choices, and then figure out what is best for them. My employees—each of them picks something different. I pick coverage for a family with children. Some of them pick a PPO or an HMO. Some of them pick all different kinds of State plans and others that are offered to them in that process.

Mr. CARPER. Will the Senator yield? Mrs. LINCOLN. Absolutely.

Mr. CARPER. Mr. President, how much time is left on our side during this period of debate?

The PRESIDING OFFICER. There is 5 minutes remaining.

Mr. CARPER. How much longer does the Senator expect to speak?

Mr. NELSON, whom I believe is about if I just go ahead and yield to the Senator from Delaware because as a former Governor, he has some incredible stories to tell, and I think they really add to this debate. I will simply say to my colleagues that I hope they follow this debate very closely and certainly appreciate how important this is to the working families of all of our States.

Mr. CARPER. I thank my colleague for yielding. I ask if she would stay on the floor.

I commend Senator LINCOLN for actually coming up with this idea. It is an idea for which she and Senator DURBIN share credit. When you think of some of our options, the options basically are do nothing, maintain the status quo, continue to make the cost of insurance very steep and rising for small businesses or to adopt the proposal of our colleagues, Senator ENZI and Senator NELSON, whom I believe are two of the most thoughtful Members of the Senate. They have worked hard to try to make a not very good idea—the original association health plan—a better idea. But between doing nothing and something we have done well, the ability to pool our collective purchasing power. It doesn’t matter if you work for the VA or Homeland Security or some other Federal agency—EPA—basically we could come together and use our collective might to negotiate better rates and, frankly, better coverage than would otherwise be the case if we were just negotiating for ourselves. We do it all through the Office of Personnel Management.

What Senator LINCOLN is suggesting is it works great for us, provides reasonably good coverage for Federal employees, including us as U.S. Senators. We have to pay our portion. It is not that we get it for free. We have to pay our share. But it works pretty darn well. She has come up with a way where we take that Government idea and transpose it and transfer it to the private sector. She would have the Office of Personnel Management effectively provide the service or play the role in the private sector that it currently plays in the public sector, to allow a lot of employees, whether you work for the local hardware store or restaurant or small manufacturer or pharmaceutical company, we would like our employees to be able to pull together from Arkansas, from Delaware, even from Minnesota, in order to get a chance to buy better insurance products, have more variety, and bring down our costs to our small businesses.

It has worked. It is proven. It is time tested, and I believe it is worth trying. The worst thing that I think could happen, coming out of this week, is for us to do nothing.

It is a big problem. It is a big problem for small employers, and it is a big problem for large employers. It is a big problem for America.

If I think what would be the worst thing that could happen, and what would basically ensure that we do nothing is for our Republican friends to basically allow no amendments to the Enzi-Durbin legislation. I think that would be awful. That would be a huge mistake. We need very much basically ensure we end up not getting this bill done or some variation and not even having a chance for debate and vote on the Lincoln-Durbin legislation. We can do better than that. Frankly, the Senate deserves a lot better than that.

I say to my colleague from Arkansas, who has been good enough to relinquish her time, I thank her on behalf of pointing out a different course, a third way in this regard. I thank her.

Mrs. LINCOLN. Mr. President, I thank my colleague from Delaware.

The PRESIDING OFFICER. Minority time has expired.

Mrs. LINCOLN. Thank you, Mr. President.

I ask unanimous consent to continue until other Members arrive.

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

Mrs. LINCOLN. Thank you, Mr. President.

I will be glad to yield the floor when others are ready to speak.

I would like to add that the experience of many of our colleagues, whether they are former insurance commissioners, former Governors and others, brings to this table the understanding what the Americans want, what our working families want. I think the debate is that small businesses definitely want more affordable health care. They also want to make sure that what they are providing for themselves and their families and their employees is quality service, quality coverage. That is what they deserve. That is what they want.

Even for those who feel so young and invincible, we also know that they may be one car accident or one diagnosis away from needing more comprehensive health insurance for the rest of their lives.

That is why we want to make sure—as I said in the beginning—that whatever we do is right, that we don’t move forward on something that is going to be less productive and in the long run, unfortunately, put more people at risk.

My goal is to help small businesses while not jeopardizing the quality of health care for the 68 million Americans in State-regulated group plans that are already out there. We don’t want to do harm there.

The fact is if we move forward on what Senator Enzi wants to do, which is preempting those State regulations and State mandates, we could do tremendous harm for those who are currently insured and the 16.5 million Americans with individual health insurance coverage who would probably lose some quality of coverage which they have.

If it is good enough for Federal employees, and if it good enough for Members of Congress, I think it should be good enough for millions of small business employees who are the economic backbone of communities throughout the country.

I applaud my colleagues for coming to the floor for this debate, and I hope we will have a serious debate so we can
move forward and actually do what is right for the American people.

Mr. CARPER. Mr. President, will the Senator yield once again?

Mrs. LINCOLN. Yes, absolutely.

Mr. CARPER. Mr. President, we do not do what the Federal Government in the way we are trying to harness market forces and competition and put them to work. We try to hold down Federal outlays. That is what we do with respect to the Federal. It is literally what we do with respect to the Federal Employee Health Benefit Plan. What we are trying to do, with respect to what the Senator has outlined, is harness market forces and competition and put them to work for small businesses as well.

Mr. ENZI. Mr. President, reclaiming our time, I didn’t realize they would be allowed to use part of it.

It would be helpful if the other side would actually share the details of their amendment with us so that we can take a look at it. The details of our bill have been through the committee, out here, and had hearings. We don’t know what is going to be in there. The last time I looked at it, there was, I think, $9 billion of cost in it each year, and I don’t know what that would be built up. I make that request to the other side—that we would sure like to take a look at their bill. It is hard to do until we have a copy.

Mr. PRESIDING OFFICER. The Senator from Alaska is recognized.

Mr. STEVENS. Mr. President, I thank the Chair.

CAPE WIND FACILITY IN NANTUCKET SOUND

Mr. President, I am here to discuss the provision in the Coast Guard and Maritime Transportation Act of 2006 and the provision which allows the State of Massachusetts to have a say in the siting of a 24-square-mile, 130-wind turbine energy facility. I have a chart I want to use and describe.

First, let me say why the Senator from Alaska is involved in this issue. What I am trying to say is that this is a tremendous precedent.

We have a series of areas of various States where there is a gap in State jurisdiction and where Federal waters are adjacent to and sometimes almost surrounding State waters. That is particularly true in my State. With the Cook Inlet on either side of Kamig Insland, there are gaps of Federal waters surrounding the mainland of Alaska going down the inlet.

The Minerals Management Service tells us there are roughly 2.5 million acres of Federal waters going down that inlet that could be used for projects such as I am going to discuss today.

A similar situation exists with Chandelier Island, LA; the Channel Islands in California; the Farallon Islands in California; the Hawaiian Islands in many instances; and in Puerto Rico.

What I am here to talk about is the precedent that would be established by locating this facility in Nantucket Sound, less than 2 miles beyond the State of Massachusetts’ jurisdiction.

If we look at this chart, you can see very clearly the area with the darkest color on the chart, which is the proposed site of this power facility. It is 9 miles from the mainland of Massachusetts, 13.8 miles from the other side, and 6 miles from the other direction.

When you look at the situation, we realize the State has jurisdiction over at least 3 miles. This is very close to the area of Massachusetts where people have a right to be concerned over this project. Before the Federal Government claimed ownership of this area, there was a judicial dispute over which government had jurisdiction over it. I am informed that the State of Massachusetts had established a marine park in this area. As a matter of fact, it was listed as part of a proposed marine sanctuary, even in the Federal listings. It is now the proposed site of one of the most expansive offshore wind energy projects ever undertaken in the world.

This facility would include turbines that stand 417 feet tall.

This is a chart that describes it. Those windmills would be 417 feet taller than the Statue of Liberty. The one little point at the bottom shows a 30-foot sailboat. You can see the size of it. People sail on the water that size on Nantucket Bay. The Great Point Lighthouse is supposed to keep the sailors and mariners warned about the area. It is only 73 feet tall.

When you look this area, it is 24 miles across, more than half the size of Boston Harbor itself. It is going to be the site of this enormous facility.

As I said, it is larger than any similar kind of wind energy project in the world.

It is a very small area of Federal jurisdiction, completely surrounded by the mainland and islands of Massachusetts.

Some in the media have intimated that by including this provision in the Coast Guard and Maritime Transportation Act, I am doing it as an old friend to Senator TED KENNEDY. He is an old friend. It is true that Senator KENNEDY and the Governor of Massachusetts support the provision in the Coast Guard bill, but this is my amendment. They have agreed with me. I am not in any agreement. It is not an issue based on friendship or on past favors or future favors. It is strictly a provision based upon my long-held belief that States should have the final say on projects which will directly impact their lands, resources, and constituencies.

Some in the press have claimed this provision is embedded in “obscure legislation to be passed in the dead of the night.” We hear this all the time. But the Coast Guard authorization bill is hardly obscure legislation, and there is nothing secretive about this bill.

The version of this bill that passed the House of Representatives included a provision related to offshore wind farms. It was in the House-passed bill to start with. The House and the Senate, in a bicameral, bipartisan group of Members of a conference committee, discussed and negotiated language to provide the State of Massachusetts a federal veto in the siting of this windmill farm in Nantucket Sound.

This bicameral, bipartisan group also negotiated language requiring the Coast Guard to assess the potential navigational impacts of the proposed offshore powerplant.

This is the normal legislative process for passing legislation of this type through the Congress.

Again, let me point out this chart. I don’t live in this area, but I have studied it very well. This is the path the ferries take coming out of these areas and going through this sound, and it is the path which the commercial traffic, steamships, and cargo ships use going into that port.

As a consequence of this location, this line demonstrates the State’s jurisdiction and how close it is to the State’s jurisdiction. As a matter of fact, the area that is has been lined shows the previous plan which would have partially gone into the State’s jurisdiction. The project was amended, so it does not touch the State waters or State jurisdiction areas at all.

It is this area of solid brown on this chart. Clearly the way, this is the very shallow portion of this area. There is no question about it. Nantucket Island is out here. But there are equally shallow portions outside of the sound that could have been used. But, of course, it is deeper going in there, and that access to this interior part of this sound I think is strictly a financial decision.

At the heart of the debate on the issue is States’ rights. The fact is this project will be located entirely in the water in this small doughnut hole of the Federal water surrounded by islands and mainland of the State of Massachusetts.

The debate over this project is similar to the fights those of us in Alaska have been engaged in for decades. Our State lands are surrounded by Federal lands, and we often don’t have any decision regarding the development of our resources or projects which will be located in our State. This is one of those situations where Congress ought to listen to the Governor. They ought to listen to the senior Senator, in my opinion.

Those in Massachusetts have raised legitimate concerns about the impact of this wind farm and what its impact will be on maritime navigation, avia- tion, and radar installations critical to our homeland security.

This proposed site is an area already known for its treacherous flight conditions, and this facility could make those conditions much worse. According to the National Air Traffic Controllers Association, this facility will be located in the flight path of thousands
of small planes. Both the Barnstable and Nantucket Airport Commissions are opposed to the construction of this facility, as are the major ferry lines that operate in Nantucket Sound.

As the chart I have described shows, ferry traffic within a mile of the proposed location for this project on two sides. The 24-square-mile footprint for this facility is nearly half the size of Boston Harbor, a 471-foot wind farm. Again, those windmills are larger than this building. Those windmills are larger than the Capitol.

You have to get the specter of this size being built in the center of this sound. It is a 24-square-mile footprint for this facility. As I have said, it is half the size of Boston Harbor andhas shipping and ferry channels bordering on three sides.

There is not a single local fishing group from Massachusetts that supports this project, I am informed. It would close a 24-square-mile footprint of many kinds of fishing that has taken place in this sound for generations. Horseshoe Shoal, where the facility will be built, is one of the most productive fishing grounds in the area. That means this area produces offspor. This is where the fish spawn.

The impact of the shoal will be significant. The piling for each one of these windmills—there are 130 of them—will be 16 feet in diameter and will be bored down into the sea floor of about 80 feet. This productive area will be littered with 130 drilled holes. Each piling will occupy 2 acres of productive fishing ground. Navigating in and around 130 turbines will make fishing and fishing reproduction in this area nearly impossible.

In addition, these turbines will make Coast Guard search and rescue missions much more difficult in this area, already known for severe weather and sea conditions in parts of the year.

Those in Massachusetts raise another important point. Developing a wind farm of this size and scale offshore has never been done before, let alone in an environment as extreme as the waters of the North Atlantic.

To put this challenge in perspective, it helps to compare the Massachusetts project to the wind farm currently operating in Palm Springs, CA. I know a little bit about this. I have gone into that area many times by airplane. The facility stands 150 feet at the tallest point. The blades are half the length of a football field, but they are one-third of this size. Even on dry land and a relatively calm desert climate, the Palm Springs wind farm has been plagued by serious maintenance and repair complications. Many of the turbines require constant maintenance and repair.

Put that in the Massachusetts Sound. They require maintenance and repair constantly. This Massachusetts project would require maintenance and repair to take place in icy waters of Nantucket Sound. The size of the windmills for this facility would dwarf the existing land-based wind projects. The windmills in Nantucket Sound would stand nearly three times as tall as those in Palm Springs, with wind blades over a football field in length. Just the blade is a football field in length.

Now, given the legitimate issues raised by the people of Massachusetts and their representative, I believe it is only fair to allow the State to have an equal voice in the debate over the siting of this project. Nantucket Sound, as I have said, is not the only place where a project of this kind can be built. In Europe, deepwater wind energy technologies are currently being developed as far out as 15 miles in 138 feet of water. Placing wind energy facilities further from their shore reduces their impact on maritime navigation.

If this 24-square-mile wind farm is built further away from shore, there would be a number of benefits. It would be repayable to fishing, shipping, ferrying, shipping channels, reducing the risk of collision and reducing the potential impact on the navigation which we have asked the Coast Guard to look into.

I do support America's use of alternative energy sources, including wind farms and wind power. I have supported wind projects in the past during my time as chairman of the Senate Committee on Appropriations. Our committee appropriated over $15 million for wind projects in fiscal year 2002 to fiscal year 2006. There was even one in my State around Kotzebue.

It is the right of a State to determine if this type of project is consistent with its efforts to protect its resources. I believe Congress should defer to the judgment of the Massachusetts congressional delegation, the Governor of Massachusetts, and the people of Massachusetts on this matter. States should have a say when activities taking place in the waters adjacent to their shores. This location, in particular, deserves special consideration due to the geographic peculiarities of the region.

California blocked oil platforms, Oregon and Washington blocked them before they were even built.

We now have a dispute before the Congress over a potential development of gas resources 170 miles off the State of Florida. This is with a sound that is one of the—I have only been there two or three times, but it is a place if you ever go to it you would not forget. It is not a place that deserves to have this impact. The residents of Massachusetts will have to live with the impact of this project. They must have a greater role in determining the fate of this treasured area.

This bill, H.R. 899, as agreed to by the conference committee, rightly awards the State of Massachusetts this greater authority in the decision making on this project. So I am here today to urge the House and the Senate to listen to the people of Massachusetts and particularly to listen to their senior Senator.

I am pleased to yield whatever time I have remaining. I think I have another 10 minutes or so. I yield to the Senator from Massachusetts.

Mr. STEVENS. Is there time on the Democratic side for the Senator from Massachusetts?

Mr. KENNEDY. We are rotating back and forth. I am happy to work that out.

Mr. STEVENS. We will work that out.

Mr. KENNEDY. We will stay on the subject matter.

Mr. ENZI. We had some latitude here to allow 20 minutes on this and we were 5 minutes late from that one.

Mr. STEVENS. I talked too long.

Mr. ENZI. And Senator THUNE does not have the time for his speech.

Mr. THUNE. I cannot yield, but if the Senator from Massachusetts requests time and wants to use the Democratic time for that, we have 14 minutes on the majority side I would like to use to talk about the small business health plan. But if the Senator from Massachusetts wants to use Democratic time, that is fine.

Mr. KENNEDY. I ask to be yielded 8 minutes on the Democratic time.

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

The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I thank my friend and colleague, the Senator from Alaska.

I hope to have an opportunity to get into this in greater detail than I will for the few minutes I have this afternoon.

There are certain points I want to make. That is, the waters around the acreage described by the Senator from Alaska, the Nantucket-Martha's Vineyard-Cape Cod area, has been designated a state ocean sanctuary and it is an irreplaceable asset to the people of Massachusetts. Up to 1986, it was generally recognized to be under the jurisdiction of the Commonwealth. In the 1970s, Massachusetts was concerned about potential development threats and made the entire area a protected state ocean sanctuary—where no structures could be built on the seabed and no offshore from boating. From 1986 on, no offshore generation facilities could be constructed.

The legislation was passed easily through the State House. And the specific part of Nantucket Sound that is no longer protected by the state laws, because of a Supreme Court decision, is under consideration for national marine sanctuary status.

My second point, Mr. President, is that I am for wind energy. We all know we need it to meet our future needs, and we've seen the successes that onshore wind energy farms can be. We ought to have offshore wind energy, but we need to get it right.
The problem in Massachusetts is that we have a developer who’s basically staked a claim to 24 square miles of Nantucket Sound back when there were no rules on offshore wind development, and then got the project written into the law. If the new rules won’t apply to this project.

And the practical effect is that there will be no competition for the developer and that his application is being reviewed and processed before the Department of Interior can even complete a national policy.

In the Energy bill, section 388 says: . . . the Secretary shall issue a lease, easement or right-of-way under paragraph (1) on a competitive basis unless the Secretary, after public notice of a proposed lease, easement or right-of-way that there is no competitive interest.

The next provision says:

Nothing in the amendment made by subsection (a) requires the resubmittal of any document that was previously submitted or the reauthorization of any action that was previously taken with respect to a project for which, before the date of enactment of this Act—

(1) an offshore test facility has been constructed.

Well, where in the country was there a project that had an offshore test facility?—only in Nantucket Sound. So this was a real special interest provision.

Because of this “savings provision,” the developers are pushing Interior to complete this review before the rules of the game are even established and before the ocean is zoned.

So, in the middle of the game is getting a uniform program—and deciding which sites should be used—this project is on the fast track. The developer and the developer alone picked the site.

And this is a serious problem. Look at what the EPA said about this project’s draft environmental impact statement. They called it “inadequate.” That’s from the EPA, the agency charged with protecting the environment.

And the EPA wasn’t alone. Look at what the US Geological Survey said about Cape Wind’s draft environmental impact statement:

. . . the DEIS is at best incomplete, and too often inaccurate and misleading.

Inadequate—Incomplete—and too often inaccurate and/or misleading. Does this sound like a project that should be on the fast track?

But because they’ve been written into the law, the interests of the State for safety and for environmental protection aren’t run roughshod over.

The provision Senator STEVENS crafted tries to remedy an injustice the developer created, and at least let the people of our State be heard.

We wish this provision wasn’t necessary, and it wouldn’t be if the developer had to follow the rules that apply to everyone else.

That would have been satisfactory, but no, we are denied that equal treatment. We are prohibited from that. That is not fair.

Our State went out and created the Cape and Islands Ocean Sanctuary as a protected area. Then the Supreme Court cut a hole in those protections, and now the interests of the State to preserve the fisheries and environment of the whole region is being undermined. It is being handed off to private interests. It’s not right. We deserve to have at least a little fairness in this.

I will not take the time to list the valid national marine sanctuaries, including the Channel Islands, all the Florida Keys, and other national treasures, like Stellwagen Bank outside of Boston, which I am so happy we have protected the ocean.

The law says you can’t build energy facilities in those sanctuaries and we shouldn’t—and Nantucket Sound is just as important as those.

For 400 years the Sound was considered Massachusetts’ waters, and it was a protected by the people of our state. In preparation for the 1986 Supreme Court decision that would specify that this narrow area would be carved out as Federal land, we took special care to get on the National Marine Sanctuary site evaluation list. We didn’t want to take any chances then, and we’re still on the list. At a minimum, no industrial project should be built there until we can resolve that status.

And now this developer who wants complete control over 24 miles in the middle of the Sound, even though no government agency has zoned it for energy development yet.

We know that the US Commission on Ocean Policy called for a comprehensive sitting policy, and that Interior is now working on it. We endorse that approach completely, but this developer is undermining that.

And the American people should know just what this developer is getting for this no-bid, no-compete contract. There will be at least $28 million a year in federal tax benefits available to the developer that’s $280 million over 10 years.

And in Massachusetts, the developer will be eligible for between $37 million and $82 million a year in price subsidies under the renewable energy credit program. That’s $370 million to $820 million over 10 years in price subsidies.

Then there’s the fact that the company will be able to write off the $800 million cost of this project off in just 5 years.

That is a boondoggle, and it’s an outrage the developer’s getting a no-bid contract to a public resource. We’ve seen what no-bid contracts can do. Mr. President.

Who pays when we talk about subsidies? It comes out of the taxpayers’ pockets when we talk about subsidies. It is a great deal for this developer. It is a great deal for his investors. It is a great deal for the venture capitalists. They will get so much money they will not be able to count it. But it shouldn’t be done without the voice, without the consideration, and without the interest of the State, let alone the many groups that oppose this project and fear that it will undermine the safety, environment, and economic interests of the region for years to come.

I thank the Senator from Alaska for his hard work on this bill and this provision.

Let me ask the Senator—and I know the time is up—I understand if this proposal were for an LNG facility in Nantucket Sound, the Governor of Massachusetts would have the same authority under the Deepwater Port Act that we’re seeking here for this project. Am I correct?

Mr. STEVENS. That is right.

Mr. KENNEDY. We need LNG and we need more energy sources, but if they had decided here to do an LNG on this site, the Governor would have a vote in that, am I correct?

Mr. STEVENS. I believe the Senator is correct.

Mr. KENNEDY. So this idea about having a voice on this makes a good deal of sense.

I thank the Senator from Alaska. I yield the floor.

The PRESIDING OFFICER (Mr. Martinez). The Senator from South Dakota.

Mr. THUNE. Mr. President, how much time is remaining on this side?

The PRESIDING OFFICER. Ten minutes remains.

Mr. THUNE. Mr. President, I ask unanimous consent that I be granted a little bit of extra time when they were addressing this issue as well.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered. The Senator will have an additional 2 minutes.

Mr. THUNE. Mr. President, last week the Robert Wood Johnson Foundation sponsored “Cover the Uninsured” week, a call for this country to wake up and address a huge and growing problem in our Nation. In 2004, approximately 19.1 percent of nonelderly Americans did not have health insurance. That number is growing.

Why do we have this problem in one of the wealthiest nations in the world? It is because nearly one-half of the 45 million uninsured individuals in the United States are either employees of small firms or family members of small business employees.

The primary reason cited by small businesses themselves for not offering health benefits is simply the high cost of health insurance. We can do something about that beginning today. We
also have this problem because Congress has repeatedly failed to do its job in the past. We can also do something about that, beginning today.

Today the Senate voted on a motion to proceed to S. 1955, which is a bipartisan proposal addressing the issue of small businesses working uninsured. This legislation allows the creation of small business health plans to help lower the cost of health care for small business owners and their employees.

Our colleagues on the other side have also offered some legislation today to address this issue. Senators DURBIN and LINCOLN have talked about their particular proposal, which is a Government approach. In fact, they say it saves money, but it shifts the costs over to the taxpayers, to the tune of $73 billion over a 10-year period. Why would we ask for taxpayers to foot the bill before we have allowed the small businesses of this country to take advantage of a market-based approach and build the forces that exist out there in a way that would drive health care costs down for them and their employees? It is very simply a difference of philosophy.

Our philosophy—the approach contemplated by S. 1955—deals with a market-based solution to this issue. The proposal, S. 2510, by our colleagues on the other side is a Federal Government solution to this issue, at a great cost. I might add, to the taxpayers of $73 billion over a 10-year period.

S. 1955, the Enzi bill, which, as I said earlier, we were able to move to proceed to today, would lower the cost of care for employers and employees. In addition, the Congressional Budget Office estimates S. 1955 would reduce net Federal spending for Medicaid by about $750 million over the next 10 years. It would also save the States of this country about $600 million in the cost of Medicaid over a 10-year period. That is in addition to the savings that would be achieved for small businesses.

The Congressional Budget Office has analyzed this particular piece of legislation and concluded it would save somewhere between 2 and 3 percent for small firms in this country on the cost of their health insurance. What is significant about this, as well, in contrast to the proposal by our colleagues on the other side, which would cost an additional $1.7 billion over the course of the next 10 years, is the Congressional Budget Office said that the Enzi bill, S. 1955, would increase tax revenues coming into the Government by $3.3 billion over 10 years because lower spending on health insurance would increase the share of employee compensation paid in taxable wages and salaries versus tax-excluded health benefits. In other words, lower spending on health insurance would translate into higher wages and salaries and actually would also generate more growth for the economy. The Government rather than less, which is what would happen under the proposal by the Democrats, which would cost the taxpayers $73 billion, according to the Congressional Budget Office, over a 10-year period. So I believe it is important we move forward and we vote to send S. 1955 out of the Senate to conference with the House of Representatives, as I did in the House of Representatives, I voted for the creation of small business health plans numerous times. In fact, that particular proposal has been voted on no fewer than eight times in the House of Representatives.

Every time I voted when I was a Member of the House, and every time it has been passed by the House of Representatives, it has come to the Senate and has been unable to be voted on because it has been filibustered, obstructed by the other side. I would say, that is in spite of the fact that if it were allowed an up-or-down vote in the Senate, I believe there would be a decisive bipartisan majority in favor of this legislation.

Unfortunately, due to obstructionism, the Senate, until today, has never voted on legislation creating small business health plans. As a Congressmen and now Senator, I have listened to many accusations about the harm that legislation or similar legislation would do if it were enacted.

What harm would be caused by decreasing the cost of health care for small employers by 12 percent and increasing the coverage of the working uninsured by 4 percent? Lower costs and more coverage for those who are currently uninsured: That is not harm. That is exactly what we ought to be accomplishing here by enacting legislation that would make health care coverage more affordable and more available to more Americans.

South Dakota has an estimated 72,949 small businesses as of 2004, which is an increase of 2.4 percent from the previous year in 2003. South Dakota also had an estimated 1,989 million individuals or 12 percent of our population in the year 2004. Fifty-two percent of South Dakotans had employer-based health insurance, 8 percent below the national average.

Small businesses are the backbone of South Dakota’s, as well as our Nation’s, economy. It is time these businesses were placed on a level playing field and allowed to pool together to purchase health insurance, like large employers and unions.

I have heard from many provider groups in my State of South Dakota concerned about coverage for their specific services. S. 1955 allows small business health plans to offer a basic benefit plan that would be exempt from State mandates. If I am the small business health plan also offers an enhanced benefits option that includes at least those covered benefits and providers that are covered by a State employee health benefit plan in one of the five most populated States in this country.

According to the Council for Affordable Health Insurance, all of these States—all of these States—require coverage for alcoholism, breast reconstruction, diabetes self-management, diabetic supplies, emergency services, mammograms, mastectomy stays, maternity stays, general mental health, optometrists, psychologists, social workers. Small business owners want to give their employees the best health possible under the costs to recruit and retrain their workforce.

Facts suggest self-insured large company health plans, currently exempt from State mandates, generally cover services important to their employees. This legislation would create new options for small businesses and the potential for a choice in health plans for their employees. Today, only 10 percent of firms with 50 or fewer employees offer their workforce a choice of and allow an up-and-down plan. Lowering the administrative costs of health insurance plans will give small firms new and better coverage choices for their workers.

Additionally, the GAO found that the added cost of mandates to a typical plan is between 5 and 22 percent. CBO estimates that every 1-percent increase in insurance costs results in 200,000 to 300,000 more uninsured Americans. When the cost of health insurance goes up, coverage and access go down.

The concept behind S. 1955 is very simple: to provide health insurance to small businesses that is both affordable and accessible. Small businesses not only in my State of South Dakota but across the Nation have been fighting for the creation of small business health plans for over 10 years. It is high time that the obstruction end in the Senate, that the Senate step aside and allow an up-and-down vote on this very important legislation.

As I said before, it is legislation that, if you look at just the Congressional Budget Office findings, would cover nearly 1,000 million would allow three out of every four small business employees to pay lower premiums than they currently pay under current law, and would see small firms’ premium costs decline by 2 to 3 percent. The average decrease per firm would likely be greater, since the CBO estimate is a total that factors in the costs of other benefits added by firms in response to the reduction in premiums.

I would also allow annual spending on employer-sponsored health insurance to be reduced by about $2 billion in a 5-year period. As I said earlier, it would increase Federal tax revenues by $3.3 billion over 10 years because lower spending on health insurance would increase the share of employee compensation paid in taxable wages and salaries versus tax-excluded health benefits. In other words, lower spending on health insurance would translate into higher wages and salaries and actually would also generate more growth for the economy.
We can do better. We can allow the market forces of this country to be used. We can take a market-based approach to this issue and do something that has been done a long time ago, something that has, as I said, been voted on repeatedly in the House of Representatives and has not been voted on here in the Senate, because it has been blocked.

It is high time for the small businesses of this country, for their employees, for families who lack coverage today, to have another tool at their disposal, a tool that takes into account and takes full advantage of market forces, by allowing small businesses to group together to leverage their size, to drive down the rates they pay for health insurance and, thereby, cover more of their employees.

The那, again, is in stark contrast to the model and the proposal that is being offered by our colleagues on the other side, which consists of a government-based solution, that comes at a very high cost to the taxpayers, that calls for more bureaucracy and red-tape, and does nothing in the end to bring down the cost of health care for small businesses in this country.

It is long overdue. I hope, as we have the chance to debate this now in the Senate, once that debate is concluded, we will be able to proceed to a vote because the one thing that has always been missed here in the Senate, despite action on eight different occasions in the actual up-and-down vote in the Senate that would allow the Senate to speak on the issue of whether we want to do something meaningful to reduce the cost of health care for small businesses in this country, to provide more coverage for those who are currently uninsured, and also to do something that would reduce the cost to the Government, the cost of Medicaid, as well as the other costs that are associated, as I said earlier, by increasing the amount that would come into the Treasury.

For those reasons, Mr. President, I ask my colleagues to support this legislation.

I yield back the remainder of my time.

The PRESIDING OFFICER. The time until 4:30 is controlled by the minority.

The Senator from Iowa.

Mr. HARKIN. Mr. President, here we are on day 2 of Health Week, and not vote on the legislation.

The fact is, it doesn't matter what I think about the potential of embryonic stem cell research. It doesn't matter what Senator BROWNBACK thinks either. What matters is what the scientists think. And I defy anyone to find a single reputable biomedical scientist whose doesn't believe we should pursue embryonic stem cell research.

I have a letter from Dr. J. Michael Bolen, a scientist who won the Nobel Prize in medicine in 1989. He writes:

The vast majority of the biomedical research community believes that human embryonic stem cells are likely to be the source of major discoveries relevant to debilitating diseases. . . . In fact, some of the strongest advocates for human embryonic stem cell research are those scientists who have devoted their careers to the study of adult stem cells.

A letter from Dr. Alfred G. Gilman, who won the Nobel Prize for medicine in 1994:

It has become obvious, however, that the number of stem cell lines actually available under current policy is too small and is controlled by a limited monopoly, which has made it significantly more difficult and expensive for research to be conducted. These limits have hindered the important search for new understanding and treatment of devastating diseases.

I have similar letters from Dr. Ferid Murad, who won the Nobel Prize for medicine in 1998; Dr. Y. Mani Swamy, who won the Nobel Prize in medicine in 1995; and dozens more of our Nation's top researchers—all of whom believe in the potential of embryonic stem cell research. I ask my friend from Kansas, in response to his speech of late last week: Are there any Nobel Prize winners in medicine who oppose embryonic stem cell research? Name one.

In fact, I challenge him further: Are there any reputable biomedical researchers at all who think we should be studying adult stem cells only and not embryonic stem cells? Name one.

I don't think he will find one. Every scientist I have spoken to says stem cell research should not be an either-or endeavor. We should not be talking about stem cell research or embryonic stem cell research. We should study both. We should open all doors in the pursuit of therapies that can save lives and ease human suffering. The breakthroughs are coming, but they take multiple forces, by allowing small businesses to group together to leverage their size, to drive down the rates they pay for health insurance and, thereby, cover more of their employees.
works. More importantly, it denies hope to millions of Americans who suffer from Parkinson’s, ALS, juvenile diabetes, spinal cord injuries, and dozens of other terrible diseases and conditions.

We are rapidly approaching the 1-year anniversary of the vote in the House on H.R. 810. It has been 351 days since the House passed it on a strong bipartisan vote. If the Senate were allowed to vote on H.R. 810, we would win here, too. We have the votes. We would pass it and send it onto the President. Regrettably, however, the Republican leadership has not let that happen. So here we are, we are going through this farce—it is farcical—comedy, gimmickry of a so-called Health Week without taking up the American public’s No. 1 health research priority.

It is Tuesday. Health Week lasts for 3 more days. We could pass H.R. 810 in a matter of hours. I urge the majority leader, take up the bill. Let the Senate have the amount of time to debate it. We will pass it, and we will give millions of Americans who are suffering from diseases the hope they deserve.

I yield the floor.

The PRESIDING OFFICER. The Senator from California.

Mrs. BOXER. Mr. President, before he leaves the floor, I say to my colleague from Iowa, Senator HARKIN, how much I appreciate his leadership in the area of health care. His analysis of where we stand on the stem cell issue is so appropriate, and he is so right. Here we have a whole area of scientific research that is waiting to take off. We have States, such as mine and others, that are taking the lead instead of following the lead of the Federal Government. I say to my friend, does he ever remember a time in history when this country was plagued by disease that the Government didn’t step up to the plate, whether there was a Republican President or a Democratic President? Isn’t it shocking that as we face these epidemics of Alzheimer’s and Parkinson’s and cancer and heart disease and all the others my friend mentioned, isn’t it amazing—I am sure it is to him as well as to me—that we have a lack of leadership in Washington?

Mr. HARKIN. I say to the Senator from California, it is not just amazing, it is shameful. It is shameful what is happening now with the lack of support for biomedical research, especially embryonic stem cell research. As I said, every Nobel Prize winner in medicine, all the reputable scientists say we should be on it and we should be on it strongly. Yet the President, through this arbitrary cutoff, is denying this for scientists, denying it to people who are suffering. I say to my friend from California, God bless California. They have put in the bill. They are suffering. I say to my friend from California, God bless California. They are suffering. I say to my friend from California, the distinguished Senator, hasn’t there been in the forefront of fighting for the things that will help people have better lives, especially in health care, and to ease the pain and suffering of people, especially juvenile diabetics.

As the Senator knows, the families tell us that perhaps one of the first therapies that could come from embryonic stem cell research would be for these kids suffering from juvenile diabetes. What a great day that would be. I thank the Senator for her comments and strong leadership in all the areas of health care, and I thank California, through her, for the leadership they have shown.

Mrs. BOXER. I am very proud of my State.

In my State the gentleman who took the lead in putting the stem cell research initiative on the ballot has a child with juvenile diabetes. Watching that child struggle and struggle motivated him. He ignited this wonderful movement in our State. Shockingly, here we are in Health Week and this thing is nowhere to be seen. It is another example of why we need change around this place thank my friend.

This Health Week Republican style is really fascinating when you look at the bills that have come before us. The first two bills would have hurt patients who were injured by malpractice, patients who might have been made infertile or harmed in many ways. Those two bills took away the rights of patients.

The PRESIDING OFFICER. The minority’s time has expired.

Mrs. BOXER. I ask unanimous consent to speak another 15 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. Mr. President, I object.

The PRESIDING OFFICER. Objection is heard.

Mrs. BOXER. I ask unanimous consent to suggest a quorum call.

Mr. ENZI. Mr. President, under the unanimous consent we are alternating every 30 minutes.

The PRESIDING OFFICER. Under the precedents of the Senate, the Senator must control at least 10 minutes in order to suggest the absence of a quorum.

Mrs. BOXER. I ask unanimous consent that at 5 o’clock I be given the floor for 10 minutes.

The PRESIDING OFFICER. Is there objection?

Mr. ENZI. Mr. President, reserving the right to object, the Senator’s side controls the time at that time. So if they want to give the Senator the 10, there would be no objection to that. It would come out of the Democratic time.

Mrs. BOXER. I thank the Chair.

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

The Senator from Wyoming.

Mr. ENZI. Mr. President, first, I apologize for the confusion over the unanimous consent that we had. It was designed early this morning to make sure each side had an opportunity to have an equal amount of time for the 30 hours that we are working on in order to actually get to amendments on this bill. Now that we have had cloture and everybody has agreed, or almost everybody, that we needed to proceed on the Senate floor, I think it is huge to small businesses out there and wanting to find some kind of solution. We even suggested that perhaps they would like to reduce the number of hours of debate about the right to try so that we could actually get to offering amendments. But we have a 30-hour time requirement. That could be reduced by unanimous consent, or even eliminated by unanimous consent. But it has not been, so we will try to keep on a half-hour rotating basis so that as many people as possible can have something to say on the bill.

I am going to take a few minutes at this point to talk about this issue. We have been talking about health care. One advantage of having this 30 hours is to have some additional health care debate. I need to talk a little bit about prescription drugs Part D. That is not part of the motion to proceed, but it has been talked about a number of times on the Senate floor today. There are some confusing things out there for seniors that I would like to clear up.

I have been taking the last two recesses to travel across Wyoming and hold meetings with senior citizens to explain the prescription drug plan to give them the opportunity to ask questions. There is some confusion out there. When we were designing the plan, we were worried that there would not be any plan interested in our small population in Wyoming. We have less than 500,000 people in our State. Our biggest city has 52,000 people. So we have a little bit of trouble finding a big enough pool for anything and to encourage interest. So I asked that there be kind of a Federal backup plan on it, and that was put in the bill. Because we can’t make it around for companies to offer plans in Wyoming, obviously, they were even excited about 500,000 people because we had 41
plans respond. That is competition. That competition brought the prices down by 25 percent before the people even applied for the benefit. A huge decrease in cost; that is cost by competition. The downside is that 41 plans create confusion. If you have been the method to buy insurance talked to a number of different insurance salesmen, every package is designed slightly different to make it a little more confusing so that their plan looks better, but it is also harder for you to make comparisons.

There is an easy way to make comparisons. Medicare saw that coming and set up a computer analysis so that all you have to know is what your prescriptions are and what the doses are. You can put them in over the Internet or you can talk to somebody live by an 800 number or there are a lot of volunteers across America who are helping to get this information out. It lets Medicare do the math. They will present you with four to five plans that meet your prescription, your doses, and your criteria for where you want to buy it. You can look at these line by line. All the lines match up and you can compare them and find the best one for you. It has been a tremendous help.

My mother asked me to help her on her decision. There are kids across the United States—kids like me—who need to be helping their moms on these kinds of problems. I was happy to do it because it gave me an opportunity to try out the telephone method, the Internet method, and I talked to a number of volunteers and the local pharmacist. We owe the local pharmacist a great deal of thanks for the help. We have not had a big change in the approach where we could work across State borders, so that associations could build a big enough pool that they could effectively work with their insurance companies to get these multiple plans that you can look at, that it will work. One of the reasons we are certain that it will work is because it has been tried within States. But those who have tried it within States have found that it works very well, and they know it would work even better if they could go across State borders. So even those who are doing it are asking to do it on a wider scale than what they have been. For a lot of the States that have less population, yes, they want to be able to do it at all. They don't have the big enough pools within their States to do it, so they want to be able to go across the State borders.

I want to discuss a little bit why we need to pass S. 1955 and allow for the creation of these small business health plans. First of all, the concept of allowing small businesses to join together to find better prices for health insurance is not new, as I mentioned. Many organizations have offered nationwide health plans to members in the past. But States continued to add mandated benefits and other regulations to their insurance markets during the 1980s and 1990s, and the administrative hassles and costs associated with the mandates and regulations became too much of a burden for existing plans that could no longer offer an affordable benefit on a national basis. So they discontinued the plans.

The Associated Builders and Contractors organization, known as ABC, is an unfortunate example of this problem. Their insurance carrier refused to continue doing business with the ABC insurance trust in the late 1990s because...
the panoply of 50 different State regulations and excessive benefit mandates made it impractical and unattractive for the insurance company to continue the program. ABC was unable to find another carrier to pick up their business.

This chart kind of shows how health care costs have gone. I don’t think there is any argument on either side of the aisle that this is what has happened. There has been a rapid escalation, and compared to what it used to be, there has been a rapid escalation for a long time, oddly enough. We are up to a national average cost per employee of about $8,000 a year. That doesn’t include the part the individuals are paying, which brings it up to about $11,000 a year. That is the amount we have been talking about on both sides of the aisle today.

What is truly unfortunate is that workers at ABC’s member companies were benefiting from this program, and the other 11,000, saving millions on their health care expenses. The health plan sponsored by ABC for nearly 45 years had total administrative expenses of about 13 cents for every dollar in premium. These costs included all administration, management of the health plan, the actuarial management, and all the other expenses of running a health plan.

The other benefit to ABC’s member companies and employees is that any profit generated by their health plan stays in the plan. This also helped keep costs down. So the idea isn’t new, and it has worked before.

But Congress needs to act before small business organizations can resurrect their defunct programs and before other organizations can start new ones. Congress considered fixing this problem during debate over the Health Insurance Portability and Accountability Act in 1996—it is better known as HIPAA—but the small business affordability provisions in the House bill were dropped during the conference between the House and the Senate in the final hours. HIPAA does not address access to health insurance and not affordability. So now everyone has access to health insurance policies, but the policies themselves are unaffordable to many. When I became chairman of the Committee on Health, Education, Labor, and Pensions last year, I announced that I would bring a health insurance affordability bill before the committee so we could finish the job we started 10 years ago—in other words, to make it possible for all Americans to have access to health insurance that is affordable.

Many were skeptical then, and some may still be skeptical now, but the time for more of the same is over. America’s working families want change, and they are tired of excuses from Congress.

Small businesses and working families are demanding relief from high health insurance costs. It is no wonder. This year, employers are paying twice what they were paying in the year 2000 for health insurance. That is correct. What businesses paid for health insurance has doubled over the past 6 years. That is a pace we can’t keep up.

This cost squeeze hurts small businesses the most. The highest rates of uninsured workers can be found in businesses with 25 or fewer workers. Only 60 percent of the Nation’s businesses are offering health insurance these days, down from nearly 75 percent just 5 years ago.

Small businesses and working families are stuck on the escalator of rising health insurance costs, with no end in sight. ABC describes the tight labor market in its small business owners don’t want to jump off this fast-moving escalator because dropping health insurance puts them at a major disadvantage in competing for the best workers. We need to give this growing escalator of rising costs, somewhere where it is more affordable for themselves and working families, and the small business health plan will give them that option.

Mr. President, I yield the floor to the Senator from North Carolina.

The PRESIDING OFFICER. The Senator from North Carolina is recognized.

Mr. BURR. Mr. President, the chairman has brought a carefully crafted piece of legislation to the Senate floor, one that took a tremendous amount of skill to negotiate and one that has incredible support—more support when the bill passed out of committee than it does today. Why? Because people now know how many American fear this might pass, and they never believed it would. What does it do? It brings additional competition to the marketplace, but more importantly, it brings health care coverage to Americans who have no coverage today.

Why are we here today, on Tuesday afternoon at almost 5 o’clock? Because the Senate is in a 30-hour debate about whether we are going to be willing or able to proceed. We are not even on the bill yet. HIPAA only in its current form requires us to have a vote to proceed to consider whether we are going to have a debate on this bill, S. 1955, a bill that changes the choices of the uninsured population in America.

The choices they have today are nothing and nothing. Under any scenario, you would have unanimous support to change that. But there are actually people who are against that up here, but not across the country. As a matter of fact, in this poll done by Public Opinion Strategies in March of this year, over 80 percent of the people polled overwhelmingly support small business health plans; in other words, they support this legislation—the effort to bring new choices of products that are affordable to small businesses, to employers, and, more importantly, to the employees they hire.

In North Carolina, we have 671,000 small businesses. Ninety-eight percent of firms with employees are small businesses in North Carolina. Don’t let anybody come to the floor and tell you that this bill does not have an effect on the select group of people. It may be a select group of people, but it is the largest percent of the employer population in North Carolina. Women-owned small businesses have increased 24 percent in North Carolina since 1997, Hispanic-owned small businesses have increased 24 percent since the same date, Black-owned small businesses have increased 31 percent since 1997, and Asian-owned small businesses have increased 74 percent since 1997. These are companies which benefit from this legislation. These are companies which today can’t afford health insurance; therefore, their employee base goes without. They are in that category of uninsured that so many people come and talk about on this floor, but they talk about uninsured without the solution as to how to cover them.

This is a population which in some cases today is on Medicaid. They work full-time. Their income level qualifies them for Medicaid. And what would be the incentive for them to get off of Medicaid? It would be if their employer offered them the option to have health care the way the majority of America is now provided health care: through their employer. But we are here in 30 hours of debate trying to decide whether we are going to allow Members to come to the floor and debate a bill and offer amendments which will allow us to switch from nothing and nothing to nothing and something, which will allow us to inject something, some ray of hope into the millions of Americans who don’t have coverage today.

Let me read a few letters. I think it is always helpful to hear from people whom this affects, the human face behind the issues that sometimes we lose on this floor simply because we don’t want to talk about names or pictures.

This is a woman from Sunbury, NC. She wrote me in mid-April of this year. I am just going to read some pieces. She says:

Support SBHP legislation, S. 1955. I feel that this is very important because I haven’t had health insurance in many years, because my employer doesn’t have access to affordable insurance to offer us.

Some suggest on this Senate floor that is not the case, that everybody has the opportunity to have health insurance. “I haven’t had health insurance in many years.” Why? “Because my employer can’t afford what is available.”

Another letter received in April of this year from a young lady in Elizabethtown, NC:

Please support Senate bill 1955, the Health Insurance Marketplace Modernization
Affordability Act. My employer cannot afford health insurance for their employees. My husband works for Ford. They are closing his plant soon. We will have no insurance unless my employer offers it. I have premature twins. They were born 3 months early. It costs me $2,000 a month to feed them. That does not include any doctor's appointments we have to go to. I feel that this is a great bill.

What is America looking for? They are looking for hope. They are looking for us to produce a product out of this institution that actually fulfills their needs. I don't know how it can be any clearer.

It is not offered to me today, because my employer can't afford the options that are in our marketplace.

What do we do? We create new options that are affordable. That is, in fact, what the chairman is trying to do with this bill.

Here is a third letter, also from Elizabeth City but a different business. It says:

Small businesses need help with insurance—

In big bold letters—

I am now paying $995 per month for my wife and myself. This is for only 60 percent coverage and a $2,500 deductible. I know people with group insurance who are paying $800 a month for 80 percent coverage and a $2,500 deductible. Many of those have dental insurance as well. My policy provides none. Please vote for this bill. Allow small businesses to have coverage equal to employers of other companies.

That is all we are doing. We are using the scale of what people who have a tremendous amount of employees can do, and that is they can go to insurance carriers and they can negotiate for products based upon the volume of their employees. But how does a small business owner do that when he has five or six or seven employees? Well, it is real simple. We allow them to band together into a common association, and we allow that association to then market their entire association based upon the volume.

Another letter that I received on April 6 says:

As a small business owner, it is important to enable some economy of scale in allowing franchises to obtain more affordable health care coverage.

The last one I am going to read is quite unique.

As a professional photographer, I have seen firsthand the difficulty that my fellow professional photographers face when attempting to purchase health insurance on their own. They would allow photographers and other independent business owners to band together across State lines and purchase health insurance. Having this as an option and choice will improve our access to quality health care and help control costs through competition.

These letters are from people on the front lines. They are from employees whose employers can't offer coverage today because it is not affordable. They are from individuals who own businesses and would like to offer coverage to their employees. They are even from photographers, people whose lives are in their hands every day in a camera, but they cannot afford the individual costs of health insurance in today's marketplace.

In North Carolina, we have 1.3 million uninsured North Carolinians. Of that 1.3 million, almost 900,000 uninsured individuals are in families or are on their own where one person at least works full-time. With the passage of this bill, 900,000 of the 1.3 million uninsured individuals would potentially be offered health insurance. We can narrow it down from 1.3 million to 400,000 individuals who are uninsured in North Carolina with the passage of one simple bill, or at least they would have the option to be able to purchase it for once. Ninety-one percent of workers in large firms of 1,000 employees or more have health insurance, yet 66 percent of workers in small businesses defined as 10 employees or fewer have health insurance. Well, if you remember the choices, the choice is between nothing and nothing, tomorrow their choice is between nothing and something.

Why are we here? We are here for 30 hours of debate on the bill, not debate about the amendments, debate about whether we are going to move forward. We do that at a time when—I just went back and did a quick calculation on the back of my calendar—we have 76 legislative days left between now and adjournment. That is assuming we have productive days on Fridays and Mondays, and as the chairman knows, Fridays and Mondays are not always productive in the Halls of Congress. People are either slow to get here or wish to leave. If you take out the Fridays and Mondays, we are down to 45 days. But we are going to spend 30 hours trying to decide whether we are going to move forward to debate this bill, and we will spend another 30 hours after we file cloture on the bill to get to a point where we can have an up-or-down vote, if, in fact, we get that far.

Last night, we voted on two medical amendments that deal explicitly with health care issues on the floor of the Senate. The intent, I believe, of the chairman who brings this bill to the floor is that we should speak only about and address only the issues dealing with small business health plans. However, he knows and I know there are many other health issues that have been long delayed by this Chamber and that need to be debated. I intend to offer a number of amendments. They are in order under the rules of the Senate. They are amendments that deal explicitly with health care issues.

The issue before the Senate is not unimportant. The question of rising health care costs is very significant to everybody—individuals, businesses, governments. Everyone who is a consumer has to deal with increased costs of health care and we should, indeed, address the issue of health care costs for business associations and for small businesses. There is no question about it. I wish to be a part of the group that works on that in a bipartisan way, in a way that expands opportunity, not narrows opportunity; in a way that expands coverage, not narrows coverage; in a way that covers everyone, not just a few. I do not agree that we should make health care unavailable for the older and sicker and then make profit out of insuring people who are younger and healthier. That is not the right way to do this.

But having said all of that, let me describe some other things that have been long delayed on the floor of the Senate that need to be addressed. Let me talk about the first one. It is the
issue of reimportation of prescription drugs. A bipartisan piece of legislation has been long ago introduced and discussed here on the floor of the Senate, and we have not had the opportunity to vote on it.

The reimportation of prescription drugs, why is that important? Because the American people are charged the highest prices in the world for prescription drugs; it is not even close—the highest prices in the world. Consumers in every other country are paying lower fees. Why? Because they buy Lipitor and if you buy it in the United States you pay a higher price than in any country in the world—France, Germany, England, you name it. You pay the highest prices in the United States. Why should U.S. consumers be charged the highest prices?

With consent, I want to show a couple of things on the floor of the Senate. Let me show, if I might, two bottles of Lipitor. I ask consent to show these on the floor of the Senate.

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

Mr. DORGAN. As you can see, they look identical: identical labels, identical pills in the same bottle, made in the same company; shipped to two different places. One is shipped to Canada and one is shipped to the United States. The difference? One is half the price of the other. Guess which. It is the one sent by Senator Frist, the one that gets the benefit of paying half the price for the identical prescription drug. Let me also show a couple of containers of Prevacid. This is a drug that is widely used for ulcers. Once again, as you can see, it is essentially the same bottle, same pill, made by the same company, made in an FDA-approved plant and shipped to two different locations, one to Canada and one to the United States. The difference? This one costs twice as much. Who buys this one? The U.S. consumer; twice as much for the same pill.

An old fellow sitting on a hay bale in North Dakota at a farm meeting said, my wife has been fighting breast cancer for 3 years. She took Tamoxifen for breast cancer. Every 3 months we drove to North Dakota to get Tamoxifen because it was the only way we could afford it, and we paid about 80 percent less than it would have cost us to buy that prescription drug to treat her breast cancer. We paid about 80 percent less by driving to Canada to get it.

The fact is, they allow a small number of patients to buy Lipitor and Prevacid for the benefit of paying half the price for the identical prescription drug. That is unbelievable. We have a bipartisan group of Members of the Senate who say consumers ought to be able to purchase FDA-approved prescription drugs by reimporting them from other countries. That would put downward pressure on prescription drug prices in this country. A bipartisan group of Senators wants to do that, but we are prevented from doing it by current law. We want to change the law.

Yet we are prevented from changing the law because the majority leader won’t bring this legislation to the floor of the Senate. This is something we can offer as an amendment to the bill on the floor. It is well within the rules of the Senate, it deals with health care, and I am serving notice now that this is an amendment we will offer and vote on during this discussion, providing we are allowed to offer amendments. I am hearing rumors that perhaps the majority leader will decide to fill the tree legislatively and allow no amendments. If that is the case, it will kill the amendment. But my hope is he will not do that. If amendments are allowed, I will offer this amendment and will get a vote.

Let me go back to about midnight on the night of March 11, 2004. That is a little over 2 years ago—midnight. The reason I remember it was midnight, I was sitting right back here and I reached an agreement with the majority leader, Senator Frist. Here is what Senator Frist announced that evening after our negotiations, and after which I agreed to release the name of Dr. Mark McClellan to be promoted from the head of FDA to the Centers for Medicare and Medicaid Services. As a result of that, Senator Frist came to the floor and said:

I announce for the information of my colleagues that, with consultation with the chairman of the Senate Committee on Health, Education, Labor, Pensions, Senator Dorgan, Senator McCain, Senator Cochran, and other interested Senators, the Senate will begin a process for developing proposals that would allow for the safe reimportation of FDA-approved prescription drugs.

Two years later, nothing: No vote on the floor of the Senate, nothing. My colleague, Senator Vitter, sent a letter around a year ago. It says:

...in the western states FDA nomination, I obtained an agreement with Majority Leader Frist regarding drug importation legislation... The Senate will probably have one vote on a reimportation amendment soon, probably on the Agriculture Appropriations bill. Should that vote demonstrate that reimportation has 60-vote support on the floor, then Leader Frist will be open to work in good faith toward a floor debate and vote on a reimportation bill... What happens as a result of that? Nothing. No action, no votes, nothing. This bill on the floor of the Senate is amendable. This bipartisan amendment deals with health care. It has been long delayed—and no more. I intend to offer this amendment this week.

Finally, at long last, perhaps the American consumers will no longer be charged the highest prices in the world for prescription drugs because they will be able to access FDA-approved drugs by reimporting them from virtually any other country. And it is not going to be a life of diabetes. We can cure that disease.

I have been involved in political campaigns recently and have been told by opponents that my proposal and my position on stem cell research is one that...
murses embryos. Nothing could be further from the truth, nothing at all. Do you know there are 1 million people living among us, walking, breathing, talking—1 million people who were conceived through in vitro fertilization? One million people! Who also that in vitro fertilization takes place, the uniting of a sperm and an egg in a petri dish, more than a single embryo is created. A number of embryos are created in that process. Some are implanted into a woman and become a human being. Some are cryogenically frozen and stored in the event they should be used again if this did not result in a pregnancy.

There are some 400,000 of those embryos frozen at in vitro clinics right now, 400,000 of them, and 8,000 to 11,000 are discarded, thrown away, every year. They become hospital waste.

Should some perhaps be used for stem cell research with the hope of saving lives? This, clearly, is another issue.

This is not about murdering an embryo. If in fact this is the murder of an embryo, then the discarding of the embryos at the in vitro fertilization clinic, 8,000 to 11,000 a year, is clearly foolish. We had one person testify at the Commerce Committee a couple of years ago who said those 1 million people who are here as a result of in vitro fertilization should not be here; it was wrong to create these people. Tell that to the parents who had those children: the childless parents who, through in vitro fertilization, discovered the miracle of having a child.

The question of stem cell research is not about murdering an embryo, it is about an opportunity to cure some of the dreaded diseases.

The other issue—and the reason I am talking about this is this is a big issue that we are not allowed to vote on in the Senate. This, too, should be an amendment on this bill. This, too, during Health Week is a very important issue dealing with health.

Stem cell research is something called somatic cell nuclear transfer. Simply it is this: Let us assume a patient takes a skin cell from their own earlobe and that skin cell from their earlobe is then put in an evacuated egg and stimulated to become a blastocyst of a couple of hundred cells.

That blastocyst now has predictor cells. They use the predictor cells for heart muscle, to inject back into the heart to stop a stronger heart, to repair a heart attack.

Some would say you have destroyed or murdered an embryo. There is no fertilized egg. There is only the skin cell from the person who had the heart attack. It is now being used through somatic cell nuclear transfer, to save that person’s life. This is about lifesaving. Yet we have so many here who said: Let’s not worry about these diseases. Let’s shut off this research because we think it is about murdering embryos.

That is not what this is about. It is about this young girl and whether we decide we want this young girl to live her life as a diabetic, a life filled with hope at this point that Congress will finally do the right thing.

The House of Representatives did it. The Senate needs to vote on it. Perhaps this bill is as good a week as any. We have been promised. A year ago we were promised, just like drug reimportation. This Chamber is full of promises, but we never quite get to vote on important issues.

I am not suggesting that when I talk about one cell in a biopsy that there are not ethical considerations, without serious concerns and serious issues to which we should be attentive. We should. I don’t dismiss all the other concerns. But I do say this: If you have lost a child, if you have lost a loved one, and you have watched someone die from Parkinson’s or cancer or heart disease, if you have been through that and then say to yourself: But I want to shut down promising research that could make things better, I think you have not been through it the way a number of people in this Chamber have been through it. I think it is so important for us to do the right thing and to continue this breathtaking research that is going on.

There are so many other issues. There are just a couple of minutes remaining. Then I will yield the time to my colleague from California.

We passed recently in the Senate a piece of legislation that provides prescription drug benefits to senior citizens. But we did nothing to put downward pressure on drug prices. There is a special provision in the bill which my colleagues, Senators Wyden and Snowe, were talking about earlier today, that actually prevents the Federal Government from negotiating for lower prices with the pharmaceutical industry. That is unbelievably ignorant. A provision like that is unbelievably ignorant, and it ought to be repealed.

All we need is a vote on that on the Senate floor. That, too, is a health issue. There is no excuse for this Congress to say: By the way, the Federal Government cannot negotiate for a lower price. We already do it in the VA.

We end up with far lower prices as a result. We have seen how difficult their youngsters who have juvenile diabetes, and we have seen how difficult their lives are and how they suffer, even with the strides that have been made in this area. They are still in great danger.

Health Week is here. We have a vehicle, as Senator Dorgan calls it, the Enzi bill which tries to deal with the health insurance problems that small businesses face. I am going to talk about a better alternative to the Enzi
have bipartisan support for drug importation from countries such as Canada for all the medications that are sold at half the price of what drug companies charge in the U.S. We have bipartisan support for stem cell research, fixing the Medicare prescription drug issue so we could actually say to Medicare: You have the bill and the right to use as the VA has to negotiate with the pharmaceutical companies for lower prices. But I have to say Health Care Week Republican style is really Insurance Company Week.

If you look at the bills that have been brought before us, they all help the insurance companies. They don't help average Americans. They do not help us.

The first two bills we are going to restrict the right of patients—whether they are very wealthy, whether they are middle income, whether they are poor—we are going to stop them from recovering damages if they are harmed by medical malpractice.

I was very pleased that the Senate chose not to limit debate on those two bills which would have taken away the rights of patients while giving a gift to the insurance companies. And hopefully we can change the Enzi bill. I don't like bills that take away benefits from my people in California. I don't like bills that take away benefits from all Americans. That is why the Enzi bill. It does just that. I will go through with you the list of benefits that are taken away.

Mr. President, the Republicans bring us Health Care Week. They bring us the Enzi bill. What they do not tell us and you don't find out until you look is that all the States' protections that have been put into place will be wiped out upon passage of the Enzi bill.

Those are harsh words. What do I mean by that? Well, let me give you an example from my people in California. I don't like bills that take away benefits from all Americans. That is why the Enzi bill. It does just that. I will go through with you the list of benefits that are taken away.

As I said, if you are a little older—whether you are a little older—maybe you have high blood pressure, maybe you have some other health problems—you are in trouble. You are not going to have an affordable plan and you will lose the benefits you have. You may be priced out of the market.

We have serious problems with the Enzi bill. Here is the great news. There is a wonderful alternative out there, the Durbin-Lincoln bill, of which I am a cosponsor. I thank my friends for working so hard on this.

As I go around my State, people nod in agreement with the Durbin-Lincoln bill's premise. Senators have very good
health insurance. We pay half of the premium and the Government matches the other half. There is a Federal Employee Health Benefits Program. There are basic benefits required and private companies come in and offer various plans. People such as me and my employees can choose from a broad array of plans. It works beautifully.

I ask unanimous consent, at 5:45, the Senator from Oregon, Senator MURRAY, be recognized for 15 minutes, until 6 o’clock.

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

Mrs. BOXER. Senators DURBIN and LINCOLN take this Federal plan and open it up to small businesses with 100 employees down to a single self-employed person.

This plan will work because there will be a huge pool set up. Everyone can buy into it from any business in this country with less than 100 employees. It would be a very diverse pool of people. They will be insured. The pricing is going to be very fair and reasonable. The plan will be administered in the same way our Federal benefits are administered.

I heard Senator THUNE say: That is a great plan. No. It isn’t. It is a plan that is administered by the Federal Employees Health Benefit Plan, but it is coverage provided by private insurers. Because the administrative costs are kept so low, this is going to be very affordable and will solve the problem.

And guess what. This alternative, the Durbin-Lincoln alternative, does not take away the protections States have given all who live in those States. If you are in California, you still get the benefits. By law, you are protected. If you live in Washington State, you will get those benefits. The alternative that the Democrats are behind will cost less. It will protect benefits. It will work beautifully.

I say to my colleagues, if it is good enough for you, it ought to be good enough for small businesses and their employees. This bill is a wonderful and practical alternative.

In my concluding 6 or 7 minutes, I will say that this so-called Health Care Week is a major disappointment, unless we find out tomorrow we can amend the Enzi bill. If we can amend Enzi and pass stem cell research and preserve importation of safe drugs, we can make sure there is hope for patients with Alzheimer’s, diabetes, heart condition, stroke, cancer because we move ahead with science, then Health Care Week will have mattered. If we can offer the Durbin-Lincoln substitute, it will not prevent the protections of State law as the Enzi bill does. The Enzi bill has more opposition than any bill I remember. AARP is against it. The Cancer Foundation is against it. There are 224 organizations against it.

I ask unanimous consent to have printed in the RECORD those organizations opposed to the Enzi bill.

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

National Partnership for Women & Families, 9 to 5, Association for Working Women, Action Alliance for Health & Aging, American Federation of Teachers, American Federation of State, County and Municipal Employees, American Federation of Teachers, American Graduate School of Business and Professional Women, Arizona Psychological Association, Assencion de Psicologia de Puerto Rico, Assistive Technology Law Center, Association of Medical School Pediatric Department Chairs, Association of University Centers on Disabilities, Association of Women’s Health, Obstetric and Neonatal Nurses, N’nai Brith International.

Bazelon Center for Mental Health Law, C3: Colorectal Cancer Coalition, California Coalition for PKU and Allied Disorders, California Black Health Network, California Psychological Association, Campaign for Better Health Care—Illinois, Capital District Physician’s Health Plan, Inc., Catholics for a Free Choice, Center for Civil Justice, Center for Justice and Democracy.


Committee of Ten Thousand, Communications Workers of America, Connecticut Citizen Action Group, Consumers for Affordable Health Care, Delaware Alliance for Health Care, Denver Psychological Association, Department for Professional Employees, AFL-CIO, Disability Rights Wisconsin, District of Columbia Psychological Association, Easter Seals.

Empire Justice Center, Epilepsy Foundation, Excellus Blue Cross Blue Shield, Familial Hypercholesterolemia Association Planning Advocates of New York State, Florida Consumer Action Network, Georgia Rural Urban Summit, Guttmacher Institute, HIP Health Plan of New York.


Bazelon Center for Mental Health Law, C3: Colorectal Cancer Coalition, California Coalition for PKU and Allied Disorders, California Black Health Network, California Psychological Association, Campaign for Better Health Care—Illinois, Capital District Physician’s Health Plan, Inc., Catholics for a Free Choice, Center for Civil Justice, Center for Justice and Democracy.


Committee of Ten Thousand, Communications Workers of America, Connecticut Citizen Action Group, Consumers for Affordable Health Care, Delaware Alliance for Health Care, Denver Psychological Association, Department for Professional Employees, AFL-CIO, Disability Rights Wisconsin, District of Columbia Psychological Association, Easter Seals.

Empire Justice Center, Epilepsy Foundation, Excellus Blue Cross Blue Shield, Familial Hypercholesterolemia Association Planning Advocates of New York State, Florida Consumer Action Network, Georgia Rural Urban Summit, Guttmacher Institute, HIP Health Plan of New York.

That is on everyone's mind. There is country still awaiting cleanup. We have finished the job on immigration and out of the shadows. There are many other things we could do, but since we are on Health Care, it is clear we need a health care system. Let's not pass a bill that will not help people with serious diseases or fix the problems with the Medicare prescription drug program.

We have so much work to do and this Enzi bill is masquerading as a bill that will help our citizens. When we read the fine print, we find out it is only going to make matters worse.

I am proud to yield the floor to my friend from Washington, Mr. DOGGETT.

Mrs. MURRAY. Mr. President, at this hour, families are struggling with health care. Seniors are facing a critical deadline for drug coverage. Businesses are grappling with the high cost of insurance. And patients are being denied the cutting-edge research that could save their lives. Those are critical issues. And what is the Senate doing? We are dealing with a distraction instead of real solutions to make health care affordable, more accessible, and more innovative.

I am on the Senate floor this evening to talk about what we should be doing to help families and businesses and communities meet their health care needs. I also want to talk this evening about why the Republican proposal, S. 1955, could do more harm than good.

This is a bill which takes a good idea—pooling the risk in health insurance—and distorts it with a plan that will raise the cost of health care, strip away patient protections, and hurt many of our small businesses. But do not take my word for it. Attorneys general from 41 States, including my own, have written to outline the serious problems with the Republican bill. I have heard from doctors with the Washington State Medical Association and from my own Governor about the damage this bill will inflict on patients and our economy.

Simply put, this proposal is a distraction. Instead of dealing with real solutions to real problems, the Republican bill is focused on one narrow proposal that is only going to make things worse. We can do better. The truth is that patients and seniors, doctors and nurses, and all of our communities deserve better.

If we were serious about reducing the cost of health care, helping to improve access, and driving innovation, we would be talking about the critical problems the Republican leadership is trying to avoid. We should be focusing on everything from the Medicare drug program, to stem cell research, to community health care. Frankly, we do not have a day to waste.

Today, millions of seniors and disabled will be hit with a deadline that means higher premiums for their prescription drugs. That May 15 deadline is just 6 days away. I am hearing from seniors that they are very worried about this deadline. They are worried they are going to pick the wrong plan, and they do not think it is fair to be punished if they need more time so they can make an informed choice.

I have been traveling throughout my home State of Washington, meeting with hospitals, doctors, and community organizations, hearing from patients, with pharmacists, with advocates.

Three weeks ago, I was in Chehalis, at the Twin Cities Senior Center. I can tell you seniors are worried. They are frightened. They are frightened about this May 15 deadline, and that deadline is just one of the problems this flawed drug program is presenting.

Two weeks before that, I was in Silverdale, and I have held Medicare roundtables in Kent, Vancouver, Ballard, Shelton, Spokane, Anacortes, Bellevue, Aberdeen, Olympia, Lakewood, Seattle, and Everett. Everywhere, I have heard from seniors about just how bad the Medicare Part D Program is. I have heard their frustration about dealing with such a confusing system. I have heard their anger that this program does not meet their needs. And I have heard from many of them just want to throw their hands up in the air and ignore the whole program.

If we were serious about improving health care, we would be fixing the problems they have outlined. Instead, we are going to let an unfair deadline hurt our seniors even further. In just 6 days—in just 6 days—they are going to have to pick a plan or face high penalties whenever they do enroll, and the penalties grow larger the longer they wait. To me, that is just not fair.

Right now, this Senate could be extending the deadline so our seniors are not pressured into making the wrong choice in such a complicated system. Right now, we could be lifting the penalty so that seniors are not punished if they need more time to make the right choice. Right now, we could be providing help to millions of vulnerable Americans who have been mistreated by this flawed Republican plan. But, instead, this Congress is leaving seniors to fend for themselves. The Secretary of Health and Human Services has said he opposes extending the deadline or lifting the penalties, and this
Republican Congress seems to agree with him by a shameful lack of action. Senators deserve better. The disabled deserve better. Our most vulnerable neighbors deserve better. If we really wanted to make health care more affordable and more accessible by innovative ideas, we would be on this floor fixing the Medicare drug program and helping seniors who are facing that unfair deadline.

Now, that is just one example of what a real focus on health care on this floor would include.

If we were serious about helping patients, we would be expanding lifesaving research. For patients who are living with diseases such as Parkinson’s or multiple sclerosis or Alzheimer’s or diabetes, stem cell research holds the potential to help us understand and to treat and someday perhaps cure those devastating diseases.

Nearly a year ago, the House of Representatives passed legislation to lift the restrictions that hold back this promising research. The House of Representatives has acted, but for an entire year the Senate has not. My colleagues, Senator SPECTER and Senator HARKIN, are well known for their leadership. They worked late into the night to pass a bill that required a vote on stem cell research, and that vote has still not taken place. Every delay means missed opportunities for patients with devastating diseases.

If this Senate is serious about health care and saving lives, we should be voting on stem cell legislation today. That is why, last week, I joined with 39 other Senators in writing to the majority leader urging him to bring up S. 810, the Stem Cell Research Enhancement Act. But instead of real solutions, the Senate is focusing on a distraction. Patients with life-threatening diseases deserve a lot better.

If we were serious about improving health care, we would be investing in local efforts that boost access to health care.

Two weeks ago, through the Johnson & Johnson Community Health Care Awards, I had a chance to honor leaders from across the country who are doing innovative work to break down the barriers to care. If we were serious about improving health care, we would be building more Federal support for their work. Instead, we are moving in the opposite direction.

Perhaps the best example is the Bush administration’s 5-year effort to kill the Healthy Communities Access Program, which is known as HCAP. This is a program which helps our local organizations coordinate care for the uninsured. I have seen it make a tremendous difference in my home State. Well, every year since taking office, this Bush administration has tried to kill that successful program. I have been out here on the floor leading the fight for Healthy Communities every year, and most years we have won. But this past year, the White House and the Republican Congress ended the support for Healthy Communities and thus made health care less accessible for families from coast to coast.

If we were serious about improving health care, we would be investing in local programs that make a difference. But, instead, the Republican leadership on health care is focused on distractions. We can do better than that.

So let me take a few minutes to turn to the specific problems with the bill that is before us, S. 1955, and explain why so many experts across this country are warning us that this bill will eliminate critical patient protections, it will lead to unfair premiums and insurance practices, and it will raise the cost of health care.

First of all, this bill will eliminate many of the important protections that keep patients healthy and lower the cost of health care.

In my home State of Washington, we have enacted a number of State patient protections that require health plans to cover services such as diabetic care, mental health services, breast and cervical cancer screening, emergency medical services, and dental procedures. But under this bill, small business health plans or association health plans would not be required to cover those important benefits. Allowing insurers to abandon mandated benefits, many of which are preventive and are diagnostic, will result in a sicker population and higher health costs for everyone.

When this legislation was debated in the HELP Committee, I offered a number of amendments to provide for coverage of several important women’s health benefits. Unfortunately, every one of those amendments was defeated. So now, here we are, and we have a bill on this floor that will strip away the protections on which our patients across this country rely.

A new report by Families USA shows just how many families in my home State will be hurt by this bill. That report found that 1,861,000 residents of Washington State may lose protections if this bill is passed. And what could they lose? Emergency services, home health care, drug and alcohol treatment, contraceptives, diabetic supplies and education, hospice care, mammography screening, maternity services, mental health care—the list goes on. I am not going to tell nearly 2 million Washington residents whom I represent that we are going to take a gamble and risk losing those hard-won protections for a plan that will likely raise the cost of health care for many of our families and small businesses.

Secondly, this bill will encourage insurance companies to charge higher premiums for less healthy consumers. This bill will preempt strong laws and protections in our State that limit the ability of insurers to vary premiums based on health status, age, gender, or geography. I believe this will result in adverse selection or what we call cherry-picking, leading to higher premiums for less healthy consumers. In fact, rates will likely become unaffordable for those who need it the most, potentially increasing the number of uninsured Americans.

Now, Mr. President, I would like to share some letters I have received from leaders in my home State who all speak against this flawed proposal. I ask unanimous consent that these two letters be printed in the Record following my remarks.

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

Mrs. MURRAY. Mr. President, recently I received a letter from the Governor, Governor Christine Gregoire of my home State of Washington, in which she expressed many of her concerns regarding this legislation and its impact on the people who live in my home State.

This chart behind me contains the full text of the Governor’s letter. As you can see, she has many serious concerns. I wish to highlight for the Senate some of the main points our Governor has raised with me.

Governor Gregoire alludes to the harmful aspects of this bill, and she says:

S. 1955 (the Patient’s Bill of Rights) stands to harm our small group insurance market, which is a critical component of [Washington State’s] current health care system. . . .

Instead of promoting more affordable health care, this legislation would cause a serious increase in rates for consumers—possibly two or three times over what they now pay.

Governor Gregoire also warns in her letter to me that:

[this] bill threatens consumer protections that the state of Washington strives to guarantee to [all of] our residents.

The Governor also warns that this bill:

1. Would foster a proliferation of health plans that do not cover preventive services that are absolutely vital to the health and well-being of Washington residents. . . .

Mr. President, I would also like to share a letter that I have received from the 9,000-member Washington State Medical Association that wrote to me in strong opposition to S. 1955.

Now, this chart shows the full letter, and I want to read just a portion of it:

This legislation will have a severe impact on all the consumer health gains that have been made in Washington State over the past decade.

S. 1955 will:

Undermine Washington State’s many gains in advancing health care quality;

Pull people from existing insurance coverage rather than attract the uninsured;

Lead to higher costs for consumers.

Strike down Washington’s Mental Health Parity law, which took eight years of work to be enacted.

Eliminate other mandated benefits that help consumers such as mammography services; and,

Leave Washington’s citizens at risk for unpredictable medical bills in the event of an AHP insolvency.

That is from the head of the Washington State Medical Association, which has 9,000 members in my home State.
State. I think their words should be heeded by the Members of this Senate. Third, this proposal does nothing to address increasing health care costs.

In fact, it builds on the sorry record of this administration and this Congress in not addressing the rising costs that Americans face. Because of the flaws I mentioned, this bill does nothing to contain those costs. In fact, it could dramatically increase costs for many businesses and families in Washington State. It could well mean that people in the State of Washington who have affordable coverage today could end up worse off than they are right now.

I know my State has been a leader in working to expand access to affordable health insurance for working families and small businesses. Many of the reforms that worked to control costs in my State have failed if this legislation is enacted. Washington State has a proud tradition of strong consumer protections and integrated managed care that has improved health outcomes and controlled cost increases. We should not jeopardize what my State has worked so hard for by dangerous Federal legislation.

I do support the concept of pooling. I believe we can implement policies that provide stability in health insurance premiums. In fact, I am currently working with a number of my colleagues on legislation to create Federal and State public pooling pools to spread out the risks and address what is driving health care costs. We can help spread the risk in ways that will lower costs and still protect patients. The legislation before us could raise costs for consumers and small businesses. We can do better than that.

There are serious challenges facing our country when it comes to health care. This Senate needs to get serious. Instead of focusing on a distraction, we should be helping seniors with prescription drugs. We should be expanding Medicaid and health care costs. We should be supporting community health care. Those are some of the things we should be working on to reduce the cost of health care and to improve access and to accelerate innovation. We can do all of those things, but we need the Republican leadership to get serious and to come forward with solutions.

I hope we can get to work on the real solutions that our American families deserve.

EXHIBIT 1

Christine O. Gregoire,
Office of the Governor,

Dear Senator Murray:

I am writing with great concern about S. 1955, the Health Insurance Marketplace Modernization and Affordability Act, and its potential to further erode our ability to provide sound health coverage in Washington State.

This bill stands to harm our small group insurance market, which is a critical component of our current health care system. Furthermore, the bill threatens consumer protections that the State of Washington strives to guarantee to our residents. For these reasons, I ask that you oppose the bill in its current form.

When it comes to providing health care, the federal government has been putting an ever-increasing burden on the states. The Affordable Care Act is an example of how the way we do business needs to change to eliminate nearly $50 billion over the next five years for the Medicaid program. Fresh on the heels of signing the Deficit Reduction Act, the President unveiled his Fiscal Year 2007 budget proposal, which proposes eliminating $36 billion from the Medicare program over the next five years. Additionally, the Medicare Prescription Drug Improvement Act of 2003 has had enormous impacts on the states. Nearly every state in the Nation—Washington included—felt compelled to step in to ensure that our most needy citizens, our dual eligible population, continue to receive their medications due to fundamental flaws in the Medicare Modernization Act. Against this backdrop, new comes S. 1955.

If passed, S. 1955 would establish a small group rating mechanism that would further erode the possibility of pursuing reasonable health care costs in the states. Instead of promoting a more affordable health care, this legislation would cause a serious increase in rates for consumers—possibly two or three times over.

At worst, the bill could result in the total collapse of our small group insurance market, something we must fight to prevent.

Additionally, I am concerned that S. 1955 would foster the creation of health plans that do not cover preventative services that are absolutely vital to the health and well-being of Washington residents, such as mammograms, obstetric care services, and newborn coverage. In 2005, the Washington State Legislature passed, and I signed, legislation providing mental health parity. If Congress passes S. 1955, the bill could also fully abrogate this effort to ensure mental health coverage in Washington State.

It is surprising to me that S. 1955 is moving forward, given that it is patterned, in part, on a flawed National Association of Insurance Commissioner’s 1993 Model Rating Law, actually adopted by the state of New Hampshire as an experiment in 2003. This was an unfortunate experiment for the people of New Hampshire. Just this year, that state’s Legislature repealed provisions of its 2003 law due to the astronomical jump in rates that occurred in only a two-year period after it was implemented.

Given this history that he knows only too well, my colleague, Governor John Lynch of New Hampshire, recently registered his opposition to S. 1955 in a letter to his federal delegation, dated March 28, 2006. New Hampshire’s experience is illustrative and a harbinger of what could come to all states, should Congress adopt S. 1955.

As Washington State’s Attorney General from 1993-2005, I, along with the majority of my colleagues within the National Association of Attorneys General, opposed several precursor bills to S. 1955. Introduced in each of the last several Congresses, these bills allow for the federal regulation of association health plans, which have gone dormant out of the U.S. House more than once. I appreciate that S. 1955, in its current form, does away with one fatal flaw of the earlier AHP bills—that being the wholesale obliteration of the state’s ability to shape local AHPs. But, as I have articulated, S. 1955 still goes too far in preempting other basic consumer protections. It is heartening to see that a majority of current members of NAAG, including Washington State Attorney General Rob McKenna, have now weighed in with their concerns and opposition to S. 1955.

As a nation, we need innovative solutions that provide high quality, sustainable and affordable health care access to our un- and under-insured populations. With the help of the Washington State Legislative Republicans, I have embarked on a five-point strategy to promote evidence-based medicine; better manage chronic diseases; increase prevention and wellness initiatives; require data transparency; and expand the reach of health information technology. These strategies invite strong partnerships between states and the Federal government. I am committed to pursuing with you. Unfortunately, proposals like S. 1955, are counterintuitive to the notion of forging such partnerships and I ask that you reject the bill.

Sincerely,

Christine O. Gregoire,
Governor.

WASHINGTON STATE MEDICAL ASSOCIATION,
April 25, 2006.

Hon. Patty Murray,
U.S. Senate, Washington, DC.

Dear Senator Murray:

On behalf of the 9,000 members of the Washington State Medical Association, WSMA, I am writing to ask that you vote no on S. 1955—Association Health Plans, AHPs, when the bill comes to a vote in the U.S. Senate.

The WSMA is very concerned about the negative effect of this legislation on our State’s citizens, purchasers, providers and health plans.

This legislation will have a severe impact on all the consumer health gains that have been made in Washington State over the past decade.

S. 1955 will:

- Undermine Washington State’s many gains in advancing health care quality;
- Pull people from existing insurance coverage rather than attract the uninsured;
- Lead to higher costs for consumers;
- Strike down Washington’s Mental Health Parity law, which took eight years of work to be enacted;
- Eliminate other mandated benefits that help consumers such as mammography services; and,
- Leave Washington’s citizens at risk for unpaid medical bills in the event of an AHP insolvency.

The Washington State Medical Association works hard every day to ensure that Washington’s citizens have access to the finest medical care in the country. This legislation will test our ability to continue in this endeavor.

For more information, please do not hesitate to contact Len Eddinger in our Olympia office.

Very Truly yours,

PETER J. DUNBAR, MD,
President.

The PRESIDING OFFICER (Mr. SMITH). The Senator from Kansas.

Mr. BROWNBACK. Mr. President, I rise to address some issues my colleagues have raised. I am appreciative of the debate and the chance to talk about health care, which is an important topic. It is one that we have to talk a lot more about, how we can provide as much health care as possible to everybody at the lowest price that we...
May 9, 2006

CONGRESSIONAL RECORD — SENATE

S4201

can get it and get more people insured. That is at the root of what we are trying to get done with the proposal of Senator Enzi and others to get more health insurance, better coverage to more people across the United States. That is a worthy goal, something we need to do. We have far too many people uninsured. We need more people insured. That is central to us. It is central to the hospital and the provider community that we have people who are living day to day, not knowing what they need to do. We want far too many people uninsured. We need more people insured. That is central to us.

Others have said that what we need to be talking about is different than this, rather than expanding health insurance coverage. I respect that. Some of my colleagues have raised the stem cell issue. I want to address the concerns my colleagues have raised on stem cells. I want to report to my colleagues what a tremendous positive story we have to tell about stem cells, an exciting story of people receiving treatments, living longer and better lives because of stem cell treatments. These are not the controversial ones. This does not involve the destruction of a young human in the embryonic stage. This involves the use of adult stem cells. And everybody in this room has in their body, adult stem cells. It also involves cord blood stem cells. These are the stem cells that are in the umbilical cord between the mother and child, while the mother is carrying the child.

I want to show two charts to start off. I think it is best if we make this a personal debate. I challenge my colleagues who have challenged me about this. I am moving forward with pictures of individuals who are being treated with embryonic stem cells. I would like to see the people who are being treated with embryonic stem cells. We have put nearly half a billion dollars of research money into embryonic stem cell research. We have known about embryonic stem cells for 20 years. I don’t know of the people being treated by embryonic stem cells. I can show people who are being treated with embryonic stem cells and others, everybody in this room has in their body, adult stem cells. It also involves cord blood stem cells. These are the stem cells that are in the umbilical cord between the mother and child, while the mother is carrying the child.

I want to show you a picture of Keone Penn. I had him in to testify before a Commerce Committee hearing a couple years ago. He has sickle cell anemia. The date of transplant was December 11, 1998. He had been very sick. He wasn’t expected to live. As a matter of fact, it says in a statement that he made: If it wasn’t for cord blood, I would probably be dead by now. It is a good thing I found a match. It saved my life.

We have now many more people being treated for sickle cell, a whole host of diseases. As a matter of fact, I want to read off a few of these. These are human clinical trials, real people getting real treatments, living longer lives, if not being cured, by the use of adult stem cells and cord blood stem cells in 69 different disease areas.

My colleagues have raised this issue for a period of years. We have been debating the controversial area of embryonic stem cells, which the Federal Government funds, which State governments fund, which private industry and the private sector is fully free to fund completely, every bit of the way that they want to do that. They can. They have been. And we have no human treatments from embryonic stem cells to date. We don’t have any. They are funded globally. There is no prohibition against embryonic stem cell research in the United States.

My colleagues seek more than the nearly $200 million that we have put into embryonic stem cell research, an area that has not produced any human treatments to date. I want to be clear that that is what we are talking about. When we started this debate, my colleagues asked about embryonic stem cells, who in their hearts believe they are doing the right thing and this will lead to cures, listed cancer, sickle cell anemia, Lou Gehrig’s disease. We are going to deal with all of these things. With the promise of embryonic stem cells, we will cure these things. That is what they said on their side when we started this debate 6 years ago. Six years later—I could be off a year or 2—where are the cures? I say we have them. They are in adult and cord blood stem cells.

I ask unanimous consent to print in the RECORD at the end of my statement a sheet of human clinical applications using adult stem cells.

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

(See exhibit 1.)

Mr. BROWNBACK. I want to read a few of the 69 from this document: Sickle cell anemia, aplastic anemia, chronic myelogenous leukemia, lupus, Crohn’s disease, rheumatoid arthritis, juvenile arthritis, multiple sclerosis, brain tumors, different cancers, lymphoma, non-Hodgkin’s lymphoma, a number of solid tumors, cardiovascular. This is an exciting area that is taking place where we now have people with acute heart damage, chronic coronary artery disease being treated with adult stem cells. Primarily, this has been an adult stem cell treatment where they harvest stem cells out of the bone and inject them right back into the damaged heart tissue.

Now we are seeing people who couldn’t walk up a flight of steps going up eight flights, having hard tissue being regenerated with the use of their own adult stem cells. There is no rejection problem. This is their own cells. They take these adult stem cells from your body, which are repair cells, grow them, inject them back into the damaged heart tissue area, and now instead of congestive heart failure, without any ability to get enough blood throughout the body, the heart is pumping harder and better. It is actually taking place in human clinical trials today. It is a beautiful issue.

The list goes on: chronic liver failure, Parkinson’s disease; he has a gentleman in to testify who had taken stem cells out of a part of his body, grew them, put them in the left part of the brain. The right side of the body started functioning without Parkinson’s disease. Later it came back, after several years, but he had several years free and was starting to learn how better this can work with Parkinson’s disease.

Again, continuing from the list: spinal cord injury, stroke damage, limb girdle, skull bone. I have recently had advances. For example, they took the stem cells out of a person’s body. They had a form around which the bladder could be grown, outside a new bladder could be grown. They took the stem cells, put them around this form, and actually grew a bladder out of a person’s own stem cells. These are marvelous, miraculous things that are taking place in 69 different areas of human clinical trials, adult and cord blood. I ask my colleagues from the other side, the ones who promised all of the cures from embryonic stem cells, as this debate moves forward, we will bring out statements that people made 5, 6 years ago about the cures that were from embryonic stem cells. The cures have come from these noncontroversial areas. This is where we ought to be funding. This is what we ought to be doing. This is where we are getting treatments.

I ask my colleagues from the other side, where are the treatments with embryonic stem cells? Colleagues on the other side, for whom I have great respect and I know in their hearts are doing what they believe is the right thing to do, asked about reputable scientists opposed to embryonic stem cells. I ask unanimous consent to print in the RECORD this letter at the conclusion of my statement.

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

(See exhibit 2.)

Mr. BROWNBACK. It is dated October 27, 2004. It is to Senator John F. Kerry, running for President at the time, signed by 57 scientists who have a real problem with embryonic stem cell research.

They say in this letter:

As professionals trained in the life sciences we are alarmed at these statements. They are referring to what Senator Kerry was saying, that this would be a
centerpiece issue for him in moving forward with science. This is in 2004.

First, your statement misrepresents science. In itself, science is not a policy or a political program.

Second, it is no mere “ideology” to be concerned about the possible misuse of humans in scientific research.

Here we come to the real rub of the issue on embryonic stem cell research. Is the embryonic human life or isn’t it? It is or it isn’t. It is either a human life or it isn’t. It is alive. It is human in its genetic form. Is it a human life or not? If it is not a human life, do it with as you choose. If it is a human life, it deserves protection and respect. We do it for everybody in this room, no matter what your State is, your physical condition. Why wouldn’t we do it while you are in the womb?

I have a letter signed by 57 scientists with a real problem with embryonic stem cell research. My colleague asked me to read the letter. Without the letter, you would be supporting embryonic stem cell research. I am not entirely convinced that we might achieve. This is a real issue for the scientific community. I am not entirely convinced that we might achieve. This is a real issue for the scientific community.

My colleagues started to raise the issue that if you create an embryo by process of cloning, it is not really a young human life. But if you create an embryo that is a sheep, like Dolly, and grow it up to be Dolly the sheep, is Dolly not a sheep? Would that be the contention? That is simply not the case when they are creating a cloned individual or cloned human being, and that goes into the next step in this debate, to discuss human cloning. The other side is it somatic nuclear cell transfer—the next process that created Dolly.

My point is that that is the next step on this continuum. We are talking about embryonic stem cell research and that is the situation that we are talking about this next step. We are talking about funding and the lack of production taking place there for human treatment.

The next step is that we need to clone and then we need to clone the individual and not harvest it in a day or two, but we need to grow the fetus out several weeks so to have adult cells that can be used for fetal farming, which is a ghastly thing to even consider. Yet it is being talked about in some research circles.

I conclude with the statement that if we want to be successful in this area and treat people, which I believe is the measure that we should go by—the treatment of individuals—our best bet, if my colleagues want human treatments to take place, they want to cure people, if that is what their effort is, let’s fund what is working, which is adult cord blood. Let’s move off of this debate and do something.

I yield the floor.

ADDITIONS & UPDATES FOR APRIL 2006

HIGHLIGHT OF THE MONTH—STEM CELL HOPE FOR LIVER PATIENTS

British doctors reported treatment of 5 patients with liver failure with the patients’ own adult stem cells. Two of the 5 patients showed improvement, and 2 patients regained normal liver function. The authors noted: “Liver transplantation is the only treatment option for liver failure but it is available only to a small proportion of patients due to the shortage of organ donors. Adult stem cell therapy could solve the problem of degenerative disorders, including liver disease, in which organ transplantation is inappropriate or there is a shortage of organ donors.”—Stem Cells Express, Mar. 30, 2006

ADVANCES IN HUMAN TREATMENTS USING ADULT STEM CELLS—

Buerger’s Disease: Scientists in Korea used adult stem cell therapy showed significant improvement in the limbs of patients with Buerger’s disease, where blood vessels are blocked and inflamed, eventually leading to tissue death. In a recent study of 27 patients there was a 79% positive response rate and improvement in the limbs, including the healing of previously non-healing ulcers.—Stem Cells Express, Jan. 26, 2006

Bladder Disease: Doctors at Wake Forest constructed new bladders for 7 patients with bladder disease, using the patients’ own progenitor cells grown on an artificial framework in the laboratory. When implanted back into the patients, the tissue-engineered bladders appeared to function normally and improved the patients’ conditions. “This suggests that tissue engineering may one day be a solution to the shortage of donor organs in this country for autografts,” said Dr. Anthony Atala, the lead researcher.—The Lancet, Apr. 4, 2006; reported by the AP, Apr. 4, 2006

Lupus: Adult Stem Cell Transplant Offers Promise for Severe Lupus—Dr. Richard Burt of Northwestern Memorial Hospital is pioneering new research that uses a patient’s own adult stem cells to treat extremely severe cases of lupus and other autoimmune diseases such as multiple sclerosis and rheumatoid arthritis. In a recent study of 50 patients, lupus in the patients’ adult stem cells resulted in stabilization of the disease or even improvement of previous organ damage, and greatly increased survival of patients. “We bring the patient in, and we give them chemo to destroy their immune system,” Dr. Burt said. “And then right after the chemotherapy, we infuse the stems cells to make a brand-new immune system.”—ABC News, Apr. 11, 2006; Journal of the American Medical Assoc, Feb. 1, 2006

Cancer: Bush policy may help cure cancer— “Unlike embryonic stem cells . . . cancer stem cells are mutated forms of adult stem cells.” In the [adult stem cell] field is growing rapidly, thanks in part, paradoxically, to President George W. Bush’s restrictions on embryonic-stem-cell research. Some of the findings that might otherwise have gone to embryonic stem cells could be finding their way into cancer [adult-stem-cell studies].”—Time: Stem Cells that Kill, Apr. 17, 2006

Heart: Adult stem cells may inhibit remodeling and make the heart pump better and more efficiently.—Researchers in Pittsburgh have shown that adult stem cells along with bypass surgery can give significant improvement for those with chronic heart failure. Ten patients treated with their own bone marrow cells improved well beyond patients who had only standard bypass surgery. In addition, scientists in Arkansas and Boston administered the protein G-CSF to advanced heart failure patients, to activate the patients’ bone marrow adult stem cells, and found significant heart improvement 9 months after the treatments.—Journal of Thoracic and Cardiovascular Surgery, Dec., 2005; American Journal of Cardiology, Mar., 2006

Stroke: Mobilizing adult stem cells helps stroke patients—Researchers have shown that mobilizing a stroke patient’s bone marrow adult stem cells can improve
recovery. Seven stroke patients were given injections of a protein—G-CSF—that encourages bone marrow stem cells to leave the marrow and enter the bloodstream. From there, they homed in on damaged brain tissue and stimulate repair. The 7 patients showed significantly greater improvement after stroke than patients receiving standard care.—Canadian Medical Association Journal Mar. 3, 2006

69 CURRENT HUMAN CLINICAL APPLICATIONS

USING ADULT STEM CELLS

ANEMIAS & OTHER BLOOD CONDITIONS

Sickle cell anemia, Sideroblastic anemia, Aplastic anemia, Red cell aplasia (failure of red blood cell development), Amegakaryocytic thrombocytopenia, Thalassemia (gene inherited disorder manifesting from which involve underproduction of hemoglobin), Primary amylodosis (A disorder of plasma cell myeloma), Fabry anemia, Fanconi’s anemia, Chronic Epstein-Barr infection (similar to Mono).

AUTO-IMMUNE DISHARES

Systemic lupus (auto-immune condition that can affect skin, heart, lungs, kidneys, joints, and nervous system), Sjogren’s syndrome (autoimmune disease symptoms similar to arthritis), Myasthenia (An auto-immune neuromuscular disorder), Autoimmune cytopenia, Scleromyxedema (skin condition), Scleroderma (skin disorder), Crohn’s disease (chronic inflammatory disease of the body), Behcet’s disease, Rheumatoid arthritis, Juvenile arthritis, Multiple sclerosis, Polyarthritis (chronic disorder of the cartilage) Systemic vasculitis, (inflammation of the blood vessels), Alopea universalis, Buerger’s disease (limb vessel inflammation), Fibromyalgia (chronic condition), Scleroderma (skin disorder), Myelofibrosis, Rheumatoid arthritis, Juvenile arthritis, Multiple sclerosis, Polyarthritis (chronic disorder of the cartilage). Systemic vasculitis (inflammation of the blood vessels), Alopecia universalis, Buerger’s disease (limb vessel constriction, inflammation).

CANCER

Brain tumors, medulloblastoma and glioma, Retinoblastoma (cancer), Ovarian cancer, Skin cancer: Merkel cell carcinoma, Testicular cancer, Lymphoma, Non-Hodgkin’s lymphoma, Hodgkin’s lymphoma, Acute lymphoblastic leukemia, Acute myelogenous leukemia, Chronic myelogenous leukemia, Juvenile myelomonocytic leukemia, Cancer of the lymph nodes: Angioimmunoblastic lymphadenopathy, Multiple myeloma (cancer affecting white blood cells of the immune system), Leukemia (bone marrow disorder), Breast cancer, Neuroblastoma (childhood cancer of the nervous system), Renal cell cancer (cancer of the kidney), Soft tissue sarcoma (malignant tumor that begins in the muscle, fat, fibrous tissue, bone vessels), Varix solid tumors, Waldenstrom’s macroglobulinemia (type of lymphoma), Hemophagocytic lymphohistiocytosis, POEMS syndrome (osteosclerotic myeloma), Myelofibrosis.

CARDIOVASCULAR

Acute Heart damage, Chronic coronary artery disease.

IMMUNODEFICIENCIES

Severe combined immunodeficiency syndrome, X-linked lymphoproliferative syndrome, X-linked hyper immunoglobulin M syndrome.

LIVER DISEASE

Chronic liver failure.

NEURAL DEGENERATIVE DISEASES & INJURIES

Parkinson’s disease, Spinal cord injury, Stroke damage.

OCULAR

Corneal regeneration.

WOUNDS & INJURIES

Limb gangrene, Surface wound healing, Jawbone regeneration, Full bone repair.

OTHER METABOLIC DISORDERS

Sandhoff disease (hereditary genetic disorder), Hurler’s syndrome (hereditary genetic disorder), Osteogenesis imperfecta (bone/cartilage disorder), Krabbe Leukodystrophy (hereditary genetic disorder), Osteopetrosis (genetic bone disorder), Cerebral X-linked recessive Leukodystrophy.

EXHIBIT 2


Senator John F. Kerry, John Kerry for President, Washington, DC.

Dear Senator Kerry: Recently you have made the promotion of embryonic stem cell research, including the cloning of human embryos for research, into a centerpiece of your campaign. You have said you will make such research a “top priority” for government, agriculture, and medicine (Los Angeles Times, Oct 17/04). You have given no authorized support for this research with respect for “science,” and said that science must be freed from “ideology” to produce miracle cures for numerous diseases.

As professionals trained in the life sciences we are alarmed at these statements.

First, it is no mere “ideology” to be concerned about the possible misuse of humans in scientific research. Federal bioethics advisory groups, serving under both Democratic and Republican presidents, have affirmed that the human embryo is a developing form of human life that deserves respect. Indeed you have said that human life begins at conception, that fertilization produces a “human being.” To equate concern for these beings with mere “ideology” is to dismiss the entire history of efforts to protect human subjects from research abuse.

Third, the statements you have made regarding the purported medical applications of cloned human embryos is extravagant. There is no credible evidence, ignoring the limited scope of our knowledge about embryonic stem cells and the advances in other areas of research that may make these cells unnecessary for many applications. To make such exaggerated claims, at this stage of our knowledge, is not only scientifically irresponsible— it is deceptive and cruel to millions of patients and their families who hope desperately for cures and have come to rely on the scientific community for accurate information.

What does science tell us about embryonic stem cells? The facts can be summed up as follows:

At present these cells can be obtained only by destroying live human embryos at the blastocyst (4-7 days old) stage. They proliferate, they are adaptable, they are versatile, ultimately capable (in an embryonic environment) of forming any kind of cell found in the developed human body. Yet there is scant scientific evidence that embryonic stem cells will form normal tissues in a culture dish, and the very versatility of these cells is now known to be a disadvantage as well—embryonic stem cells are versatile to develop into a stable cell line, spontaneously accumulate genetic abnormalities in culture, and are prone to uncontrollable growth and tumor formation.

Almost 25 years of research using mouse embryonic stem cells have produced limited indications of clinical benefit in some animals, as well as indications of serious and potentially lethal side-effects. Based on this evidence, claims of a safe and reliable treatment for any disease in humans are premature at best.

Embryonic stem cells obtained by destroying human embryos with additional ethical issue—that of creating human lives solely to destroy them for research—and may pose added practical problems as well. Cloning living embryos would produce many problems of chaotic gene expression, and this may affect the usefulness and safety of these cells. Nor is it proven that cloning will provide safe embryonic stem cells, as even genetically matched stem cells from cloning are sometimes rejected by animal hosts. Some animal trials of embryonic stem cell therapy involve placing cloned embryos in a womb and developing them to the fetal stage, then destroying them for their more developed tissues, to provide clinical benefit—surely an approach that poses horrific ethical issues if applied to humans.

Non-embryonic stem cell have also received increasing scientific attention. Here the trajectory has been very different from that of embryonic stem cells: Instead of destroying these cells and putting them to work as they may someday have a clinical use, researchers have discovered them producing undoubted clinical benefits and then sought to better understand how to work so they can be put to more uses. Bone marrow transplants were benefiting patients with various forms of cancer for many years before it was understood that the active ingredients in these transplants are stem cells.

Non-embryonic stem cells have been discovered in many unexpected tissues—in blood, nodules, skin, muscle, gut, bone, adipose, cord blood, placentas, even dental pulp—and dozens of studies indicate that they are far more versatile than once thought. Use of these cells poses no serious ethical problem, and may avoid all problems of tissue rejection if stem cells can be obtained from a patient for use in that same patient. Clinical use of non-embryonic stem cells has grown greatly in recent years. In contrast to embryonic stem cells, adult stem cells are in established or experimental use to treat human patients. Non-embryonic stem cells originating in the National Institutes of Health and the National Marrow Donor Program (Cong. Record, September 9, 2004, pages H6556–7). These have been or are being used in human trials for treatment of spinal cord injury, Parkinson’s disease, stroke, cardiac damage, multiple sclerosis, and so on. The results of these experimental trials will help us better assess the medical prospects for stem cell therapies.

In the case of many conditions, advances are likely to come from sources other than any kind of stem cell. For example, there is a strong scientific consensus that complex diseases such as Alzheimer’s disease are likely to be treated by any stem cell therapy. When asked recently why so many people nonetheless believe that embryonic stem cells will provide a cure for Alzheimer’s disease, NIH stem cell expert Ron McKay commented that “people need a fairy tale” (Washington Post, June 18, 2004, page A3). Similarly, autoimmune diseases such as juvenile diabetes, lupus and MS are unlikely to benefit from simple addition of new cells unless the underlying problem—a faulty immune system that attacks the body—can be halted, even though they were foreign invaders—is corrected.

In short, embryonic stem cells pose one especially controversial avenue toward understanding and treating the myriad of various degenerative diseases. Based on the available evidence, no one can predict with
certainty whether they will ever produce clinical benefits—much less whether they will produce benefits unobtainable by other, less ethically problematic means.

The second is one approach into a political campaign—even more, to declare that it will be a "top priority" or receive any particular amount of federal funding, regarding the evidence or the usual scientific peer review process—is, in our view, irresponsible. It is, in fact, a subordination of science to ideology.

Because politicians, biotechnology interests and even some scientists have publicly exaggerated the "promise" of embryonic stem cells, public perceptions of this avenue have increased and unrealistic. Politicians may hope to benefit from these false hopes to win elections, knowing that the collision of these hopes with reality will come only after they win their races. The scientific and medical professions have no such luxury. When desperate patients discover that they have been subjected to a salesman's pitch rather than an objective and candid assessment of possibilities, we have reason to fear a public backlash against the credibility of our professions. We urge you not to turn a problem, by promoting false promises that exploit patients' hopes for political gain.

Signed 57 Senators.

The PRESIDING OFFICER (Mr. CORNYN). The Senator from Minnesota is recognized.

Mr. DAYTON. Mr. President, I ask unanimous consent to speak for 15 minutes as in morning business.

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

Report on Hurricane Katrina

Mr. DAYTON. Mr. President, last week the Senate Committee on Homeland Security and Governmental Affairs, of which I am a member, approved its report titled "Hurricane Katrina, A Nation Still Unprepared." The committee's distinguished chairman set today as the deadline for additional views.

I reluctantly voted not to approve that draft of the report last week because it is so incomplete. While it is still lacking all of the information, documents, and testimony which President Bush and his subordinates denied the committee, last March 15 the ranking member asked the chairman to subpoena witnesses and documents that have been withheld by the White House. Regrettably, she declined to do so.

Earlier this year, on January 12, the chairman and ranking member wrote the White House Chief of Staff, Mr. Andrew Card, regarding the information they had previously requested. Their letter stated, in part:

This practice (of withholding information) must cease.

It continued:

We are willing to discuss claims of executive privilege asserted by the White House, either directly or through a Federal agency. But we will not stand for blanket instructions to refuse answering any questions concerning communications with the EOP (Executive Office of the President).

Their insistence that either administration officials comply with this oversight committee's rightful demands or the President invoke his executive privilege not to do so was entirely appropriate. Unfortunately, when Mr. Card and his subordinates still refused to comply, the chairman denied the ranking member's request to issue subpoenas. Regrettably, at its markup of the draft report, the Senate committee failed to support my motion to subpoena those documents and witnesses, which were being withheld by the White House to protect executive privilege, and which were being wrongfully denied by executive agencies.

The administration's refusal to comply and cooperate with this investigation is deplorable, as is the Homeland Security Committee's failure to back the chairman and ranking member's proper insistence that the White House do so. That committee is charged by the full Senate with the responsibility to oversee the agencies, programs, and activities that make up homeland security. The committee was expressly directed by the Senate majority leader to examine the Bush administration's failure to respond quickly or effectively to the disasters caused by Hurricane Katrina. That investigation is incomplete without all of the information requested from the administration. Furthermore, the report's findings and conclusions can hardly be considered reliable if the White House has decided what to redact and what information to withhold from the committee.

This unfortunate acquiescence confirms the judgment of the Senate Democratic leader that an independent bipartisan commission was necessary to ensure complete and unbiased investigation into the failed Federal, State, and local responses to Hurricane Katrina. His request has been repeatedly denied by the majority, with the excuse that the committee would fulfill those responsibilities. Tragically and reprehensibly, it has failed to do so. Thus, the committee failed the Senate's constitutional obligations to be an independent, coequal branch of Government from the executive. It also failed the long-suffering victims of Hurricane Katrina, who deserve to know why their governments failed them, and all of the American people, who depend upon their elected representatives to protect their lives and property, without regard to partisan political considerations. That partisanship includes unjustified protection of an administration of the same political party, as much as undue criticism of one from another party.

That partisan protectionism is especially unwarranted given widespread agreement about the urgent need to understand the failures during and after Hurricane Katrina and to remedy them before another large-scale disaster, God forbid, should occur. Now, 8 months after the hurricane, the lack of progress in cleanup, repair, and reconstruction in devastated areas provides further evidence of the Federal Government's continuing failure to respond efficiently or effectively.

There is no time in which the helping hand of Government is more urgently needed and more surely deserved than during and after a disaster. Victims are traumatized for days or months, physically, emotionally, and financially.

Local officials and their public services are overwhelmed, if not destroyed. They need a Federal emergency response organization comprised of experienced, dedicated professionals who have the resources necessary to alleviate short-term suffering and commence long-term recovery, and also have the authority to expeditiously commit those resources.

What the failed Federal response to Hurricane Katrina showed is the utter ineptitude of the Federal Emergency Management Agency, known as FEMA. Even worse, FEMA's indifference and incompetence in the aftermath of Katrina was not an isolated instance. In its recent experience with FEMA's disaster relief responses in Minnesota, the agency is too often a major obstruction to recovery projects rather than a principal ally.

Thus, I agree with the report's recommendation to create a new, comprehensive emergency management organization, to prepare for and respond to all disasters and catastrophes. I remain openminded about whether this new entity should remain within the Department of Homeland Security, as this recommendation intends, or be established as a separate Federal agency. The challenge for the committee, for all of Congress, and for the administration will be to actually recreate an existing Federal agency which has become dysfunctional and nonfunctional. Merely "reforming" FEMA by rearranging some boxes and lines in its organizational chart, revising it, and giving its head a new title, will be woefully inadequate. The new organization must be more streamlined, centralized, and compact than its predecessor. It must be less bureaucratic, less consumed with regulatory minutiae, and less resistant to local recovery initiatives. It must spend less time creating complex plans and cumbersome procedures, and more time in training and perfecting action responses to emergency situations.

History shows that "if a student does not learn the lesson, the teacher reappears." This report describes some of the most important lessons from the failed response to Hurricane Katrina. The committee's and this Congress's subsequent actions to correct these serious deficiencies before the next catastrophe will indicate whether those lessons will be learned.

I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.
Mr. AKAKA. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded. The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. AKAKA. Mr. President, I ask unanimous consent that I be allowed to speak for 10 minutes as in morning business.

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

NATIVE HAWAIIAN GOVERNMENT REORGANIZATION ACT OF 2005

Mr. AKAKA. Mr. President, I rise today to talk about bipartisan legislation that is of critical importance to the people of Hawaii. S. 147, the Native Hawaiian Government Reorganization Act of 2005, would extend the Federal policy of self-governance and self-determination to Hawaii’s indigenous peoples, Native Hawaiians, by authorizing a process for the reorganization of a Native Hawaiian governing entity for the purposes of a government-to-government relationship with the United States.

Together with my senior Senator and the rest of Hawaii’s congressional delegation, I first introduced this bill in 1999. The bill passed the House in 2000, but, unfortunately, the Senate adjourned before we could complete consideration of that bill.

Since then, I have introduced a bill every Congress. In every Congress, the committees of jurisdiction—the Senate Committee on Indian Affairs and the House Committee on Resources—have favorably reported the bill and its companion measure.

I thank the majority leader, the senior Senator from Tennessee, who is working to uphold his commitment to bring this bill to the Senate floor for a debate and rollcall vote. I must tell my colleagues that he did try to meet his commitment in September 2005 and did schedule it for the floor. But at that time, Katrina happened, and we took it off the calendar.

I also appreciate the efforts of my colleague from Arizona who opposes the bill on substance, but has worked with me to uphold his promise to allow the bill to come to the floor for debate and rollcall vote.

S. 147 does three things. First, it authorizes the Office of Native Hawaiian Relations in the Department of the Interior. The office is intended to serve as a liaison between Native Hawaiians and the United States. It is not intended to become another Bureau of Indian Affairs, as the current program for Native Hawaiians will remain with the agencies that currently administer those programs.

Second, the bill establishes the Native Hawaiian interagency coordinating group. This is a Federal working group to be composed of representatives from Federal agencies who administer programs and services for Native Hawaiians. There is no statutory requirement for these agencies to work together. This working group can coordinate policies to ensure consistency and prevent unnecessary duplication in Federal policies impacting Native Hawaiians.

Finally, the bill authorizes a process for the reorganization of the Native Hawaiian governing entity. And we ask: Why establish this entity? It is because the Native Hawaiian Government was overthrown with the assistance of U.S. agents in 1893. Rather than shed the blood of the people, our beloved queen, Queen Lili’uokalani, abdicated her throne after being arrested and imprisoned in her own home.

Following the overthrow, a republic was formed. Any reformation of a native governing entity has been discouraged. Despite this fact, Native Hawaiians have established distinct communities and retained their language, culture, and traditions. They have done so in a way that also allows other cultures to flourish in Hawaii. Now their generosity is being used against them by opponents of this bill who claim that because Native Hawaiians do not have a governing entity, they cannot partake in the Federal policy of self-governance and self-determination that is offered to their native brethren in the United States.

My bill authorizes a process for the reorganization of the Native Hawaiian governing entity for the purposes of a federally recognized government-to-government relationship. There are many checks and balances in this process which has the structure necessary to comply—to comply—with Federal law and still maintains the flexibility for Native Hawaiians to determine the outcome of this process.

Further, my bill includes a negotiations process between the Native Hawaiian governing entity, the State of Hawaii, and the United States to address issues such as lands, natural resources, assets, criminal and civil jurisdiction, and historical grievances. Nothing that is currently within the jurisdiction of another level of government can be conveyed to the Native Hawaiian Government without going through this negotiations process.

I am proud of the fact that this bill respects the rights of Hawaii’s indigenous peoples through a process that is consistent with Federal law and it provides the structured process for the people of Hawaii to address the long-standing issues which have plagued both Native Hawaiians and non-Native Hawaiians since the overthrow of the Kingdom of Hawaii.

I want to reiterate to my colleagues that this bill is not race based. This bill is based on the Federal policies toward indigenous peoples. Those who characterize this bill as race based fail to understand the Federal policies toward indigenous peoples. Those who characterize this bill as race based fail to understand the legal and political relationships that have been established with the indigenous peoples and their governments preexisting the United States.

Finally, those who characterize this bill as race based are saying that Native Hawaiians are not native enough. I find this offensive. And I ask that my colleagues join me in my efforts to bring parity to Native Hawaiians by enacting my bill.

This effort will continue from day-to-day here. We will continue to bring forward the history of Hawaii and the reasons why we are trying to enact this bill, not only for the benefit of the indigenous people of Hawaii but for the benefit of the United States as well.

Mr. President, I suggest the absence of a quorum.

The PRESIDING OFFICER. The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

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

The PRESIDING OFFICER (Mr. THUNE). Without objection, it is so ordered.

MORNING BUSINESS

Mr. VOINOVICH. Mr. President, I ask unanimous consent that there now be a period of morning business with Senators permitted to speak for up to 10 minutes each.

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

VOTE EXPLANATION

Mr. DURBIN. Mr. President, yesterday, the Senate voted on two motions to invoke cloture to proceed to legislation regarding medical malpractice. Due to a mechanical problem with the plane on my flight from Chicago, I was necessarily absent for this debate and the first vote. Had I been present for that vote, I would have voted against the motion to invoke cloture, and I did vote against the second motion.

Since 2003, the last time Congress considered this issue, 34 States have passed malpractice legislation. Four additional States have pending legislation in this year.

AMA counts 21 States as “crisis” States. Of those 21 States, 16 States passed legislation in the past 2 years, and two are currently considering bills.

Instead of considering ways to cap pain and suffering damages for injured patients, Congress should be working on other health care priorities.

Neither S. 22 nor S. 23 do anything to address medical errors, the underlying reason for medical malpractice lawsuits.

According to the Institute of Medicine, medical errors have caused more American deaths per year than breast cancer, AIDS and car accidents combined. It is equivalent to a jumbo jet liner crashing every 24 hours for 1 year.

When I sat on the Government Affairs Committee, Dr. Carolyn Clancy, Director of the Agency for Healthcare Research and Quality, testified about patient safety.
She called medical errors “a national problem of epidemic proportions.” She went on to say that Congress and HHS need to make sure that health care professionals work in systems that are designed to prevent mistakes and catch problems before they cause harm.

These bills will do nothing to reach that goal.

The most far-reaching study of the extent and cost of medical errors in our hospitals was published in the Journal of the American Medical Association, the authors of the study analyzed 7.45 million records from 994 hospitals in 28 States, a sample representative of about 20 percent of U.S. hospitals.

They concluded that medical injuries in hospitals “pose a significant threat to patients and incur substantial costs to society” and “are a serious epidemic confronting our health care system.”

The study found that injuries in U.S. hospitals in 2000, just 1 year, led to approximately 32,600 deaths, at least 2.4 million hospital stays of patient hospitalization and additional costs of up to $9.3 billion. These injuries did not include adverse drug reactions or malfunctioning medical devices.

What do these bills do about these medical malpractices?

Instead, these bills place an arbitrary, one-size-fits-all cap on non-economic damages, forfeiting the right of a jury to decide the appropriate level of compensation for an injured person.

The answer to this problem is not to have Congress deciding what injured patients should receive. America has judges and juries who make those decisions. One hundred Senators do not have all the facts and should not place a blanket cap on all cases.

Proponents of this bill are saying it is a “new” medical malpractice proposal because a patient could receive up to $750,000 in pain and suffering as opposed to the $250,000 cap we considered in 2003.

However, the cap is still $250,000 for a doctor, a hospital or other provider. If a patient is injured at three hospitals or by three doctors, he or she could receive a total $750,000, but the cap is still $250,000 per provider.

Ten years ago, Donna Harnett arrived at a hospital in Chicago, IL, in labor with her first child. She waited nearly 5 hours before being admitted. Following an initial examination, her doctor decided that her labor was not progressing quickly enough and prescribed a drug to help induce more contractions.

Later, when Donna’s labor still was not progressing, her doctor broke her water and found that it was abnormal. Rather than consider a C-section, Donna’s doctor decided to continue administering the drug, in hopes that the labor would progress.

Six hours later, Donna still hadn’t delivered, but her son’s fetal monitoring system began alarming, indicating that the baby was in serious respiratory distress. The doctor finally decided that it was time to perform an emergency C-section, but it was another hour before Donna was taken into the operating room.

During that time, the doctor failed to administer oxygen or an IV to help the baby breathe. After Martin was born, he remained in the intensive care unit for 3 weeks. Examinations have since revealed that Martin has substantial brain damage and cerebral palsy—a direct result of the doctor’s failure to respond to indications of serious oxygen deprivation and deliver in a timely manner.

Donna’s doctor told her never to have more children because there was a serious problem with her DNA, which could result in similar mental and physical disabilities in any of her future children.

Donna has since given birth to three perfectly healthy sons. Donna sued the doctor responsible for Martin’s delivery and received a settlement. But this doctor is still licensed and practicing medicine in Illinois—despite several other cases that have been filed against him.

Donna is thankful that she has money from a malpractice settlement to help cover the costs associated with Martin’s care that are not covered by health insurance—such as the used, wheelchair-accessible van that she purchased for $30,000, and the $100,000 for renovating the new home she purchased to make it accessible for Martin.

If the law we are debating today had been in place when Donna filed her malpractice suit against the doctor who delivered Martin, she doubts that she would have been able to keep him out of an institution, because as someone who sustained permanent injuries as a newborn, Martin would not have been eligible for an economic damage award.

The problem with malpractice premiums is a cyclical insurance problem. We had a crisis during the 1970s and again in the 1980s. Dozens of States have passed tort reform. Yet we find ourselves facing the same problems. That is because we haven’t looked closely at insurance companies.

Property casualty insurers had a record year in 2006. The property casualty insurance industry made $43 billion in profit last year.

The difference between the cost of the policies offered to doctors and hospitals, and the payouts from lawsuits is enormous. Payouts have remained steady while premiums have skyrocketed. Wonder where that money is going?

Jeffry Immelt, the CEO of GE, made $19.23 million last year.

Martin Sullivan, CEO of American International Group, made $11 million.

Stephen Lilienthal, CEO of CNA Financial Corporation, made $3.2 million.

A. Derrill Crowe, CEO of ProAssurance, made $1.5 million.

This bill completely ignores the role of insurers in this problem.

Between 1993 and 2003, the annual premiums Americans paid for their health insurance increased by 79 percent and employer contributions to their employee insurance increased by 90 percent.

We need to be looking at the underlying reasons for rising health costs, and these bills do nothing to achieve that goal.

In fact, a new CBO report, published last Friday concluded that “the estimated effect of implementing a package of previously proposed tort limits is near zero.”

In other words, capping pain and suffering for patients will not bring down health insurance costs.

Proponents of limiting pain and suffering claim frivolous lawsuits are at the root of the problem, but these bills do nothing to cut down on the number of lawsuits. They only punish those who have legitimate cases.

The people whose cases make it to jury are those that have mounted many hurdles. Cases without merit are thrown out before they ever reach the jury. Why would we want to limit pain and suffering for those whose cases make it through the system?

Medical malpractice is a complicated and multifaceted problem that requires a variety of solutions.

First, we must improve patient safety.

Medicare is starting to embrace something called Pay for Performance that will go a long way toward improving quality.

The idea of Pay for Performance is to pay doctors based on whether they fulfill certain quality standards and use the best treatment methods, rather than simply reimbursing for all services performed.

Under a Medicare pilot program, doctors can qualify for bonuses if they provide services like vaccines and cancer screening, and eliminate unnecessary procedures.

Here is an example of how it can improve quality.

Hackensack University Medical Center in New Jersey signed up for the program. It agreed to report its performance on a variety of measures.

Right away, the hospitals noticed some problem areas. Under clinical guidelines, a patient who has had orthopedic surgery should be taken off IV antibiotics after 24 hours. Longer use of these drugs don’t prevent infection, they cost money, and they can lead to greater antibiotic resistance.

Hackensack hospital found that 25 percent of their surgery patients were being kept on IV antibiotics longer than 24 hours. Within one week of the launch of the Pay for Performance program, 94 percent of patients were taken off the drugs on time.

Second, we must improve oversight.

We have something called the National Practitioner Data Bank, which was set up to allow licensing boards and employers to check on doctors’ records before they are hired so problem doctors could not move from state to state.
This data bank is not working. According to the federal Department of Health and Human Services, nearly 54 percent of all hospitals have never reported a disciplinary action to the data bank.

Federal law requires that hospitals and medical boards be penalized if they don’t report to the data bank. But no fine or penalty has ever been levied.

Further, hospitals sometimes agree not to report doctors they are forcing from their staffs to smooth their departure. If the doctors’ names are removed from malpractice settlements to keep them out of the data bank.

The failings of the data bank create problems like the one faced by Gwyneth Vives. Three hours after giving birth to a healthy boy in 2001, Vives, a scientist at Los Alamos National Laboratory in New Mexico, suffered a complication and bled to death.

The OB/GYN who tended to Ms. Vives had a troubled history. She had previously been forced to leave a job at Duke University Medical Center in North Carolina when questions arose about her surgical skills and her complication rate.

According to the New Mexico Medical Board, she lied to get her New Mexico license, saying she had never lost hospital privileges.

After Ms. Vives died, the OB/GYN went to Michigan and got a license.

We must improve the national practices to fix this data bank to give doctors who are causing medical injuries cannot simply move to another State.

Contrary to popular belief about frivolous lawsuits, 95 percent of people who are injured by a doctor do not sue.

Studies have shown that the most significant reason people sue is because they feel their doctor or hospital did not acknowledge the problem, or apologize.

In other words, they are angry.

Based on this data, a program called ‘Sorry Works’ has been launched. Under the program, doctors and hospital staff conduct analyses after every patient injury, and if a medical error caused the problem, the doctors and hospital staff apologize, provide solutions to fix the problem, and offer up-front compensation to the patient, family, and their attorney.

This approach helps alleviate anger and actually reduces the chances of litigation and costly defense litigation bills. This program has worked successfully at hospitals such as the University of Michigan Hospital system, Stanford Medical Center, Children’s Hospitals and Clinics of Minnesota, and the VA Hospital in Lexington, Kentucky.

I am proud to say that Illinois is the first State to enact a Sorry Works pilot program statewide.

My colleague from Illinois, BARACK OBAMA, has introduced a bill in the U.S. Senate to facilitate federal funding for apology programs.

The insurance industry has a blanket exemption from Federal antitrust laws. Using their exemption, insurers can collude to set rates, resulting in higher premiums than true competition would achieve—and because of this exemption, enforcement officials cannot investigate any such collusion.

There was an article in the Washington Post last Friday about Hank Greenberg, the former chairman of one of the largest malpractice insurers in the country, American Continental Group.

Mr. Greenberg has been sued by New York Attorney General Eliot Spitzer for fraudulent transactions aimed at manipulating the insurer’s financial statements and deceiving regulators and investors.

If Congress is serious about controlling rising medical malpractice premiums, we must revoke this blanket exemption created in the McCarran-Ferguson act.

I am a cosponsor of a bill introduced by Senator LEAHY called the Medical Malpractice Insurance Antitrust Act. Our bill modifies the McCarran-Ferguson Act for the most pernicious anti-trust offenses: price fixing, bid rigging, and market allocation.

Who could object to a prohibition on insurance carriers’ fixing prices or dividing territories for anticompetitive purposes. After all, the rest of our Nation’s industries manage either to abide by these laws or pay the consequences.

We need to stop insurers from gouging doctors and hospitals and this bill is a step in the right direction.

LOCAL LAW ENFORCEMENT ENHANCEMENT ACT OF 2005

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. Each Congress, Senator KENNEDY and I introduce hate crimes legislation that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

Likewise, we have come to the floor to highlight a separate hate crime that has occurred in our country.

On March 7, 2006, in New York, NY, Victor Lopez and David Andrade were sentenced separately to 8 years in prison for their involvement in a series of beatings that targeted gay men. Lopez and Andrade would pick up gay men, then beat and rob them. According to police, these attacks were motivated by the victims’ sexual orientation.

I believe that the Government’s first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can be misconstrued. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

HONORING OUR ARMED FORCES STAFF SERGEANT JOSEPH E. PROCTOR

Mr. BAYH. Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave man from Indianapolis. Joseph E. Proctor, 38 years old, was killed on May 2 in a suicide bombing near his observation post in Iraq. Leaving his life and family behind him, Joseph risked everything to fight for the values Americans hold close to our hearts, in a land halfway around the world.

After September 11, many Americans, including Joseph, felt a deep calling to help their country in its time of need. In the wake of the events, despite his family’s concerns over his safety, Joseph signed up for the Indiana National Guard, where he had served 20 years ago as a young man.

After his Guard service in the mid-1980s, he went into the Army on active duty and served in Desert Storm. Joseph re-enlisted in the Guard in 2002, and began work as a refueler in Iraq. His brother Eddie told a local news outlet that Joseph had seen his military service as a way to help out fellow soldiers. He recalls Joseph’s selflessness, saying that one of the reasons Joseph went to Iraq was to give other soldiers a break to come home and see their families. At the time of his death, he was supposed to return home in just 2 weeks.

Joseph was killed while serving his country in Operation Iraqi Freedom. He was assigned to the 638th Aviation Support Battalion in Noblestville. This brave soldier leaves behind his wife, Billie, and three children, Andrae, Cassandra, 17, and Adam, 11 years old.

Today, I join Joseph’s family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make the world a safer place. It is his courage and strength of character that people will remember when they think of Joseph, a memory that will burn brightly during these continuing days of hurt and grief.

Joseph was known for his dedication to his family and his love of country. Today and always, Joseph will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Joseph’s sacrifice, I am reminded of President Lincoln’s remarks that he addressed the fallen soldiers in Gettysburg: “We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here.” This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Joseph’s actions will live on for a long time and long be remembered by all who read of these words.

It is my sad duty to enter the name of Joseph Proctor in the official record.
of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. When I think about this just cause in which we are engaged, and the unfortunate pain that comes with the loss of our heroes, I hope that families like Eric's can find comfort in the words of the prophet Isaiah who said, "He will swallow up death in victory; and the Lord God will wipe away tears from off all faces."

May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Joseph.

HONORING CORPORAL ERIC LUEKEN

Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young Marine from Southern Indiana. Eric Lueken, 23 years old, died on April 22 in combat operations in the Anbar province of Iraq. With his entire life before him, Eric risked everything to fight for the values Americans hold closest to their hearts, in a land halfway around the world.

A 2001 graduate of Northeast Dubois High School, Eric joined the Marine Corps in October 2003 to challenge himself and see the world. He previously served for 7 months before heading out to Iraq in March. He was a decorated war hero, who was awarded with a Purple Heart, two Combat Action Ribbons, a National Defense Service Medal, a Sea Service Deployment Ribbon, Iraq and Afghanistan Service Medals, the Global War on Terror Service Medal. A Marine who took his work seriously, Eric had planned to marry his girlfriend Ericka Merkel upon his return from Iraq. She told a local paper, "He always put other people before him." I stand here today to express my gratitude for Eric's sacrifice and that of his family and loved ones.

Eric was killed while serving his country on Iraqi Freedom. He was assigned to the 3rd Battalion, 3rd Marine Regiment, 3rd Marine Division, III Marine Expeditionary Force based at Kaneohe Bay, Hawaii. This brave young soldier leaves behind his parents Glenn "Jake" and Melinda Lueken, and his brother Brent.

Today, I join Eric's family and friends in mourning his death. While we struggle to bear our sorrow over this loss, we can also take pride in the example he set, bravely fighting to make our world a safer place. It is his courage and strength of character that people will remember when they think of Eric, a memory that will burn brightly during these continuing days of conflict and grief.

Eric was known for his dedication to his family and his love of country. Today and always, Eric will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

Today and always, Eric will be remembered by family members, friends and fellow Hoosiers as a true American hero and we honor the sacrifice he made while dutifully serving his country.

As I search for words to do justice in honoring Eric's sacrifice, I am reminded of President Lincoln's remarks as he addressed the families of the fallen soldiers in Gettysburg: "We cannot dedicate, we cannot consecrate, we cannot hallow this ground. The brave men, living and dead, who struggled here, have consecrated it, far above our poor power to add or detract. The world will little note nor long remember what we say here, but it can never forget what they did here." This statement is just as true today as it was nearly 150 years ago, as I am certain that the impact of Eric's actions will live on far longer than any record of these words.

It is my sad duty to enter the name of Eric Lueken in the official record of the U.S. Senate for his service to this country and for his profound commitment to freedom, democracy and peace. May God grant strength and peace to those who mourn, and may God be with all of you, as I know He is with Eric.

HONORING STAFF SERGEANT ERIC A. MCINTOSH

Mr. President, I rise today with a heavy heart and deep sense of gratitude to honor the life of a brave young man from Colorado. Eric McIntosh, 29 years old, was one of three Marines killed on April 2 during combat operations in the Anbar province of Iraq. With his entire life before him, Eric risked everything to fight for the values Americans hold closest to our hearts, in a land halfway around the world.

A former Roncalli High School student, Eric had been in the Marines for 10 years and was on his second tour in Iraq when he was killed. Although he graduated high school unsure of what he wanted to do with his life, he found purpose during his time as a Marine. After completing his second tour, he hoped to become a recruiter for the military. Despite having battled asthma as a child, Eric was an avid athlete and an enthusiastic surfer. His brother Richard, who served in the Army during the Gulf War, recalled his pride in Eric and Eric's passion for his job. "He loved the Marines. He loved his job," said Richard. "He was a way better soldier than I was." It is my sad duty to enter the name of Eric McIntosh in the official record.

Mr. Burns. Mr. President, I rise today to express my support for legislation introduced in the Senate which has a significant impact on more than 800 small businesses in Montana and thousands more around the country. S. 722 would reduce the tax burden on every barrel of beer, which currently stands at $18. Prior to 1991, this tax was only half of the cost today.

This tax was originally enacted as a means to pay for the U.S. Civil War. The lesson is that there is no such thing as a short-term tax. The tax on beer, which accounts for 44 percent of a bottle of beer and a whopping 80 percent cost of a six-pack, has been steadily increasing since 1991.

The taxation of beer falls unfairly on Montanans who can least afford to pay it. A report by Citizens for Tax Justice indicates that people whose family's income is in the top 20 percent pay five times less in excise beer tax than those whose family is in the bottom 20 percent.
The Tax Code was intended to raise revenue for the Federal Government. It should not be used to influence behavior or personal choice. This excessive tax on beer is not efficient at raising revenue, and the cost of each dollar imposed is much greater in terms of jobs lost and economic growth.

There are, of course, concerns about the social costs of alcohol consumption. I am very sensitive to those concerns and am encouraged by the reductions in drunk driving and alcohol abuse. But the fact is, this tax punishes all beer consumers instead of the minority who act dangerously. In any case, these problems must be addressed directly through specific legislation rather than indirectly through the Tax Code, which is already complicated enough.

Mr. President, because this tax has grown so much since 1991 and because it not only affects beer wholesalers and retailers, but hard-working Montanans who enjoy these products responsibly, I am pleased to cosponsor this legislation in the Senate.

PASSING THE MINIMUM WAGE

Mr. BIDEN. Mr. President, every day we see more evidence that this economy is not working for millions of Americans. One troubling trend is the growing divide between rich and poor. The widening gap in income inequality and the distribution of wealth in our country.

Over the past 24 years, the most fortunate Americans, in the top 1 percent, saw their incomes more than double from an average of $306,000 to over $700,000. During that same period, the incomes of average Americans grew just 15 percent.

But the poorest fifth of our citizens saw their already inadequate incomes grow just $600—over 24 years.

As a result, the top 1 percent of Americans now get over 12 percent of all the income, up over 50 percent 24 years ago. And the share of the average family actually dropped. The share going to the bottom fifth dropped even more.

We are moving apart, not coming together, as a nation. Last year, the Chair of the Federal Reserve called growing concentration of income in the hands of a tiny minority “a really serious problem.”

There are many things we need to do to get our economy working for working families. One place to start is at the bottom among those Americans who work at full-time jobs and remain below the poverty line. We should not permit that to happen. If we honor work and effort, we should not stand not for any American to work a full-time job and come home too poor to meet the basic needs.

The minimum wage has not increased since 1996—and all of that increase has been wiped out by the cost of living. The minimum wage today, at $5.15 an hour, is even worth less in today’s dollars than the $4.25 rate it replaced.

Today, the minimum wage is worth only a third of the average hourly wage of American workers, the lowest level in more than half a century. The bottom rung of the ladder of opportunity is broken. It is time to fix it.

That is why I am a cosponsor of S. 1062, which will raise the minimum wage in three stages, over the next 3 years, to $7.25 an hour.

That means a pay raise for over 7 million workers and lifting the floor under everybody’s wages.

It has been 10 years since we last raised the minimum wage. Over the past few years, we have passed tax cuts that last year alone gave over $100,000,000 to the wealthiest among us. The gap between rich and poor is now as big as it was during the Great Depression.

Raising the minimum wage is only the first step in restoring balance and fairness to our economy. But it is past time for us to take that step. We must not wait any longer.

BE KIND TO ANIMALS WEEK

Mr. ALLARD. Mr. President, I am pleased to announce that this week, May 7 to 13, is Be Kind to Animals Week designated by the American Humane Association as the 92nd Be Kind to Animals Week. The American Humane Association, which is headquartered in Englewood, CO, was founded in 1877 and is the oldest national organization dedicated to the mission of cruelty to animals, as well as to children. Through this work, American Humane has helped America shed light on the nature and origins of cruelty and through this mission, American Humane reminds us that the practice of kindness can both heal hurt and yield constructive reform.

When, in 1915, American Humane launched the Nation’s first national week for animals, its purpose was simple: “To draw the attention of the public to the importance of giving proper care and attention to animals.” This message resonated powerfully with Americans and quickly evolved into a national public education campaign with a broader mission: promoting the teaching of humane education in our schools; promoting the good works of animal shelters; and helping Americans understand the unique bond between humans and animals.

Be Kind to Animals Week is the oldest event of its kind. Each year it reminds us how animals enrich our lives through their companionship, friendship, and love. Over the last 91 years, a central theme of this annual event has been the importance of teaching the principles of kindness and compassion to children. Humane groups spend much of their time reacting to mistreatment of animals as it occurs. American Humane believes that, if we share our humane values with our children, these problems can be prevented and our society made safer and kinder.

American Humane’s Be Kind to Animals Week is as much a lifelong attitude as it is a weeklong event. It is about animal shelters, veterinarians, humane educators, animal control professionals, and the faith community promoting discussion and reflection about kindness to animals, to individuals, within families and perhaps most important, within communities. But Be Kind to Animals Week isn’t just about animals. It is also about children and those who care for and about them.

As a veterinarian, I have seen firsthand how important animals are to people. When a family adopts a pet, it becomes one of them. Usually, when people bring an animal to a veterinarian, it is because there is something wrong with the animal. It was always obvious to me the love that people had for their animals. The illness of a pet can cause great sorrow, but the healing of a pet brings great joy. Many studies have shown the increased happiness and healing powers of spending time with a pet.

During Be Kind to Animals Week, we should all keep in mind a simple but powerful message. The week should serve as a reminder that as humans, we need to be ever more compassionate about the animals in our world, whether they are companion pets, service animals such as seeing-eye dogs, zoo critters, livestock, or nature’s wildlife. It is a reminder that the bond between humans and animals is a vital one and is capable of bringing joy and healing to people of all ages. It is also a reminder to be more compassionate to our fellow man. We co-exist in this world—human to human and human to animal—and those bonds must be maintained, they must be kept strong.

ADDITIONAL STATEMENTS

HONORING SIGNATURE SCHOOL

Mr. BAYH. Mr. President, I rise today to pay tribute to Evanville’s Signature School, which was recently ranked by Newsweek Magazine as one of the top one hundred high schools in the Nation. This ranking is a remarkable honor to the school, and it demonstrates the hard work and dedication to educational excellence of the students and teachers at Signature.

I am honored to have the opportunity to commend the achievements of Signature’s students and the commitment of Signature’s families and teachers, which made this prestigious recognition possible. Now more than ever, education is the key to greater personal opportunity. Here in Washington, I have fought to ensure that education is available and accessible to all our Nation’s students. However, the real heroic work is done on the ground, in our schools. The Signature School is a perfect example of what can happen when a family adopts a personal goal of achieving academic excellence. Signature was the first charter school in Indiana, created to offer a
challenging curriculum and nurturing educational environment to its students. Signature was a half-day program offering accelerated courses for a decade, before the passage of Indiana’s charter school law, allowing Signature to become a full-day, independent charter school in 1992. Since then, Signature has been able to focus full-time on offering Evansville students the opportunity to compete at a national level. As Newsweek’s rankings demonstrate, the school has certainly succeeded in accomplishing this mission.

I wish to take a moment to pay special tribute to Signature’s teachers and principal, Vicki Schneider. With their focus on quality education and dedication to their students, every teacher and staff person at Signature has helped ensure that their graduates have the necessary tools to excel in today’s increasingly competitive world. This summer, as Signature’s graduates take the next step in their lives, they do so to assume the mantle of leadership for their generation. I look forward to following their future successes, and I hope they will remember their extraordinary education and someday return the favor and give back to the youth of our country so that they can enjoy similar opportunities.●

IN RECOGNITION OF DELTA TAU DELTA’S BETA PHI CHAPTER

• Mr. CARPER. Mr. President. I rise today to recognize the Beta Phi Chapter of Delta Tau Delta for their reinstatement to the Ohio State University’s fraternity system and for the chapter’s commitment to living lives of excellence that can serve as an example for us all.

Founded at Bethany College in 1858, Delta Tau Delta began as a response by the eight founding members to suspicion that the student Neotrophian Literary Society had been compromised and that the results of a student oratory contest had been manipulated. This injustice was not to be tolerated by the young founding members, as they were devoted to the ideal of truth in all matters. Their response was to found the fraternal society of Delta Tau Delta, which continues to thrive on college campuses across America.

This devotion to the truth is only one of the hallmarks of Delta Tau Delta. The ideals of courage, faith and power complete the quartet of founding principles. These guiding lights have illuminated the lives of many extraordinary young men who have undertaken the commitment that is required to become an active member of this outstanding organization.

Those men have gone on to serve in positions of trust and great responsibility to our country, but now in places like GM and General Mills, a Governor of New Mexico, as U.S. Representatives, and as U.S. Senators of South Dakota and Delaware.

The Beta Phi chapter at the Ohio State University was founded on November 19, 1894. More than 2,000 young men have forged their college memories there through their participation in this chapter. Located less than 200 yards from campus, the Delta Tau Delta house has served the past century as a testament to character, honesty, and integrity. The reinstatement of the Beta Phi chapter represents a return to those values.

These bonds of brotherhood do not dissolve as they continue through time because the brothers of Delta Tau Delta commit themselves to a cause that is larger than a single individual or graduating class.

With chapters on more than 200 college campuses across America and approximately 6,000 active members and more than 145,000 alumni, Delta Tau Delta has had an immeasurable impact on the communities in which its members—past and present—live and serve. Volume two of the Beta Phi chapter have lent their time and energy at every turn to mentor and tutor thousands of schoolchildren less fortunate than they.

The Delta Tau Delta experience also allows young men to gain experience that the average college student does not receive by providing members with opportunities for responsibility and leadership that are not easily found in the many traditional college settings. Whether mentoring school children or organizing a community blood drive, the men of Delta Tau Delta accept responsibility for more than themselves. They learn to give back to their communities and strive for excellence at every opportunity.

With this proud tradition in mind, the men of Delta Tau Delta’s Beta Phi chapter are to be commended and applauded for their reinstatement to the Ohio State University community and for this chapter’s return to the principles on which it was founded more than a century ago.●

IN RECOGNITION OF RETHA FISHER’S RETIREMENT

• Mr. CARPER. Mr. President. I rise today in recognition of Retha Fisher upon her retirement. Retha has served as Westminster Presbyterian Church’s director of social services for 29 years, and her leadership over that span of time has won her the respect and gratitude of our entire State. She has been, and remains, a trusted friend to many members of our congregation and of the community that we serve.

Retha was born in Fayetteville, NC, on April 18, 1936. She was the only child of Clara and Lester McLerin. Her early childhood ambition was to become a nurse, but she decided against it because she disliked the sight of blood.

After many years of piano and voice lessons, she began her college career in Washington, DC, at Howard University where she majored in music. She later decided to follow her childhood desire to help her fellow man and added her major to psychology and sociology with a minor in English. It was during this time that she decided the mission to become a social worker.

After graduation, while looking for employment, Retha applied to what was then known as the State Department of Welfare, Child Welfare Division in Dover. During the interview process, she was asked if she would like to take advantage of a stipend to attend graduate school. While living in Wilmington, she attended the University of Pennsylvania’s School of Social Work and was placed in a position in Dover. Her placement was with Child Welfare, which Retha discovered that working with children was her true calling. Twelve years later, Retha accepted a position with the Wilmington Housing Authority as their coordinator of social services.

Throughout these years helping others do their fine work, Retha maintained and nourished some other “loves of her life.” She met and married Arland Roland Fisher, whom everyone called Roland. Together they had one daughter, Whitney Gayle Fisher, who now practices personal injury and criminal law in Newark, NJ. After her daughter’s birth, Retha left her position to with the Wilmington Housing Authority to devote her time as a full-time wife and mother.

In 1977, though, Retha was asked by Westminster Presbyterian Church if she would be interested in interviewing for a job there. It was with this wonderful opportunity that Retha discovered her true calling. She became the church’s director of social services, and the people of Westminster and of Delaware have been truly blessed by this decision for almost three decades.

Retha’s service has extended far beyond the church walls and well into the community. In 1993, she founded the Food Bank of Delaware, a nonprofit agency that helps feed hungry people throughout our State. The Food Bank of Delaware is the only facility in Delaware with the equipment, warehouse, and staff to collect donations for all sectors of the food industry and to safely and efficiently redistribute it to those people who need it. Through 235 member agencies, the Food Bank of Delaware distributes over 10 million pounds of food annually.

In addition to the Food Bank of Delaware, Retha has also helped countless meet with representatives of the utility and the State of Delaware to bring financial support to those who cannot afford to pay their utility bills.
In 1989, Retha met with 10 West- 
mister couples to explore the possi-
abilty of how they might help homeless 
groups get off the street and into ade-
quately housing. To that end, Retha 
founded the Samaritans. From case 
management to furniture to mentor-
ing, the Samaritans stand ready to 
provide support for the year or so that 
a homeless family needs to become sta-
bilized.

At Christmastime, Retha embodies 
the true spirit of the holidays. Each 
year, Retha organizes and oversees 
Westminster’s yearly program to dis-
tribute Christmas food and gift baskets 
to nearly 200 clients of the social serv-
ices agencies of greater Wilmington.

Retha has not only brought financial 
assistance through her work in these 
various programs, but she has served as 
a spiritual leader as well. She has been 
an ear to the lonely and a person to 
pray with through the hard times. She 
gives all to a people who have come to her 
dignity and hope.

Through Retha’s tireless efforts, she has 
made a profound difference in the 
lives of thousands of Delawareans. 
Upon her retirement, she leaves behind 
a legacy of commitment to public serv-

cing for future generations to follow. I 
thank her for the friendship that many 
of us are privileged to share with Retha 
and for the inspiration that she pro-
vides through a lifetime of caring. On 
behalf of all Delawareans, I congratul-
ate her on a truly remarkable and dis-

tinguished career and extend to her my 
very best wishes for every success in the 
future. I wish her and her family 
only the very best in all that lies 
ahead.

MESSAGES FROM THE PRESIDENT

Messages from the President of the 
United States were communicated to 
the Senate by Ms. Evans, one of his 
secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding 
Officer laid before the Senate messages 
from the President of the United States 
supporting sundry nominations 
which were referred to the appropriate 
committees.

(The nominations received today are 
printed at the end of the Senate pro-
ceedings.)

REPORTS OF COMMITTEES

The following reports of committees 
were submitted:

By Mr. STEVENS, from the Committee on 
Commerce, Science, and Transportation, 
with an amendment in the nature of a sub-
stitute:

S. 2293. A bill to amend the Communica-
tions Act of 1934 to prohibit the unlawful 
acquisition and use of confidential customer 
proprietary network information, and for 
other purposes (Mr. No. 199-253).

By Mr. WARNER, from the Committee on 
Armed Services, without amendment:

S. 2766. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, for 
military construction, and for defense activi-
ties of the Department of Energy, to pre-
scribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes.

S. 2767. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, to 
prescribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes.

S. 2768. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, to 
prescribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes.

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S. 2769. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, to 
prescribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes.

INTRODUCTION OF BILLS AND 
J OINT RESOLUTIONS

The following bills and joint resolu-
tions were introduced, read the first 
and second times by unanimous con-
sent, and referred as indicated:

By Mr. DODD (for himself and Mr. 
SMITH):

S. 2766. A bill to provide assistance to 
improve the health of newborns, children, 
and mothers in developing countries, and for 
other purposes; to the Committee on Foreign 
Relations.

By Mr. WARNER:

S. 2766. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, to 
prescribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes; from the Committee on Armed 
Services; placed on the calendar.

By Mr. WARNER:

S. 2767. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, to 
prescribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes; from the Committee on Armed 
Services; placed on the calendar.

By Mr. WARNER:

S. 2768. An original bill to authorize appro-
priations for fiscal year 2007 for military ac-
tivities of the Department of Defense, to 
prescribe personnel strengths for such fiscal 
year for the Armed Forces, and for other 
purposes; from the Committee on Armed 
Services; placed on the calendar.

By Mr. WARNER:

S. 2769. An original bill to authorize appro-
priations for fiscal year 2007 for defense ac-
tivities of the Department of Energy, and for 
other purposes; from the Committee on Armed 
Services; placed on the calendar.

By Mr. MCCAIN (for himself, Mr. 
BIDEN, Mr. LIEBERMAN, and Mr. 
LEAHY):

S. 2770. A bill to impose sanctions on cer-
tain official of Uzbekistan responsible for 
the Andijan massacre; to the Committee on 
Foreign Relations.

By Mr. VITTER:

S. 2771. A bill to increase the types of Fed- 
eral housing assistance available to indivi-
duals and households in response to a major 
disaster, and for other purposes; to the 
Committee on Homeland Security and Govern-
mental Affairs.

By Mr. VOINOVICH (for himself, Mr. 
BINGAMAN, Mr. DEWINE, and Mr. 
AKAKA):

S. 2772. A bill to provide for innovation in 
health care through State initiatives that 
expand coverage and access and improve 
quality and efficiency in the health care sys-
tem; to the Committee on Health, Edu-
cation, Labor, and Pensions.

By Mrs. BOXER:

S. 2773. A bill to require the Federal Gov-
ernment to purchase fuel efficient auto-
mobiles, and for other purposes; to the Com-
mittee on Homeland Security and Govern-
mental Affairs.

SUBMISSION OF CONCURRENT AND 
SENATE RESOLUTIONS

The following concurrent resolutions 
and Senate resolutions were read, and 
referred (or acted upon), as indicated:

By Mr. COLEMAN (for himself, Ms. 
LANDRIEU, and Mr. CRAIG):

S. Res. 471. A resolution recognizing that, 
during National Foster Care Month, the 
leaders of the Federal, State, and local gov-
ernments should provide leadership to im-
prove the care given to children in foster 
care programs; considered and agreed to.

ADDITIONAL COSPONSORS

S. 185

At the request of Mr. NELSON of Flori-
da, the name of the Senator from Ohio 
(Mr. DEWINE) was added as a cosponsor of 
S. 185, a bill to amend title 10, United States 
Code, to repeal the requirement for the 
appropriation of certain Survivor Benefit 
Plan annuities by the amount of dependency 
and indemnity compensation and to modify 
the effective date for paid-up coverage under 
the Survivor Benefit Plan.

S. 401

At the request of Mr. HARKIN, the names 
of the Senator from Hawaii (Mr. 
INOUYE) and the Senator from South 
Dakota (Mr. JOHNSON) were added as 
cosponsors of S. 401, a bill to amend 
title XIX of the Social Security Act to 
provide individuals with disabilities and 
older Americans with equal access to 
community-based attendant services and 
supports, and for other purposes.

S. 733

At the request of Mr. ROBERTS, the name 
of the Senator from Idaho (Mr. 
CRAY) was added as a cosponsor of S. 
733, a bill to amend title XI of the Internal 
Revenue Code of 1986 to provide for col-
legeate housing and infrastructure 
grants.

S. 722

At the request of Mr. SANTORUM, the 
name of the Senator from Montana (Mr. 
BURNS) was added as a cosponsor of S. 
722, a bill to amend the Internal Revenue 
Code of 1986 to reduce the tax 
on beer to its pre-1991 level.

S. 1278

At the request of Mr. LEAHY, the 
name of the Senator from Hawaii (Mr. 
AKAKA) was added as a cosponsor of S. 
1278, a bill to amend the Immigration 
and Nationality Act to provide a mech-
anism for United States citizens and 
lawful permanent residents to sponsor 
their permanent partners for residence in 
the United States, and for other pur-
pouses.

S. 1377

At the request of Mr. AKAKA, the 
name of the Senator from Illinois (Mr.
OBAMA) and the Senator from Washington (Mrs. MURRAY) were added as cosponsors of S. 1537, a bill to amend title 38, United States Code, to provide for the establishment of Parkinson's Disease Research Education and Clinical Centers in the Veterans Health Administration of the Department of Veterans Affairs and Multiple Sclerosis Centers of Excellence.

At the request of the Senator from Washington (Mrs. MURRAY) was added as a cosponsor of S. 1698, a bill to accelerate efforts to develop vaccines for diseases primarily affecting developing countries and for other purposes.

At the request of Mr. CORNYN, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 1774, a bill to amend the Public Health Service Act to provide for the expansion, intensification, and coordination of the activities of the National Heart, Lung, and Blood Institute with respect to research on pulmonary hypertension.

At the request of Mr. SPECTER, the name of the Senator from Maryland (Ms. MIKULSKI) was added as a cosponsor of S. 1934, a bill to reauthorize the grant program of the Department of Justice for reentry of offenders into the community, to establish a task force on Federal programs and activities relating to the reentry of offenders into the community, and for other purposes.

At the request of the Senator from North Dakota (Mr. DORGAN), the bill to amend the Native American Languages Act to provide for the support of Native American language survival schools, and for other purposes.

At the request of Mr. LEVIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2039, a bill to provide for loan repayment for prosecutors and public defenders.

At the request of Mr. CRAIG, the name of the Senator from Idaho (Mr. CINDRICK) was added as a cosponsor of S. 2491, a bill to prohibit picketing at the funerals of members and former members of the armed forces.

At the request of Mr. CORNYN, the name of the Senator from North Dakota (Mr. DORGAN) was added as a cosponsor of S. 2491, a bill to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator.

At the request of Mr. DURBIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2510, a bill to establish a national health program administered by the Office of Personnel Management to offer health benefits plans to individuals who are not Federal employees, and for other purposes.

At the request of Mr. ENSIGN, the name of the Senator from South Carolina (Mr. GRAHAM) was added as a cosponsor of S. 2554, a bill to amend the Internal Revenue Code of 1986 to expand the permissible use of health savings accounts to include premiums for non-group high deductible health plan coverage.

At the request of Mr. CRAIG, the name of the Senator from Maine (Ms. SNOWE) was added as a cosponsor of S. 2562, a bill to increase, effective as of December 1, 2006, the rates of compensation for veterans with service-connected disabilities and the rates of dependency and indemnity compensation for the survivors of certain disabled veterans.

At the request of Mrs. FEINSTEIN, the name of the Senator from Delaware (Mr. BIDEN) was added as a cosponsor of S. 2644, a bill to harmonize rate setting standards for copyright licenses under sections 112 and 114 of title 17, United States Code, and for other purposes.

At the request of Mrs. FEINSTEIN, the name of the Senator from Colorado (Mr. ALLARD) was added as a cosponsor of S. 2652, a bill to amend chapter 27 of title 18, United States Code, to prohibit the unauthorized construction, financing, or, with reckless disregard, permitting the construction or use on one's land, of a tunnel or subterranean passageway between the United States and another country.

At the request of Mr. BOND, the name of the Senator from Ohio (Mr. DeWINE) was added as a cosponsor of S. 2658, a bill to amend title 10, United States Code, to enhance the national defense through empowerment of the Chief of the National Guard Bureau and the enhancement of the functions of the National Guard Bureau, and for other purposes.

At the request of Mr. LEAHY, the names of the Senator from Nevada (Mr. REID) and the Senator from Louisiana (Ms. LANDRIEU) were added as cosponsors of S. 2658, supra.

At the request of Mr. AKAKA, the name of the Senator from North Dakota (Mr. DORBAN) was added as a cosponsor of S. 2674, a bill to amend the Native American Languages Act to provide for the support of Native American language survival schools, and for other purposes.

At the request of Mr. LEVIN, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 2692, a bill to suspend temporarily the duty on certain microphones used in automotive interiors.

At the request of Mr. CINDRICK, the name of the Senator from Texas (Mrs. HUTCHISON) was added as a cosponsor of S. 2694, a bill to amend title 38, United States Code, to remove certain limitations on attorney representation of claimants for veterans benefits in administrative proceedings before the Department of Veterans Affairs, and for other purposes.

At the request of Mr. LUGAR, the name of the Senator from Missouri (Mr. BOND) was added as a cosponsor of S. 2697, a bill to establish the position of the United States Ambassador for ASEAN.

At the request of Mr. LEAHY, the name of the Senator from Wisconsin (Mr. FEINGOLD), the Senator from Indiana (Mr. BAYH) and the Senator from Connecticut (Mr. LIEBERMAN) were added as cosponsors of S. 2703, a bill to amend the Voting Rights Act of 1965.

At the request of Mr. DeWINE, the name of the Senator from New York (Mrs. CLINTON) was added as a cosponsor of S. 2704, a bill to revise and extend the National Police Athletic League Youth Enrichment Act of 2000.

At the request of Mr. LAUTENBERG, the name of the Senator from Colorado (Mr. SALAZAR) was added as a cosponsor of S. 2723, a bill to amend title XVIII of the Social Security Act to require the sponsor of a prescription drug plan or an organization offering an MA-PD plan to promptly pay claims submitted under part D, and for other purposes.

At the request of Mrs. CLINTON, the names of the Senator from Indiana (Mr. BAYH) and the Senator from Massachusetts (Mr. KERRY) were added as cosponsors of S. 2725, a bill to amend the Fair Labor Standards Act of 1938 to provide for an increase in the Federal Minimum wage and to ensure that increases in the Federal minimum wage keep pace with any pay adjustments for Members of Congress.

At the request of Mr. SANTORUM, the name of the Senator from Oklahoma (Mr. BROWN) was added as a cosponsor of S. 2754, a bill to direct human pluripotent stem cell lines using techniques that do not knowingly harm embryos.
At the request of Mr. SMITH, the name of the Senator from Ohio (Mr. DEWINE) was added as a cosponsor of S. 2759, a bill to provide for additional outreach and education related to the Medicare program and to amend title XVIII of the Social Security Act to provide a special enrollment period for individuals who qualify for an income-related subsidy under the Medicare prescription drug program.

S. RES. 320
At the request of Mr. Ensign, the name of the Senator from New York (Mrs. CLINTON) and the Senator from New York (Mr. SCHUMER) were added as cosponsors of S. Res. 320, a resolution calling the President to ensure that cosponsors of S. Res. 320, a resolution urging the President to ensure that the United States reflects appropriate understanding and sensitivity concerning issues related to genocide documented in the United States record relating to the Armenian Genocide.

S. RES. 436
At the request of Mr. McCaIN, the name of the Senator from Oregon (Mr. SMITH) was added as a cosponsor of S. Res. 436, a resolution urging the Federation Internationale de Football Association to prevent persons or groups representing the Islamic Republic of Iran from participating in sanctioned soccer matches.

S. RES. 469
At the request of Mr. Lieberman, the name of the Senator from Connecticut (Mr. Dodd) was added as a cosponsor of S. Res. 469, a resolution condemning the April 25, 2006, beating and intimidation of Cuban dissident Martha Beatriz Roque.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

Mr. DODD (for himself and Mr. Smith): S. 2765. A bill to provide assistance to improve the health of newborns, children, and mothers in developing countries, and for other purposes; to the Committee on Foreign Relations.

Mr. President, I rise today to introduce, on behalf of myself and my friend, Senator GORDON SMITH of Oregon, the Child Health Investment for Long-term Development (CHILD and Newborn) Act of 2006. This legislation would perform four simple, yet critically important functions. First, it would require the Administration to develop and implement a strategy to improve the health of, and reduce mortality rates among, newborns, children, and mothers in developing countries.

Second, it would mandate the establishment of a U.S. Government task force to assess, monitor, and evaluate the progress of U.S. efforts to meet the United Nations Millennium Development Goals by 2015—specifically as those goals relate to reducing mortality rates for mothers and for children less than 5 years of age in developing countries.

Third, it would authorize the President to furnish assistance for programs whose goal is to improve the health of newborns, children, and mothers in developing countries.

And fourth, this legislation would authorize appropriations to carry out its provisions—$600 million for fiscal year 2007, and $1.2 billion for each of fiscal years 2008-2011.

I know that some of my colleagues will look at this bill and ask why the U.S. should devote such large amounts of resources to combating child and maternal mortality in the developing world. Certainly, nobody would deny that it’s an important cause, but should it really be this much of a priority?

I would argue that the answer to this is yes. Why? Because with U.S. leadership, the current reality for mothers and their young children in the developing world can be changed dramatically.

What is that reality?
 Almost 11 million children under the age of 5 die every year in the developing world, that’s approximately 30,000 each day. About four million of those children die in their first four weeks of life. In many cases, they aren’t even provided with a fighting chance. Indeed, for children under the age of five in the developing world, preventable or treatable diseases such as measles, tetanus, diarrhea, pneumonia, and malaria are the most common causes of death.

Each year, more than 525,000 women die from causes related to pregnancy and childbirth—more than 1,400 each day. Ninety-nine percent of these deaths occur in the developing world. And the lifetime risk of an African woman dying from a pregnancy or childbirth-related complication is 1 in 16, a high level of risk that is all the more striking when compared to the same risk for women in more developed regions—one in 2,300. Some of the most common risk factors for maternal death in developing countries include early pregnancy and childbirth, closely spaced births, infectious diseases, malnutrition, and complications during childbirth.

Mr. President, the deaths of these nearly 12 million mothers and children are largely preventable causes. This is a tragic situation, and it shouldn’t be the case.

Luckily, we can combat these high levels of mortality—and it won’t require a lot of sophisticated technology. Instead, it will require simple measures that are within its grasp and are desperately needed.

For instance, it is estimated that two-thirds of deaths among children under 5 years of age—that’s 7.1 million children, including one million newborns—could be prevented by low-cost, low-tech health and nutritional interventions. These interventions include encouraging breastfeeding; providing vitamin supplements, immunizations, and antibiotics; offering oral rehydration therapy with clean water; and expansion of basic clinical care.

For expecting mothers, simple steps such as birth spacing, access to preventive care, skilled birth attendants, and emergency obstetric care can help reduce maternal mortality rates. And keeping mothers healthy is critical because the welfare of newborns and infants is inextricably tied to the health of the mother.

Mr. President, the U.S. isn’t new at this battle. Over the past 30 years, our work in promoting child survival and maternal health globally has resulted in millions of lives being saved.

And in 2000, the U.S. joined 188 other countries in supporting eight Millennium Development Goals laid out by the United Nations. Two of these goals are related to child and maternal health—one calls for a reduction by two-thirds in the mortality rate of children under 5, and the other calls for a reduction in maternal deaths by three-quarters. Both of these goals are targeted to be met by 2015.

But with current structures and current funding levels, the world is unlikely to meet these laudable goals. Certainly, the U.S. can’t meet these global needs alone. Addressing this critical issue can’t be a unilateral effort—countries around the world must also do their part and come forward with much-needed funding.

But passing the CHILD and Newborn Act of 2006 would send a strong message to the international community that this is a priority issue, and it would encourage them to step up to the plate. Millions of lives could be saved in the process.

On September 14, 2005, President Bush stated that the U.S. is “committed to the Millennium Development Goals.” I commend the President for his words. But now, it is time for Congress to stand up and make sure that the U.S. fulfills this commitment to protect millions of innocent women and their children around the globe. I urge my colleagues to support this bill.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

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

SECTION 1. SHORT TITLE. This Act may be cited as the “Child Health Investment for Long-term Development (CHILD and Newborn) Act of 2006.”

SEC. 2. FINDINGS AND PURPOSES.

(a) FINDINGS.—Congress finds the following:

(1) Around the world, approximately 10.8 million children under the age of five die each year, more than 30,000 per day, almost all in the developing world.

(2) Each year in the developing world, four million newborns die in their first four weeks of life.
Over the past three decades has resulted in promoting child survival and maternal health care, skilled birth attendants, and emergencies during childbirth.

Tuberculosis, and (D) child spacing.

(6) Activities to expand access to safe water and sanitation.

(7) Activities to expand the use of and technical support for appropriate technology to reduce acute respiratory infection from firewood smoke inhalation.

(5) HIV/AIDS.—The term ‘HIV/AIDS’ has the meaning given in the term section 104B(c)(2) of this Act.

SEC. 4. DEVELOPMENT OF STRATEGY TO IMPROVE THE HEALTH OF NEWBORNS, CHILDREN, AND MOTHERS IN DEVELOPING COUNTRIES.

(a) DEVELOPMENT OF STRATEGY.—The President shall develop a comprehensive strategy to improve the health of newborns, children, and mothers, including reducing child and maternal mortality, in developing countries.

(b) ANNUAL REPORT.—Not later than January 31 of each year, the President shall transmit to Congress a report on the implementation of this section for the prior fiscal year.

(c) DEFINITIONS.—In this section:

(1) AIDS.—The term ‘AIDS’ has the meaning given in the term section 104B(g)(1) of this Act.

(2) BIRTH SPACING.—Birth spacing, access to preventive care, skilled birth attendants, and emergency obstetric care can help reduce maternal mortality.

(3) Contraception.—The role of the United States in promoting child survival and maternal health over the past three decades has resulted in millions of lives being saved around the world.
(b) COMPONENTS.—The strategy developed pursuant to subsection (a) shall include the following:

(1) Programmatic areas and interventions providing maximum health benefits to populations at risk as well as maximum reductions in mortality, including—

(A) costs and benefits of programs and interventions;

(B) investments needed in identified programs and interventions to achieve the greatest results.

(2) An identification of countries with priority needs for the five-year period beginning on the date of the enactment of this Act based on—

(A) the neonatal mortality rate; (B) the mortality rate of children under the age of five; (C) the maternal mortality rate; (D) the percentage of women and children with limited or no access to basic health care; and

(E) additional criteria for evaluation such as—

(i) the percentage of one-year old children who are fully immunized;

(ii) the percentage of children under the age of five who sleep under insecticide-treated bed nets;

(iii) the percentage of children under the age of five who receive oral-rehydration therapy and continued feeding;

(iv) the percentage of children under the age of five who are covered by vitamin A supplementation;

(v) the percentage of children under the age of five with diarrhea who are receiving oral rehydration therapy and continued feeding;

(vi) the percentage of children under the age of five with pneumonia who are receiving appropriate care;

(vii) the percentage of the population with access to improved sanitation facilities;

(viii) the percentage of the population with access to safe drinking water;

(ix) the percentage of children under the age of five who are underweight for their age;

(x) the percentage of births attended by skilled health care personnel;

(xi) the percentage of women with access to emergency obstetric care;

(xii) the potential for implementing newborn, immunization, and maternal health interventions at scale; and

(xiii) the demonstrated commitment of countries to newborn, child, and maternal health.

(3) A description of how United States assistance complements and leverages efforts by other donors, as well as builds capacity and self-sufficiency among recipient countries.

(4) An expansion of the Child Survival and Health Activities Program of the United States Agency for International Development to provide additional support programs and interventions determined to be efficacious and cost-effective in improving health and reducing mortality.

(5) Enhanced coordination among relevant departments and agencies of the Government of the United States engaged in activities to improve the health of newborns, children, and mothers in developing countries.

(c) REPORT.—Not later than 180 days after the date of enactment of this Act, the President shall transmit to Congress a report that contains the strategy described in this section.

SEC. 5. INTERAGENCY TASK FORCE ON CHILD SURVIVAL AND MATERNAL HEALTH IN DEVELOPING COUNTRIES.

(a) ESTABLISHMENT.—There is established a task force to be known as the Interagency Task Force on Child Survival and Maternal Health in Developing Countries (in this section referred to as the ‘‘Task Force’’).

(b) DUTIES.—

(1) IN GENERAL.—The Task Force shall assess, monitor, and evaluate the progress and contributions of relevant departments and agencies of the Government of the United States in achieving the Millennium Development Goals.

(2) DETERMINATION.—The Task Force shall determine the mortality of children under the age of five by two-thirds and reducing maternal mortality by three-quarters in developing countries, including by—

(A) identifying and evaluating programs and interventions that directly or indirectly contribute to the reduction of child and maternal mortality; (B) assessing effectiveness of programs, interventions, and strategies toward achieving the maximum reduction of child and maternal mortalities; (C) assessing the level of coordination among relevant departments and agencies of the Government of the United States, the international community, international organizations, faith-based organizations, academic institutions, and the private sector; (D) assessing the contributions made by United States efforts toward achieving the Millennium Development Goals; (E) identifying and evaluating efforts of other national, local, and international efforts toward achieving the Millennium Development Goals; and

(f) preparing the annual report required by subsection (f).

(2) CONSULTATION.—To the maximum extent practicable, the Task Force shall consult with individuals with expertise in the matters to be considered by the Task Force who are not officers or employees of the Government of the United States, the international community, international organizations, faith-based organizations, academic institutions, and the private sector.

(3) MEMBERSHIP.—

(A) NUMBER AND APPOINTMENT.—The Task Force shall be composed of the following members:

(i) The Administrator of the United States Agency for International Development.

(ii) The Assistant Secretary of State for Population, Refugees and Migration.


(iv) The Director of the Office of Global Health Affairs of the Department of Health and Human Services.

(v) The Under Secretary for Food, Nutrition and Consumer Services of the Department of Agriculture.

(vi) The Chief Executive Officer of the Millennium Challenge Corporation.

(vii) The Director of the Peace Corps.

(viii) Other officials of relevant departments and agencies of the Federal Government who shall be appointed by the President.

(2) CHAIRPERSON.—The Administrator of the United States Agency for International Development shall serve as chairperson of the Task Force.

(D) MEETINGS.—The Task Force shall meet on a regular basis, not less often than quarterly, on a schedule to be agreed upon by the members of the Task Force, and starting not later than 90 days after the date of the enactment of this Act.

(e) DEFINITION.—In this subsection, the term ‘‘Millennium Development Goals’’ means the development objectives described in the United Nations Millennium Declaration, as contained in United Nations General Assembly Resolution 55/2 (September 2000).

(f) REPORT.—Not later than 120 days after the date of the enactment of this Act, and not later than April 1, 2007, and $1,200,000,000 for each of the fiscal years 2008 through 2011.

(b) AVAILABILITY OF FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) are authorized to remain available until expended.

By Mr. VOINOVICH (for himself, Mr. BINGAMAN, Mr. DEWINE, and Mr. AKAKA):

S. 2772. A bill to provide for innovation in health care through State initiatives that expand coverage and access and improve quality and efficiency in the health care system; to the Committee on Health, Education, Labor, and Pensions.

Mr. VOINOVICH. Mr. President, I rise to speak about a bill my colleague Senator BINGAMAN and I introduced today, the Health Care Partnership Act. For too many years, I have listened to my colleagues on both sides of the aisle talk about the rising cost of health care and the growing number of uninsured Americans. Yet, we have not been able to make much progress here at the Federal level to find a meaningful solution for the dilemma this Nation is facing regarding access to quality, affordable health care. Next to the economy, it is the greatest domestic challenge facing our Nation. In fact, the rising cost of health care is a major part of what is hurting our competitiveness in the global marketplace.

While surveys have indicated that health insurance premiums have stabilized—a 9.2 percent increase in 2006 and 2005 and compared with a 12.3 percent in 2004; 14.7 percent in 2003; and 15.2 percent in 2002—health insurance costs continue to be a significant factor impacting American competitiveness. In addition, the share of costs that individuals have paid for employer sponsored insurance has risen roughly 2 percent each year, from 31.4 percent of health care costs in 2001 to 38.4 percent this year.

In fact, spending on health care in the United States reached $1.9 trillion in 2004—almost 16.5 percent of our GDP—the largest share ever.

Yet, despite all the increases in health care spending some 46 million Americans—15 percent of the population—had no health insurance at some point last year. This number has increased steadily. In 2000, that number was 39.8 million. In 2002 it was 43.6 million.
allow states the freedom to explore with health care reform options. This bill would support state-based efforts to reduce the uninsured and the cost of health care, improve quality, improve access to care, and expand information technology.

I have been in this situation before. As Governor of Ohio, I had to work creatively to expand coverage and deal with increasing health care costs for a growing number of uninsured Ohioans. I am hopeful that we will be able to make some progress toward reducing the number of uninsured Ohioans during my time as the head of the state by negotiating with the state unions to move to managed care; by controlling Medicaid costs to the point where from 1995 to 1998, due to good stewardship and management, Ohio ended up under-spending on Medicaid without harming families; and implementing the S-CHIP program to provide coverage for uninsured children.

Like we did in Ohio, a number of states are already actively pursuing efforts to reduce the number of their residents who lack adequate health care coverage. The Health Care Partnership Act will build on what states like the one I just referenced and others are doing, while providing a mechanism to analyze results and make recommendations for future action at the Federal level.

Under the Health Partnership Act, Congress would authorize grants to individual states, groups of states, and Indian tribes and local governments to carry out any of a broad range of strategies to improve our Nation’s health care delivery. The bill creates a mechanism for states to apply for grants to a bipartisan “State Health Innovation Commission” housed at the Department of Health and Human Services (HHS). After reviewing the state proposals, the Commission would submit to Congress, a list of recommended state applications. The Commission would also recommend the amount of Federal grant money each state should receive to carry out the actions described in their plan.

Most importantly, at the end of the five-year period, the Commission would be required to report to Congress whether the states are meeting the goals of the Act. The Commission would then recommend future action Congress should take concerning overall reform, including whether or not to extend the state program.

I believe it is important that we pass this legislation to provide a platform from which we can have a thoughtful conversation about health care reform here in Washington. Since I have been in the Senate, Congress has made some progress toward improving health care, most notably for our 43 million seniors who now have access to affordable prescription medication through the Medicare Part D Act. We have also increased funding for community health centers and safety net hospitals that provide health care for the uninsured and under insured; increased the use of technology in our health care delivery system; and improved the safety of medical care by passing a medical errors reporting bill.

Yet, these incremental steps are not enough, and we have been at this for too long here in Washington without comprehensive, meaningful results. I ask for my colleagues’ support for this bipartisan bill that I hope will move us closer toward a solution to the uninsured.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2772

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

SECTION 1. SHORT TITLE.

This Act may be cited as the “Health Partnership Act.”

SEC. 2. STATE HEALTH REFORM PROJECTS.

(a) PURPOSE; ESTABLISHMENT OF STATE HEALTH CARE EXPANSION AND IMPROVEMENT PROGRAM.—(1) PURPOSES OF THE PROGRAMS APPROVED UNDER THIS SECTION.—In general, the purposes under this section shall include, but not be limited to—

(1) achieving the goals of increased health coverage and access; and

(2) ensuring that patients receive high-quality, appropriate health care;

(3) improving the efficiency of health care spending; and

(4) testing alternative reforms, such as building on the public or private health systems, or creating new systems, to achieve the objectives of this Act.

(b) APPLICATIONS FOR STATES, LOCAL GOVERNMENTS, AND TRIBES.—

(1) ENTITIES THAT MAY APPLY.—(A) IN GENERAL.—A State, in consultation with local governments, Indian tribes, and Indian organizations involved in the provision of health care, may apply for a State health care expansion and improvement program for the entire State (or for regions of the State) under paragraph (2).

(B) REGIONAL GROUPS.—A regional entity consisting of more than one State may apply for a multi State health care expansion and improvement program for the entire region involved under paragraph (2).

(c) DESCRIPTION OF ACTIVITY.—

(1) IN GENERAL.—Subject to such additional guidelines as the Secretary may prescribe, a unit of local government, Indian tribe, or Indian health organization may submit an application under this section, whether or not the State submits such an application, if such unit of local government can demonstrate unique demographic needs or a significant population of the State that would benefit from a substate program under this subsection.

(d) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;

(2) PURPOSES.—Subject to such additional guidelines as the Secretary may prescribe, a unit of local government, Indian tribe, or Indian health organization may submit an application under this section, whether or not the State submits such an application, if such unit of local government can demonstrate unique demographic needs or a significant population of the State that would benefit from a substate program under this subsection.

(e) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;

(f) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;

(g) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;

(h) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;

(i) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;

(j) STATE HEALTH INNOVATION COMMISSION.—

(1) IN GENERAL.—Within 90 days after the date of enactment of this Act, the Secretary shall establish a State Health Innovation Commission that shall—

(A) be comprised of—

(i) the Secretary; and

(ii) four State governors to be appointed by the Minority Leaders of the State Legislatures on a bipartisan basis;
differing State requirements under the programs.

(2) PERIOD OF APPOINTMENT; REPRESENTATION REQUIREMENTS; VACANCIES.—Members shall be appointed for a term of 5 years. In appointing such members under paragraph (1)(A), the designated appointing individuals shall ensure the representation of urban and rural areas and an appropriate geographic distribution of such members. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner as the original appointment.

(3) CHAIRPERSON, MEETINGS.—

(A) CHAIRPERSON.—The Commission shall select a Chairperson from among its members.

(B) QUORUM.—A majority of the members of the Commission shall constitute a quorum, but a lesser number of members may hold hearings.

(C) MEETINGS.—Not later than 30 days after the date on which all members of the Commission have been appointed, the Commission shall hold its first meeting. The Commission shall meet at the call of the Chairperson.

(4) POWERS OF THE COMMISSION.—

(A) NEGOTIATIONS WITH STATES.—The Commission may conduct detailed discussions and negotiations with States submitting application for participation, or selected individually or in groups, to facilitate a final set of applications under this section, either individually or in groups, to facilitate a final set of applications under this section, either individually or in groups, to facilitate a final set of applications under this section, either individually or in groups, to facilitate a final set of applications under this section.

(B) HEARINGS.—The Commission may hold such hearings, sit and act at such times and places, take such testimony, and receive such evidence as the Commission considers advisable to carry out the purposes of this subchapter.

(C) MEETINGS.—In addition to other meetings the Commission may hold, the Commission shall hold an annual meeting with the participating States under this section for the purpose of having States report progress toward the purposes in subsection (a)(1) and for an exchange of information.

(D) INFORMATION.—The Commission may secure directly from any Federal department or agency such information as the Commission considers necessary to carry out the provisions of this subchapter. Upon the written request of the Chairperson of the Commission, the head of such department or agency shall furnish such information to the Commission if the head of the department or agency involved determines it appropriate.

(E) POSTAL SERVICES.—The Commission may use the postal facilities of the United States in the same manner and under the same conditions as other departments and agencies of the Federal Government.

(5)ellaneous Matters.

(A) COMPENSATION.—Each member of the Commission who is not an officer or employee of the Federal Government or of a State or local government shall be compensated at a rate equal to the daily equivalent of the annual rate of basic pay prescribed for level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day (including travel time) during which such member is engaged in the performance of the duties of the Commission. All members of the Commission who are officers or employees of the United States shall serve without compensation in addition to that received for their services as officers or employees of the United States.

(B) TRAVEL EXPENSES.—The members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, while proceeding for official business of the Commission, while acting as officers or employees of the United States agencies under subchapter I of chapter 57 of title 5, United States Code, while away from their homes or regular places of business in the performance of services for the Commission.

(C) STAFF.—The Chairperson of the Commission shall select a staff of 5. The Chairperson, with the approval of the Secretary, shall appoint and terminate members of the staff of the Commission.

(D) REQUIREMENTS FOR PROGRAMS.—

(A) IN GENERAL.—Not later than 90 days after the date on which the Secretary has approved the plan of a State, the Secretary shall submit to the Congress a list of the State plan that will ensure the financial solvency of the State health plan program; and

(B) USE OF FEDERAL FUNDS.—The Secretary shall ensure that the State plan will ensure the financial solvency of the State health plan program;

(C) SUBMISSION.—Not later than 90 days after the date on which the Secretary has approved the plan of a State, the Secretary shall submit to the Congress a list of the State plan that will ensure the financial solvency of the State health plan program.

(D) HEALTH INFORMATION TECHNOLOGY.—With respect to the health information technology, the State plan shall include a proposal for the appropriate use of health information technology to improve the efficiency and effectiveness of the State health program, and shall provide for improvements in the availability of evidence-based medical and outcomes data to providers and patients, as well as other health information (such as electronic health records, electronic billing, and electronic prescribing).

(2) TECHNICAL ASSISTANCE.—The Secretary shall ensure that the State plan includes a proposal for technical assistance to States in developing applications and plans under this subchapter, including technical assistance by private entities if determined appropriate by the Commission.

(3) INITIAL REVIEW.—With respect to a State application for a grant under section 3109(b), the Secretary shall determine whether to submit a State proposal to Congress for approval.

(A) IN GENERAL.—Not later than 90 days after completion of the initial review under paragraph (2), the Secretary shall determine whether to submit a State proposal to Congress for approval.

(B) VOTING.—

(i) IN GENERAL.—The determination to submit a State proposal to Congress under subparagraph (A) shall be approved by 2/3 of the members of the Commission who are eligible to participate in such determination.

(ii) ELIGIBILITY.—A State plan shall not participate in a determination under subparagraph (A) if—

(I) in the case of a member who is a Governor, such determination relates to the State of which the member is the Governor; or

(ii) in the case of a member not described in clause (I), such determination relates to the geographic area of a State of which such member serves as a State or local official.

(C) SUBMISSION.—Not later than 90 days prior to October 1 of each fiscal year, the Commission shall submit to Congress a list of the State applications that the Commission recommends for approval under this section.

(D) APPROVAL.—With respect to a fiscal year, the State proposal that has been recommended under subparagraph (B) shall be deemed to be approved, and subject to the availability of appropriations, Federal funds shall be provided to the State or local government to carry out such proposal.
subsection (e). Nothing in the preceding sentence shall be construed to include the approval of State proposals that involve waivers or modifications in applicable Federal law.

(5) PROGRAM OR PROJECT PERIOD.—A State program or project may be approved for a period of 5 years and may be extended for subsequent periods upon approval by the Commission and the Secretary, based upon achievement of targets, except that a shorter period may be requested by a State and granted by the Commission, if in the judgment of the Commission, the Secretary, and the Congress the elimination of Federal financial participation is in the best interest of the United States.

(e) EXPEDITED CONGRESSIONAL CONSIDERATION.—

(1) INTRODUCTION AND COMMITTEE CONSIDERATION.—

(A) INTRODUCTION.—The legislative proposal submitted pursuant to subsection (d)(4)(B) shall be in the form of a joint resolution (in this subsection referred to as the "resolution"). Such resolution shall be introduced in the House of Representatives by the Speaker, and in the Senate, by the Majority Leader, immediately upon receipt of the language and shall be referred to the appropriate committee of Congress. If the resolution is not introduced in accordance with the preceding sentence, the resolution may be introduced in either House of Congress by any member thereof.

(B) COMMITTEE CONSIDERATION.—A resolution introduced in the House of Representatives by the Speaker or in the Senate, by the Majority Leader, shall be referred to the Committee on Ways and Means of the House of Representatives. A resolution introduced in the Senate shall be referred to the Committee on Finance of the Senate. Not later than 15 calendar days after the introduction of the resolution, the committee of Congress to which the resolution shall be referred shall act on the resolution or a committee amendment thereto. If the committee has not reported such resolution (or an identical resolution) at the end of 15 calendar days after its introduction or at the end of the first 30 days after there has been reported to the House involved a resolution, whichever is earlier, such committee shall be deemed to be discharged from further consideration of such resolution bill and so forth.

(2) EXPEDITED PROCEDURE.—

(A) INTRODUCTION.—Not later than 5 days after the date on which a committee has discharged the resolution, the Speaker of the House of Representatives or their designee, or the Majority Leader of the House of Representatives, shall move to proceed to the consideration of such reform bill and the motion shall be in the form of a motion to proceed to the consideration of a resolution, or to a motion to proceed to the consideration of a resolution, whichever is earlier, such committee shall be deemed to be discharged from further consideration of such resolution bill and such resolution bill shall be placed on the appropriate calendar of the House involved.

(B) COMMITTEE.—

(A) CONSIDERATION.—Not later than 5 days after the date on which a committee has discharged the resolution, the Speaker of the House of Representatives or the Speaker’s designee, or the Majority Leader of the Senate, or the Majority Leader’s designee, shall move to proceed to the consideration of the resolution, and if there is no such amendment, to the resolution. It shall also be in order for any member of the House of Representatives or the Senate, respectively, to move to proceed to the consideration of the resolution at any time after the conclusion of such 5-day period. All points of order against the resolution (and against any amendment thereto) raised in the House or in the Senate shall be in the form of a motion to postpone consideration of the resolution, or to a motion to postpone consideration of the resolution, whichever is earlier, such committee shall be deemed to be discharged from further consideration of such resolution bill and such resolution bill shall be placed on the appropriate calendar of the House involved.

(B) CONSIDERATION BY OTHER HOUSE.—If, before the passage by one House of the resolution that passed the other House, such House receives from the other House a resolution as passed by such other House—

(i) the resolution of the other House shall not be considered to a committee and may only be considered for final passage in the House that receives it under clause (ii); and

(ii) the procedure in the House in receipt of the resolution, and it supersedes other rules in the House resolving the differences between the Houses on the resolution. Notwithstanding any other rule of the House of Representatives or the Senate, it shall be in order to immediately consider a report of a committee of conference on the resolution filed in accordance with this subclause. Debate in each House on the House of Representatives and the Senate on the conference report shall be limited to 10 hours, equally divided and controlled by the Speaker of the House of Representatives and the Minority Leaders of the House of Representatives or their designees and the Majority and Minority Leaders of the Senate or their designees. A vote on final passage of the conference report shall occur immediately at the conclusion or yielding back of all time for debate on the conference report.

(C) CONSIDERATION IN CONFERENCE.—Immediately following the resolution as passed by both Houses of Congress for the fiscal year involved.

(3) RULES OF THE SENATE AND HOUSE OF REPRESENTATIVES.—This subsection is enacted by Congress—

(A) as an exercise of the rulemaking power of the Congress; and

(B) with full recognition of the constitutional right of either House to change the rules (so far as they relate to the procedure of that House) at any time, in the same manner and to the same extent as in the case of any other rule of that House.

(D) LIMITATION.—The amount of Federal funds provided with respect to any State proposal that is deemed approved under subsection (d)(3) shall not exceed the cost provided for such proposals within the concurrent resolution on the budget as enacted by Congress for the fiscal year involved.

(F) FUNDING.—

(1) IN GENERAL.—The Secretary shall provide to a State that has an application approved under paragraph (1) of this subsection, such State to carry out an innovative State health program in the State.

(2) AMOUNT OF GRANT.—The amount of a grant shall be determined based upon the recommendations of the Commission, subject to the amount appropriated under subsection (k).

(3) PERFORMANCE-BASED FUNDING ALLOCATION AND PRIORITIZATION.—In awarding grants under paragraph (1), the Secretary shall—

(A) fund a diversity of approaches as provided for by the Commission in subsection (c), and

(B) give priority to those State programs that the Commission determines have the greatest opportunity to succeed in providing health insurance and in providing children, youth, and other vulnerable populations with improved access to health care services and to—

(C) link allocations to the State to the meeting of the goals and performance measures relating to health care coverage, quality, and health care costs established under this Act through the State project application process.

(4) MAINTENANCE OF EFFORT.—A State, in utilizing the proceeds of a grant received under paragraph (1), shall maintain the expenditures of the State for health care coverage purposes for the support of direct state delivery of health care and in no event less than the level of such expenditures maintained by the State for the fiscal year preceding the fiscal year for which the grant is awarded.

(5) REPORT.—At the end of the 5-year period beginning on the date on which the Secretary grants a grant under paragraph (1), the State Health Insurance Advisory Commission established under subsection (c) shall prepare and submit to the appropriate committees of Congress, a report on the progress made by States receiving grants under paragraph (1) in meeting the goals of expanded coverage, improved quality, and cost containment established during the 5-year period of the grant. Such report shall contain the recommendation of the Commission concerning any future action that Congress should take concerning health care reform, including whether or not to extend the program established under this subsection.

(g) MONITORING AND EVALUATION.—

(1) ANNUAL REPORTS AND PARTICIPATION BY STATES.—Each State that has received a grant shall—

(A) submit to the Commission an annual report based on the period representing the respective State’s fiscal year, detailing commitments established by the Commission and the Secretary in the approval and in this section; and

(B) participate in the annual meeting established in subsection (c).

(2) EVALUATIONS BY COMMISSION.—The Commission, in consultation with a qualified and independent organization such as the Institute of Medicine, shall prepare and submit to the Committee on Finance and the Committee on Health, Education, Labor, and Pensions of the Senate and the Committee on Education and the Workforce of the House of Representatives an annual report that shall contain—

(A) a description of the effects of the reforms undertaken in States receiving approvals under this section; and

(B) a description of the recommendations of the Commission and actions taken based on these recommendations;

(C) an evaluation of the effectiveness of such actions in—

(i) expanding health care coverage for State residents;

(ii) improving the quality of health care provided, as defined in the State project application; and

(iii) reducing or containing health care costs in the States;
(D) recommendations regarding the advisability of increasing Federal financial assistance for State ongoing or future health program initiatives, including the amount and sources of such assistance;

(E) as required by the Commission or the Secretary under subsection (f)(3)(A), a periodic, independent evaluation of the program.

(b) Corrective action plan: (1) Corrective action plans.—If a State is not in compliance with a requirement of this section, the Secretary shall develop a corrective action plan for such State.

(2) Termination.—For good cause and in consultation with the Commission, the Secretary may revoke any program granted under this section and such decisions shall be subject to a petition for reconsideration and appeal pursuant to regulations established by the Secretary.

(1) Relationship to Federal Programs.—(1) IN GENERAL.—Nothing in this Act, or in section 1115 of the Social Security Act (42 U.S.C. 1315) shall be construed as authorizing any other person or entity to alter or affect in any way the provisions of title XIX of such Act (42 U.S.C. 1396 et seq.) or the regulations implementing such title.

(2) Maintenance of effort.—No payment may be made under this section if the State adopts criteria for benefits, income, and resources that are less restrictive than those applied as of the date of enactment of this Act.

(3) Miscellaneous Provisions.—(A) Application of certain requirements.—

(i) Restrictions on application of preexisting condition exclusions.—

(ii) Group health plans and group health insurance coverage.—If the State program or project provides for benefits through payment for, or a contract with, a group health plan or insurance coverage for health care, the program or project may permit the imposition of a preexisting condition exclusion for covered benefits under a program or project under this section.

(B) Compliance with other requirements.—Coverage offered under the program or project shall comply with the requirements of part 2 of title XXVII of the Public Health Service Act.

(C) Prevention of duplicative payments.—

(1) Other health plans.—No payment shall be made to a State under this section for expenditures for health assistance provided for an individual to the extent that a private insurer (as defined by the Secretary by regulation and including a group health insurance plan (as defined in section 607(1) of the Employee Retirement Income Security Act of 1974), a service benefit plan, and a health maintenance organization) would have been obligated to provide such assistance but for a provision of its insurance contract which has the effect of limiting or excluding such obligations for such an individual, or is provided health assistance under the plan.

(2) Other Federal governmental programs.—Except as provided in any other provision of law, no payment shall be made to a State under this section for expenditures for health assistance provided for an individual to the extent that payment has been made or can reasonably be expected to be made promptly (as determined in accordance with regulations promulgated by the Secretary) for such purposes. For purposes of this paragraph, rules similar to the rules for overpayments under section 1903(d)(2) of the Social Security Act shall apply.

(3) Application of certain general provisions.—The following sections of the Social Security Act shall apply to States under this section in the same manner as they apply to a State under such title XIX:

(A) Title XIX provisions.—

(i) Section 1902(a)(4)(C) (relating to conflict of interest standards).

(ii) Paragraphs (2), (16), and (17) of section 1903(i) (relating to limitations on payment).

(iii) Section 1903(w) (relating to limitations on payment).

(iv) Section 1920A (relating to presumptive eligibility for children).

(B) Title XI provisions.—

(i) Sections 1122 and 1123 (relating to administrative and judicial review), but only insofar as consistent with this title.

(ii) Section 1124 (relating to disclosure of ownership and related information).

(iii) Section 1126 (relating to disclosure of information about certain convicted individuals).

(iv) Section 1128A (relating to civil monetary penalties).

(v) Section 1128B(d) (relating to criminal penalties for certain additional charges).

(vi) Section 1128J (relating to periods within which claims must be filed).

(C) Relation to other laws.—

(i) HIPAA.—Health benefits coverage provided under a State program or project under this section shall be treated as creditable coverage for purposes of part 7 of title B of title I of the Employee Retirement Income Security Act of 1974 and title XXVII of the Public Health Service Act.

(ii) ERISA.—Nothing in this section shall be construed as affecting or modifying section 1132 (relating to administrative and judicial review), but only insofar as consistent with this title.

(iii) Section 1122 (relating to disclosure of owners and related information).

(iv) Section 1126 (relating to disclosure of information about certain convicted individuals).

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(E) as required by the Commission or the Secretary under subsection (f)(5), a periodic, independent evaluation of the program.

(F) Recommendations to States, groups of States, local governments, and tribes—

(A) Recommendation of Federal funds and support.—

(i) Federal funding and support would be committed to States to reduce the number of uninsured, reduce costs, and improve the quality of health care for all Americans. Should a State decline to apply for Federal funds or if a unique need exists, local governments also would be authorized to apply for a federal grant for such purposes.

(B) States, local governments, and tribes—

(i) Federal funds and support would be authorized to submit applications to the federal government for funding to implement a state health care expansion and improvement program to a bipartisan "State Health Innovation Commission." Based on funding available through the federal budget process, the Commission would approve a variety of reform options and innovative approaches.

This federalist approach to health reform would encourage a broad array of reform options that could closely be monitored to see what is working and what is not. As Supreme Court Justice Louis D. Brandeis wrote in 1932, "It is one of the happy incidents of the federal system that a single courageous State may, if its citizens choose, serve as a laboratory; and try novel social and economic experiments without risk to the rest of the country."

Our bipartisan legislation, the "State Health Partnership Act," encourages this type of state-based innovation and will help the nation better address both the policy and the politics of health care reform. We do not have consensus at the federal level on anyone approach and so encouraging states to adopt a variety of approaches will help us all better understand what may or may not work. And, it is well past the time when we need action to be taking place to address the growing and related problems of the uninsured and increasing health care costs.

In fact, spending on health care in our country has now reached $2 trillion annually, and yet, the number of uninsured has increased to 46 million people, which is six million more than in 2000. The consequences are staggering, as uninsured citizens get about half the medical care they need compared to those with health insurance and, according to the Institute of Medicine, about 18,000 unnecessary deaths occur each year in the United States because of lack of health insurance.

While gridlock absent a solution continues to permeate Washington, DC, a number of states and local governments are moving ahead with health reform. The premise on which this bill is based is that the federal government should provide support for such efforts rather than constantly undermining them.

The "Health Partnership Act" would provide such support, as it authorizes grants to states, groups of states, local governments, and Indian tribes and organizations to carry out any of a broad range of strategies to reach the goals.
of reducing the number of uninsured, reducing costs, and improving the quality of care.

As usual, state and local governments are not waiting around for federal action. This is exactly what is happening in the early 1990s as states such as New Mexico, Massachusetts, Pennsylvania, Florida, Rhode Island, Hawaii, and Maryland. Tennessee, Vermont, and Washington led the way to expanding coverage to children through the enactment of a variety of health reforms. Some of these programs worked better than others and the Department of Health and Human Services, in 1997 with passage of the “State Children’s Health Insurance Program” or SCHIP. This legislation received broad bipartisan support and was built upon the experience of the state expansions. SCHIP continues to be a state-based model that covers millions of children and continues to have broad-based bipartisan support across this nation.

So, one that successful model and build upon it? In fact, state and local governments are already taking up that challenge and the federal government should, through the enactment of the State Children’s Health Insurance Program Act, do what it can to be helpful with those efforts. For example—

On November 15, 2005, Illinois Governor Rod Blagojevich signed into law the “Children’s Health Insurance Program ‘experiment’” as a possible solution. Other states, including New Mexico, Maine, West Virginia, Oklahoma, and New York have enacted other health reforms that have had mixed success.

All of these efforts are very important to add to our knowledge base, which is the fundamental element of a possible national solution to our uninsured and affordability crisis. We can learn from each and every one of these efforts, whether successful or failed.

Commonwealth Fund President Karen Davis said it well by noting that state-based reforms, such as that passed in Massachusetts, are very good news. West Virginia, “First, any substantial effort to expand access to coverage is worthwhile, given the growing number of uninsured in this country and the evidence showing the dangerous health implications of lacking coverage.”

She adds, “But something more important is at work here. While we urgently need a national solution so that all Americans have insurance, it doesn’t appear that we’ll be getting one at the federal level any time soon. So what Massachusetts has done poten-

tially holds lessons for every state. I would add that it holds lessons for the federal government as well and not just for the mechanics of implementing health reform policy but also to the politics of health reform.

As she concludes, “One particularly cogent lesson is the manner in which the measure was crafted—via a civil partnership resulting in the bringing together numerous players from across the political business, health care delivery, and policy sectors.”

Mr. President VONNOVICH and I have worked together for many months now on this legislation via a process much like that described by Karen Davis. The legislation stems from participation by senators and senators such as Bob Graham, Mark Hatfield, and Paul Wellstone, but also from work across ideological lines by Henry Aaron of the Brookings Institute and Stuart Butler of the Heritage Foundation.

The legislation also received much advice and support from Dr. Tim Garson who, as Dean of the University of Virginia, brought a much needed provider perspective which is reflected in support for the legislation from the American Medical Association, the American Academy of Pediatrics, the American College of Obstetricians, the American College of Cardiology, American Gastroenterological Association, the Visiting Nurses Association, the National Association of Community Health Centers, and from state-based health providers such as the New Mexico Medical Society and Ohio Association of Community Health Centers.

And the legislation also received much community support from consumer-based groups advocating for national health reform, including that by Dr. Ken Frisof and UHCAN, which is the Universal Health Care Action Network, Bill Vaughan at Consumers Union, and from numerous health care advocates in New Mexico, including Community Action New Mexico, Health Action New Mexico, Health Care for New Mexico, New Mexico Center on Law and Poverty, New Mexico Health Choices Initiative, New Mexico POZ Coalition, New Mexico Public Health Association, and the Visiting Nurses Association for Reproductive Choice, New Mexico Progressive Alliance for Community Empowerment, and the Health Security for New Mexicans Campaign, which includes 115 organizations based in the State.

Support from all stakeholders in our nation’s health care system has been sought and I would like to thank the many groups and individuals who support this legislation and may be part of the process that successfully brought to us.

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important contribution to addressing our nation’s health care crisis.

In addition to Dr. Garson, Mr. Aaron, Mr. Butler, and Dr. Frisof, I would like to express my appreciation to Dan Hawkins at the National Association of Community Health Centers, Bill Vaughan at Community Action, and both Jack Meyer and Stan Dorn at ESRI for their counsel and guidance on health reform and this legislation.

I would also like to commend the American College of Physicians, or ACP, for their outstanding leadership on the important role that health insurance has in reducing people’s morbidity and mortality. In fact, to cite the conclusion of one of those studies, “Lack of insurance contributes to the endangerment of the health of each uninsured American as well as the collective health of the nation.”

And finally, I would also thank the many people at the Robert Wood Johnson Foundation on their forththought and knowledge on all the issues confronting the uninsured. Their efforts to maintain the focus and dialogue on addressing the uninsured has kept the issue alive for many years.

I hope we can break the gridlock and urge my colleagues to support this important legislation.

I would ask for unanimous consent for a Fact Sheet and copy of the Health Affairs article entitled “How Federalism Could Spur Bipartisan Action on the Uninsured” be printed in the Record.

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

**The Health Partnership Act**

Introduced by Senators Voinovich and Bingaman, the bill to promote innovation in health care through state initiatives that expand coverage and access and improve quality and efficiency in the health care system.

The Health Partnership Act, cosponsored by U.S. Senators Voinovich (R-OH) and Bingaman (D-NM), is a first step to move beyond the political deadlock that has prevented the United States from finding paths to affordable, quality health care for all. For decades, national solutions have proven impossible because of the differences on how to pay for and organize health care services. The Health Partnership Act breaks through the impasse. It creates partnerships between the federal government, state governments, private payers and health care providers to implement different approaches to achieve sustainable reform that provides affordable, quality health care for all. It demonstrates federal leadership on health care through establishing a mechanism by which federal dollars are committed for all. It demonstrates federal leadership on health care services. The Health Partnership Act establishes a bipartisan State Health Innovation Commission composed of national, state and local leaders that will: issue requests for proposals (RFPs) Establish, in collaboration with an organization such as the Institute of Medicine, minimum performance standards and 5-year goals.

Provide states with a “toolkit” of reform options, such as single-payer systems, public program expansions, pay-or-play mechanisms, tax credit incentives, health savings accounts, etc.

Ensure the maintenance of Medicaid—prohibiting restrictive rule changes that would limit coverage or benefits.

Recommend to Congress which grants to provide, giving preference to states maximizing the reduction in numbers of the uninsured. Monitor the progress of programs and promote information exchange on what works.

Recommend ways to minimize negative effects on national employer groups, providers and insurers related to differing state requirements.

**State Level**

Each state applying for a grant will develop a health care plan to increase coverage, improve quality and reduce costs, with specific targets for reduction in the number of uninsured and the costs of administration.

States will receive renewable grants for five-year expansion and improvement programs.

States will receive from the federal level technical assistance, if requested, for developing proposals.

Each state plan would address:

- Allow states to design their own plans, including a 5-year target to reduce the number of uninsured individuals in the state.
- Quality by providing a plan to increase health care effectiveness, efficiency, timeliness, and equity while reducing health disparities and medical errors.
- Costs by developing and implementing systems to improve the cost effectiveness of health care, including a 5-year target to reduce administrative costs and paperwork burdens.
- Information technology by designing the appropriate use of information technology to improve infrastructure, to expand the availability of evidence-based medical and to provide outcomes data to providers and patients.

**States in the Lead: Lessons on the Process of Making Change**

Given the inaction of the federal government on health care access issues, states have been driven to action because of their sensitivity to local ideas and conditions. Dozens of states are considering new proposals. Five have already acted. The detailed policy particulars in each of those states and encourages states to address creatively their own needs.

Lessons learned in testing diverse state plans would benefit other states and national reform.

**How Federalism Could Spur Bipartisan Action on the Uninsured**

By Henry J. Aaron and Stuart M. Butler

Nearly everyone thinks that something should be done to reduce the number of Americans lacking health insurance. Unfortunately, while numerous plans exist on how to reach that goal, few agree on how. In deed, as authors we disagree on how best to extend and assure health insurance coverage. Nonetheless, we believe that using the pluralism and creative power of federalism is the best way to break the political logjam and to discover the best way to expand coverage.

Accordingly, we believe that states should be strongly encouraged to try any of a wide range of approaches to increasing health insurance coverage and success. This approach offers both a way to improve knowledge about how to reform health care and a practical way to initiate a process of retely, while numerous plans exist on how to reach that goal, few agree on how. In deed, as authors we disagree on how best to extend and assure health insurance coverage. Nonetheless, we believe that using the pluralism and creative power of federalism is the best way to break the political logjam and to discover the best way to expand coverage.

The process of implementing a variety of partnerships recognizes that one national solution plan does not address the real differences among states and encourages states to address creatively their own needs.

Lessons learned in testing diverse state plans would benefit other states and national reform.
the nation. It also implies a willingness to accept differences over an extended period in order to make progress. And it recognizes that permitting wide diversity can foster solutions that permit goodwill must be prepared to countenance the testing of ideas they oppose if progress is to be made. Moreover, we believe that there is no way any Congress can ever form the large U.S. industry—health care—unless such legislation enjoys strong support from both major political parties.

We propose a four-pronged approach

Proposals to reduce the number of uninsured Americans abound. Some favor expanding government programs, such as Medicaid. Others favor refundable tax credits to help families buy private health insurance. Still others favor regulatory approaches, such as changes in insurance rules. But working together in health care to achieve a goal shared by virtually everyone has proved to be impossible. One reason for this is that the capacity to reach substantive compromise in Washington has seriously eroded. Among the causes of such views have been the complex health care system requires very carefully designed and internally consistent actions. Some say that it is like building an airplane: Unless all the parts are there and fit together perfectly, the airplane will not fly. Thus, many proponents of particular approaches fear that abandoning key components of those proposals to achieve a compromise will prevent a fair test of their favored approach and lead to failure. Another obstacle is that many lawmakers believe that approaches that might conceivably work in one part of the country, given the cultural, philosophical, or health industry conditions prevailing there, will not work in their state or district because of different local conditions. This view leads many in Congress to resist proposals that might work in some areas because they believe that those proposals could make things worse for their constituents.

These and other factors have stalled efforts to extend health coverage and achieve health reforms for decades. The enactment of Medicare and Medicaid stands as one notable and instructive—exception to that pattern. Medicaid is a comprehensive social insurance initiative of congressional Democrats. Medicaid from limited needs based approaches of congressional Republicans. The passage of the law was possible by the time because the two initiatives were linked in the form of a trade-off, not so much by blending some elements of each approach but by moving forward with two programs in parallel: Medicare for the elderly and Medicaid for the poor, while others might adopt a system that allows greater flexibility but covering a much narrower range of services.

In our view, federalism offers a promising approach to help break the impasse in Congress over health care reform plans. We propose a four-pronged approach that would build on the promise of federalism by proposing action at the state level to give states the flexibility to experiment to generate information on what works and does not work. We believe that the federal government has a role to play in this process. Successes could encourage policymakers to discover which is the right approach to use in each state. Some states might adopt a single-payer system, while others might adopt a system that combines public and private options.

We propose that Congress provide financial assistance and a legal framework to trigger a diverse set of federal-state initiatives. To help break the impasse in Congress over health care reform plans, we propose a four-pronged approach that would enable states to design their own systems. The key components of our approach include:

1. **Goals and Protections**
   - Congress would establish certain goals and protections that states must meet in order to receive financial assistance.

2. **Incentives**
   - States would be encouraged to adopt certain approaches in order to receive financial assistance.

3. **Flexibility**
   - States would have the flexibility to design their own systems, as long as they meet the established goals and protections.

4. **Accountability**
   - States would be held accountable for meeting the goals and protections established by Congress.

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We propose that Congress provide financial assistance and a legal framework to trigger a diverse set of federal-state initiatives. To help break the impasse in Congress over health care reform plans, we propose a four-pronged approach that would enable states to design their own systems. The key components of our approach include:

1. **Goals and Protections**
   - Congress would establish certain goals and protections that states must meet in order to receive financial assistance.

2. **Incentives**
   - States would be encouraged to adopt certain approaches in order to receive financial assistance.

3. **Flexibility**
   - States would have the flexibility to design their own systems, as long as they meet the established goals and protections.

4. **Accountability**
   - States would be held accountable for meeting the goals and protections established by Congress.

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be achievable without that restriction. Most Medicaid outlays in many states are not strictly mandated by federal law, in the sense that some beneficiaries and some services are optional; states are often given the opportunity to provide optional coverage because federal law permits it, and the federal match makes its provision to states attractive. If initiatives were introduced to cover the non-Medicaid population, states might find it financially and politically attractive to increase the tax and fee revenues offsetting Medicaid eligibility and benefits and using the money saved, together with federal support, to cover a larger number of people who are not currently covered.

Designing and enforcing rules to prohibit or limit such “insurance swapping” would be extremely difficult, but politically—and, one could argue, morally—essential. On the other hand, we believe that states should have some opportunity to propose different ways of delivering the Medicaid commitment to the currently insured population, as long as the degree and quality of coverage were not diminished. That form of Medicaid protection, by instilling an individual mandate and improvement in coverage for the poorest citizens while avoiding any threat to their existing coverage, would be available and acceptable to all communities, including between us, on the degree of freedom states should have in deciding how to deliver the Medicaid commitment. Positively, minor tweaking of the results of sweeping changes in the delivery system, such as allowing states to use Medicaid money to subsidize individual enrollment in an employer plan. The degree of flexibility states should have, while maintaining eligibility and level of coverage, is a difficult political issue for Congress to decide. Acceptable state proposals would also have to limit cost sharing and features analogous to pre-existing condition rules. We believe that requirements, consistent with the general goals and protections we propose, are needed to ensure that lower-income households do not face unaffordable coverage. Without such limits, states could reduce the number of uninsured people and secure additional federal financial support, for example, by instituting an individual mandate with a high premium that would effectively make insurance universal among the financially secure and do little for the poor. States might be more inclined to design a way of meeting the requirement, such as by mandating some form of community rating or through a cross-subsidy to more vulnerable policyholders. The federal government should establish broad guidelines, but no more. A key principle of our proposal is that state officials are more likely than federal officials to design successful solutions to those problems that members of the policy or congressional staff community have failed to solve. Congress can and should set the parameters, but it should avoid micromanagement.

“Policy toolbox” of federal policies and programs: Nothing the congressional proposal noted earlier is that many plausible health initiatives that might merit testing, and have support in some states, are blocked by other lawmakers who oppose the introduction of the approach in their own state or across the country. Thus, we propose that Congress (a) place into legislative language approaches to the expansion of health insurance coverage as a “policy toolbox” that would be available to states la carte to apply according to their needs, and (b) empower safely vote to permit an initiative, confident that it would not be imposed on their states. In this way, potentially useful policies and programs might be introduced as they prove themselves safe and and become available for states to use in their own initiatives.

A policy toolbox likely would include expansions of existing policies, such as raising income limits under Medicaid or lowering the age of Medicare eligibility. It could include provisions for voluntary buy-ins to the FEHBP, refundable tax credits or their equivalent (perhaps with some steps to modify the federal income tax exclusion for employer-based health insurance, as profitability costs), mandating employer or individual coverage, or creating a single state insurance plan though which everyone may buy subsidized coverage.

Other possible examples might include the following: (1) Remove regulatory and tax obstacles to new or expanded health programs. We emphasize that any menu of tools and incentives establishes federal policy, only. (2) Allow Medicaid and SCHIP to cover additional populations, with greatly enhanced federal matching payments, and perhaps to operate in very different ways—with appropriate safeguards to protect those who are covered under current law. Both federal welfare legislation and SCHIP, for example, included safeguards to preserve existing Medicaid coverage. (3) Extend limited federal Employee Retirement Income Security Act (ERISA) protection to large corporate health plans willing to enroll nonemployees, and extend the tax exclusion to those enrollees. This could lead in a state to expanded access to employer-sponsored coverage. (4) Provide a voucher to individuals designed to mimic a comprehensive refundable tax credit for health insurance. This could allow the practical issues of a major tax credit approach to be examined. (5) Enact legislation to make forms of FEHBP-style coverage available to broader populations within states. This could be encouraged by government to explore the issues associated with extending the program to nonfederal employees and retirees. (6) Enable states to establish association plans and other innovative health organizations.

We emphasize that any menu of tools would be optional for states. None would be required. Members of Congress would be more likely to agree to the inclusion of elements they would deplore in their own states if they knew that no state, including their own, would be forced through them if they would be in a nationally uniform system. Some lawmakers, for instance, oppose association plans because they believe that such plans would displace state insurance arrangements. Under the menu approach, association plans would be introduced only in states wishing to use them as part of their overall strategy. State proposals, federal approval. Under our proposed strategy, states interested in a given proposal would design a proposal consistent with the goals and restrictions established by Congress. Typically this proposal would include some elements from the federal policy toolbox in conjunction with state initiatives.

Needless to say, a critical congressional decision would concern mechanisms for approving state plans and monitoring state performance. States would no doubt seek to take advantage of any financial opportunity to game the system and to stretch agreements to the limit, as the almost zany history of the Medicaid upper payment level (UPL) controversy makes painfully clear. Yet monitoring state behavior, determining the relative merits of state policies and medicaid on states is enormously difficult. Moreover, the entity could (and we think should) have the power to negotiate parts of a proposal, not merely the reins that are held by the states, if the elements could be made consistent with Congress’s objectives. But what entity should this be? It might seem natural to designate an executive agency that reports to the president, such as the Department of Health and Human Services, for instance. But many members of Congress would refuse to cede so much selection authority to another branch of government and that roughly half would fear that the president of the day is a member of the “other” party. Congress would likely insist on adding suffocating selection criteria and other restrictions to executive decisions. As a result, the entity would have very little authority. Thus, we favor instead an existing or newly created body that has independence but ultimately answers to Congress. We also think it should perform this function with members selected by Congress and the administration or with members also representing the states, with technical advice from the U.S. Government Accountability Office (GAO). This body would evaluate and negotiate draft state proposals according to the general requirements specified by Congress and then present a recommended ‘slate’ of proposals to Congress for an up-or-down vote without amendment. Once the state proposals had been selected, the entity would be responsible for implementing the program. Bipartisan willingness to authorize state programs and to appropriate sufficient funds to elicit state participation also requires that the entity be independent. Bipartisan approaches would find congenial will receive a fair trial and agree that approaches they reject will also receive a fair trial. Unfortu nately, current federal legislative and executive agencies make the two key approaches difficult to implement in individual states or even groups of states: a single-payer plan and an individual mandate combined with reduced federal matching. A federal approach should include mechanisms that would enable states to give such proposals as fair and complete a test as possible, both because that would provide valuable information and because the political support of their advocates is important in Congress. Crafting a single-payer experiment. ERISA, which exempts self-insured plans from state regulation, is the primary technical obstacle to testing single-payer plans. The political sensitivity to modifications in ERISA is difficult to exaggerate. Any attempt to make ERISA permissive for state programs to extend cover age would probably doom federal legislation. But states could create “wrap around” plans to cover enrollees who are not currently even to cover all who are not insured under plans exempt by ERISA from state regulation. While such an arrangement would not be a single-payer plan, it could achieve universal coverage, which is one defining characteristic of single-payer plans, and arguably be sufficient for a valid test. After all, the U.S. health care system is characterized by different subsystems for certain populations and has a form of single-payer coverage for military veterans. But of course the real test is whether advocates and opponents of single payer plans regard such a limited arrangement as a fair trial.

An individual tax credit approach. The obstacles to a state level individual mandate and buy-ins are less complicated. We presume that an individual mandate would require some contribution from people with incomes above defined lev els. Such a mandate raises both political and practical questions. Testing federal tax reform in selected geographic areas raises constitutional and practical issues, although especially the approach has been used in other state-specific programs involving federal tax changes, such as enterprise zones,
have passed muster. In addition, for a limited experiment it might be possible to design subsidy programs that would mimic tax relief.

Administering a refundable tax credit would pose formidable difficulties for some states, particularly those that do not have a personal income tax. All states could have economic and political incentives of providing a credit with reasonable accuracy on a timely basis would be challenging. So, too, would deciding how to address state problems which states hold that live in one state yet work in another. Advocates for tax credits say they have solutions to these and similar challenges. States with single-employer mandates claim to have answers to challenges facing those approaches. For instance, some maintain that the extent of a tax withdrawal system could serve as a vehicle for refundable credits or equivalent subsidies and would make individual enrollment practical. Whether or not they are right is of course disputed by their critics. The beauty of a “put up or shut up” federalism initiative is that it offers a chance for advocates to offer such solutions in practice instead of in theory.

Using “managed federalism” to build support? While we believe that any state initiative to justify for experiments is an open political and technical question. One approach would be to limit it to a few states. This would limit costs and extent to be said zealously, we would favor opening the program to all states wishing to accept a federal offer. Nevertheless, we recognize that some lawmakers would be reluctant to vote for a process of federal-state innovation unless they were sure that certain “generic” or “standard” approaches were included—especially if states could be held liable for outcomes were to be limited. In particular, we believe that our proposal can win congressional support only if liberals and conservatives alike are fully convinced that the approaches each holds dear will receive a fair and full trial in practice.

While we believe that any state initiative that meets approval should be welcomed, political considerations thus might require that no state’s proposal would be approved unless a sufficient range of acceptable variations was included. For example, advocates of market-based or single-payer approaches might find the federalism option acceptable only if each was confident that favor would be treated.

Adequate data collection. To determine whether a state was actually making progress toward a goal, accurate and timely data would be needed. These data would include survey data of insurance coverage, with sufficient detail to provide state-level estimates for which surveys would be essential to show whether the states were making progress in extending health insurance coverage. They are vital to the success of the whole state payment system. As states do not have the necessary data to determine the impact of the 1996 welfare reform clearly illuminates the power and importance of such data collection. The cumulative effect of the reports showing the effectiveness of welfare-to-work requirements in reducing rolls, increasing earnings, and promoting work behavior transformed the political environment and made welfare reform inescapable. Therefore, long before welfare reform is in progress, not would be rewarded for their progress in meeting the agreed federal-state goals of extending insurance, reducing spending, and increasing coverage, just as a version of this approach triggered a radical change in the way states addressed welfare eligibility. By actually testing competing approaches to reach common goals, rather than endlessly debating them, the United States is far more likely to find the solution to the perplexing and seemingly intractable problem of uninsurance.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 471—RECOGNIZING THAT, DURING NATIONAL FOSTER CARE MONTH. THE LEADERS OF THE FEDERAL, STATE, AND LOCAL GOVERNMENTS SHOULD PROVIDE LEADERSHIP TO IMPROVE THE CARE GIVEN TO CHILDREN IN FOSTER CARE PROGRAMS

Mr. COLEMAN (for himself, Ms. LANDRIEU, and Mr. CRAIG) submitted the following resolution, which was considered and agreed to:

Whereas more than 500,000 children are in foster care programs throughout the United States;
Whereas, while approximately 1⁄4 of all children in foster care programs are available for adoption, only about 50,000 foster children are adopted each year;
Whereas many of the children in foster care programs have endured:
(1) numerous years in the foster care system; and
(2) frequent moves to and from foster homes;
Whereas approximately 50 percent of foster care children have been placed in foster care programs for longer than 1 year;
Whereas 25 percent of foster care children have been placed in foster care programs for at least 3 years;
Whereas children who spend longer amounts of time in foster care programs often experience worse outcomes than children who are placed for shorter periods of time;
Whereas children who spend time in foster care programs are more likely:
(1) to become teen parents;
(2) to rely on public assistance when they become adults; and
(3) interact with the criminal justice system;
Whereas Federal, State, and local governments—
(1) share a unique relationship with foster children; and
(2) United States removed children from their homes to better provide for the safety, permanency, and well-being of the children;
Whereas unfortunately, studies indicate that Federal, State, and local governments have not been extremely successful in caring for foster children;
Whereas Congress recognizes the commitment intended to be proposed by the bill S. 1955, supra; which was ordered to lie on the table.
SA 3873. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

TEXT OF AMENDMENTS

SA 3861. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

AMENDMENTS SUBMITTED AND PROPOSED

SA 3861. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, to amend the title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table.
SA 3862. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3863. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3864. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
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SA 3866. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3867. Ms. SNOWE submitted an amendment intended to be proposed by her to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3868. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3869. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3870. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3871. Mrs. FEINSTEIN (for herself, Mr. DURBIN, Mr. BINGAMAN, and Ms. Stabenow) submitted an amendment intended to be proposed by her to the bill S. 1955, supra; which was ordered to lie on the table.
SA 3872. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, supra; which was ordered to lie on the table.

(1) recognizes—
(A) May 9, 2006 as “National Foster Care Month”;
(B) that, during National Foster Care Month, the leaders of the Federal, State, and local governments should play to ensure that foster children receive appropriate parenting throughout their entire childhood.

Resolved, That the Senate—

(1) recognizes—
(A) May 9, 2006 as “National Foster Care Month”;
(B) that, during National Foster Care Month, the leaders of the Federal, State, and local governments should play to ensure that foster children receive appropriate parenting throughout their entire childhood.

AMENDMENTS SUBMITTED AND PROPOSED

SEC. 1. SHORT TITLE.
This Act may be cited as the “Local Law Enforcement Enhancement Act of 2005”.
SEC. 2. FINDINGS.
Congress makes the following findings:
(1) The incidence of violence motivated by the act of, or perceived race, color, religion, national origin, gender, sexual orientation, or disability of the victim poses a serious national problem.
(2) Such violence disrupts the tranquility and safety of communities and is deeply divisive.
(3) State and local authorities are now and will continue to be responsible for prosecuting the overwhelming majority of violent crimes in the United States, including violent crimes motivated by bias.
(4) Existing Federal law is inadequate to address this problem.
(5) The prominent characteristic of a violent crime motivated by bias is that it devastates not just the actual victim and the family and friends of the victim, but frequently savages the community sharing the traits that caused the victim to be selected.
(6) Such violence substantially affects interstate commerce in many ways, including—
(A) by impeding the movement of members of targeted groups and forcing such members to move across State lines to escape the incidence or risk of such violence; and
(B) by preventing members of targeted groups from purchasing goods and services, obtaining employment, or participating in other commercial activity.
(7) Perpetrators cross State lines to commit such violence.
(8) Changes in the amenities, and instrumentalities of interstate commerce are used to facilitate the commission of such violence.
(9) Such violence is committed using articles that have traveled in interstate commerce.
(10) For generations, the institutions of slavery and involuntary servitude were defined by the race, color, or ancestry of those held in bondage. Slavery and involuntary servitude were enforced, both prior to and after the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States, through widespread public and private violence directed at persons because of their race, color, or ancestry, or perceived thereof.

Possible, the badges, incidents, and relics of slavery and involuntary servitude.
(11) Both at the time when the 13th, 14th, and 15th amendments to the Constitution of the United States were adopted and continuing to date, members of certain religious and national origin groups were and are perceived to be distinct “races”. Thus, in order to nominate, to the extent possible, the badges, incidents, and relics of slavery, it is necessary to prohibit assaults on the basis of real or perceived religions or national origins, at least to the extent such religions or national origins were regarded as races at the time of the adoption of the 13th, 14th, and 15th amendments to the Constitution of the United States.
(12) Federal jurisdiction over certain violent crimes motivated by bias enables Federal, State, and local authorities to work together as partners in the investigation and prosecution of such crimes.
(13) The problem of crimes motivated by bias is sufficiently serious, widespread, and interstate in nature as to warrant Federal assistance to States and local jurisdictions.

SEC. 3. DEFINITION OF HATE CRIME.
In this Act, the term “hate crime” has the same meaning as in section 6 of the Violent Crime Control and Law Enforcement Act of 1994 (28 U.S.C. 1994 note).

SEC. 4. SUPPORT FOR CRIMINAL INVESTIGATIONS AND PROSECUTIONS BY STATE AND LOCAL LAW ENFORCEMENT OFFICIALS.
(a) Assistance Other Than Financial Assistance—
(1) In General.—At the request of a law enforcement official of a State or Indian tribe, the Attorney General may provide technical, forensic, prosecutorial, or any other form of assistance in the criminal investigation or prosecution of any crime that—
(A) constitutes a hate crime; or
(B) constitutes a hate crime as defined in section 6 of title 18, United States Code; or
(C) is motivated by prejudice based on the race, color, religion, national origin, gender, sexual orientation, or disability of the victim, or is a violation of the hate crime laws of the State or Indian tribe.
(2) Priority.—In providing assistance under subparagraph (A) the Attorney General shall give priority to crimes committed by offenders who have committed crimes in more than 1 State and to rural jurisdictions that have difficulty in providing extraordinary expenses relating to the investigation or prosecution of the crime.
(b) Grants—
(1) In General.—The Attorney General may award grants to assist State, local, and Indian law enforcement officials with the extraordinary expenses associated with the investigation and prosecution of hate crimes.
(2) Office of Justice Programs.—In implementing the grant program, the Office of Justice Programs shall work closely with the funders of jurisdiction to ensure that the concerns and needs of all affected parties, including community groups and schools, colleges, and universities, are addressed through the local infrastructure developed under the grants.

PHOTOGRAPH—The chief justice of the United States shall forward to the Secretary of the Senate the official photograph of the President of the United States which is kept in his office for the purpose of having it printed in the Congressional Record.

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(C) REQUIREMENTS.—A State or political subdivision of a State or tribal official applying for assistance under this subsection shall—

(i) describe the extraordinary purposes for which the grant is needed;

(ii) certify that the State; political subdivision, or Indian tribe lacks the resources necessary to investigate or prosecute the hate crime;

(iii) demonstrate that, in developing a plan to implement the grant, the State, the political subdivision, or tribal official has consulted and coordinated with nonprofit, nongovernmental victim services programs that have experience providing services to victims of hate crimes; and

(iv) certify that any Federal funds received under this subsection will be used to supplement, not supplant, non-Federal funds that would otherwise be available for activities funded under this subsection.

(4) DEADLINES.—An application for a grant under this subsection shall be approved or disapproved by the Attorney General not later than 30 business days after the date on which the Attorney General receives the application.

(5) GRANT AMOUNT.—A grant under this subsection shall not exceed $100,000 for any disapproved by the Attorney General not

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section.

thought or action shall not exceed $100,000 for any

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paragraph (A)—

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, as added

(ii) the defendant uses a firearm, channel, facility, or instrumentality of interstate or foreign commerce in connection with the conduct described in subparagraph (A); or

the attorney general, or an attempt to commit kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill.

(b) CIRCUMSTANCES DESCRIBED.—For purposes of subparagraph (A), the circumstances described in this subparagraph are that—

(i) the conduct described in subparagraph (A) occurs during the course of, or as the result of, the travel of the defendant or the victim—

(B) the verdict or sentence obtained pursuant to such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments

(A) occurs in interstate or foreign commerce; or

(b) Authorization of Appropriations.—There are authorized to be appropriated to carry out this subsection $5,000,000 for each of fiscal years 2006 and 2007.

SEC. 5. GRANT PROGRAM.

(a) AUTHORITY TO MAKE GRANTS.—The Office of Justice Programs of the Department of Justice shall award grants, in accordance with such regulations as the Attorney General may prescribe, to State and local programs designed to combat hate crimes committed by juveniles, including programs to train local law enforcement officials in identifying, investigating, prosecuting, and preventing hate crimes.

(b) Authorization of Appropriations.—There are authorized to be appropriated such sums as may be necessary to carry out this section.

SEC. 6. AUTHORIZATION FOR ADDITIONAL PERSONNEL TO ASSIST STATE AND LOCAL LAW ENFORCEMENT.

There are authorized to be appropriated to the Department of the Treasury and the Department of Justice, including the Federal Law Enforcement Training Center, the Office of Justice Programs, the Equal Employment Opportunity Commission, and other agencies of the Federal Government, such sums as may be necessary for the purpose of carrying out this section.

SEC. 7. PROHIBITION OF CERTAIN HATE CRIME ACTS.

(a) IN GENERAL.—Chapter 13 of title 18, United States Code, is amended by adding at the end of chapter 13 the following:

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‘‘(B) shall be imprisoned for any term of years or for life, fined in accordance with this title, or both; and

‘‘(C) REQUIREMENTS.—A State or political subdivision of a State or tribal official applying for assistance under this subsection shall—

(i) Offenses involving actual or perceived race, color, religion, or national origin: Whoever, whether or not acting under color of law, willfully causes bodily injury to any person or, through the use of fire, a firearm, or an explosive or incendiary device, attempts to cause bodily injury to any person, because of the actual or perceived race, color, religion, or national origin of any person.

‘‘(D) the verdict or sentence obtained pursuant to such provision or amendment to any person or circumstance is held to be unconstitutional, the remainder of this Act, the amendments

(b) Certification Requirement.—No prosecution of any offense described in this subsection may be undertaken by the United States, except under the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General that—

1. Strike all after the enacting clause and insert the following:

§ 102. Elimination of cap on SCHIP funding for States that expand eligibility for children.

(b) Technical and Conforming Amendments.—The amendment, for chapter 13 of title 18, United States Code, is amended by adding at the end the following:

SEC. 2. Findings.

TITLES I—EXPANDED COVERAGE OF CHILDREN UNDER MEDICAID AND SCHIP

Sec. 101. State option to receive 100 percent FMAP for medical assistance for children in poverty in exchange for expanded coverage of children in working poor families under medicaid or SCHIP.

Sec. 102. Elimination of cap on SCHIP funding for States that expand eligibility for children.
TITLE II—STATE OPTIONS FOR INCENTIVE MENTAL CHILD CONVERAGE EXPANSIONS

Sec. 201. State option to provide wrap-around SCHIP coverage to children who have other health coverage.

Sec. 202. State option to enroll low-income children of State employees in SCHIP.

Sec. 203. Optional coverage of legal immigrant children under medicaid and SCHIP.

Sec. 204. State option for partial expansion of eligibility for children under medicaid and SCHIP.

TITLE III—TAX INCENTIVES FOR HEALTH INSURANCE COVERAGE OF CHILDREN

Sec. 301. Refundable credit for health insurance coverage of children.

Sec. 302. Forfeiture of personal exemption for any child not covered by health insurance.

TITLE IV—MISCELLANEOUS

Sec. 401. Requirement for group market to offer children's health coverage option for workers with children.

Sec. 402. Effective date.

TITLE V—RECUR PROVISION


SEC. 2. FINDINGS.
Congress makes the following findings:

(1) NEED FOR UNIVERSAL COVERAGE.—
(A) Currently, there are 9,000,000 children under the age of 19 who are uninsured. One out of every 5 children are uninsured while in the Midwest, 8.3 percent are uninsured. The South's rate of uninsured children is 14.3 percent while the West has an uninsured rate of 13 percent.

(B) Children in the Southern and Western parts of the United States were nearly 1.7 times more likely to be uninsured than children in the Northeast. In the Northeast, 9.4 percent of children are uninsured while in the Midwest, 8.3 percent are uninsured. The South's rate of uninsured children is 14.3 percent while the West has an uninsured rate of 13 percent.

(C) Children's health care needs are neglected in the United States. One-quarter of young children in the United States are not fully up to date on their basic immunizations. One-third of children with asthma do not get a prescription for the necessary medications to manage the disease.

(D) According to the Centers for Disease Control and Prevention, nearly 1/3 of all uninsured children have not had a well-child visit in the past year. One out of every 5 children has problems accessing needed care, and 1 out of 4 children do not receive annual dental exams. One in 6 uninsured children had a delayed or unmet medical need in the past year. Minority children are less likely to receive proven treatments such as prescription medications to treat chronic disease.

(E) There are 7,600,000 young adults between the ages of 19 and 20. In the United States, approximately 28 percent, or 2,100,000 individuals, of this group are uninsured.

(f) Chronic illness and disability among children are on the rise. Children most at risk for chronic illness and disability are children who are most likely to be poor and uninsured.

(2) ROLE OF THE MEDICAID AND STATE CHILDREN'S HEALTH INSURANCE PROGRAMS.—
(A) The medicaid program and SCHIP serve as a crucial health safety net for 30,000,000 children. During the recent economic downturn and the highest number of uninsured individuals ever recorded in the United States, the medicaid program and SCHIP offset losses in employer-sponsored coverage. While the number of children living in low-income families increased by 2,000,000 between 2000 and 2003, the number of uninsured children fell due to the medicaid program and SCHIP.

(B) In 2003, 25,000,000 children were enrolled in the medicaid program, accounting for 1/3 of all enrollees and only 19 percent of total program costs.

(C) The medicaid program and SCHIP do more than just fill in the gaps. Gains in public coverage have reduced the percentage of low-income uninsured by 1/2 from 1997 to 2003. In addition, a recent study found that publicly-insured children are more likely to obtain medical care, preventive care and dental care than similar low-income privately-insured children.

(D) Publicly funded programs such as the medicaid program and SCHIP actually improve the health of children who are currently insured by public programs are in better health than they were a year ago. Expansion of coverage for children and pregnant women under the medicaid program and SCHIP reduces rates of avoidable hospitalizations by 2 percent.

(E) Studies have found that children enrolled in public insurance programs experienced a 58 percent improvement in measures of school performance.

(F) Despite the success of expansions in general under the medicaid program and SCHIP, due to constraints, many States have stopped doing aggressive outreach and have raised premiums and cost-sharing requirements on families under these programs. The medicaid program and SCHIP enrollment in SCHIP for a period of time between April 2003 and July 2004. As a result, SCHIP enrollment fell by 200,000 children for the first time in the program's history.

(G) It is estimated that 50 percent of all legal immigrant children in families with income that is less than 200 percent of the Federal poverty line are uninsured. In States with programs to cover immigrant children, 57 percent of non-citizen children are uninsured.

(H) Children on the rise. Children most at risk for chronic illness and disability are children who are most likely to be poor and uninsured.

(3) NEED FOR INCREASED FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN POVERTY

(a) STATE OPTION.—Title XIX of the Social Security Act (42 U.S.C. 1396 et seq.) is amended by redesignating section 1938 as section 1940, and by inserting after section 1940 the following:

"STATE OPTION FOR INCREASED FMAP FOR MEDICAL ASSISTANCE FOR CHILDREN IN POVERTY IN EXCHANGE FOR EXPANDED COVERAGE OF CHILDREN IN WORKING POOR FAMILIES UNDER MEDICAID OR SCHIP.

Sec. 1939. (a) 100 PERCENT FMAP.—

(1) In general.—Notwithstanding any other provision of this title, in the case of a State that, through an amendment to each of its State plans under this title and title SCHIP (or to a waiver of either such plan), agrees to satisfy the conditions described in subsections (b), (c), and (d) the Federal medical assistance percentage shall be 100 percent with respect to—

(A) the State option for increased FMAP for medical assistance for children in poverty in title XIX; or

(B) the medicaid and SCHIP.

(2) Limitation on scope of application of increase.—The increase in the Federal medical assistance percentage for a State under this section shall apply only with respect to the total amount expended for providers of medical assistance for a fiscal year quarter beginning on or after the date described in subsection (e) for children whose family income does not exceed 100 percent of the poverty line.

(3) Eligibility expansions.—The conditions described in this subsection is that the State agrees to do the following:

(A) COVERED UNDER MEDICAID OR SCHIP FOR CHILDREN IN FAMILIES WHOSE INCOME DOES NOT EXCEED 150 PERCENT OF THE POVERTY LINE.—

(1) The State agrees to provide medical assistance under this title or title SCHIP to children in poverty for the purchase of dependent coverage if—

(D) The State provides additional benefits to children whose family income exceeds the medicaid applicable income level (as defined in section 2110(b)(4)) but by substituting ‘January 1, 2006’ for ‘March 31, 1977’ does not exceed 150 percent of the poverty level.

(B) The State option to expand coverage through subsidized purchase of family health insurance under this title or title SCHIP to children in poverty for the purchase of dependent coverage if—

(E) The State agrees to provide medical assistance under this title or title SCHIP to children whose family income is 150 percent of the poverty line and 300 percent of the poverty line.

(2) The State must provide additional benefits to children whose family income is 150 percent of the poverty line and 300 percent of the poverty line.

(3) The State must provide additional benefits to children whose family income is 150 percent of the poverty line and 300 percent of the poverty line.

(4) The State must provide additional benefits to children whose family income is 150 percent of the poverty line and 300 percent of the poverty line.
purposes of this title and title XXI as an individual who has not attained 21 years of age.

(3) OPPORTUNITY FOR HIGHER INCOME CHILDREN.—By medical assistance of the State agrees to permit any child whose family income exceeds 300 percent of the poverty line to purchase full or additional coverage under such coverage, as determined by the State.

(4) COVERAGE FOR LEGAL IMMIGRANT CHILDREN.—The State agrees to—

(A) provide medical assistance under this title and child health assistance under title XXI for alien children who are lawfully residing in the United States (including battered or battered shelters, the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance in accordance with section 1902(v)(4) and 2106(c)(1)(E); and

(B) not establish or enforce barriers that deter applications by such aliens, including through the application of the removal of the barriers described in subsection (c).

(c) REMOVAL OF ENROLLMENT AND ACCESS BARRIERS.—The condition described in this subsection is that the State agrees to do the following:

(1) PRESUMPTIVE ELIGIBILITY FOR CHILDREN.—The State agrees to—

(A) provide presumptive eligibility for children under this title and title XXI in accordance with section 1920A;

(B) treat any items or services that are provided to an uncovered child (as defined in section 2110(c)(8)) who is determined ineligible for medical assistance under this title as child health assistance for purposes of paying a provider for items or services, so long as such items or services would be considered child health assistance for a target low-income child under title XXI.

(2) ADOPTION OF 12-MONTH CONTINUOUS ENROLLMENT.—The State agrees to provide that eligibility for assistance under this title and title XXI shall not be regularly reetermined more often than once every year for children.

(3) ACCEPTANCE OF SELF-DECLARATION OF INCOME.—The State agrees to permit the family to report income for medical assistance under this title or child health assistance under title XXI to declare and certify by signature under penalty of perjury family income made by a Federal or State agency (or a public or private entity making such determination on behalf of such agency), including the agencies administering the Food Stamp Act of 1977, the Richard B. Russell National School Lunch Act, and the Child Nutrition Act of 1966, notwithstanding any differences in budget unit, disregard, formula, or other methodology, but only if—

(A) such agency has fiscal liabilities or responsibilities affected or potentially affected by such determinations; and

(B) any information furnished by such agency pursuant to this subparagraph is used solely for purposes of determining eligibility for medical assistance under this title or for child health assistance under title XXI.

(5) NO ASSETS TEST.—The State agrees to—

(A) not (or demonstrates that it does not) apply any assets tests, except under this title or title XXI with respect to children.

(6) ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS.—

(A) IN GENERAL.—The State agrees for purposes of initial eligibility determinations and redeterminations of children under this title and title XXI not to require a face-to-face interview and to permit applications and renewals by mail, telephone, and the Internet.

(8) NONDUPPLICATION OF INFORMATION.—

(i) IN GENERAL.—For purposes of redetermination of eligibility for currently or previously eligible children under this title and title XXI, the State agrees to use all information in its possession (including information available under other Federal or State programs) to determine eligibility or redetermine continued eligibility before seeking similar information from parents.

(ii) RULE OF CONSTRUCTION.—Nothing in clause (i) shall be construed as limiting any obligation of a State to provide notice and a fair hearing before denying, terminating, or reducing a child’s coverage based on such information in the possession of the State.

(7) NO WAITING LIST FOR CHILDREN UNDER title XXI.—Except as provided in section 2110(b) and (c), and (d) is approved by the Secretary.

(8) ADEQUATE PROVIDER PAYMENT RATES.—The State agrees to—

(A) establish payment rates for children’s health care providers under this title that are no less than the average of rates paid to providers under this title for similar items or services, so long as such items or services would be considered child health assistance and either (i) target low-income child under title XXI or (ii) enroll or embrace other barriers to the enrollment of eligible children based on the date of their application for coverage.

(B) ESTABLISHMENT OF ELIGIBILITY LEVELS FOR CHILDREN.—Subject to section 2105(h), the State agrees to use all information in its possession (including information in its possession (including information in the possession of the State).

(9) ELIGIBILITY DETERMINATIONS AND REDETERMINATIONS.—The State agrees to—

(A) maintain eligibility income, resources, and methodologies applied under this title (including under a waiver of such title or under title XXI) to children that are no more restrictive than the eligibility income, resources, and methodologies applied with respect to children under this title (including under such a waiver) as of January 1, 2006.

(B) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as implying that a State does not have to comply with the minimum income levels required for children under section 1902(f)(2).

(c) MAINTENANCE OF MEDICAID ELIGIBILITY LEVELS FOR CHILDREN.—

(1) IN GENERAL.—The condition described in this subsection is that the State agrees to maintain eligibility income, resources, and methodologies applied under this title (including under a waiver of such title or under title XXI) to children that are no more restrictive than the eligibility income, resources, and methodologies applied with respect to children under this title (including under such a waiver) as of January 1, 2006.

(2) RULE OF CONSTRUCTION.—Nothing in this section shall be construed as implying that a State does not have to comply with the minimum income levels required for children under section 1902(f)(2).

(d) DETERMINATION OF MEDICAID ELIGIBILITY LEVELS FOR CHILDREN.—

(1) IN GENERAL.—The condition described in this subsection is that the State agrees to—

(A) in subsection (a), by inserting ‘‘subject to paragraph (b)’’; and

(B) by adding at the end the following new paragraph:

(1) IN GENERAL.—A State may waive the requirement of paragraph (1)(C) that a target low-income child may not be covered under a group health plan or under health insurance coverage in order to provide—

(i) items or services that are not covered, or only partially covered, under such plan or coverage;

(ii) cost-sharing protection.

(B) ELIGIBILITY.—In waiving such requirement, a State may limit the application of the waiver to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the level otherwise established for other children under the State child health plan.

SEC. 102. ELIMINATION OF CAP ON SCHIP FUNDING FOR STATES THAT EXPAND ELIGIBILITY TO LEGAL IMMIGRANTS.

(a) IN GENERAL.—Section 2105 of the Social Security Act (42 U.S.C. 1397dd) is amended by adding at the end the following:

(F) DEFINITION OF ELIGIBILITY LEVELS FOR LEGAL IMMIGRANT CHILDREN.—

The maximum income level described in section 2110(c)(5) is increased to—

(2) Section 1902(f)(4) of the Social Security Act (42 U.S.C. 1396n(4)) is amended—

(c) in paragraph (a), by inserting ‘‘subject to section 2106(h),’’ after ‘‘Subject to paragraph (4)’’; and

(d) in subsection (c)(1), by inserting ‘‘subject to section 2106(h),’’ after ‘‘for a fiscal year.’’

TITLE II—STATE OPTIONS FOR INCREASING CHILD HEALTH COVERAGE EXPANSIONS

SEC. 201. STATE OPTION TO PROVIDE ADDITIONAL SCHIP COVERAGE EXPANSIONS.

(a) IN GENERAL.—Section 2110(b) of the Social Security Act (42 U.S.C. 1397j(b)) is amended—

(1) in paragraph (1)(C), by inserting ‘‘subject to paragraph (b),’’ after ‘‘under title XIX or’’; and

(2) by adding at the end the following new paragraph:

(E) STATE OPTION TO PROVIDE ADDITIONAL COVERAGE.

(A) IN GENERAL.—A State may waive the requirement of paragraph (1)(C) that a target low-income child may not be covered under a group health plan or under health insurance coverage in order to provide—

(i) items or services that are not covered, or only partially covered, under such plan or coverage;

(ii) cost-sharing protection.

(B) ELIGIBILITY.—In waiving such requirement, a State may limit the application of the waiver to children whose family income does not exceed a level specified by the State, so long as the level so specified does not exceed the level otherwise established for other children under the State child health plan.
"(C) CONTINUED APPLICATION OF DUTY TO PREVENT SUBSTITUTION OF EXISTING COVERAGE.—Nothing in this paragraph shall be construed as modifying the application of section 4302(a), or 1909(c)(3), for a State where such a duty would otherwise be applicable under section 1909(c)(3)."

(b) TITLE XXI.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(1) by redesignating subparagraphs (A) through (D) as subparagraphs (C) through (E), respectively; and

(2) by inserting after subparagraph (A) the following new subparagraph:

"(B) Section 1902(a)(25) (relating to coordination and secondary payor provisions) with respect to children covered under a waiver described in section 2110(b)(5))."

SEC. 202. STATE OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES IN SCHIP.

Section 2110(b)(2) of the Social Security Act (42 U.S.C. 1397f(b)(2)) is amended—

(1) by redesignating subparagraphs (A) and (B) as clauses (1) and (2), respectively and re-aligning the left margins of such clauses appropriately;

(2) by striking "Such term" and inserting the following:

"(A) IN GENERAL.—Such term; and

(3) by striking the second subparagraph and inserting—

"(B) STATE OPTION TO ENROLL LOW-INCOME CHILDREN OF STATE EMPLOYEES.—At the option of a State, the paragraph (A) clause (ii) shall not apply to any low-income child who would otherwise be eligible for child health assistance under this title but for such subparagraph."

SEC. 203. OPTIONAL COVERAGE OF LEGAL IMMIGRANT CHILDREN UNDER MEDICAID AND SCHIP.

(a) MEDICAID PROGRAM.—Section 1902(v) of the Social Security Act (42 U.S.C. 1396v) is amended—

(1) in paragraph (1), by striking "paragraph (2)" and inserting "paragraphs (2) and (4)"; and

(2) by adding at the end the following:

"(4) A State may elect (in a plan amendment under this title) to provide medical assistance under this title for aliens who are lawfully residing in the United States (including battered aliens described in section 421(c) of the Personal Responsibility and Work Opportunity Reconciliation Act of 1996) and who are otherwise eligible for such assistance, within any of the following eligibility categories:

"(I) CHILDREN.—Children (as defined under such plan), including optional targeted low-income children described in section 1905(e)(2)(B).

"(II) NEBENZWEISE.

"(b) Title XXI.—Section 2107(e)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended by adding at the end the following:

"(E) Section 1903(v)(4) (relating to optional coverage under section 1903(v)(4) for children where the State has elected to provide such coverage to such State under title XIX)."

SEC. 204. STATE OPTION FOR PASSIVE RENEWAL OF ELIGIBILITY FOR CHILDREN UNDER MEDICAID AND SCHIP.

(a) IN GENERAL.—Section 1902(1) of the Social Security Act (42 U.S.C. 1396a(l)) is amended by adding at the end the following:

"(5) Notwithstanding any other provision of this title, a State may provide that an individual who has been determined eligible for medical assistance under this title shall remain eligible for medical assistance until such time as the State has information demonstrating that the individual is no longer so eligible.

(b) APPLICATION UNDER TITLE XXI.—Section 2190e(v)(1) of the Social Security Act (42 U.S.C. 1397gg(e)(1)) is amended—

(1) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively, and

(2) by inserting after subparagraph (A) the following:

"(B) Section 1902(1)(5) (relating to passive renewal of eligibility)."

TITLE III—TAX INCENTIVES FOR HEALTH INSURANCE COVERAGE OF CHILDREN

SEC. 301. REFUNDABLE CREDIT FOR HEALTH INSURANCE COVERAGE OF CHILDREN.

(a) IN GENERAL.—Subpart C of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 (relating to refundable credits) is amended by redesigning section 36 as section 3601 and by inserting after section 36 the following new section:

"SEC. 36. HEALTH INSURANCE COVERAGE OF CHILDREN.

"(a) IN GENERAL.—In the case of an individual, the credit shall be allowed as a credit against the tax imposed by this subtitle to the extent of the amount equal to so much of the amount paid during the taxable year, not compensated for by insurance or otherwise, for qualified health insurance for each dependent child of the taxpayer, as exceeds 5 percent of the adjusted gross income of such taxpayer for such taxable year.

"(b) DEPENDENT CHILD.—For purposes of this section, the term 'dependent child' means any child (as defined in section 36(b)) of such individual from whom payments described in section 213 or 224 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

"(6) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year in which such taxpayer elects to have this section not apply for such taxable year.

"(b) INFORMATION REPORTING.—

(1) IN GENERAL.—Subpart B of part III of subchapter A of chapter 61 of the Internal Revenue Code of 1986 (relating to information concerning transactions with other persons) is amended by inserting after section 6604 the following new section:

"SEC. 6605G. RETURNS RELATING TO PAYMENTS FOR QUALIFIED HEALTH INSURANCE.

"(a) IN GENERAL.—Any governmental unit or any person who, in connection with a trade or business conducted by such person, receives payments during any calendar year from any individual for coverage of a dependent child (as defined in section 36(b)) of such individual under creditable health insurance, shall make the return described in subsection (b) at such time as the Secretary may by regulations prescribe with respect to each individual from whom such payments were received.

"(b) FORM AND MANNER OF RETURNS.—A return is described in this subsection if such return—

"(1) is in such form as the Secretary may prescribe, and is a substantial portion of its benefits and are excepted benefits (as defined in section 9832(c)).

"(2) INCLUDES OTHER CONTRACTS.—Such term shall not include insurance if a substantial portion of its benefits and are excepted benefits (as defined in section 9832(c)).

"(3) MEDICAL SAVINGS ACCOUNT AND HEALTH SAVINGS ACCOUNT CONTRIBUTIONS.—

"(1) IN GENERAL.—If a deduction would (but for paragraph (2)) be allowed under section 220 or 223 to the taxpayer for a payment for qualified medical savings account or health savings account claims (as defined in section 220(b)(1)) of an individual, subsection (a) shall be applied by treating such payment as a payment for qualified health insurance for such individual.

"(2) DENIAL OF DOUBLE BENEFIT.—No deduction shall be allowed for that portion of the payments otherwise allowable as a deduction under section 220 or 223 for the taxable year which is equal to the amount of credit allowed for such taxable year by reason of this subsection.

"(c) SPECIAL RULES.—

(1) DETERMINATION OF INSURANCE COSTS.—The Secretary shall provide rules for the allocation of the cost of any qualified health insurance for family coverage to the coverage of any dependent child under such insurance.

"(2) COORDINATION WITH DEDUCTION FOR MEDICAL EXPENSE AND HIGH Deductible health PLAN DEcUCTIONS.—The amount which would (but for this paragraph) be allowed by the taxpayer under section 213 or 224 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

"(3) COORDINATION WITH MEDICAL EXPENSE AND HIGH Deductible health PLAN DEcUCTIONS.—The amount which would (but for this paragraph) be included in gross income by the taxpayer under section 213 or 224 for the taxable year shall be reduced by the credit (if any) allowed by this section to the taxpayer for such year.

"(4) DENIAL OF CREDIT TO DEPENDANTS.—No credit shall be allowed under this section to any individual with respect to whom a deduction under section 152 is allowable to another taxpayer for a taxable year beginning in the calendar year in which such individual's taxable year begins.

"(5) DEDUCTION OF PERSONAL BENEFIT.—No credit shall be allowed under subsection (a) if the credit under section 36 is allowed and no credit shall be allowed under section 152 if a credit is allowed under this section.

"(6) ELECTION NOT TO CLAIM CREDIT.—This section shall not apply to a taxpayer for any taxable year in which such taxpayer elects to have this section not apply for such taxable year."
"(c) CREDIBLE HEALTH INSURANCE.—For purposes of this section, the term "creditable health insurance" is qualified health insurance (as defined in section 36(c)).

(d) STATEMENTS TO BE FURNISHED TO INDIVIDUALS.—Every person required to make a return under subsection (a) shall furnish to each individual whose name is required to be furnished, and whom such return subsection (a) received by the person required under subsection (b)(2)(A) to be set forth in such return a written statement showing—

(1) the name and address of the person required to make such return and the phone number of the information contact for such person,

(2) the aggregate amount of payments described in subsection (a) received by the person required to make such return from the individual to whom the statement is required to be furnished, and

(3) the information required under subsection (b)(2)(B) with respect to such payments.

The written statement required under the preceding sentence shall be furnished on or before January 31 of the year following the calendar year for which the return under subsection (a) is required to be made.

(2) RETURNS WHICH WOULD BE REQUIRED TO BE MADE BY 2 OR MORE PERSONS.—Except as otherwise provided in this paragraph, the exemption amount otherwise determined under this subsection for any dependent child (as defined in section 36(b)) for any taxable year shall be reduced by the same percentage as the percentage of such taxable year during which such dependent child was not covered by qualified health insurance (as defined in section 36(c)).

(3) FULL REDUCTION IF NO PROOF OF COVERAGE.—If no proof of coverage is furnished in connection with the return pursuant to subsection (a), in the case of any taxpayer who fails to attach to the return of tax for any taxable year a copy of the statement furnished to such taxpayer under section 6050I, the percentage reduction under such subparagraph shall be deemed to be 100 percent.

(4) NONAPPLICATION OF PARAGRAPH TO TAXPAYERS IN LOWEST TAX BRACKET.—This paragraph shall not apply to any taxpayer whose taxable income for the taxable year does not exceed the aggregate amount determined under section 1(1)(a)(B).

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning on or after January 1, 2007.

TITLE V—REVENUE PROVISION

SEC. 501. PARTIAL REPEAL OF RATE REDUCTION IN THE HIGHEST INCOME TAX BRACKET.

Section 1(1)(c) of the Internal Revenue Code of 1986 is amended by adding at the end the following flush sentence:

"The rate described in section 1(1)(c) of the Internal Revenue Code of 1986 shall be the highest rate of any individual who, before the date of enactment of this Act, was required to file a return for a taxable year beginning before January 1, 2007, on which tax was paid at a rate exceeding 39.6 percent of taxable income, or whose income was subject to tax under section 1(1)(a) of such Code (relating to such income)."

SEC. 3963. MR. SMITH submitted an amendment intended to be proposed by him to the bill S. 1555 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the promotion of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

In section 2222 of the Public Health Service Act, as added by section 2021 of the bill, strike subsection (a) and insert the following:

"(a) BENEFIT CHOICE OPTIONS.—Not later than 6 months after the date of enactment of this Act, the Secretary shall issue, by interim final rule, Benefit Choice Standards that implement a standard benefit package as provided for in this part.

"(2) REQUIREMENT.—The Benefit Choice Standards shall provide that a health insurance issuer in a State, may offer a coverage plan or plan in the small group market, individual market, large group market, or through a small business health plan, that does not comply with one or more mandates regarding covered benefits, services, or coverage of provider as may be in effect in such State with respect to such market or market other prior to the date of enactment of this title, if such coverage or plan provides for coverage of a standard benefit package as provided for in paragraph (3)."

"(3) STANDARD BENEFIT PACKAGE.—A health insurance issuer described in paragraph (2) shall offer to purchasers (including, with respect to a small business health plan, the participating employer (such plan) a plan that, at a minimum, provides coverage for such benefits, services, and categories of providers as are required under the laws of at least 26 States, as determined by the Secretary.

"(4) PUBLICATION OF BENEFIT PACKAGE.—Not later than 3 months after the date of enactment of this title, the Secretary shall publish in the Federal Register
the standard benefit package required under this subsection. In making such publication the Secretary shall resolve any variations that exist in the scope of the benefits, services, and participation of providers permitted under the laws of the States considered by the Secretary for purposes of paragraph (3).

(5) UPDATING OF BENEFIT PACKAGE.—Not later than 2 years after the date on which the standard benefit package is issued under paragraph (3), and every 2 years thereafter, the Secretary, in consultation with the National Council on Quality Assurance, shall update the package. The Secretary shall issue the updated package by regulation, and such updated package shall be effective upon the first plan year following the issuance of such regulation.

SA 3864. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 5. PROVISION OF MENTAL HEALTH BENEFITS.—The standard benefit package under this Act shall require that health plans include coverage (and cost sharing if applicable) for mental health care in a manner that is comparable to the coverage (and cost sharing if applicable) provided under such plan for items and services relating to physical health.

SA 3865. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

In section 222(a) of the Public Health Service Act, as added by section 201 of the bill, add at the end the following:

"(5) UPDATING OF BENEFIT PACKAGE.—Not later than 2 years after the date on which the standard benefit package is issued under paragraph (3), and every 2 years thereafter, the Secretary, in consultation with the National Council on Quality Assurance, shall update the package. The Secretary shall issue the updated package by regulation, and such updated package shall be effective upon the first plan year following the issuance of such regulation.

SA 3866. Mr. SMITH submitted an amendment intended to be proposed by him to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

In section 222(a) of the Public Health Service Act, as added by section 201 of the bill, add at the end the following:

"(5) UPDATING OF BENEFIT PACKAGE.—A health insurance issuer in a State that offers a basic option plan as provided for in paragraph (2) and an enhanced option plan as provided for in paragraph (3), shall ensure that each such plan provides coverage (and cost sharing if applicable) for mental health care and mental health parity consistent with the requirements under paragraph (2) and an enhanced option plan for the coverage (and cost sharing if applicable) provided under each such plan for items and services relating to physical health.

SA 3867. Ms. SOWE submitted an amendment intended to be proposed by her to the bill S. 1955 to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 6. NEGOTIATING FAIR PRICES FOR PRESCRIPTION DRUGS.

(a) IN GENERAL.—Title XVIII of the Social Security Act (42 U.S.C. 1395 et seq.) is amended by adding at the end the following:

"(a) IN GENERAL.—Not later than 18 months after the date of enactment of the Hospital Quality Report Card Act of 2006, the Secretary, in consultation with the Advisory Board of the Centers for Medicare & Medicaid Services, in this section referred to as the ‘Advisory Board’ and in consultation with the Director of the Agency for Healthcare Research and Quality, shall, directly or through contracts with States, establish and implement a Hospital Quality Report Card Initiative (in this section referred to as the ‘Initiative’) to report on hospital quality in subsection (d) hospitals.

(b) SUBSECTION (d) HOSPITAL.—For purposes of this section, the term ‘subsection (d) hospital’ means the hospital given such term in section 1102(d)(1)(B).

(c) REQUIREMENTS OF INITIATIVE.—

(1) QUALITY MEASUREMENTS REQUIRED FOR HOSPITALS.—

(A) QUALITY MEASURES.—Not less than 2 times each year, the Secretary shall publish reports on hospital quality. Such reports shall include quality measures data submitted under section 1116A(d)(1)(B)(viii), and other data as feasible, that allow for an assessment of health care—

(i) effectiveness;

(ii) safety;

(iii) timeliness;

(iv) efficiency;

(v) patient-centeredness; and

(vi) equity.

(B) REPORT CARD FEATURES.—In collecting and reporting data as provided for under subparagraph (A), the Secretary shall include hospital information, as possible, relating to—

(i) staffing levels of nurses and other health professionals, as appropriate;

(ii) rates of nosocomial infections;

(iii) the volume of various procedures performed;

(iv) the availability of interpreter services on-site;

(v) the accreditation of hospitals, as well as sanctions and other violations found by accreditation or State licensing boards;

(vi) the quality of care for various patient populations, including pediatric populations and racial and ethnic minority populations;

(vii) the availability of emergency rooms, intensive care units, obstetrical units, and burn units;
(viii) the quality of care in various hospitals, including inpatient, outpatient, emergency, maternity, and intensive care unit settings;

(ix) ongoing patient safety initiatives; and

(x) measures determined appropriate by the Secretary.

(C) TAILORING OF HOSPITAL QUALITY REPORTS.—The Director of the Agency for Healthcare Research and Quality may modify and publish hospital reports to include quality measures for diseases and health conditions of particular relevance to certain regions, States, or local areas.

(D) RISK ADJUSTMENT.—

(1) IN GENERAL.—In reporting data as provided for under subparagraph (A), the Secretary may risk adjust quality measures to account for differences relating to—

(i) the characteristics of the reporting hospital, such as licensed bed size, geography, teaching hospital status, and profit status; and

(ii) patient characteristics, such as health status, race, ethnic background, insurance status, and socioeconomic status.

(2) UNAUTHORIZED USE AND DISCLOSURE.—The Secretary shall compare quality measures data submitted by each subsection (d) hospital under section 1886(b)(3)(B)(viii) with data submitted in the prior year or years by the same hospital in order to identify and report actions that would lead to false or artificial improvement in the quality of care in the hospital's quality measures, including—

(i) adverse selection against patients with severe illness or other factors that predispose patients to poor health outcomes; and

(ii) provision of health care that does not meet established recommendations or accepted standards.

(2) DATA SAFEGUARDS.—

(A) UNAUTHORIZED USE AND DISCLOSURE.—The Secretary shall develop and implement effective safeguards to protect against the unauthorized use or disclosure of hospital data that is reported under this section.

(B) INACCURATE INFORMATION.—The Secretary shall develop and implement effective safeguards to protect against the dissemination of inconsistent, incomplete, invalid, inaccurate, or subjective hospital data.

(C) INCONSISTENCY.—The Secretary shall ensure that identifiable patient data shall not be released to the public.

(3) MERTING OF HOSPITAL QUALITY ADVISORY COMMITTEE.—

(A) HOSPITAL QUALITY ADVISORY COMMITTEE.—

(i) ESTABLISHMENT.—The Administrator, in consultation with the Director of the Agency for Healthcare Research and Quality, shall establish the Hospital Quality Advisory Committee (hereinafter referred to as the 'Advisory Committee') to provide advice to the Administrator on the submission, collection, and reporting of quality measures data. The Administrator shall serve as the chairperson of the Advisory Committee.

(ii) MEMBERSHIP.—The Advisory Committee shall include representatives of the following (except with respect to subparagraphs (A) through (D), to be appointed by the Administrator):

(A) The Agency for Healthcare Research and Quality.

(B) The Health Resources and Services Administration.

(C) The Department of Veterans Affairs.

(D) The Centers for Disease Control and Prevention.

(E) National membership organizations that focus on health care quality improvement.

(F) Public and private hospitals.

(G) Health insurance purchasers and other payers.

(H) Physicians, nurses, and other health professionals.

(I) Patients and patient advocates.

(J) Health researchers, policymakers, and other experts in the field of health care quality.

(K) Health care accreditation entities.

(L) Other agencies and groups as determined appropriate by the Administrator.

(3) DUTIES.—The Advisory Committee shall review and provide guidance and recommendations to the Administrator on—

(A) the establishment of the Initiative;

(B) integration and coordination of Federal quality measures data submission requirements, to avoid needless duplication and inefficiency;

(C) legal and regulatory barriers that may hinder quality measures data collection and reporting; and

(D) necessary technical and financial assistance to encourage quality measures data collection and reporting.

(4) STAFF AND RESOURCES.—The Administrator shall provide the Advisary Committee with appropriate staff and resources for the functioning of the Advisory Committee.

(5) DURATION.—The Advisory Committee shall terminate at the discretion of the Administrator, but in no event later than 5 years after the date of enactment of this section.

(E) AUTHORIZATION OF AppropriATIONS.—There are authorized to be appropriated to carry out this section such sums as may be necessary for each of fiscal years 2007 through 2016.

(b) CONFORMING AMENDMENT.—Section 1886(b)(3)(B)(viii) of the Social Security Act (42 U.S.C. 1395ww(b)(3)(B)(viii)), as added by section 5001 of the Deficit Reduction Act of 2005, is amended to read as follows:

(VII) The Secretary shall use the data submitted under this clause for the Hospital Quality Report Card Initiative under section 1886.

SEC. 4. EVALUATION OF THE HOSPITAL QUALITY REPORT CARD INITIATIVE.

(a) IN GENERAL.—The Director of the Agency for Healthcare Research and Quality, directly or through contract, shall evaluate and periodically report to the Congress the effectiveness of the Hospital Quality Report Card Initiative established under section 1886 of the Social Security Act, as added by section 5001 of the Deficit Reduction Act of 2005, in achieving the purposes described in section 2. The Director shall make such reports available to the public.

(b) RESEARCH.—The Director of the Agency for Healthcare Research and Quality, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall use the outcomes and recommendations of the Initiative in meeting the purpose described in section 2. The Director may make such reports available to the public.

(c) REPORTS TO CONGRESS.—The Director of the Agency for Healthcare Research and Quality, in consultation with the Administrator of the Centers for Medicare & Medicaid Services, shall submit to Congress reports on the effect of the Initiative on the health care quality improvement.

SA 3869. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title IA of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Health Care for Hybrids Act".

SEC. 2. FINDINGS.

Congress makes the following findings:

(1) The United States imports over half the oil it consumes.

(2) According to present trends, the United States reliance on foreign oil will increase to 68 percent of its total consumption by 2025.

(3) With only 3 percent of the world's known oil reserves, the health of the United States economy is dependent on world oil prices.

(4) World oil prices are overwhelmingly dictated by countries other than the United States, thus endangering our economic and national security.

(5) Legacy health care costs associated with retiree workers are an increasing burden on the global competitiveness of American industries.

(6) American automakers have lagged behind their foreign competitors in producing

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hybrid and other energy efficient automobiles.

(7) Innovative uses of new technology in automobiles in the United States will help retain American jobs, support our obligations for retiring workers in the automotive sector, decrease America’s dependence on foreign oil, and address pressing environmental issues.

TITLE I—PROGRAM

SEC. 101. COORDINATING TASK FORCE.
Not later than 6 months after the date of enactment of this Act, the Secretary of Energy, the Administrator of the Environmental Protection Agency, and the Secretary of Transportation shall establish, and appoint an equal number of representatives to, a task force (referred to in this Act as the ‘‘task force’’) to administer the program established under this Act.

SEC. 102. ESTABLISHMENT OF PROGRAM.
(a) IN GENERAL.—Not later than 1 year after the date of enactment of this Act, the task force established under section 101 shall establish a program to provide financial assistance to eligible domestic automobile manufacturers for the costs incurred in providing health benefits to their retired employees.

(b) CONSULTATION.—In establishing the program under subsection (a), the task force shall consult with representatives from the domestic automobile manufacturers, unions representing employees of such manufacturers, and consumer and environmental groups.

(c) ELIGIBLE DOMESTIC AUTOMOBILE MANUFACTURER.—To be eligible to receive financial assistance under the program established under subsection (a), a domestic automobile manufacturer shall—

(1) submit an application to the task force at such time, in such manner, and containing such information as the task force shall require;

(2) certify that such manufacturer is providing full health care coverage to all of its domestic employees;

(3) provide an assurance that the manufacturer will invest an amount equal to not less than 50 percent of the amount of health savings derived by the manufacturer as a result of its retiree health care costs being covered under this program;

(A) the domestic manufacture and commercialization of petroleum fuel reduction technologies, including alternative or flexible fuel vehicles, hybrids, and other state-of-the-art fuel saving technologies;

(B) the retraining of workers and retooling of assembly lines for such domestic manufacture and commercialization;

(C) research and development, design, commercialization, and other costs related to the diversifying of domestic production of automobiles through the offering of high performance fuel efficient vehicles; and

(D) assisting domestic automobile component suppliers to retrofit their domestic manufacturing plants to produce components for petroleum fuel reduction technologies, including alternative or flexible fuel vehicles, hybrids, and other state-of-the-art fuel saving technologies; and

(4) provide additional assurances and information as the task force may require, including a plan by the task force to audit the manufacturer’s compliance with the requirements of the program.

(d) LIMITATION.—The total amount of financial assistance provided under this program shall not exceed an amount equal to 10 percent of the retiree health care costs of that manufacturer for that year.

SEC. 103. REPORTING.
Not later than 6 months after the date of enactment of this Act, and every 6 months thereafter, the task force shall submit to Congress, and the Secretary of the Treasury shall, a report on any financial assistance provided under this program and the resulting changes in the manufacture and commercialization of fuel saving technologies implemented by auto manufacturers as a result of such financial assistance.

(1) For purposes of subparagraph (A)—

(i) the transaction changes in a meaningful way (apart from general tax effects) the taxpayer’s economic position, and

(2) The department of the Treasury shall not be taken into account in determining whether a transaction is a tax-free exchange.

(3) IN GENERAL.—For purposes of subparagraph (A)—

(i) the present value of the reasonably expected pre-tax profit from the transaction is subsumed in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

(ii) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

(4) ‘‘Special rule where taxpayer relies on profit potential.‘‘—A transaction shall not be treated as having economic substance by reason of having a potential for profit unless—

(i) the present value of the reasonably expected pre-tax profit from the transaction is subsumed in relation to the present value of the expected net tax benefits that would be allowed if the transaction were respected, and

(ii) the reasonably expected pre-tax profit from the transaction exceeds a risk-free rate of return.

(5) Regulations.—The Secretary shall prescribe such regulations as may be necessary or appropriate to carry out the purposes of this section. Such regulations may include exceptions from the application of this subsection.

(6) EFFECTIVE DATE.—The amendments made by this section shall apply to transactions entered into after the date of enactment of this Act.
SEC. 202. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

(a) In General.—Subchapter A of chapter 68 of the Internal Revenue Code of 1986 is amended by inserting after section 6622A the following new section:

"SEC. 6622A. PENALTY FOR UNDERSTATEMENTS ATTRIBUTABLE TO TRANSACTIONS LACKING ECONOMIC SUBSTANCE, ETC.

"(a) Imposition of Penalty.—If a taxpayer has a noneconomic substance transaction understatement for any taxable year, there shall be added to the tax an amount equal to 40 percent of the amount of such understatement.

"(b) Reduction of Penalty for Disclosed Transactions.—Subsection (a) shall be applied by substituting '20 percent' for '40 percent' with respect to the portion of any noneconomic substance transaction understatement with respect to which the relevant facts affecting the tax treatment of the item are adequately disclosed in the return or a statement attached to the return.

"(c) Noneconomic Substance Transaction Understatement.—For purposes of this section:

"(1) In General.—The term 'noneconomic substance transaction understatement' means any amount which would be an understatement under section 6622A(b)(1) if section 6622A were applied to transactions lacking intangible items attributable to noneconomic substance transactions rather than items to which section 6622A would apply without regard to this paragraph.

"(2) Noneconomic Substance Transaction.—The term 'noneconomic substance transaction' means any transaction if—

"(A) there is a lack of economic substance (within the meaning of section 7701(o)(1)) for the transaction giving rise to the claimed benefit or the transaction was not respected (within the meaning of section 7701(o)(2)), or

"(B) the transaction fails to meet the requirements of any similar rule of law.

"(d) Rules Applicable to Compromise of Penalty.—

"(1) In General.—If the last letter of proposed deficiency which allows the taxpayer an opportunity for administrative review in the Large Business and International Service Office of Appeals has been sent with respect to a penalty to which this section applies, only the Commissioner of Internal Revenue may compromise all or any portion of such penalty.

"(2) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SEC. 203. DENIAL OF DEDUCTION FOR INTEREST UNDERPAYMENTS ATTRIBUTABLE TO NONECONOMIC SUBSTANCE TRANSACTIONS.

(a) In General.—Section 163(m) of the Internal Revenue Code of 1986 (relating to interest on unpaid taxes attributable to non-disclosed reportable transactions) is amended—

"(1) by striking "and noneconomic substance transaction understatements" after "reportable transaction understatement" and inserting "after " reportable transaction understatement";

"(c) Effective Date.—The amendments made by this section shall apply to transactions entered into after the date of the enactment of this Act.

SA 3870. Mr. OBAMA submitted an amendment intended to be proposed by him to the bill S. 155, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

Strike out all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the "Healthy Places Act of 2009.

SEC. 2. DEFINITIONS.

In this Act:

(1) ADMINISTRATOR.—The term 'Administrator' means the Administrator of the Environmental Protection Agency.

(2) BUILT ENVIRONMENT.—The term 'built environment' means an environment consisting of all buildings, spaces, and products that are created or modified by people, including—

(A) homes, schools, workplaces, parks and recreation areas, grocery and business areas, and transportation systems;

(B) electric transmission lines;

(C) waste disposal sites; and

(D) land-use planning and policies that impact urban, rural, and suburban communities.

(3) DIRECTOR.—The term "Director" means the Director of the Centers for Disease Control and Prevention.

(4) ENVIRONMENTAL HEALTH.—The term 'environmental health' means the health and well-being of a population as affected by—

(A) the direct pathological effects of chemicals, radiation, and some biological agents; and

(B) the effects (often indirect) of the broad physical, psychological, social, and aesthetic environment.

(5) HEALTH IMPACT ASSESSMENT.—The term "health impact assessment" means any combination of procedures, methods, tools, and measures used under section 4 to analyze the actual or potential effects of a policy, program, or project on the health of a population (including the distribution of those effects within the population).

(6) SECRETARY.—The term "Secretary" means the Secretary of Health and Human Services.

SECTION 3. INTERAGENCY WORKING GROUP ON ENVIRONMENTAL HEALTH.

(a) DEFINITIONS.—In this section:

"(1) INSTITUTE.—The term "Institute" means the Institute of Medicine of the National Academies of Science.

"(2) IWG.—The term "IWG" means the interagency working group established under subsection (b).

"(3) ESTABLISHMENT.—The Secretary, in coordination with the Administrator, shall establish an interagency working group to discuss environmental health concerns, particularly concerns disproportionately affecting disadvantaged populations.

(b) ESTABLISHMENT.—The Secretary, in coordination with the Administrator, shall establish an interagency working group to discuss environmental health concerns, particularly concerns disproportionately affecting disadvantaged populations.

(1) The Council on Environmental Quality;

(2) the Department of Agriculture;

(3) the Department of Commerce;

(4) the Department of Defense;

(5) the Department of Education;

(6) the Department of Energy;

(7) the Department of Health and Human Services;

(8) the Department of Housing and Urban Development;

(9) the Department of the Interior;

(10) the Department of Justice;

(11) the Department of Labor;

(12) the Department of Transportation;

(13) the Environmental Protection Agency;

and

(14) such other Federal agencies as the Administrator and the Secretary jointly determine to be appropriate.
(d) Duties.—The IWG shall—

(1) facilitate communication and partnership on environmental health-related projects and policies;

(A) improving and better understanding of the interactions between policy areas; and

(B) to raise awareness of the relevance of health across policy areas to ensure that the potential negative health consequences of decisions are not overlooked;

(2) serve as a centralized mechanism to coordinate a national effort—

(A) to evaluate evidence and knowledge on the relationship between the general environment and the health of the population in the United States;

(B) to determine the range of effective, feasible, and comprehensive actions to improve environmental health; and

(C) to evaluate and better address the influence of social and environmental determinants of health;

(3) survey Federal agencies to determine which policies are effective in encouraging, and how best to facilitate outreach without duplicating, efforts relating to environmental health promotion;

(4) to identify goals within and across Federal agencies for environmental health promotion, including determinations of accountability for reaching those goals;

(5) to develop criteria for allocating responsibilities and ensuring participation in environmental health promotions, particularly in the case of competing agency priorities;

(6) to coordinate plans to communicate research results related to environmental health to enable reporting and outreach activities to produce more useful and timely information;

(7) to establish an interdisciplinary committee to improve research efforts to further understand the relationship between the built environment and health indicators (including air quality, physical activity levels, housing quality, access to primary health care practitioners and health care facilities, injury risk, and availability of nutritional, fresh food) that coordinates the expertise of the public health, urban planning, and transportation communities;

(8) to develop an appropriate research agenda for Federal agencies—

(A) longitudinal studies;

(ii) rapid-response capability to evaluate natural and manmade occurrences; and

(iii) extensions of national databases; and

(B) to review evaluation and economic data relating to the impact of Federal interventions in the prevention of environmental health concerns;

(9) to initiate environmental health impact demonstration projects to develop integrated place-based models for addressing community quality-of-life issues;

(10) to provide a description of evidence-based best practices, model programs, effective guidelines, and strategies for promoting environmental health;

(11) to make recommendations to improve Federal efforts relating to environmental health promotion and to ensure Federal efforts are consistent with available standards and evidence and other programs in existence as of the date of enactment of this Act;

(12) to monitor Federal progress in meeting specific environmental health promotion goals;

(13) to assist in ensuring, to the maximum extent practicable, the implementation of the impact of environmental policies, programs, and activities on the areas under Federal jurisdiction;

(14) to assist in the implementation of the recommendations from the reports of the Institute of Medicine entitled "Does the Built Environment Influence Physical Activity? Examining the Evidence" and dated January 11, 2005, and "Rebuilding the Unity of Health and the Environment: A New Vision of Environmental Health for the 21st Century" and dated January 22, 2001, including recommendations for—

(A) the expansion of national public health and the environment observatories to gain more detailed information about the connection between the built environment and health, including expansion of such survival;

(B) the National Risk Factor Surveillance System, the National Health and Nutrition Examination Survey, and the National Health Interview Survey conducted by the Centers for Disease Control and Prevention;

(C) the American Community Survey conducted by the Bureau of Labor Statistics;

(D) the Youth Risk Behavior Survey conducted by the Centers for Disease Control and Prevention; and

(E) the National Longitudinal Cohort Survey of American Children (the National Children's Study) conducted by the National Institute of Child Health and Human Development;

(15) to collaborate with national initiatives to learn from natural experiments such as a program for the American Time Use Survey conducted by the Bureau of Labor Statistics;

(16) to develop of a program of research with a defined mission and recommended budget, concentrating on multiyear projects and enhanced data collection;

(D) development of interdisciplinary education programs—

(i) to train professionals in conducting recommended research; and

(ii) to prepare individuals with appropriate skills at the intersection of physical activity, public health, transportation, and urban planning;

(17) to collect and disseminate best practices for inclusive public involvement in planning decision-making; and

(18) to present the guidance to the public at the annual conference described in section 3(e)(2).

(2) GRANT PROGRAM.—The Secretary, acting through the Director and in collaboration with the Administrator, shall establish a program under which the Secretary shall provide funding and technical assistance to eligible entities to prepare health impact assessments—

(1) to ensure that appropriate health factors are taken into consideration as early as practicable during any planning, review, or decision-making process; and

(2) to evaluate the effect on the health of individuals and populations, and on social and economic development, of decisions made outside of the health sector that result in modifications of a physical or social environment.

(e) APPLICATIONS.—

(1) IN GENERAL.—An application under this section, an eligible entity shall submit to the Secretary an application in accordance with this subsection, in such time, in such manner, and containing such additional information as the Secretary may require.

(2) INCLUSION.—

(A) IN GENERAL.—An application under this subsection shall include an assessment of the potential health effect of the proposed activity or proposed activity with an applicable activity or proposed activity will have at least 1 significant, adverse health effect on an individual or population in the jurisdiction of the eligible entity, based on the criteria described in paragraph (B). On the criteria referred to in subparagraph (A) include, with respect to the applicable activity or proposed activity—

(i) any substantial adverse effect on—

(A) collecting and disseminating best practices;

(B) administering capacity building grants, in accordance with subsection (d);

(C) providing technical assistance;

(D) providing training;

(E) conducting evaluations; and

(F) awarding competitive extramural research grants;

(2) to develop guidance to conduct health impact assessments; and

(3) to establish a grant program to allow eligible entities to conduct health impact assessments.

(e) GUIDANCE.—The Director, in collaboration with the IWG, shall—

(1) develop guidance for the assessment of the potential health effects of land use, housing, and transportation policy and plans, including—

(A) background on international efforts to bridge urban planning and public health institutions and disciplines, including a review of health impact assessment best practices internationally;

(B) evidence-based causal pathways that link urban planning, transportation, and housing policy and objectives to human health objectives;

(C) data resources and quantitative and qualitative forecasting methods to evaluate both the status of health determinants and health effects; and

(D) best practices for inclusive public involvement in planning decision-making;

(2) not later than 1 year after the date of enactment of this Act, promulgate the guidance and our recommendations from the Institute of Medicine reports described in paragraph (14) were executed; and

(16) to assist the Director with the development of guidance for the assessment of the potential health effects of the use, housing, and transportation policy and plans.

(e) MEETINGS.—

(1) IN GENERAL.—The IWG shall meet at least 3 times each year.

(2) ANNUAL CONFERENCE.—The Secretary, acting through the Director and in collaboration with the Administrator, shall sponsor an annual conference on environmental health and health disparities to enhance coordination, build partnerships, and share best practices in environmental health data collection, analysis, and reporting.

(f) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated such sums as are necessary to carry out this section.

SEC. 4. HEALTH IMPACT ASSESSMENTS.

(a) DEFINITION OF ELIGIBLE ENTITY.—In this section, the term "eligible entity" means any unit of State or local government the jurisdiction of which includes individuals or populations the health of which will be affected by an activity or a proposed activity.

(b) ESTABLISHMENT.—The Secretary, acting through the Director and in collaboration with the Administrator, shall—

(1) establish a program at the National Center of Environmental Health at the Centers for Disease Control and Prevention focused on advancing the field of health impact assessment, including—

(2) INCLUSION.—

(A) in general.—An application under this subsection shall include an assessment of the potential health effect of the proposed activity or proposed activity will have at least 1 significant, adverse health effect on an individual or population in the jurisdiction of the eligible entity, based on the criteria described in paragraph (B).

(B) CRITERIA.—The criteria referred to in subparagraph (A) include, with respect to the applicable activity or proposed activity—

(i) any substantial adverse effect on—

(A) collecting and disseminating best practices;

(B) administering capacity building grants, in accordance with subsection (d);

(C) providing technical assistance;

(D) providing training;

(E) conducting evaluations; and

(F) awarding competitive extramural research grants;

(ii) rapid-response capability to evaluate the effect on the health of individuals and populations, and on social and economic development, of decisions made outside of the health sector that result in modifications of a physical or social environment.

(3) EXTENSIONS.—

(A) IN GENERAL.—An application under this subsection shall include an assessment of the potential health effect of the proposed activity or proposed activity will have at least 1 significant, adverse health effect on an individual or population in the jurisdiction of the eligible entity, based on the criteria described in paragraph (B).

(B) CRITERIA.—The criteria referred to in subparagraph (A) include, with respect to the applicable activity or proposed activity—

(i) any substantial adverse effect on—

(A) collecting and disseminating best practices;

(B) administering capacity building grants, in accordance with subsection (d);

(C) providing technical assistance;

(D) providing training;

(E) conducting evaluations; and

(F) awarding competitive extramural research grants;
(VIII) the character or quality of an important historical, archæological, architectural, or aesthetic resource (including neighborhood character) of the community of the eligible entity or (IX) any other natural resource; (ii) any increase in— (I) solid waste production; or (II) pollution, including to erosion, flooding, leaching, or drainage; (iii) any requirement that a large quantity of vegetation or fauna be removed or destroyed; (iv) any conflict with the plans or goals of the community of the eligible entity; (v) any significant change in the amount of energy used by the community of the eligible entity; (vi) any hazard presented to human health; (vii) any substantial change in the use, or intensity of use, of land in the jurisdiction of the eligible entity, including agricultural, open space, and recreational uses; (viii) the probability that the activity or proposed activity will result in an increase in tourism in the jurisdiction of the eligible entity; (ix) any substantial, adverse aggregate impact on environmental health resulting from— (I) changes caused by the activity or proposed activity to 2 or more elements of the environment; or (II) 2 or more related actions carried out under the authority of the proposed activity; and (x) any other significant change in concern, as determined by the eligible entity. (C) FACTORS FOR CONSIDERATION.—In making an assessment under subparagraph (A), an eligible entity may take into consideration any reasonable, direct, indirect, or cumulative effect relating to the applicable activity or proposed activity, including the effect of any action that is— (i) included in the long-range plan relating to the activity or proposed activity; (ii) likely to be carried out in coordination with the activity or proposed activity; (iii) dependent on the occurrence of the activity or proposed activity; or (iv) likely to have a disproportionate impact on disadvantaged populations. (f) Use of Funds.— (1) GOVERNANCE.—An eligible entity shall use assistance received under this section to prepare and submit to the Secretary a health impact assessment received under this section to the applicable activity or proposed activity; and (i) the mitigation of any adverse impact on health of the applicable activity or proposed activity; or (ii) the encouragement of any positive impact of the applicable activity or proposed activity. (B) provide, for the monitoring of the impacts on health of the applicable activity or proposed activity, as the eligible entity determines to be appropriate; and (C) provide recommendations of the eligible entity with respect to— (i) the mitigation of any adverse impact on health of the applicable activity or proposed activity; or (ii) the encouragement of any positive impact of the applicable activity or proposed activity. (f) Use of Funds.— (1) IN GENERAL.—An eligible entity shall— (A) follow guidelines developed by the Director, in collaboration with the IWG, that— (i) are consistent with subsection (c); (ii) will be established not later than 1 year after the date of enactment of this Act; and (iii) will be made publicly available at the annual conference described in section 3(e)(2); and (B) establish a balance, as the eligible entity determines to be appropriate, between the use of— (i) rigorous methods requiring special skills or increased use of resources; and (ii) expedient, cost-effective measures. (g) Public Participation.— (1) IN GENERAL.—In preparing and submitting to the Secretary a final health impact assessment, an eligible entity shall request and take into consideration public and agency comments, in accordance with this subsection. (2) REQUIREMENT.—Not later than 30 days after the date on which a draft health impact assessment is completed, an eligible entity shall submit the draft health impact assessment to each Federal agency, and each State and local organization that— (A) has jurisdiction with respect to the activity or proposed activity to which the health impact assessment applies; (B) has substantial knowledge with respect to an environmental or health impact of the activity or proposed activity; or (C) is authorized to develop or enforce any environmental or health standard relating to the activity or proposed activity. (3) COMMENTS REQUESTED.— (A) REQUEST BY ELIGIBLE ENTITY.—An eligible entity may request comments with respect to a health impact assessment from— (i) affected Indian tribes; (ii) interested or affected individuals or organizations; and (iii) any other State or local agency, as the eligible entity determines to be appropriate. (B) REQUEST BY OTHERS.—Any interested or affected agency, organization, or individual may— (i) request an opportunity to comment on a health impact assessment; and (ii) submit to the eligible entity comments with respect to the health impact assessment by not later than— (I) for a Federal, State, or local government agency or organization, the date on which a final health impact assessment is prepared; and (II) for any other individual or organization, the date described in clause (I) or another date, as the eligible entity may determine. (4) RESPONSE TO COMMENTS.—A final health impact assessment— (A) shall— (i) respond to comments from any individual or organization; and (ii) provide notice of any means by which the eligible entity, as a result of such a comment— (I) modified an alternative recommended with respect to the applicable activity or proposed activity; (ii) developed and evaluated any alternative not previously considered by the eligible entity; (iii) supplemented, improved, or modified an analysis of the eligible entity; or (iv) made any fact correction to the health impact assessment; and (B) for any comment with respect to which the eligible entity took no action, an explanation of the reasons why no action was taken and, if appropriate, a description of the circumstances under which the eligible entity would take such an action. HEALTH IMPACT ASSESSMENT DATABASE.—The Secretary, acting through the Director and in collaboration with the Administrator, shall establish and maintain a health impact assessment database, including— (1) a catalog of health impact assessments received under this section; (2) an inventory of tools used by eligible entities to prepare draft and final health impact assessments; and (3) guidance for eligible entities with respect to the selection of appropriate tools described in paragraph (2). (E) AUTHORIZATION OF APPROPRIATIONS.— There are authorized to be appropriated to carry out this section such sums as are necessary. SEC. 5. GRANT PROGRAM. (a) Definitions.—In this section: (1) DIRECTOR.—The term "Director" means the Director of the Centers for Disease Control and Prevention, acting in collaboration with the Administrator and the Director of the National Institute of Environmental Health Sciences. (2) ELIGIBLE ENTITY.—The term "eligible entity" means a State or local community that— (i) bears a disproportionate burden of exposure to environmental health hazards; (ii) has established a coalition— (I) with not less than 1 community-based organization; and (ii) with not less than 1— (I) public health entity; (II) health care provider organization; or (III) academic institution; (c) ensures planned activities and funding streams are coordinated to improve community health; and (d) submits an application in accordance with subsection (c). (b) Establishment.—The Director shall establish a grant program under which eligible entities shall receive grants to conduct environmental health improvement activities. (c) Application.—To receive a grant under this section, an eligible entity shall submit an application to the Director at such time, in such manner, and accompanied by such information as the Director may require. (d) COOPERATIVE AGREEMENTS.—An eligible entity may use a grant under this section— (1) to promote environmental health; and (2) to address environmental health disparities. (e) CONTENT OF COOPERATIVE AGREEMENT.— (1) IN GENERAL.—The Director shall award grants to eligible entities at the 2 different funding levels described in this subsection. (2) LEVEL I: COOPERATIVE AGREEMENTS.— (A) IN GENERAL.—An eligible entity awarded a grant under this paragraph shall use the funds to identify environmental health problems and solutions by— (i) establishing a planning and prioritizing council in accordance with subparagraph (B); and (II) conducting an environmental health assessment in accordance with subparagraph (C).
(B) PLANNING AND PRIORITIZING COUNCIL.—

(i) IN GENERAL.—A prioritizing and planning council established under subparagraph (A)(i) (referred to in this paragraph as a “PPC”) shall establish the environmental health assessment process and environmental health promotion activities of the eligible entity.

(ii) MEMBERSHIP.—Membership of a PPC shall consist of representatives from various organizations within public health, planning, development, and environmental services and advocacy stakeholders from vulnerable groups such as children, the elderly, disabled, and minority ethnic groups that are often not actively involved in democratic or decision-making processes.

(iii) DUTIES.—A PPC shall—

(A) identify key stakeholders and engage and coordinate potential partners in the planning process;

(B) establish a formal advisory group to plan for the establishment of services;

(C) conduct an in-depth review of the nature and extent of the need for an environmental health assessment, including—

1. a local epidemiological profile, an evaluation of the service delivery capacity of the community, and a profile of any target populations; and

(D) define the components of care and form essential programmatic linkages with relevant providers and the community.

(C) ENVIRONMENTAL HEALTH ASSESSMENT.—

(i) IN GENERAL.—A PPC shall carry out an environmental health assessment to identify environmental health concerns.

(ii) ASSESSMENT PROCESS.—The PPC shall—

(A) define the goals of the assessment;

(B) generate the environmental health issue list;

(C) analyze issues with a systems framework;

(D) develop appropriate community environmental health indicators;

(E) rank the environmental health issues;

(F) set priorities for action;

(G) develop an action plan;

(H) implement the plan; and

(I) evaluate progress and planning for the future.

(D) EVALUATION.—Each eligible entity that receives a grant under this paragraph shall evaluate, report, and disseminate program findings and outcomes.

(E) GROUNDWORK FOR COLLABORATION.—The Director may provide such technical and other non-financial assistance to eligible entities as the Director determines to be necessary.

(F) LEVEL 2 COOPERATIVE AGREEMENTS.—

(A) ELIGIBILITY.—

(i) IN GENERAL.—The Director shall award grants under this paragraph to eligible entities that have already—

1. established broad-based collaborative partnerships; and

2. generated environmental assessments.

(ii) NO LEVEL 1 REQUIREMENT.—To be eligible to receive a grant under this paragraph, an eligible entity is not required to have successfully leveraged a Level 1 Cooperative Agreement (as described in paragraph (2)).

(B) USE OF GRANT FUNDS.—An eligible entity awarded a grant under this paragraph shall use the funds to further activities to carry out environmental health promotion activities, including—

1. addressing community environmental health priorities in accordance with paragraph (2)(C)(ii), including—

(A) air quality;

(B) water quality;

(C) waste management;

(D) land use;

(E) housing;

(F) food safety;

(G) lead poisoning; and

(H) injuries; and

(I) healthcare services;

(ii) building partnerships between planning, public health, and other sectors, to address how the built environment impacts food availability and access and physical activity levels and health behaviors and lifestyle changes and reduce obesity and related co-morbidities;

(iii) establishing programs to address—

(A) how environmental and social conditions of work and living choices influence physical activity and dietary intake; or

(B) how those conditions influence the concerns and experiences of people who have impaired mobility and use assistive devices, including wheelchairs and lower limb prostheses; and

(iv) convening intervention programs that examine the role of the social environment in connection with the physical and chemical environment in—

(A) determining access to nutritional food; and

(B) improving physical activity to reduce morbidity and increase quality of life.

(F) AUTHORIZATION OF APPROPRIATIONS.—There are authorized to be appropriated to carry out this section—

1. $25,000,000 for each of fiscal years 2008 through 2011.

(G) other indicators as determined appropriate by the Secretary and the Administrator an application for a grant under the grant program authorized under subsection (b)(2) at such time, in such manner, and containing such agreements, assurances, and statements as the Secretary and Administrator may require.

(b) RESEARCH GRANT PROGRAM.—

(1) DEFINITION OF HEALTH.—In this section, the term “health” includes—

(A) levels of physical activity;

(B) consumption of nutritional foods;

(C) rates of injury;

(D) air, water, and soil quality;

(E) risk of injury;

(F) accessibility to healthcare services; and

(G) other indicators as determined appropriate by the Secretary.

(2) GRANTS.—The Secretary, in collaboration with the Administrator, shall provide grants to eligible institutions to conduct and coordinate research on the built environment and its influence on individual and population-based health.

(3) RESEARCH.—The Secretary shall support research that—

(A) investigates and defines the causal links between aspects of the built environment and the health of residents;

(B) examines—

1. the extent of the impact of the built environment on the health of residents;

2. the variance in the health of residents by—

(A) location (such as inner cities, inner suburbs, and outer suburbs); and

(B) population subgroup (such as children, the elderly, the disadvantaged); or

3. the importance of the built environment to the total health of residents, which is the primary variable of interest from a public health perspective.

(C) is used to develop—

(A) measures to address health and the connection of health to the built environment; and

(B) tools to link the measures to travel and health databases.

(D) distinguishes carefully between personal attitudes and choices and external influences on observed behavior to determine how much an observed association between the built environment and health of residents, versus the lifestyle preferences of the people that choose to live in the neighborhood, reflects the physical characteristics of the neighborhood.

(E) identifies or develops effective intervention strategies to promote better health among residents with a focus on behavioral interventions and enhancements of the built environment that promote increased use by residents; and

(ii) in developing the intervention strategies under clause (i), the intervention strategies will reach out to high-risk populations, including low-income urban and rural communities.

(4) PRIORITY.—In providing assistance under the grant program authorized under paragraph (2), the Secretary and the Administrator shall give priority to research that incorporates—

(A) interdisciplinary approaches; or

(B) the expertise of the public health, physical activity, urban planning, and transportation research communities in the United States and abroad.

(c) AUTHORIZATION OF APPROPRIATIONS.—

There are authorized to be appropriated such sums as are necessary to carry out this section.

SA 3871. Mrs. FEINSTEIN (for herself, Mr. DURBIN, Mr. BINGAMAN, and Ms. STABENOW) submitted an amendment intended to be proposed by her to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974, and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace, which was ordered to lie on the table; as follows:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the “Medicare Drug Formulary Protection Act.”

SEC. 2. REMOVAL OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.

(a) LIMITATION ON REMOVAL OR CHANGE OF COVERED PART D DRUGS FROM THE PRESCRIPTION DRUG PLAN FORMULARY.—Section 1860D–4(b)(3)(E) of the Social Security Act (42 U.S.C. 1395w–104(b)(3)(E)) is amended to read as follows:

(3) REMOVAL.—(A) In general.—Subject to subsection (I) and clause (ii), beginning with 2006, the PDP sponsor of a prescription drug plan may not remove a covered part D drug from the plan formulary or impose a restriction on the coverage of such a drug (such as through the application of a preferred status, usage restriction, step therapy, prior authorization, or quantity limitation) other than at the beginning of each plan year.

(B) Special rule for newly enrolled individuals.—Subject to clause (i), in the case of an individual who enrolls in a prescription drug plan on or after the date of enactment of this paragraph, the PDP sponsor of such a plan may not remove a covered part D drug from the plan formulary or impose a restriction or limitation on the coverage of such a drug (such as through the application
of a preferred status, usage restriction, step therapy, prior authorization, or quantity limitation) during the period beginning on the date of such enrollment and ending on December 31 of the immediately succeeding plan year.

(ii) EXCEPTIONS TO LIMITATION ON REMOVAL.—Clause (i) shall not apply with respect to a covered D drug that—

(I) is a brand name drug for which there is a generic drug approved under section 580B(b) of the Food and Drug Cosmetic Act (21 U.S.C. 360br) that is placed on the market during the period in which there are limitations on removal or change in the formulary under subsection (a); or

(ii) is a brand name drug that goes off-patent during such period;

(iii) is a drug for which the Commissioner of Food and Drugs issues a clinical warning that imposes a restriction or limitation on the drug during such period or removes the drug from the market;

(iv) is a drug that the plan’s pharmacy and therapeutic committee determines, based on scientific evidence, to be unsafe or ineffective during such period; or

(V) is a drug for which the Secretary has determined an exception to such application is appropriate (such as to take into account new therapeutic uses and newly covered part D drugs).

(iii) NOTICE OF REMOVAL UNDER APPLICATION OF EXCEPTION TO LIMITATION.—The PDP sponsor of a prescription drug plan shall provide advance notice (such as under subsection (a)(3)) of any removal or change under clause (ii) to the Secretary, affected enrollees, physicians, pharmacies, and pharmacists.

(b) NOTICE FOR CHANGE IN FORMULARY AND OTHER RESTRICTIONS OR LIMITATIONS ON COVERAGE.—

(1) IN GENERAL.—Section 1861D–4(a) of such Act (42 U.S.C. 1395w–104(a)) is amended by adding at the end the following new paragraph:

(5) ANNUAL NOTICE OF CHANGES IN FORMULARY AND OTHER RESTRICTIONS OR LIMITATIONS ON COVERAGE.—Each PDP sponsor offering a prescription drug plan shall furnish to each enrollee at the time of each annual coordinated election period (referred to in section 1861D–1(b)(1)(B)(iii)) for a plan year a notice in the form described in the preceding sentence of any other restrictions or limitations on coverage of a covered part D drug under the plan that will take effect for the plan year.

(c) NOTICE.—The amendment made by paragraph (1) shall apply to annual, coordinated election periods beginning after the date of enactment of this Act.

SA 3872. Mr. KERRY submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place insert the following:

SEC. 45N. CREDIT FOR EMPLOYEE HEALTH INSURANCE EXPENSES.

(a) IN GENERAL.—Subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code (relating to business-re-}
were increased by the amount of employer payroll taxes imposed on the taxpayer during the calendar year in which the taxable year begins.

The amount of the credit allowed under this subsection shall not be treated as a credit allowed under this subpart and shall reduce the amount of the credit otherwise allowable under subsection (a) without regard to section 38(c).

"(2) Employer payroll taxes.—For purposes of this subsection—

(A) in general.—The term ‘employer payroll taxes’ means the taxes imposed by—

(i) subsections (a) and (b) of section 3111, and

(ii) sections 3211(a) and 3221(a) (determined at a rate equal to the sum of the rates under subsections (a) and (b) of section 3111).

(B) Special rule.—A rule similar to the rule of section 24(d)(2)(C) shall apply for purposes of subparagraph (A).

(C) Denial of Double Benefit.—No deduction or credit under any other provision of this chapter shall be allowed with respect to qualified employee health insurance expenses taken into account under subsection (a).

(b) Credit to Be Part of General Business Credit.—Section 38(b) of the Internal Revenue Code of 1986 (relating to current year business credits) is amended by striking “and 34” and inserting “34 and 45N”.

(c) Conforming Amendment.—Section 6211(b)(4)(A) of the Internal Revenue Code of 1986 is amended by striking “and 34” and inserting “34, and 45N”.

(d) Technical Amendment.—The table of sections for subpart D of part IV of subchapter A of chapter 1 of the Internal Revenue Code of 1986 is amended by adding at the end thereof the following:

“31 the employee health insurance expenses credit determined under section 45N.”

(e) Effective Date.—The amendments made by this section shall apply to amounts paid or incurred in taxable years beginning after December 31, 2006.

SA 3873. Mr. LEAHY submitted an amendment intended to be proposed by him to the bill S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace; which was ordered to lie on the table; as follows:

At the appropriate place, insert the following:

SEC. 1. MEDICAL MALPRACTICE INSURANCE ANTITRUST PROVISIONS.

(a) Short Title.—This section may be cited as the “Medical Malpractice Insurance Antitrust Act of 2005”.

(b) Prohibition on Anti-Competitive Activities.—Notwithstanding any other provision of law, nothing in the Act of March 9, 1945 (15 U.S.C. 1011 et seq., commonly known as the “McCarran-Ferguson Act”) shall be construed to permit commercial insurers to engage in price fixing, bid rigging, or market allocations in connection with the conduct of the business of providing medical malpractice insurance.

(c) Active Payment Activities of State Commissions of Insurance and Other State Insurance Regulatory Bodies.—This section does not apply to the information gathering and rate setting activities of any State commissions of insurance, or any other State regulatory body with authority to set insurance rates.

AUTHORITY FOR COMMITTEES TO MEET

SUBCOMMITTEE ON AVIATION

Mr. ENZI. Mr. President, I ask unanimous consent that the Senate Committee on Commerce, Science, and Transportation’s Subcommittee on Surface Transportation and Merchant Marine be authorized to meet on Tuesday, May 9, 2006, at 10 a.m. on Corporation Average Fuel Economy (CAFE) Standards.

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

PRIVILEGES OF THE FLOOR

Mr. DODD. Mr. President, I ask unanimous consent that Elizabeth Hoffman, a fellow in my office, be granted the privileges of the floor for the duration of the debate on this legislation.

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

Mr. WYDEN. Mr. President, on behalf of Senator BAUCUS, I ask unanimous consent that the following interns and fellows be granted floor privileges during consideration of S. 1955: Leona Cutler, David Schwartz, Henry Spies, Britt Sandler, Tiffany Smith, Tom Louthan, and Christal Edwards.

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

Mr. HARKIN. Mr. President, I ask unanimous consent that Courtney Wilcox of my staff be granted floor privileges for the duration of today’s session.

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

APPOINTMENTS

The PRESIDING OFFICER. The Chair, on behalf of the majority leader, after consultation with the ranking member of the Senate Committee on Finance, pursuant to Public Law 106–170, announces the appointment of the following individual to serve as a member of the Ticket to Work and Work Incentives Advisory Panel: Katie Beckett of Iowa.

The Chair, on behalf of the majority leader, in consultation with the Democratic Leader, pursuant to Public Law 98–541, as amended by Public Law 102–224 appoints John Michels, of Pennsylvania, as a member of the Library of Congress Trust Fund Board for a term of 5 years.

NATIONAL FOSTER CARE MONTH

Mr. VINOVICH. Mr. President, I ask unanimous consent that the Senate now proceed to the consideration of S. Res. 471 which was submitted earlier today.

The PRESIDING OFFICER. The clerk will report the resolution by title.

The legislative clerk read as follows:

A resolution (S. Res. 471) recognizing that, during National Foster Care Month, the leaders of the Federal, State, and local governments should provide leadership to improve the care given to children in foster care programs.

There being no objection, the Senate proceeded to consider the resolution.

Mr. VINOVICH. Mr. President, I ask unanimous consent that the resolution
be agreed to, the preamble be agreed to, and the motion to reconsider be laid upon the table.

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

The resolution (S. Res. 471) was agreed to.

The preamble was agreed to.

The resolution, with its preamble, reads as follows:

S. Res. 471

Whereas more than 500,000 children are in foster care programs throughout the United States;

Whereas, while approximately ¼ of all children in foster care programs are available for adoption, only about 50,000 foster children are adopted each year;

Whereas many of the children in foster care programs have endured—

(1) numerous years in the foster care system; and

(2) frequent moves to and from foster homes;

Whereas approximately 50 percent of foster care children have been placed in foster care programs for longer than 1 year;

Whereas 25 percent of foster care children have been placed in foster care programs for at least 3 years;

Whereas children who spend longer amounts of time in foster care programs often experience worse outcomes than children who are placed for shorter periods of time;

Whereas children who spend time in foster care programs are more likely to—

(1) become teen parents;

(2) rely on public assistance when they become adults; and

(3) interact with the criminal justice system;

Whereas Federal, State, and local governments—

(1) share a unique relationship with foster children; and

(2) have removed children from their homes to better provide for the safety, permanency, and well-being of the children;

Whereas, unfortunately, studies indicate that Federal, State, and local governments have not been entirely successful in caring for foster children;

Whereas Congress recognizes the commitment of Federal, State, and local governments to ensure the safety and permanency of children placed in foster care programs; and

Whereas every child deserves a loving family: Now, therefore, be it

Resolved, That the Senate—

(1) recognizes—

(A) May 2006 as “National Foster Care Month”; and

(B) that, during National Foster Care Month, the leaders of Federal, State, and local governments should rededicate themselves to provide better care to the foster children of the United States; and

(2) resolves to provide leadership to help identify the role that Federal, State, and local governments should play to ensure that foster children receive appropriate parenting throughout their entire childhood.

ORDERS FOR WEDNESDAY, MAY 10, 2000

Mr. VOINOVICH. Mr. President, I ask unanimous consent that when the Senate completes its business today, it stand in adjournment until 9:30 a.m. on Wednesday, May 10. I further ask that following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to dare, the time for the two leaders be reserved, and the Senate proceed to a period of morning business for up to 60 minutes, with the first 30 minutes under the control of the majority leader or his designee and the final 30 minutes under the control of the Democratic leader or his designee; further, that the Senate then begin consideration of S. 1555, the small business health plans bill.

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

PROGRAM

Mr. VOINOVICH. Mr. President, today cloture was invoked on the motion to proceed to the small business health plans bill by a vote of 96 to 2. Tomorrow morning, we will begin consideration of the bill. Chairman Enzi will be here and will be available to discuss relevant amendments that Senators may want to offer during tomorrow’s session. Therefore, rollovertimes are possible during Wednesday’s session on the small business health plans-related amendments.

ADJOURNMENT UNTIL 9:30 A.M.

TOMORROW

Mr. VOINOVICH. Mr. President, if there is no further business to come before the Senate, I ask that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 7:31 p.m., adjourned until Wednesday, May 10, 2006, at 9:30 a.m.

NOMINATIONS

Executive nominations received by the Senate May 9, 2006:

DEPARTMENT OF THE TREASURY

ERIC SOLOMON, OF NEW JERSEY, TO BE AN ASSISTANT SECRETARY OF THE TREASURY, VICE PAMELA F. OLSON, RESIGNED.
EXTENSIONS OF REMARKS

IN RECOGNITION OF NORTHSIDE COLLEGE PREPARATORY HIGH SCHOOL

HON. RAHM EMANUEL
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. EMANUEL. Mr. Speaker, I rise today in proud recognition of Northside College Preparatory High School, recently selected by Newsweek Magazine as one of America's best high schools.

Northside College Preparatory High School, founded in 1999, was the first new Chicago public school to be built in 20 years. This magnet school on the North Side of Chicago provides a well-rounded education to bring out the best in the exceptional young adults who fill its classrooms.

The school achieved the highest score in Illinois for six straight years from 2001–2005 on the Prairie State Achievement Exam. Last year, 415 students at Northside took 905 AP exams, with 83 percent scoring a three or better. It also has a great deal of National Merit, National Achievement, Hispanic, and Illinois state scholars. And in 2003, Northside won the division three National Academic Decathlon Championship.

Northside College Preparatory High School's exemplary academic instruction produces world-class graduates: 92 percent of the 2005 graduating class continued on to a 4-year institution. To equip students for a lifetime of success, the school partners with DePaul University, Northeastern Illinois University, North Park University; Mayer, Brown, Row & Maw; OW&P Architects; and S&C Electric.

Mr. Speaker, Northside College Preparatory High School is a shining example of public education at its best. I am proud of the students, faculty, and families of the school and I wish them continued success in the coming years.

TRIBUTE TO LAQUINTA HIGH SCHOOL

HON. MARY BONO
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mrs. BONO. Mr. Speaker, I rise today to honor an exceptional educational institution in the 45th Congressional District of California, La Quinta High School. Through the hard work and commitment of a tremendously talented faculty and staff, La Quinta High School has been named among the top 600 high schools in the nation by Newsweek magazine.

La Quinta High School holds the 583th slot on a list of 1,000 of the top high schools in the United States of America. The high school was honored for the high number of students who participate in both International Baccalaureate and Advance Placement classes.

Under the leadership of Principle Donna Salazar, La Quinta High School has established a record of success in the community by fostering an environment where students are challenged to excel and meet their academic dreams. As the highest ranked school in Riverside County, the Newsweek results are a testament to the high quality of this academic establishment.

I am impressed by the openness of La Quinta High School to students wanting the opportunity to learn and to challenge their mind. With an ethically and socio-economically diverse student body, La Quinta High School is a model for schools around the state.

Thomas Jefferson said, “Educate and inform the whole mass of the people... They are the only sure reliance for the preservation of our liberty.” Jefferson was a powerful advocate for freedom and his message of the importance of a knowledge-based population holds great significance for continuing prosperity of our nation.

An educated public begins with our children and La Quinta High School is fulfilling our founding fathers’ vision by fostering an educational environment that challenges today’s students and tomorrow’s leaders, to reach their academic potential.

Mr. Speaker, I would like once again to pay tribute to La Quinta High School for this impressive achievement. I encourage my colleagues to join me in recognizing and celebrating this exceptional high school.

IN RECOGNITION OF BILL UtTER FORD

HON. MICHAEL C. BURGESS
OF TEXAS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate Bill Utter Ford for his years of service to North Texas.

Mr. Bill Utter came to Denton, Texas from Amarillo in 1956 when he purchased the local Ford dealership becoming the fifth Ford dealer in Denton. Over the years, the Denton Ford dealership under Mr. Utter grew to employ over 100 people and is now in its 4th location since 1956.

But Mr. Utter is not known simply for bringing the all-American Ford Corporation to North Texas, he has been known for his generosity to many causes and organizations throughout the community.

Bill Utter, Sr., Bill Utter, Jr. and staff have served in important leadership positions in the Denton Community, including Denton Chamber of Commerce and the United Way of Denton County. They have also provided leadership with Ford Motor Company including service on the Ford Dealer Council. Nationally, Bill Utter Ford has won numerous community awards and Ford Motor Company Awards including Ford’s Highest Honor, the Fort President’s Award.

The Utter men, their legacy and their dealership Bill Utter Ford, have brought quality automobiles to North Texas but more important kindness and philanthropic hearts to the community. Their recognition on the national level has brought prominence and respect to the people of Denton. May their spirit of entrepreneurship and skills as leaders be an example to us all.

IN RECOGNITION OF LINCOLN PARK HIGH SCHOOL

HON. RAHM EMANUEL
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. EMANUEL. Mr. Speaker, I rise today in proud recognition of Lincoln Park High School, recently selected by Newsweek Magazine as one of America’s best high schools.

Lincoln Park High School, formerly named Robert A. Waller High School, has served the students and families of Chicago’s North Side for over 100 years. The students at Lincoln Park High School have established an impressive record of academic achievement. Eighty-seven percent of the school’s 2004 graduates enrolled in a college or university. Lincoln Park High School has had the most National Merit Semi-Finalists out of all the Chicago Public Schools over the last 15 years.

In addition to its academic prowess, the school helps create well-balanced individuals through its active participation in community service through donating to schools in Mali, and working for the National Runaway Switchboard. These activities and experiences teach students the importance of academic achievement while also providing a balanced perspective on life that promotes responsibility, justice and social service.

Students at Lincoln Park High School enjoy the support of strong parent and alumni associations which take an active role in over 60 extra curricular activities and clubs. Community partnerships with institutions such as Children’s Memorial Hospital and the Lincoln Park Zoo also provide learning opportunities outside of the classroom in a wide range of disciplines.

Mr. Speaker, Lincoln Park High School is a shining example of public education at its best. I am proud of the students, faculty and families of the schools and I wish them continued success in the coming years.

TRIBUTE TO JANICE AND RICHARD OLI PHANT

HON. MARY BONO
OF CALIFORNIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mrs. BONO. Mr. Speaker, I rise today to honor the outstanding contributions of two individuals in California’s 45th Congressional
District—Janice and Richard Oliphant. Jan and Dick are well-known throughout the Inland Empire for their commitment to bettering the community and their devotion to education. I am pleased to join the Indian Wells Rotary Club, which established the “Dick Oliphant Scholarship Endowment Fund,” in recognizing Jan and Dick for their exemplary work in our community.

Since moving to the desert in 1962, Jan and Dick Oliphant have been valued members of our community. The time and effort these two individuals have devoted to the valley is highly commendable and will have a lasting impact for years to come. As a leader in the construction and development business, Dick’s projects, including designing golf courses, retirement communities, apartment complexes, and commercial and medical centers, have earned him international recognition, including some of the highest awards one can achieve in the building industry. Among his first projects in the desert was the development and construction of Palm City, later named the Palm Desert Country Club, which was California’s first retirement community and winner of 21 National Awards.

Both Jan and Dick Oliphant are firm believers in giving back to their community and are known for their philanthropic work in Southern California, especially in the area of education. Their service in numerous nonprofit organizations and community service projects has made them invaluable assets to our region. Additionally, Dick has served over two years as an Indian Wells Planning Commissioner, six years as a councilman, two years as vice mayor and eight years as mayor. He is the founding chairman of the Coachella Valley Economic Development Conference and State of the Valley, the founder and chairman of the Coachella Valley Economic Partnership, and the founding chairman of the Lincoln Club of the Coachella Valley.

Jan and Dick have truly enhanced our community with their support of and involvement with education. Jan has served as president and founder of several parents clubs, including the Katherine Finchy Parents Club in Palm Springs and the John F. Kennedy Parents Club in Indio. Both Jan and Dick are actively involved on countless advisory boards and committees, truly extending themselves to promote education in the Coachella Valley. For over sixteen years, Dick has been a member of the California State University, San Bernardino Advisory Board, and he is also a co-chair in fundraising for a public/private partnership with the California State University, San Bernardino, Palm Desert Campus. He has been named a “fellow” by the A. Gary Anderson School of Business at the University of Riverside, where he spent a year lecturing and counseling graduate students on campus. Furthermore, nearly every city in the Coachella Valley has designated a “Richard R. Oliphant Day” because of his extensive work on valley-wide issues. For their outstanding contributions, in 1996, Jan and Dick were named the “Distinguished Citizens of the Year” by the Boy Scouts of America.

Both Jan and Dick Oliphant have graciously offered their resources and services to the benefit of our community and are well-deserving of our praise. Devoted to their family and to each other, Jan and Dick are truly exemplary citizens, and I am honored by their friendship and to serve as their representative in the 45th Congressional District of California.

Mr. Speaker and colleagues, please join me in honoring and recognizing Jan and Dick Oliphant, for their unwavering dedication, integrity, and outstanding public service. Their energy and passion to build our community and to foster learning and education, continues to benefit Palm Desert and our entire community.

IN RECOGNITION OF THE GIRL SCOUTS OF AMERICA CROSS TIMBERS COUNCIL

HON. MICHAEL C. BURGESS OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 9, 2006

Mr. BURGESS. Mr. Speaker, I rise today to congratulate the Girl Scouts of America for their 94 years of dedication to this country.

The Girl Scouts of America are celebrating their 94th anniversary which was founded by Juliette Gordon Low in 1912 in Savannah, Georgia. Since then, they have had a long and exceptional history of instilling young girls with confidence, courage, and integrity.

More than 3.8 million current Girl Scout members and 50 million veteran members will be partaking in this momentous celebration.

Girl scouting opens all kinds of doors for a young lady’s future. This organization urges these girls to strive for higher goals than they could have ever possibly imagined. Hence, these young girls are on the way to becoming women that would make this world a better place.

In addition, I am thrilled to announce that the Cross Timbers Council, which serves my North Texas district, will be opening an additional office for the Girl Scouts so that they may better serve our community.

The Girl Scouts of America, their legacy and their purpose, have brought joy to North Texas but more important kindness and philanthropic hearts to the community. The Cross Timbers Girl Scouts have brought prominence and respect to the communities they serve in my district including Denton and Cooke counties. May spirit of perseverance and honor these young ladies bring be an example to us all.

HONORING DOLLY PARTON

HON. MARSHA BLACKBURN OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Tuesday, May 9, 2006

Mrs. BLACKBURN. Mr. Speaker, Dolly Parton is living proof that the American Dream is alive and kicking. She worked hard, harnessed her God given talent, and touched the lives of countless millions.

Not only is Dolly a great entertainer, she’s a proven businesswoman and a philanthropist. She is the embodiment of a value my mama taught me—that you always work to give back more to your community than you take. And Dolly has given back so much.

Tennessee is proud of this Smoky Mountain daughter, and that’s why we join the 2006 Southern Women in Public Service Conference to honor her with the Lindy Boggs Award. As the U.S. Representative who has the lucky fortune to represent Dolly in Congress, I want to take a moment to be certain my colleagues here in the House of Representatives know just how much she has given back to all of us.

Dolly has put the same passion and leadership she used to make it to the top in business into improving child literacy. In 1996, Dolly’s vision led to the creation of the Imagination Library—a program that sends children books each month to help them improve their reading skills. What began in East Tennessee now includes over 600 communities and spans 41 states. There are hundreds of thousands of children across this country whose futures have been changed for the better because of her work.

We simply cannot put a value on the positive effect Dolly has had on these kids, their communities, and this country.

The Imagination Library is just one example of Dolly’s work to help raise up others. Today we honor Dolly for her passion and her determination.
TRIBUTE TO NORTHWEST COLLEGIATE ACADEMY

HON. PHIL ENGLISH
OF PENNSYLVANIA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. ENGLISH of Pennsylvania. Mr. Speaker, today I rise to commend the Northwest Collegiate Academy’s recent success at the 25th Annual United States Academic Decathlon, USAD, in San Antonio, TX. The USAD is a national competition in which teams of nine students, three from each recognized academic level, compete in ten separate academic subjects, including mathematics, language and literature, social science, economics, art, music, and science. Each team member has to compete in each of the 10 subjects and their combined scores determine the overall team winner.

Once again, the Northwest Collegiate Academy made Erie and all of western Pennsylvania proud by demonstrating the scholastic excellence of its students. The Academy’s team cruised through this year’s local and State competitions, winning all three of the local events and the final State wide competition. Along the way, individual team members won numerous awards for excellence in all of the academic subjects and the team as a whole often took all the awards for a given subject.

However, the team’s outstanding run did not end at the State level. The team scored 38,992.7 points out of a possible 60,000 during the 3-day national competition in San Antonio. This performance earned the team a well deserved silver medal in competition. Furthermore, the team members continued to show their individual brilliance by winning awards for their proficiency in specific subject areas. Matthew Faytak earned six different awards at the competition, including a gold medal in art and a gold medal for being the highest overall scorer at the honors level. Joining him on the podium was Christina Radder who won the bronze medal in music and the bronze medal for being third highest overall scorer at the honors level. Both Matthew and Christina were also recognized for high scores in economics, mathematics or science, as were four other team members, Greg Nieder, Dan Juilfs, Shane Kelley, and Alexandra Talarico.

Mr. Speaker, I hope my fellow members will rise with me at this time and commend the nine members of the Northwest Collegiate Academy team, Matthew Faytak, Christina Radder, Alexandra Talarico, Shane Kelley, Greg Nieder, Caitlyn Pierce, Dan Juilfs, William Steinbaugh, and David Zielinski. I congratulate each of these students for all of their academic achievements and wish them continued success in their future endeavors.

HONORING DICK KAY

HON. RAHM EMANUEL
OF ILLINOIS
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. EMANUEL. Mr. Speaker, I rise today to recognize the long and distinguished career of my friend, Mr. Dick Kay, political editor, and host of the news show “City Desk.” Mr. Kay will retire in June 2006, with the honor of having been the longest-serving reporter in the history of Chicago’s WMAQ–Channel 5 TV.

With 46 years in the business, Dick Kay has unparalleled political experience, knowledge and perspective. He arrived at WMAQ–Channel 5 in 1958, initially working as a writer/producer but soon switching to reporting. He later became their political editor as well as the host of “City Desk,” the Sunday morning public service program.

Over the years, Dick Kay has interviewed mayors, Governor, Congressmen, Senators, and countless other public leaders. Viewers have come to rely on his thoughtful yet fearless approach to covering politics and public policy.

Dick Kay’s hard work and insightful reporting have been recognized by numerous awards over the years. Among others, Dick has received a Peabody Award—the highest honor in TV broadcasting—as well as 11 Emmys, a National Headliner award, and a Jacob Scher award for investigative reporting.

In 2001, he was inducted into the Television Academy’s Silver Circle Hall of Fame, which honors those who have made major contributions to Chicago broadcasting for 25 years or more.

In addition to his work as a reporter and editor, Dick was the long-time president of the local unit of the American Federation of Television and Radio Artists. In this capacity, Dick successfully persuaded Illinois legislators to ensure that on-air employees had the freedom to move to competing stations.

I am sure Dick’s wife, children and grandchildren will be glad to enjoy more time with him. The rest of us will miss his hard-hitting investigative work, insightful commentary, and engaging Sunday morning discussions.

Mr. Speaker, I wish Dick and his family the best of luck during his retirement and throughout his future endeavors. Political reporting in Chicago will not be the same without Dick Kay, dean of Chicago political reporters.

INTRODUCTION OF INDIAN HEALTH CARE IMPROVEMENT ACT REAUTHORIZATION

HON. DON YOUNG
OF ALASKA
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. YOUNG of Alaska. Mr. Speaker, I am pleased today to introduce legislation to reauthorize the Indian Health Care Improvement Act Reauthorization (IHCIA) with my fellow colleagues.

The Indian Health Care Improvement Act (IHCIA) requires reauthorization. It became Public Law 94–437 in the 94th Congress (September 30, 1976), and has been amended seven times. The IHCIA provides for health care delivery to over 2 million American Indians and Alaska Natives. Congress enacted a one-year extension to extend the life of the Act through FY 2001 but efforts at further extensions were interrupted due to the events of 9/11. Appropriations for the Indian health have continued through authorization of the Snyder Act, a permanent law authorizing expenditures of funds for a variety of Indian programs, including health.

This bill responds to the changes that have occurred in the delivery of Indian Health services in the decade since the last reauthorization of the IHCIA. In this period, more than half of the tribes in the United States have exercised their rights under the Indian Self-Determination and Education Assistance Act to assume responsibility to carry out programs of Indian Health Service (IHS) on their own behalf. This, along with a growing trend in the IHS direct operations, have led to hospitals being accredited by the Joint Commission on Accreditation of the Healthcare Organizations, and health delivery systems being tailored to expanded outpatient and home and community based services. Change is commonplace in the private sector. Medicare, Medicaid and other third party revenue were important to achieving these gains and are crucial for retaining them. Equally important is the need to reinforce the authority provided to tribal health programs under self-determination and self-governance to establish their own priorities and to determine the best way to respond to the specific needs of their tribal members.

Some highlights of the ways this bill addresses these changes:

Section 3. Declaration of Health Policy. Declares that it is the priority of the United States that the health status of American Indians and Alaska Natives should be raised by 2010 to the same level as is set for other Americans, including establishing health goals as has previously been accepted, and establishes a policy requiring “meaningful consultations” with Indian tribes, tribal health organizations and urban Indian programs.

Section 4. Definitions. Modernizes current IHCIA definitions and harmonizes them consistent with the Indian Self-Determination and Education Assistance Act. Definitions of “health promoting” and “disease prevention” are expanded to encompass the full scope of these activities as recommended by the World Health Organization. Includes a definition of “traditional health care practices” that reflects the value of Native health practices.

Title I, Indian Health, Human Resources, and Development. The purpose of this title is to increase, to the maximum extent feasible, the number of Indians in the health professions and providing health services, and to assure an optimum supply of health professionals to the Indian Health programs and Urban Indian Organizations involved in the provision of health services to Indians.

Title II, Health Services. The purpose of this title is to establish programs that respond to the health needs of American Indians and Alaska Natives. For example, American Indians and Alaska Natives have a disproportionately high rate of diabetes (death rate for this disease is generally more than 50% of the rate of the U.S. population) and have a specific diabetes provision. It also includes the Indian Health Care Improvement Fund through which the Appropriation Act supply funds to eliminate health deficiencies and disparities in resources made available to American Indians and Alaska Native tribes and communities.

Title III, Facilities. The purpose of this title relates to the construction of health facilities including hospitals, clinics, and health stations necessary for staff quarters, and of sanitation facilities for Indian communities and homes.

Title IV, Access to Health Services. This title addresses payments to the IHS and tribes for services covered by the Social Security Act Health Care programs, and to enable Indian
children of Blackman for the school's strong showing. A second group of students finished in fourth place, while a third team finished 20th overall. And again, I applaud Ken Reed, Samuel Brace, Jeremy Crook, and Andy Michael for their impressive win in this year's competition.

HONORING THE WINNERS OF THE 2006 CAPITOL HILL STOCK MARKET GAME

HON. BART GORDON
OF TENNESSEE
IN THE HOUSE OF REPRESENTATIVES
Tuesday, May 9, 2006

Mr. GORDON. Mr. Speaker, today I rise to recognize the outstanding achievements of three young men from Blackman High School in my hometown of Murfreesboro, Tennessee. Samuel Brace, Jeremy Crook, and Andy Michael bested a field of over 43,000 teams from across the nation to win the 2006 Capitol Hill Stock Market Game. I congratulate Sam, Jeremy, and Andy for their tremendous win, and I commend their accounting teacher, Ken Reed, for engaging the students in such an innovative and educational competition.

The Stock Market Game helps students learn about saving and investing by testing their skills with a hypothetical $100,000, which they invest in the U.S. stock markets. Sam, Jeremy, and Andy dominated in meeting the competition, holding on to the top spot for 8 of the 10 weeks. The students increased the value of their portfolio by an incredible 50 percent to finish the game with $150,263 and a $15,000 lead over their nearest competitor.

Today, the students and Mr. Reed are here in Washington, D.C., touring the nation's capital as their grand prize.

I congratulate all the participants from Blackman for their outstanding performance. This achievement is a testament to their hard work and dedication. I commend the students and their teacher, Ken Reed, for engaging the students in such an innovative and educational opportunity.
especially popular program is Friday Night Live, a social and spiritual Sabbath service drawing hundreds in the 21 to 39 age group. The monthly event has become a model for other communities and its success has now been replicated around the country.

Over the last 100 years, Sinai Temple has become an anchor for the Jewish community, serving its religious, spiritual, and educational needs. The synagogue’s vision for its next 100 years is to create Sinai: A Center for Jewish Life and Learning dedicated to the entire Jewish community through excellence in religious, educational, and social programming.

I am delighted to recognize the Congregation’s remarkable success and wish them continued success in their future endeavors. I ask my colleagues to join me in congratulating Sinai Temple on its first 100 years in Los Angeles.

**ARMENIAN PLANE CRASH**

**HON. FRANK PALLONE, JR.**

**OF NEW JERSEY**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, May 9, 2006**

Mr. PALLONE. Mr. Speaker, I rise today to express my sincere condolences to the families and friends of the passengers and crew members aboard Airbus Airliner A—320, which crashed last Wednesday morning off of Russia’s Black Sea coast. Luckily, investigators do not suspect foul play or terrorism, stating the crash was due to stormy weather.

The plane disappeared from radar screens about four miles from shore. As it was heading for what seemed like an emergency landing at the Adler Airport near the Southern Russian resort city of Sochi at 2:15 a.m., it crashed, killing all 113 people on board, including six children. No passenger was wearing a life jacket, indicating they did not expect the crash. The members of the Disciples of Christ Church, members of the First Christian Church of Monmouth, and friends of the passengers and crew members aboard Airbus Airliner A320, which crashed last Wednesday morning off of Russia’s Black Sea coast.

Mr. Speaker, I rise today to recognize the First Christian Church of Monmouth, Oregon. These settlers, members of the Disciples of Christ Church, came to create a new community and school steeped in their religion and their values, threats that they shared with the long history of pioneers going back to the beginnings of our nation. In 1856, Monmouth University (present-day Western Oregon University) was chartered, and it became the first home for the church.

Just as the buildings that house this faith community have changed and grown over the years, so has the church’s congregation. Active in the community, their good works include a temple that has become the home for the Monmouth chapter of Meals on Wheels. This congregation represents the heart of the community and the goodness in people which we should all strive to achieve.

I want to take this opportunity to honor this church for the efforts that they have made on behalf of the residents of Monmouth and students of Western Oregon University. On this, their sesquicentennial anniversary, I acknowledge and honor the First Christian Church of Monmouth for their service and dedication to their community.

**HON. HENRY CUELLAR**

**OF TEXAS**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, May 9, 2006**

Mr. CUELLAR. Mr. Speaker, I rise today to honor Ms. Judy Gruber and Mr. Robbie Greenblum for their community service to their religious community. They will be honored at the Annual L’ Chaim celebration on May 22, 2006.

Judy Gruber is a longtime supporter and member of Chabad Lubavitch of south Texas. She has served on the Community Relations Council of the Jewish Federation and on the San Antonio Association for Jewish Education and Rekindling Tradition committees.

Robbie Greenblum is an immigration attorney in San Antonio, TX, and has been an ardent supporter of Chabad’s outreach efforts in south Texas. He has been instrumental in organizing Chabad’s Torah Study Group which has been ongoing for the past decade. He was a past chair of the Community Relations Council of Jewish Education and spearheaded the Latino and Black Jewish dialog programs.

Mr. Speaker, I am honored to have had this time to recognize Ms. Judy Gruber’s and Mr. Robbie Greenblum’s dedication to community service.

**HON. JUN C. PORTER**

**OF NEVADA**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, May 9, 2006**

Mr. PORTER. Mr. Speaker, I rise today to honor the life of Jelindo Angelo "J.A." Tiberti, who died on Wednesday, May 3, 2006.

J.A. was a pillar of the Las Vegas construction industry, patriarch of Tiberti construction and a civic leader. J.A. came to Las Vegas from California in 1941 with the U.S. Army Corps of Engineers to build the runway at what is now Nellis Air Force Base. He formed Waale, Campian and Tiberti Construction Co. in 1947 and developed Bonanza Village on Bonanza Road, before he won it in 1950. Among his many prominent works in Las Vegas are the Las Vegas Club, Palace Station, Sunset Station, Club Bingo and the Gold Coast. He built schools, hospitals, and public buildings. Not only was he a great craftsman, he was also a boon to the community.

Mr. Speaker, I am proud to honor the life of Jelindo Angelo "J.A." Tiberti. His professional success and philanthropic nature should serve as an example to us all, he will surely be missed by the community.

**HON. GEORGE RADANOVICH**

**OF CALIFORNIA**

**IN THE HOUSE OF REPRESENTATIVES**

**Tuesday, May 9, 2006**

Mr. RADANOVICH. Mr. Speaker, I rise to recognize posthumously Mrs. Judith Poor of Mariposa, CA, for her remarkable life and tireless dedication to her community and family.

Her community gathered to celebrate her life on Sunday, April 23rd, in Mariposa. Her community gathered to celebrate her life on Sunday, April 23rd, in Mariposa.

A native of Texas, Judy was well-known in her community for her tremendous generosity and an unmistakable southern charm that was both delightful and genuine. Judy believed that her family was her top priority. As a wife, mother and grandmother, Judy led by example, showing that dedication to the family unit though participation in many family centered activities was an all-important foundation of the Poor Family.

Holding Texas close to her heart, Judy remained a devout Dallas Cowboys fan and enjoyed spending time with her husband, Rod, watching modified stock car races. In addition, she served as the circulation manager for her local newspaper for 8 years.

Judy Poor was survived by her husband, Rod; children and their families, Larry and Tisha Cullens, Diana Poor, Marty Poor, Christy Nich- oson, Megan and Mandy Cullens, Larry Cullens III, Jennifer Poor, Travis and Randa Poor, Canna Stephen, siblings, Ava Jane Fisher, Jan Cromeans and David Hodnett.

Mr. Speaker, I rise to honor posthumously the life of Mrs. Judith Poor of Mariposa, CA. I urge my colleagues to join me in celebrating the life of Judy Poor.
Mr. HUNTER. Mr. Speaker, I rise today to recognize California native and U.S. Army Lieutenant Colonel Patrick Mulvihill. Mr. Speaker, it is a pleasure for me to honor Colonel Mulvihill, who will soon be retiring from the Army after 25 years of distinguished service to our nation.

Colonel Mulvihill began his career with the Army in 1981 upon receiving an ROTC commission from the University of California, Davis. Since that time, he has been assigned to commands from California to Europe, serving as a Battalion S2, Assistant Brigade S2, Tactical Signals Intelligence Company Commander, Observer-Controller for the National Training Center, Instructor at Fort Huachuca, Assistant G2 in Europe, SFOR Intelligence Task Force Commander in Bosnia and the 66th MI Group S3.

In 2001, Colonel Mulvihill assumed command at the Joint Intelligence Training Activity Pacific, his current and final duty assignment. Colonel Mulvihill is known by those who have served beside him, as well as those he has commanded, as an Intelligence expert and a leader who has always put the welfare of our nation’s soldiers, Marines, airmen and sailors before his own.

President Ronald Reagan once said, “I always believed in the importance of peace through strength. And the military is the provider of that strength. So we must equip them, train them and support them. But over the years, America’s military leadership has brought us to even greater heights than we ever could imagine.” Mr. Speaker, President Reagan was referring to leaders like Colonel Mulvihill, who embody the strength of our nation and remain our military’s greatest asset.

As Chairman of the House Committee on Armed Services, I extend my deepest appreciation and gratitude to Colonel Mulvihill for his 25 years of dedicated military service. Mr. Speaker, I ask that my colleagues join me in saluting this American hero and wishing him and his family continued success in their future endeavors.
Tuesday, May 9, 2006

Daily Digest

Senate

Chamber Action

Routine Proceedings, pages S4163–S4240

Measures Introduced: Nine bills and one resolution were introduced, as follows: S. 2765–2773, and S. Res. 471.

Measures Reported:

S. 2766, to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, for military construction, and for defense activities of the Department of Energy, to prescribe personnel strengths for such fiscal year for the Armed Forces. (S. Rept. No. 109–253)

S. 2767, to authorize appropriations for fiscal year 2007 for military activities of the Department of Defense, to prescribe personnel strengths for such fiscal year for the Armed Forces.

S. 2768, to authorize appropriations for fiscal year 2007 for military construction.

S. 2769, to authorize appropriations for fiscal year 2007 for defense activities of the Department of Energy.

Measures Passed:

Recognizing National Foster Care Month: Senate agreed to S. Res. 471, recognizing that, during National Foster Care Month, the leaders of the Federal, State, and local governments should provide leadership to improve the care given to children in foster care programs.

Health Insurance Marketplace Modernization and Affordability Act: Senate resumed consideration of the motion to proceed to consideration of S. 1955, to amend title I of the Employee Retirement Security Act of 1974 and the Public Health Service Act to expand health care access and reduce costs through the creation of small business health plans and through modernization of the health insurance marketplace.

Appointments:

Ticket to Work and Work Incentives Advisory Panel: The Chair, on behalf of the Majority Leader, after consultation with the Ranking Member of the Senate Committee on Finance, pursuant to Public Law 106–170, announced the appointment of the following individual to serve as a member of the Ticket to Work and Work Incentives Advisory Panel: Katie Beckett of Iowa.

Library of Congress Trust Fund Board: The Chair, on behalf of the Majority Leader, in consultation with the Democratic Leader, pursuant to Public Law 68–541, as amended by Public Law 102–246, appointed John Medveckis, of Pennsylvania, as a member of the Library of Congress Trust Fund Board for a term of five years.

Nominations Received: Senate received the following nominations:

- Eric Solomon, of New Jersey, to be an Assistant Secretary of the Treasury.
- Victoria Ray Carlson, of Iowa, to be a Member of the National Council on Disability for a term expiring September 17, 2007.
- Chad Colley, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2007.
- Lisa Mattheiss, of Tennessee, to be a Member of the National Council on Disability for a term expiring September 17, 2007.
- John R. Vaughn, of Florida, to be a Member of the National Council on Disability for a term expiring September 17, 2007.

During consideration of this measure today, Senate also took the following action:

By 96 yeas to 2 nays (Vote No. 117), three-fifths of those Senators duly chosen and sworn, having voted in the affirmative, Senate agreed to the motion to close further debate on the motion to proceed to consideration of the bill.

A unanimous-consent agreement was reached providing that at approximately 10:30 a.m., on Wednesday, May 10, 2006, Senate will begin consideration of S. 1955 (listed above).
Ellen C. Williams, of Kentucky, to be a Governor of the United States Postal Service for the remainder of the term expiring December 8, 2007.

29 Navy nominations in the rank of admiral.

Additional Cosponsors: Pages S4211–13

Statements on Introduced Bills/Resolutions: Pages S4213–25

Amendments Submitted: Pages S4209–11

Authorities for Committees to Meet: Page S4239

Privileges of the Floor: Page S4239

Record Votes: One record vote was taken today. (Total—117)

Adjournment: Senate convened at 9:45 a.m., and adjourned at 7:31 p.m., on Wednesday, May 10, 2006. (For Senate’s program, see the remarks of the Acting Majority Leader in today’s Record on page S4240.)

Committee Meetings

(Appropriations not listed did not meet)

APPROPRIATIONS: MILITARY CONSTRUCTION

Committee on Appropriations: Subcommittee on Military Construction and Veterans Affairs concluded a hearing to examine proposed budget estimates for fiscal year 2007 for military construction, after receiving testimony from Tina W. Jonas, Under Secretary (Comptroller), and Philip W. Grone, Deputy Under Secretary for Installations and Environment, both of the Department of Defense; Keith Eastin, Assistant Secretary of the Army for Installations and Environment; B.J. Penn, Assistant Secretary of the Navy for Installations and Environment; and William C. Anderson, Assistant Secretary of the Air Force for Installations, Environment, and Logistics.

CAFE STANDARDS

Committee on Commerce, Science, and Transportation: Subcommittee on Surface Transportation and Merchant Marine concluded a hearing to examine efforts to reform corporate average fuel economy (CAFE) standards for passenger cars, focusing on oil consumption, flexible fuel, fuel cells and hybrid-electric vehicles, and hydrogen internal combustion engines, after receiving testimony from Norman Y. Mineta, Secretary, Jeffrey Rosen, General Counsel, and Jacqueline Glassman, Deputy Administrator, National Highway Traffic Safety Administration, all of the Department of Transportation; Frederick L. Webber, Alliance of Automobile Manufacturers, Philip R. Sharp, Resources for the Future; Joan Claybrook, Public Citizen; David Friedman, Union of Concerned Scientists, and Alan Reuther, International Union, United Automobile, Aerospace and Agricultural Implement Workers of America, all of Washington, D.C.; and John M. Cabaniss, Jr., Association of International Automobile Manufacturers, Arlington, Virginia.

FOREIGN INVESTMENT IN U.S. AIR CARRIERS

Committee on Commerce, Science, and Transportation: Subcommittee on Aviation concluded a hearing to examine the Department of Transportation’s notice of proposed rulemaking that clarifies the rules regarding foreign investments in U.S. air carriers, after receiving testimony from Representatives Mica and Oberstar; Jeffrey N. Shane, Under Secretary of Transportation for Policy; Frederick W. Smith, FedEx Corporation, Memphis, Tennessee; Jeffrey A. Smisek, Continental Airlines, Houston, Texas; Michael G. Whitaker, United Airlines, Elk Grove Village, Illinois; and Duane Woerth, Air Line Pilots Association, International, Washington, D.C.

LONGSHORE HARBOR WORKERS’ COMPENSATION ACT


VOTING RIGHTS ACT

Committee on the Judiciary: Committee concluded a hearing to examine an introduction to the expiring provisions of the Voting Rights Act and legal issues relating to reauthorization, after receiving testimony from Chandler Davidson, Rice University, Houston, Texas; Theodore M. Shaw, NAACP Legal Defense and Educational Fund, Inc., and Samuel Issacharoff, New York University School of Law, both of New York, New York; Richard L. Hasen, Loyola Law School, Los Angeles, California; and Laughlin McDonald, ACLU Voting Rights Project, Atlanta, Georgia.

NOMINATION

Committee on the Judiciary: Committee concluded a hearing to examine the nomination of Brett M.
Kavanaugh, of Maryland, to be United States Circuit Judge for the District of Columbia Circuit, after the nominee, who was introduced by Judge Walter K. Stapleton, U.S. Court of Appeals for the Third Circuit and Judge Alex Kozinski, U.S. Court of Appeals for the Ninth Circuit, testified and answered questions in his own behalf.

House of Representatives

Chamber Action

Public Bills and Resolutions Introduced: 23 public bills, H.R. 5312–5334; 1 private bill, H.R. 5335; and 6 resolutions, H. Res. 802–804, 807–809 were introduced. Pages H2237–38

Additional Cosponsors: Pages H2239–40

Reports Filed: Reports were filed today as follows:

Conference report to accompany H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006 (H. Rept. 109–455);

H.R. 5143, to authorize the Secretary of Energy to establish monetary prizes for achievements in overcoming scientific and technical barriers associated with hydrogen energy, with an amendment (H. Rept. 109–456);

H. Res. 752, requesting the President to transmit to the House of Representatives not later than 14 days after the date of adoption of this resolution documents in the possession of the President relating to the receipt and consideration by the Executive Office of the President of any information concerning the variation between the version of S. 1932, the Deficit Reduction Act of 2005, that the House of Representatives passed on February 1, 2006, and the version of the bill that the President signed on February 8, 2006, adversely (H. Rept. 109–457);

H. Res. 805, waiving points of order against the conference report to accompany H.R. 4297, to provide for reconciliation pursuant to section 201(b) of the concurrent resolution on the budget for fiscal year 2006 (H. Rept. 109–458); and


Speaker: Read a letter from the Speaker wherein he appointed Representative Drake to act as Speaker pro tempore for today. Page H2181

Recess: The House recessed at 1:06 p.m. and reconvened at 2 p.m. Page H2185

Investigative Subcommittee—Appointment: The Chair read a letter from Ms. Pelosi, Minority Leader, whereby she designates the following Members to be available for service on an investigative subcommittee of the Committee on Standards of Official Conduct: Messrs. Becerra; Capuano; Chandler; Delahunt; Schiff; Scott of Virginia; Ms. Solis; Mr. Stupak; Ms. Tauscher; and Mr. Van Hollen. Pages H2187–88

Message From the Clerk: Read a letter from the Clerk notifying the House that she received a message from the President on Monday, May 8th, regarding the national emergency with respect to Syria. Page H2188

Presidential Message: Read a letter from the President wherein he transmitted notification of the continuation of a national emergency beyond the anniversary date with respect to the Government of Syria—referred to the Committee on International Relations and ordered printed (H. Doc. 109–109). Page H2188

Suspensions: The House agreed to suspend the rules and pass the following measures:

American River Pump Station Project Transfer Act of 2005: H.R. 4204, amended, to direct the Secretary of the Interior to transfer ownership of the American River Pump Station Project; Pages H2188–89

Establishing the Upper Housatonic Valley National Heritage Area: H.R. 5311, to establish the Upper Housatonic Valley National Heritage Area; Pages H2189–91

Requiring the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe: S. 1382, to require the Secretary of the Interior to accept the conveyance of certain land, to be held in trust for the benefit of the Puyallup Indian tribe—clearing the measure for the President; Pages H2191–93

Providing for the concurrence by the House with an amendment in the amendment of the Senate to...
H.R. 1499: H. Res. 803, to provide for the concurrence by the House with an amendment in the amendment of the Senate to H.R. 1499, by a yea-and-nay vote of 412 yeas with none voting "nay", Roll No. 128;  Pages H2193–94, H2299

Rural Health Care Capital Access Act of 2006: H.R. 4912, to amend section 242 of the National Housing Act to extend the exemption for critical access hospitals under the FHA program for mortgage insurance for hospitals;  Pages H2194–95

Byron Nelson Congressional Gold Medal Act: H.R. 4902, to award a Congressional gold medal to Byron Nelson in recognition of his significant contributions to the game of golf as a player, a teacher, and a commentator;  Pages H2195–98

Congratulating Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season: H. Res. 627, to congratulate Chris Carpenter on being named the Cy Young Award winner for the National League for the 2005 Major League Baseball season;  Pages H2198–99

Respect for America's Fallen Heroes Act: H.R. 5037, to amend titles 38 and 18, United States Code, to prohibit certain demonstrations at cemeteries under the control of the National Cemetery Administration and at Arlington National Cemetery, by a yea-and-nay vote of 408 yeas to 3 nays, Roll No. 129; and  Pages H2199–H2208, H2300

Designating the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center: H.R. 3829, to designate the Department of Veterans Affairs Medical Center in Muskogee, Oklahoma, as the Jack C. Montgomery Department of Veterans Affairs Medical Center, by a yea-and-nay vote of 407 yeas with none voting "nay", Roll No. 130.  Pages H2208–09, H2300–01

Recess: The House recessed at 4:26 p.m. and reconvened at 6:32 p.m.  Page H2299

Board of Visitors of the United States Merchant Marine Academy—Appointment: The Chair announced the Speaker's appointment of Representative McCarthy to the Board of Visitors to the United States Merchant Marine Academy.  Page H2299

Senate Message: Message received from the Senate today appears on page H2185.

Amendments: Amendments ordered printed pursuant to the rule appear on page H2340.

Quorum Calls—Votes: Three yea-and-nay votes developed during the proceedings of today and appear on pages H2299, H2300 and H2300–01. There were no quorum calls.

Adjournment: The House met at 12:30 p.m. and adjourned at midnight.

Committee Meetings
AGRICULTURE, RURAL DEVELOPMENT, FDA, AND RELATED AGENCIES APPROPRIATIONS; SUBALLOCATION OF BUDGET ALLOCATIONS FISCAL YEAR 2007

Committee on Appropriations: Ordered reported, as amended, the Agriculture, Rural Development, Food and Drug Administration, and Related Agencies Appropriations for Fiscal Year 2007.

The Committee also approved Suballocation of Budget Allocations for Fiscal Year 2007.

CHILDREN'S HOSPITAL GRADUATE MEDICAL EDUCATION PROGRAM

Committee on Energy and Commerce: Subcommittee on Health held a hearing entitled “Examining the Children’s Hospital Graduate Medical Education Program.” Testimony was heard from Kerry Nesseler, R.N., Associate Administrator, Health Professions, Health Resources and Services Administration, Department of Health and Human Services; and public witnesses.

HORSE RACING WORKFORCE WELFARE

Committee on Energy and Commerce: Subcommittee on Oversight and Investigations held a hearing entitled “Thoroughbred Horse Racing Jockeys and Workers: Examining On-Track Injury Insurance and Other Health and Welfare Issues.” Testimony was heard from public witnesses.

ANTHRAX PROTECTION

Committee on Government Reform: Subcommittee on National Security, Emerging Threats and International Relations held a hearing entitled “Anthrax Protection: Progress or Problems.” Testimony was heard from Keith Rhodes, Chief Technologist, Center for Technology and Engineering, Applied Research and Methods, GAO; the following officials of the Department of Defense: Ellen P. Embrey, Deputy Assistant Secretary, Health Affairs, Force Health Protection and Readiness; and Jean Reed, Special Assistant to the Secretary, Chemical and Biological Defense Programs; the following officials of the Department of Health and Human Services: Gerald Parker, D.V.M., Deputy Assistant Secretary, Public Health Preparedness; and Richard Besser, M.D., Director, Office of Terrorism Preparedness and Emergency Response, Centers for Disease Control and Prevention; Susan Elizabeth George, Deputy Director, Biological Countermeasures Portfolio, Department of Homeland Security; and Dana Tulis, Deputy Director, Office of Emergency Management, EPA.
OVERSIGHT—FEMA HOMELAND SECURITY DEPARTMENT INTEGRATION

Committee on Homeland Security: Held an oversight hearing on proposed legislation to strengthen the Federal Emergency Management Agency and better integrate it into the Department. Testimony was heard from William O. Jenkins, Jr., Director, Homeland Security and Justice, GAO; and public witnesses.

CONFERENCE REPORT
TAX INCREASE PREVENTION AND RECONCILIATION ACT OF 2005

Committee on Rules: Granted, by voice vote, a rule waiving all points of order against the conference report to accompany H.R. 4297, Tax Increase Prevention and Reconciliation Act of 2005, and against its consideration. The rule provides that the conference report shall be considered as read. Testimony was heard from Representative Camp.

NATIONAL DEFENSE AUTHORIZATION ACT FOR FISCAL YEAR 2007

Committee on Rules: Granted, by voice vote, a structured rule on H.R. 5122, National Defense Authorization Act for Fiscal Year 2007, providing one hour of general debate equally divided and controlled between the chairman and ranking minority member of the Committee on Armed Services. The rule waives all points of order against consideration of the bill. The rule provides that the amendment in the nature of a substitute recommended by the Committee on Armed Services now printed in the bill shall be considered as an original bill for the purpose of amendment and shall be considered as read. The rule waives all points of order against the amendment in the nature of a substitute recommended by the Committee on Armed Services.

...The rule makes in order only those amendments printed in the Rules Committee report accompanying the resolution. The rule provides that the amendments printed in the report accompanying the resolution may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. The rule waives all points of order against the amendments printed in the Rules Committee Report. Finally, the rule provides, that after disposition of the amendments printed in the Rules Committee report, the Committee of the Whole shall rise without motion and no further consideration of the bill shall be in order except by a subsequent order of the House. Testimony was heard from Chairman Hunter and Representatives Simmons, Shays, Castle, Lewis (KY), Mica, Chabot, Tom Davis (VA), Gorknecht, Dent, Gohmert, Skelton, Israel, Udall (CO), Capps, Tierney, Hoyer, Bishop (GA), Stupak, Woolsey, Jackson-Lee (TX), Schakowsky, Thompson (CA), Lynch, Schiff, Michaud.

CORPORATE TAX REFORM

Committee on Ways and Means: Subcommittee on Select Revenue Measures held a hearing on Corporate Tax Reform. Testimony was heard from public witnesses.

COMMITTEE MEETINGS FOR WEDNESDAY, MAY 10, 2006

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Agriculture, Nutrition, and Forestry: to hold hearings to examine the implementation of the sugar provisions of the Farm Security and Rural Investment Act of 2002, 10 a.m., SH–216.

Committee on Appropriations: Subcommittee on Defense, to hold hearings to examine proposed budget estimates for fiscal year 2007 for the missile defense program, 10 a.m., SD–192.

Committee on Armed Services: to meet in closed session to discuss the current situation in Afghanistan, 5:45 p.m., SR–222.

Committee on Energy and Natural Resources: business meeting to consider the nomination of Dirk Kempthorne, of Idaho, to be Secretary of the Interior, 11:30 a.m., SD–366.

Subcommittee on Public Lands and Forests, to hold hearings to examine S. 906, to promote wildland firefighter safety, S. 2003, to make permanent the authorization for watershed restoration and enhancement agreements, H.R. 585, to require Federal land managers to support, and to communicate, coordinate, and cooperate with, designated gateway communities, to improve the ability of gateway communities to participate in Federal land management planning conducted by the Forest Service and agencies of the Department of the Interior, and to respond to the impacts of the public use of the Federal lands administered by these agencies, and H.R. 3981, to authorize the Secretary of Agriculture to carry out certain land exchanges involving small parcels of National Forest System land in the Tahoe National Forest in the State of California, 2:30 p.m., SD–366.

Committee on Finance: to hold hearings to examine progress achieved and challenges ahead for America’s child welfare system, 10 a.m., SD–215.
Committee on Foreign Relations: to hold hearings to examine the nominations of Earl Anthony Wayne, of Maryland, to be Ambassador to Argentina, David M. Robinson, of Connecticut, to be Ambassador to the Co-ope-

Committee on the Judiciary: to hold hearings to examine modern enforcement of the Voting Rights Act, 9:30 a.m., SD–226.

Select Committee on Intelligence: closed business meeting to consider pending intelligence matters, 2:30 p.m., SH–219.

House

Committee on Appropriations, to mark up the following appropriations for Fiscal Year 2007: the Military Quality of Life, and Veterans Affairs, and Related Agencies; and the Interior, Environment, and Related Agencies, 10 a.m., 2359 Rayburn.

Committee on Education and the Workforce, Subcommittee on Select Education, to mark up H.R. 5293, Senior Independence Act of 2006, 10:30 a.m., 2175 Rayburn.

Committee on Energy and Commerce, hearing entitled “Gasoline Supply, Price and Specifications;” 10 a.m., and to mark up a measure to amend the automobile fuel economy provisions of title 49, United States Code, to authorize the Secretary of Transportation to set fuel economy standards for passenger automobiles based on one or more vehicle attributes, 1 p.m., 2123 Rayburn.

Committee on Government Reform, Subcommittee on Federalism and the Census, hearing entitled “Public Housing Management: Do the Public Housing Authorities Have the Flexibility They Need To Meet the Changing Demands of the 21st Century?” 10 a.m., 2154 Rayburn.

Subcommittee on Government Management, Finance and Accountability, hearing entitled “After Katrina: The Role of the Department of Justice Katrina Fraud Task Force and Agency Inspectors General in Preventing Waste, Fraud, and Abuse,” 2 p.m., 2247 Rayburn.


Subcommittee on Intelligence, Information Sharing, and Terrorism Risk Assessment, to continue hearings entitled “Protection of Privacy in the DHS Intelligence Enterprise,” 4 p.m., 311 Cannon.

Committee on International Relations, hearing on A Resurgent China: Responsible Stakeholder or Robust Rival? 10 a.m., 2172 Rayburn.


Committee on the Judiciary, to mark up the following bills: H.R. 9, Fannie Lou Hamer, Rosa Parks, and Corretta Scott King Voting Rights Act Reauthorization and Amendments Act of 2006; and H.R. 4681, Palestinian Anti-Terrorism Act of 2006, 10 a.m., 2141 Rayburn.

Committee on Resources, Subcommittee on Fisheries and Oceans, hearing on the following bills: H.R. 4947, Cahaba River National Wildlife Refuge Expansion Act; H.R. 5094, Lake Mattamuskeet Lodge Preservation Act; and H.R. 5232, Cherry Valley National Wildlife Refuge Study Act, 10 a.m., 1334 Longworth.


Committee on Small Business, hearing entitled “Bridging the Equity Gap: Examining the Access to Capital for Entrepreneurs Act of 2006,” 2 p.m., 2360 Rayburn.

Committee on Transportation and Infrastructure, Subcommittee on Highways, Transit and Pipelines, oversight hearing on Highway Capacity and Freight Mobility: The Current Status and Future Challenges, 10 a.m., 2167 Rayburn.

Subcommittee on Railroads, oversight hearing on Operational Experience Under the 2001 Railroad Retirement Reform Law, 2 p.m., 2167 Rayburn.

Committee on Veterans’ Affairs, Subcommittee on Economic Opportunity, to mark up the following bills: H.R. 3082, Veteran-Owned Small Business Promotion Act of 2005; and H.R. 5220, Veterans Certification and Licensure Act of 2006, 2:30 p.m., 334 Cannon.

Committee on Ways and Means, to consider the draft implementing proposal of the United States-Oman Free Trade Agreement Implementation Act, 10:30 a.m., 1100 Longworth.

Joint Meetings

Joint Economic Committee: to hold hearings to examine the next generation of health information tools for consumers, 10 a.m., SD–106.
Next Meeting of the SENATE
9:30 a.m., Wednesday, May 10

Senate Chamber

Program for Wednesday: After the transaction of any morning business (not to extend beyond 60 minutes), Senate will begin consideration of S. 1955, Health Insurance Marketplace Modernization and Affordability Act.

Next Meeting of the HOUSE OF REPRESENTATIVES
10 a.m., Wednesday, May 10

House Chamber

Program for Wednesday: Consideration of a suspension as follows: H. Res. 802—Encouraging all eligible Medicare beneficiaries who have not yet elected to enroll in the new Medicare Part D benefit to review the available options and to determine whether enrollment in a Medicare prescription drug plan best meets their current and future needs for prescription drug coverage. Begin consideration of H.R. 5122—National Defense Authorization Act for Fiscal Year 2007 (Subject to a Rule).

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