I am confounded. There is no other way to put it.

My colleagues on the other side of the aisle come to this floor, time and again, raving about a ''do nothing'' Congress.

Well, today, just a few minutes ago, we had yet another opportunity to do something—as we have already many times this Congress.

We had the chance to bring three very important issues to the floor for debate: permanent death tax relief, extension of expiring tax provisions, and a minimum wage Increase.

These are issues that matter in the day-to-day lives of our constituents—issues that actually mean something to hard-working Americans.

And yet some of my colleagues decided these issues aren't important enough to debate here on the Senate floor.

This package—it's about securing America's prosperity.

It's about easing the tax burden facing America's families.

It's about helping hard-working Americans tackle an increasing cost of living head on.

And it's about fostering innovation and reinvestment in our homegrown small businesses and farms.

Quite simply, it's vital to the economic security of everyday Americans.

These are challenging issues, and they must be addressed here on the Senate floor.

And as I have said before, these issues must be addressed as a package: permanent death tax relief, tax policy extensions, and a 40-percent increase in the minimum wage.

All three together. All or nothing.

Not bringing this package—the Family Prosperity Act—to the floor is tantamount to saying, ''We don't care about America's economic security.''

And I am deeply ashamed that we, the U.S. Senate, would ever dare send such a message to the American people.

The PRESIDING OFFICER. The Democratic leader.

Mr. REID. Mr. President, everyone will be relieved to know I don't have anything to say.

PENSION PROTECTION ACT OF 2006

The PRESIDING OFFICER. Under the previous order, the Senate will proceed to the consideration of H.R. 4, which the clerk will report by title.

The legislative clerk read as follows:

A bill (H.R. 4) to provide economic security for all Americans, and for other purposes.

The PRESIDING OFFICER. Under the previous order, there are 20 minutes equally divided between the two leaders.

The Senator from Wyoming.

Mr. ENZI. Mr. President, I allocate myself 7 minutes of the 10 we have on our side.

A year ago, we were working on a pension bill, and we were working on the bill in two separate committees. We passed bills out of both committees. Then the two committees met together, and we merged it into one bill. There were a lot of difficulties in doing that process. It took quite a while. At the end of November we still had several problems and because of that, the media pronounced the bill dead. A week later, we had revived it and passed it in the Senate with just two votes in opposition to it and 97 in favor. All that in just 1 hour. Then it was brought to life on the House side. They passed the bill in December of 2005.

Then, in March 2006, a conference was named, and we worked on it diligently for hours virtually every day. A lot of moving parts started to fit into place. Some wondered if it would never get done.

I looked up the last major revisions we did on a pension bill. They were not nearly as expansive as this. This is the biggest revision of pension laws to be enacted in the past 32 years.

I noticed, in 1987, a big pension reform conference started in early March. The conference committee started a little earlier, but the bill was enacted until December 22. In 1994, there was a second pension reform conference. Again, the conference started in March of that year. The conferees wound up the conference agreement a little earlier than in 1987. This time, the bill was enacted on December 8, 1994. So we are way ahead of schedule compared to those two conferences. But we had to do it in a little different method than we might have liked to get to this point. Nevertheless, it is the most sweeping amendment to ERISA and the Internal Revenue Code in over 30 years. It is nearly identical to the product and agreements made by the members of the conference committee in a bipartisan manner. I am proud we have before us the most sweeping changes to our Nation's retirement laws since the enactment of ERISA itself.

This legislation will provide greater security for our Nation's workers who have retirement benefit plans and greater stability for the Pension Benefit Guaranty Corporation. There is little doubt this bill will be the foundation on which the future of our retirement system rests.

Today, we secure the future for American workers and their families. We ensure their hard work is rewarded and their hard-earned dollars go towards their retirement needs.

At the outset of the pension debate, I laid out three guiding principles that must be followed when the bill is enacted. Each of these has been satisfied in this bill that I am proud to have helped craft as chairman of the conference committee.

The first guiding principle is: The money workers earn for retirement must be there when they retire. This legislation contains tougher funding rules to ensure the money is there when workers enter retirement.

The pension bill puts an end to phony pension accounting rules that inflated the apparent value of pension plans, relied on inaccurate measurements of liabilities, and permitted funding holidays through the use of credit balances when plans were seriously underfunded.

Promises made to workers for their retirement will be promises kept by assuring the money needed is in the fund and by appropriately limiting when benefits may be increased, freezing future accruals, and restricting the rapid out-flow of lump sums and shutdown benefits when the plan gets into serious trouble. The bill also imposes discipline on management by restricting new executive compensation when pension plans are in trouble.

The second guiding principle is: The new rules we craft should not be so draconian that they become the cause of more bankruptcies and pension plan terminations.

The conference committee leaders spent nearly 4 months debating this exact point with regard to ''at risk'' triggers. In the final bill, I believe we have found a proper balance.

The legality of cash balance and other hybrid pension plan designs is clarified on a prospective basis under ERISA, the Internal Revenue Code, and the Age Discrimination in Employment Act, thus ending legal challenges that have driven hundreds of quality employers out of the defined benefit system. We have always felt that these plans are valid under the Code, ERISA and the ADEA.

The final guiding principle is: A taxpayer bailout of the PBGC is not an option. The full faith and credit of the United States does not stand behind the private pension insurance systems, and I am committed to keeping it that way by shoring up the finances of the agency without a taxpayer bailout.

The legislation repeals the full funding exemption on the variable rate premium which reduces the deficit at the PBGC by billions over the next 10 years. With this single vote, we will make the most sweeping changes to ERISA since its enactment in 1974.

I urge my colleagues to vote in favor of this bill. Our future generations are counting on it.

I ask unanimous consent that the following letters be printed in the RECORD.

There being no objection, the material was ordered to be printed in the RECORD, as follows:

PENSION BENEFIT GUARANTY CORPORATION,
Washington, DC, October 14, 1993.

We write in response to your inquiry. You ask whether the PBGC adheres to the interpretation of section 4225 of the Employee Retirement Income Security Act of 1974 (''ERISA''), as amended by the Multiemployer Pension Plan Amendments Act of 1980 (''MPPAA''), set forth in its amicus curiae brief in Trustees of the Amalgamated Insurance Fund v. Geltman Industries, 784 F.2d 926 (9th Cir. 1986). In its brief, PBGC addressed the proper application of ERISA §§4225(a) and 4225(b) where the withdrawn employer satisfies the prerequisites for the application of both subsections. PBGC expressed the view that an employer meeting the criteria in both subsections (a) and (b) may elect the limitation that yields the lesser of the amounts determined under the two subsections. The Ninth Circuit, however, reached a contrary conclusion. 784 F.2d at 929–30. For the reasons set out below, PBGC continues to believe that its interpretation of ERISA §§4225 (a) and 4225(b) is correct as a matter [*2] of law.

Under ERISA §4225(a)(1)(A), an employer who withdraws in connection with a ''bona fide sale of substantially all of [its] assets in an arm's-length transaction to an unrelated party'' will ordinarily be permitted to retain a portion of its dissolution value. The Geltman court, however, citing ''the language and . . . structure'' and the ''underlying policies of ERISA and MPPAA,'' concluded that an ''insolvent'' employer must be denied relief under subsection (a)(1)(A), because subsection (b) provides a different liability limit that is explicitly directed to ''an insolvent employer undergoing liquidation or dissolution.''

This analysis overlooks several pertinent points. First, when Congress intended to deny classes of employers relief under section 4225, it did so explicitly. See ERISA §4211(d) (prohibiting application of section 4225 to employers who withdraw from coal-industry pension plans). Significantly, nothing in the language of section 4225 suggests that subsections (a) and (b) are mutually exclusive.[1] The two provisions have separate factual prerequisites, and provide different types of relief. So long as an employer satisfies the requirements of both subsections, [*3] it should qualify for relief under either rule, and its liability should not exceed the lesser of the amounts determined under the two subsections.

[1] Sections 4225(a) and (b) both begin with the phrase ''in the case of an employer.'' The Geltman court suggested this phrase was ''evidence that the sections are to operate exclusive of each other. . . .'' This suggestion is manifestly incorrect. The phrase ''in the case of'' is used as an introduction to at least 30 provisions of MPPAA; in each such instance, it is used in its normal statutory sense, as a synonym for ''when'' or ''if''. 20A Words and Phrases 75 (1959 & Supp. 1983).

This conclusion is further supported by the technical definition of ''insolvency'' included in section 4225. Under section 4225(d)(1), ''an employer is insolvent if [its] liabilities, including withdrawal liability under the plan (determined without regard to subsection (b)), exceed [its] assets (determined as of the commencement of the liquidation or dissolution)'' (emphasis added). Section 4201(b)(1)(D) defines ''withdrawal liability'' as including adjustment pursuant to section 4225. Thus, the use of the term ''withdrawal liability'' in the definition [*4] of insolvency incorporates any reductions in withdrawal liability resulting from the application of section 4225 (including subsection (a)) except the reduction set out in section 4225(b), which is specifically excluded.[2]

[2] The decision is therefore incorrect when it states that whether ''an employer is an insolvent employer . . . is done by looking to the provisions of [section 4225(d)(1)] without regard to [section 4225(a)].'' Geltman, 784 F.2d at 929.

PBGC believes that its interpretation of section 4225 is fully consistent with the ''underlying policies of ERISA and MPPAA.'' Section 4225 is but one of several ERISA provisions that limit the amount of withdrawal liability imposed upon withdrawing employers.[3] Nothing in the congressional findings and policy declarations that preface MPPAA indicate that the withdrawal liability limitation provisions should be construed to maximize the liability of an employer. See MPPAA §3, codified at 29 U.S.C. §1001a. The same is true of the legislative history.

[3] See, e.g., ERISA §§4203 (b), (c), (d), and (f), 4204, 4207, 4208, 4209, 4210, 4217, 4218, 4219(c)(I)(B), 4224, and 4225. The Supreme Court has noted with approval Congress's efforts to moderate the impact of withdrawal liability on employers, including Congress's effort in section 4225. Connally v. PBGC, 475 U.S. 211, 225, 226 n.8 (1986).

Finally, the interpretation offered in Geltman makes little economic sense. Under the rationale of the decision, an employer whose liabilities exceeded its assets by only one dollar is ''insolvent'' and would automatically forfeit any relief under section 4225(a)(1)(A). In contrast, if the employer's assets were one dollar greater than liabilities, the full liability limitation would apply.[4] As discussed above, the application of the plain language of the statute avoids this sort of anomaly.

[4] The attached table, drawn from the PBGC's amicus brief, illustrates the dramatic increase in employer liability caused by the single dollar difference.

In conclusion, the plain wording of section 4225 dictates that an employer that meets the requirements of both subsections (a) and (b) is entitled to an assessment of withdrawal liability that does not exceed the lesser of the amounts determined under (a) and (b). Neither the legislative purpose nor principles of statutory construction compel a contrary conclusion. The PBGC therefore continues to adhere to the position stated in its brief amicus curiae.

I trust this responds to your question. If you have further questions regarding this matter, please contact Karen Morris of my staff.

CAROL CONNOR FLOWE,
General Counsel.

ADDENDUM

Computation of Withdrawal Liability Under Arbitrator's Interpretation in Geltman Industries and Amelgamated Insurance Fund, of Section 4225.

Assumptions: 1. The value of the employer's assets after the sale is $100,000; 2. The employer's liabilities other than withdrawal liability are $90,000; 3. The unfunded vested benefits allocable to the employer prior to the application of section 4225 are $10,000 in Example 1 and $10,001 in Example 2.

Maximum Withdrawal Liability Under §4225(a)	Example 1	Example 2
1. (a)(1)(A): 30% of the liquidation value of the employer = .30X($100,000–$90,000) ...	$3,000	
2. (a)(1)(B): unfunded vested benefits attributable to employees of the employer $0 or undetermined ...	....	N/A
3. Greater of (a)(1)(A) or (B) (#1 or #2) ...	3,000	
4. (b)(1): 50% of allocable unfunded vested benefits = .50X$10,00 ...	....	$5,000.50
5. (b)(2): additional amount due plan (remaining liquidation value after #4) ...	N/A	4,999
6. Total collectible under (b) (sum of #4 and #5) ...	....	10,000
7. Amount paid to Plan ...	3,000	10,000
8. Amount paid to creditors other than Plan ..	90,000	90,000
9. Amount retained by employer ...	7,000	0

CONGRESS OF THE UNITED STATES,
Washington, DC, July 27, 2006.

DEAR CONFEREE: Throughout the last 18 months as Congress has worked on pension reform legislation, we have crafted a bipartisan compromise that addresses needed reforms to identify and rehabilitate troubled multiemployer pension plans. Under this compromise, workers and employers can be assured of predictability and transparency in their pension plans.

This compromise includes new, accelerated funding requirements for all multiemployer pension plans. It provides for enhanced disclosure for workers, retirees, and employers who contribute to these pensions. And it requires pension plans with financial difficulties on the horizon to meet strict goals to avoid these problems.

The most troubled pension plans—the so-called ''red zone'' pensions—would be required to adopt a rehabilitation plan to reach healthy funding status. The plan may require a combination of employer contribution increases, expense reductions, funding relief measures and restrictions on future benefit accruals. In certain extraordinary circumstances a rehabilitation plan may also reduce or eliminate certain ancillary pension benefits for workers who have not yet retired. This limited authority is necessary to ensure the continued viability of the most poorly-funded plans. These changes must be adopted by all bargaining parties, both management and labor trustees.

Our bi-partisan compromise also requires multiemployer plan trustees to impose upon contributing employers, within 30 days after the plan provides the notice of reorganization status, a series of automatic contribution surcharges. The surcharge will end when a new collective bargaining agreement is implemented that adopts a schedule of benefits based on the rehabilitation plan.

We believe that all of these reforms are critical to safeguarding the multiemployer pension system and protecting workers' benefits. We look forward to working with you to address the challenges facing America's workers and retirees.

JOHN A. BOEHNER,
Majority Leader, House of Representatives.
EDWARD M. KENNEDY,
Ranking Member, Senate HELP Committee.

Mr. ENZI. Mr. President, this bill is nearly identical to the product and agreements made by members of the conference committee in a bipartisan manner. I am proud that we have before us the most sweeping changes to our Nation's retirement laws since the enactment of ERISA itself.

This legislation will provide greater security for our nation's workers who have retirement benefit plans and greater stability for the Pension Benefit Guaranty Corporations, PGBC. There is little doubt that this bill will be the foundation on which the future of our retirement system rests. Today, we secure the future for American workers and their families. We ensure their hard work is rewarded and their hard earned dollars go towards their retirement needs.

I would like to review some important aspects of this legislation. For more than a year we have been working on a package of pension funding rules that will strengthen defined benefit plans and thus, protect plan participants from the fear of poverty in their retirement years. When I have concluded that, I will speak about the process surrounding the pension reform bill.

We were motivated to make these changes for several reasons. First, plans were underfunded. This occurred due to numerous and complicated reasons. A key factor was the combination of low interest rates and lowered equity values that began in the year 2000. The intersection of these two economic events caused both defined benefit plans and the federal agency that insures them, the PBGC to show big deficits. More money needed to go into the plans regardless of fluctuations in the economy.

Underfunding was not caused solely by a drop in interest rates and equity values. It was also caused by loopholes in pension funding rules.

Second, as plan deficits rose, required contributions to plans skyrocketed. This put struggling companies in financial peril. When the terrorist attacks occurred on 9/11 the cash flow of many of those same companies froze up. Without big reserves in the plans, they could not make their pension payments any longer. Some of them just declared bankruptcy. In turn, they dumped their pensions on the PBGC. Those pension plan failures were quite large. Among them were some steel companies and a couple of big airlines.

PBGC premiums and asset recoveries from failed pension plans are not enough to cover the cost of paying benefits to participants of the failed plans. Every time there has been a pension plan failure, the PBGC's deficit worsens.

Finally, a taxpayer bailout of the PBGC is not an option. Congress' adverse experience with the savings and loan problems of the past taught us a lesson: A taxpayer bailout of the PBGC is not an option. A taxpayer bailout of the pension insurance agency could only occur if the Congress provided for it. We did not provide for a taxpayer bailout of the PBGC in this bill. Instead, we corrected the pension funding rules.

There have been murmurings in the media and on Capitol Hill that the bills produced in the House and Senate were somehow "weaker than current law". The facts plainly show that neither the House nor the Senate bill is weaker than current law and this new bill that the House introduced and passed on Friday July 28, 2006 is not weaker than current law either.

Here are just a few examples of how the pension reform proposal is tougher than current law.

Under the reform proposal: plans must be funded to 100 percent; plans must amortize their debts over 7 years; plans must use updated and accurate mortality tables; plans may not add inflated credit balances to deflated plan assets; liabilities must be valued using a modified yield curve that will better "duration match" assets and liabilities of the plans; smoothing for both assets and liabilities may be only 24 months in duration; plans that are seriously underfunded must pay an additional contribution for "at-risk" plans. If plans are at-risk for a long enough period of time, they will be subject to an additional requirement to pay a "load factor" into the plan which assumes the plan may be at risk of terminating; benefit increases, lump sum payouts and additional accruals are prohibited for certain seriously underfunded plans; payment of shutdown benefits are severely restricted for plans that are underfunded; funding of executive compensation is prohibited when the plan covering rank-and-file workers is underfunded; and premiums payable for pension insurance are dramatically increased and will add billions of dollars to the coffers of the PBGC.

By contrast, under current law a pension need be funded only to 90 percent; liabilities are valued upon the four-year weighted average of a long-term corporate bond and assets are smoothed over as many as five year; a single accelerated payment is required for underfunded plans, but there is no load factor; credit balances are added to assets and can result in inappropriate contribution holidays and there are many other weaknesses in current law that have been corrected in the reform legislation.

One industry that made a compelling case for special transition rules is the airline industry. Because airlines are vital to our economy, Congress agreed that different rules should apply to the plans of the legacy airlines. I am a little disappointed in the language from the House bill because it fails to treat all the legacy airlines equally. I admire the courage of a plan sponsor that makes the tough decision to freeze its plan. When a company is suffering from financial distress or the risk of it, it needs to freeze accruals. But if the company has made other financial sacrifices or the employees have made other concessions in order to keep the plan in place that should, (within limits), be a decision of the company.

The Senate bill gave amortization extensions to all four legacy airlines but required the non-frozen plans to pay into their benefit plans at the "at-risk" rate. The frozen plans received a more favorable arrangement—but all the legacy airlines received some more or less equivalent treatment.

Under the House bill, frozen plans receive 17 years to amortize their plan debt and an interest rate of 8.85 percent. The frozen plans would be prohibited from having a follow-on DB plan or a DC plan in which they pay matching contributions. If their plan should terminate within the next 10 years, for any reason other than a terrorist attack, or other similar event, severe termination premiums are to be imposed on the sponsoring company. This language controverts the provisions of the recently enacted reconciliation act, P.L. 109–171, that did not impose a termination premium on plans whose sponsor declared bankruptcy prior to October 18, 2005.

By contrast, nonfrozen plans receive some limited leeway. They would obtain an amortization of ten rather than seven years for the liabilities accrued to date under their plan. They would not have to pay the deficit reduction contribution, DRC, for 2006 or 2007. That waiver of the DRC would be a big help to their finances until the new rules phase in.

I prefer the language of the Senate passed bill, S. 1783. I am very sorry that the House did not see fit to accept the Senate language, as it was the result of many and long negotiations. The Nation cannot afford any more airline bankruptcies or terminations of airline pension plans. I hope this legislation will not worsen the finances of the legacy airlines or the pension plans they sponsor.

The language we have before us makes other changes to law as well. For example, it provides clarification regarding the use of automatic enrollment programs for defined contribution plans. It establishes a new portable defined benefit plan that we refer to as the "DB(k)" plan. This retirement savings vehicle is especially appealing to small and medium sized companies. The legislation improves portability of retirement savings. It contains many beneficial changes to tax law affecting the provision of health care benefits for public safety officers of state and local governments and for savings in long-term care plans.

There are also rules that recognize the unique situation of rural cooperatives that are very common in my home State and are vital to all rural parts of this Nation.

In addition, the rules for calculating lump sum distributions have finally been updated in this legislation. The change for this calculation will be phased in very slowly so that participants will not be disadvantaged by any sudden change in the rate used to make these calculations. As is the case under current law, the new law allows a plan sponsor to use different assumptions, interest rates and/or mortality tables, to determine lump sum distributions so long as the plan provides that a participant's lump sum amount is no less than the present value determined in accordance with the provision in effect under this legislation.

While single-employer pension funding problems have been quite visible, the funding problems of multiemployer pension plans, that is, plans that are sponsored by big labor unions and the employers who have an obligation to contribute to them, have been invisible. Ironically, the agency that is charged with protecting the integrity of the pension insurance system has consistently declined to recommend changes to the funding rules for these plans. Their argument is that the multiemployer plans are not a threat to the insurance system.

I respectfully submit that, over time, these multiemployer plans have become an unseen threat to the pension insurance system and to the participants in the plans and the employers who must fund them. If there were not risk inherent in these plans, the plans would never have come to Congress asking for changes in their rules. The changes in the pension reform bill will postpone the possible collapse of some multiemployer plans, but it they will not cure it. Much remains work remains to be done in terms of multiemployer reform.

Unlike the single-employer pension system which has been amended numerous times since its enactment in 1974, the rules governing multiemployer plans have been virtually untouched since the enactment of the rules covering these plans in 1980.

In 2003 the multiemployer plans came up to Capitol Hill and asked for a blanket extension of amortization of their plan gains and losses. Congress pared back that request in the provisions applicable to multiemployer plans that appear in the 2004 Pension Funding Equity Act, PFEA.

Since then, the unions and management agreed upon changes to ease the multiemployer pension funding standards for financially distressed plans. The changes made here identify plans that are seriously underfunded. They also establish benchmarks for improvement.

The two special categories are for plans we consider to be ''endangered'' versus those that are worse funded. Those are the plans in ''critical'' condition. At the behest of the union and management multiemployer coalition, we urge these plans to increase funding.

Multiemployer plans are funded through contributions specified in collective bargaining agreements. The plans look like a defined contribution plan to the employers who pay for them since they pay a certain number of dollars per hour each participant worked under the plan. But, these plans function like, and they are, defined benefit plans for the individuals covered by them. Because the plans are funded by, in some cases hundreds of, collective bargaining agreements, improvements to overall funding cannot necessarily occur quickly.

The new rules do not set painful improvement standards for underfunded plans. On the contrary, these new benchmarks for improvement are established with the complete approval of the multiemployer coalition. The new rules allow the plans to make modest increases in their overall funded status without necessarily making other sacrifices. There is one exception to this rule. That occurs when a plan is in so-called ''critical'' status. Under that circumstance, the multiemployer coalition asked for the right to eliminate early retirement subsidies for participants who are still working. Early retirement subsidies are an accrued vested benefit and under current law. They are protected from reduction or elimination by a plan amendment. Labor and management clearly felt that the underfunding in some multiemployer plans was so severe that the only way some of the plans could survive was to eliminate early retirement subsidies of those who are still working.

It is no secret that I resisted that change. Cutbacks of early retirement subsidies were not reported out of the HELP Committee. Cutbacks were not passed by the Senate. The provision allowing cutbacks was added by the House of Representatives' bill.

The issue of the cutback of previously accrued benefits is very controversial and a few clarifying points are needed. First, the drafters took great care to ensure that the decision to cutback accrued benefits is one that must be made by the plan trustees, and as part of the collective bargaining process. The language of the bill is clear, I believe, that any reduction of adjustable benefits can only be accomplished through a separate schedule. The language of the bill does not permit cutbacks in the default schedule.

The legislation also provides a floor for benefit reductions, i.e., the so-called 1 percent rule. The bill makes clear, however, that the plan sponsor retains the ability to prepare and provide the bargaining parties with alternative schedules to the default schedule that establish lower or higher accrual and contribution rates than the rates otherwise required under the provision. Thus, the plan sponsor may supply schedules to the bargaining parties for their consideration that raise employer contributions higher than the default schedule or reduce benefit accruals below the specified 1 percent level. The legislation does not require the plan sponsor to go below the 1 percent benefits floor, but that is expressly permitted if the trustees and bargaining parties so choose.

In the Health Education Labor and Pensions Committee, we worked on multiemployer funding reform legislation over the last year and a half. We heard testimony regarding the impact of existing multiemployer pension rules on small, privately held trucking-related companies that participate in multiemployer pension plans.

These businesses participate in pension plans that are badly underfunded as a result of changes in the trucking industry and poor decisions by some of the plans' trustees—decisions that the smaller companies had virtually no knowledge of, much less control over. Despite the fact that these companies have made every pension contribution required of them, the withdrawal liabilities attributable to them has skyrocketed, and in several cases exceeds the entire net worth of the company by two and three times.

I worked diligently with my colleagues to include withdrawal liability reforms for these companies in the pension bill, and to protect those small employers who came forward to voice their opinions from retaliation from the pension plan. I am pleased that we were successful in securing some modest reforms.

One additional issue which is vitally important to these employers involves the proper interpretation of current law. ERISA section 4225 provides limitations on withdrawal liability for an employer that withdraws from the plan in connection with a bona-fide arms-length sale of assets to an unrelated third party. As the interpretation of this section has been subject to some legal dispute (Trustees of the Amalgamated Insurance Fund v. Geltman Industries, 784 F.2d 926 (9th Cir. 1986)), it is important for Congress to reiterate its interpretation of this law.

Therefore, I have included for the CONGRESSIONAL RECORD a copy of PBGC Opinion Letter 93–3. In this opinion letter, PBGC explains that, ''the plain wording of section 4225 dictates that an employer that meets the requirements of both subsections (a) and (b) is entitled to an assessment of withdrawal liability that does not exceed the lesser of the amounts determined under (a) and (b).'' Further, PBGC says, ''that neither the legislative purpose nor principles of statutory construction compel a contrary conclusion.''

As the Chairman of the Health Education Labor and Pensions Committee, I believe this letter provides a clear and concise interpretation of Section 4225 which is completely consistent with the intent of Congress.

The pension reform bill amends the anti-retaliation section of ERISA to provide protection for employers who contribute to multiemployer plans and others. Specifically, the language adds a new sentence to ERISA Section 510 that states: ''In the case of a multiemployer plan, it shall be unlawful for the plan sponsor or any other person to discriminate against any contributing employer for exercising rights under this Act or for giving information or testifying in any inquiry or proceeding relating to this Act before Congress.''

The new sentence is necessary to close a loophole in the existing whistleblower protection. Over the course of the debate over multiemployer pension reforms, several companies approached Congress with concerns about how proposals would adversely affect their business operations. In June 2005, John Ward, of Standard Forwarding in East Moline, IL, speaking on behalf of those companies, testified before the Retirement Security & Aging Subcommittee of the Senate Health, Education, Labor & Pensions Committee.

On several occasions after that date, the committee heard allegations of threats of retaliation against Mr. Ward for testifying before Congress and for petitioning the Congress for redress of grievances. The fact is that Mr. Ward's and the small trucking companies offered a dissenting point of view on the proposed multiemployer reforms. The other companies for whom Mr. Ward testified are: Fort Transfer of Morton, IL; Midwest Drivers of Bloomington, MN; Billings Freight, Inc. of Lexington, NC; Miller Transporters of Jackson, MI; Schwerman Trucking Co. of Milwaukee, WI; and Steel Warehouse Co., Inc. of South Bend, TN. Among those allegations was the concern that all or most of the companies had been targeted by a large multiemployer fund.

The conference committee believes that such actions, if proved, would amount to unlawful retaliation under the language added to ERISA by the pension reform bill under section 205. Exercising rights under ERISA, testifying before Congress, and giving information in any inquiry or proceeding relating to this Act are protected under this provision. Retaliation in the form of threats, special audits or singling out of employers and others for adverse or disparate treatment, will not be tolerated under the law. Let me say that, had there been a conference report, there was an agreement among the majority staff to include the specific reference to the small companies who warranted protection under this antiretaliation provision because they believe they have been singled out for retaliation by one of the plans to which they had an obligation to contribute.

Finally, all of Title II of the pension reform bill, except shortening the amortization from 30 to 15 years, is sunset after December 31, 2014 although any funding improvement or rehabilitation plan is permitted to remain in effect.

One of my highest priorities for pension reform is clarification of the legal status of hybrid pension plans. Since late in 1998 when sensational stories about these plans first hit the newspapers, the Congress has been struggling over how to respond. I have never doubted the legality of hybrid plans. While some conversion practices may have been questioned, the plans are entirely valid.

Hybrid plans have been criticized on the theory that the design was per se discriminatory. The theory suggests that the hypothetical individual account plan design unlawfully favors younger workers over older ones because younger workers could accrue interest on their account over a longer period of time than older workers. This theory amounts to a declaration that the ''time-value of money'' is age discriminatory.

Not surprisingly, given the confused logic of stating that compound interest in a pension plan is age discriminatory, most courts that have reviewed the age appropriateness of hybrid plan designs have found them to be legitimate. Indeed, the first federal court to review the question stated ''Plaintiffs' proposed interpretation would produce strange results totally at odds with the intended goal of the OBRA 1986 pension age discrimination provisions (Eaton v. Onan (S.D. N.Y. 2000)).'' The case law validating the hybrid design includes three federal court decisions issued since a 2003 rogue decision in the Southern District of Illinois. These decisions explicitly reject that court's reasoning and conclusion (Tootle v. ARINC (D. Md. 2004), Register v. PNC (E.D. Pa. 2005) and Hirt v. Equitable (S.D. N. Y. 2006) and hold the hybrid pension design to be legal. Consistent with these numerous federal court decisions, the Internal Revenue Service (IRS) for 15 years issued approvals for individual cash balance plans and the Treasury Department and IRS repeatedly issued guidance as to the validity of the cash balance design. It is not time for the IRS' self-imposed moratorium on determination letters for sponsors of these plans to end.

For purposes of applying the age discrimination test, the bill permits a plan to express an employee's accrued benefit ''under the terms of the plan'' as an account balance or current value of the accumulated percentage of the employee's final average compensation. This rule was intended to limit, for purposes of age discrimination testing, the use of an account balance to cash balance plans and the use of a current value to pension equity plans. However, the phrase ''under the terms of the plan'' could create the impression that the rule applies only to cash balance and pension equity plans that define in the plan document the term ''accrued benefit'' in this way.

Many cash balance and pension equity plans define ''accrued benefit'' as an age-65 annuity, even though that annuity is determined by reference to an account balance or current value. In many cases, this definition has been required by the Internal Revenue Service. It is important to clarify that Congress does not intend to require a plan document to include a specific definition of the term ''accrued benefit'' to apply the standard set forth in this legislation.

This bill sets forth a test for age discrimination in defined benefit pension plans that compares an employee's accrued benefit with that of any similarly situated younger employee. For this purpose, an employee's accrued benefit may be expressed as the current balance in a hypothetical account for any plan that determines the employee's accrued benefit (or any portion thereof) by reference to a hypothetical account, such as a cash balance plan. Similarly, for this purpose, an employee's accrued benefit may be expressed as a current value equal to an accumulated percentage of the employee's final average pay for any plan that determines an employee's accrued benefit (or any portion thereof) by reference to such current value, such as a pension equity plan.

But the bill does not elevate form over substance. How a plan expresses the accrued benefit for purposes of the age discrimination rules is not contingent upon how the plan document defines the term ''accrued benefit.'' For example, a cash balance plan may, for purposes of the age discrimination rules, express the accrued benefit as the current balance of the hypothetical account determined under the terms of the plan, even if the plan defines the term ''accrued benefit'' in a different form, such as an annuity commencing at normal retirement age that is based on the hypothetical account.

Similarly, a pension equity plan may express the accrued benefit as a current value equal to an accumulated percentage of the employee's final average pay as determined under the terms of the plan, even if the plan defines the term ''accrued benefit'' in a different form, such as an annuity commencing at normal retirement age that is based on that current value. This flexibility is important because pension plans will often define the ''accrued benefit'' in different fashions. For example, the IRS has frequently insisted that plans define the term ''accrued benefit'' as ''an annuity commencing at normal retirement age'', even though the annuity is determined by reference to a hypothetical account or a current value equal to an accumulated percentage of an employee's final average pay.

Any hybrid plan including a cash balance or pension equity plan may also apply the age discrimination test by expressing the employee's accrued benefit as an annuity beginning at normal retirement age (or at the employee's current age, if later), as determined under the terms of the plan. If a cash balance or pension equity plan were to do so, it likely would rely on the indexing rules elsewhere in section 701 to satisfy the age discrimination test.

The pension reform bill also provides new specifications for hybrid plan conversions. These are entirely new requirements and they have been worked out among the parties to these discussions. The rule specifies that for conversions, plans should follow an ''A + B'' formula. This means that the benefit accrued to date under the old formula, that was in effect prior to the conversion, must be added to the benefit under the new formula beginning on the date the conversion takes effect.

Under this A + B formula, any early retirement subsidy that was accrued up to the date of the conversion would be preserved in the benefit of the participant. This early retirement benefit would be payable only if the participant earned the requisite number of years of service to entitle him or her to the benefit subsidy. The participant would not be entitled to any additional amount of subsidy, but only the amount earned to-date could be paid out and only assuming he or she worked the number of years required under the plan to earn it. The new rule does not require a plan to pay an early retirement subsidy in lump sum unless the plan provides that it will do so. This is consistent with current law and practice.

The hybrid language also corrects the so-called pension whipsaw for distributions after the date of enactment. The parties to the pension discussions took the view that the position taken by the IRS in Notice 96–8 was an incorrect interpretation of present law. Many of us who were engaged in the pension reform discussions noted that Notice 96–8 was never finalized by the IRS in their regulations and we observed that the Treasury Department had been reviewing the position in Notice 96–8 for some time, but without result.

The approach taken in Notice 96–8 can actually harm many participants.

Many employers have reduced the rate of interest crediting under their hybrid plans due to concerns that over the requirements of the notice. In addition to its other flaws, the approach taken in the notice provides a larger benefit to be paid to a participant who takes a distribution before normal retirement age than for a participant who waits to take his or her benefit distribution. Thus Notice 96–8 would penalize an employee who waits to take a distribution. This is a perverse result for a rule governing retirement plans.

As we developed these new rules for hybrid plans, we were cognizant that the system is voluntary and as such, it must accommodate the needs and concerns of employers and employees. A viable pension system must grant plan sponsors the ability to change their plan designs on a prospective basis without undue restrictions or mandates on benefit levels.

This legislation is a clarification of the law; the action in producing this clarification should not cast any negative inference on the legality of the hybrid plans.

There are provisions in this legislation that I believe bring our pension retirement laws into greater sync with our future retirement needs for financial education and with the operations of our quickly evolving financial markets. One provision concerns the expansion of investment advice to workers while other provisions are designed to allow ERISA plans to achieve similar benefits and efficiency of our modernized financial markets that is available currently to retail and other institutional investors.

The investment advice provisions will provide much needed financial advice and guidance for the millions of workers and their families on how to invest their hard earned monies for retirement. The compromise achieved in the legislation would predicate upon the development of computerized models to help workers to investment monies through 401(k) accounts. Significant safeguards were put into the legislation to ensure that the computerized models were certified by independent third parties. In addition, greater auditing of the use of the computerized models and enhanced disclosures will ensure that the models are being used properly and that workers understand how investment advice should be used and how they can still seek independent advice for guidance and help.

Everyone at the conference table recognized the significant differences between the operation of 401(k) accounts and IRA accounts. While 401(k) accounts within defined contribution plans offer a limited menu of investment options, IRA accounts may have hundreds of various investment options and alternatives spanning a vast array of securities, debt, insurance and other financial products. With respect to these IRA accounts, I applaud the measures in the legislation that would encourage the development of computerized models to give individuals guidance on how to invest their IRA monies. However, I am afraid that the type and sophistication of the computerized models for IRA's may not be obtainable and that the computerized models presented to the Department of Labor for review may be trimmed down to encompass only ''life cycle'' type of investment options. This should not be the objective. As IRA accounts are different, the regulatory regime for giving investment advice guidance should be based upon to overcome the real world hurdles in getting appropriate investment advice to individuals.

It also should be noted that the Department of Labor, in 2001, issued an advisory opinion to Sun America to provide a structure for providing both traditional advice and discretionary management. It was the goal and objective of the Members of the Conference to keep this advisory opinion intact as well as other pre-existing advisory opinions granted by the Department. This legislation does not alter the current or future status of the plans and their many participants operating under these advisory opinions. Rather, the legislation builds upon these advisory opinions and provides alternative means for providing investment advice which is protective of the interests of plan participants and IRA owners.

The legislation also contains provisions to modernize ERISA to align it with our financial markets of today, not the financial markets of 1974. These modernizations provisions, such as permitting the use of electronic communication networks, will put ERISA plans in parity with the current ability of retail and other institutional investors to use these modernizations. Specifically with respect to the provision on electronic communication networks and similar trading venues, it was not the intention to overturn existing interpretations or guidance granted by the Department of Labor to securities exchanges registered pursuant to the Securities Exchange Act of 1934. The legislation's provision is clear that it is applicable solely to electronic communication networks and similar trading venues and not to securities exchanges. With respect to the block trading provisions, the legislation is not intended to be inconsistent with the Department of Labor's views with respect to the recently amended prohibited transaction exemption, PTE 75–1.

Should this legislation be enacted into law, I would like to comment on the history of pension legislation. The negotiations that have given birth to this new law and its place in time have been very difficult, but that is by no means unique to the history of ERISA.

This legislation marks the first major, comprehensive reform of the pension funding rules in 32 years. ERISA, itself, was enacted in 1974, 11 years after the collapse of the Studebaker pension plan in 1963 and after extremely heated debates in the House and Senate.

The first major reform of single-employer rules after ERISA was enacted occurred in 1987. Those reforms came only after a long and contentious conference. The conference began in March 1987, but it did not conclude easily or amicably. It was not until December 22, 1987 that the legislation was signed into law. The next major reform of single-employer plans occurred in 1994, seven more years after the '87 amendments. That legislation was not enacted until December 8, 1994. Multiemployer plans have not been revisited or reformed once since their enactment in 1980.

It seems that pension legislation is marked by disagreement and strife, but this should not be the case. There have been times when partisanship was put aside and when House and Senate, Republicans and Democrats sought to ''do the right thing'' rather than score points.

One example of that bi-partisan, bicameral cooperation is the pension provisions of EGTRRA. Those provisions would be made permanent by this legislation. EGTRRA made good reforms and I hope they will become permanent. They help Americans save for retirement, increase portability, protect plan integrity, increase the limits on defined benefit, defined contribution plans and IRAs. EGTRRA allows catch-up contributions for individuals who are age 50 and older and they make permanent many other beneficial tax and ERISA provisions.

I hope we can return to those days of pension bi-cameral and bi-partisan cooperation. Given the graying of America and the on-coming retirement of the baby-boomers, the American people need Congress to enact legislation that will improve the day-to-day lives of ordinary Americans. I hope this legislation can and will make modest steps in that direction.

Mr. President, I would like to make a special note about the bill before us. This legislation is essentially the product of the conference committee of which I chaired. While I am pleased we are on the verge of passing an historic measure, I must briefly mention concern, as any chairman should, for how we arrived at the bill before us today rather than a conference report. It was our intention to make final decisions on the very last items of the conference and to report back to both the House and the Senate with a completed, bipartisan conference report. Unfortunately, the conference process was cut short and was taken out of our hands. I truly hope that this is not the start of new precedent on how conferences should be conducted. If future actions repeat the actions taken here, then the future significance of chairmen and conference committees are in severe jeopardy. At the very heart of the Congress as a whole and the Senate, are the traditions and precedents to ensure that everyone plays by the same rules. When those traditions and precedents are usurped, then we run the risk of making everything before us meaningless. I offer this statement as one of caution and not one of damnation.

Finally, Mr. President, I want to express my appreciation to the key people involved in this bill.

The pension bill we are about to pass could not have been drafted if partisanship and politics had been allowed to intervene. I want to thank Senators KENNEDY, GRASSLEY and BAUCUS for their extremely hard work on a complex piece of legislation. I appreciate their commitment to the private pension system and their willingness to drive onward to solutions to the many tough decisions we had to make. It has truly been an honor to work so closely with such fine statesmen.

I also want to thank Senators DEWINE and MIKULSKI for their extraordinary work as the leaders of the Subcommittee on Retirement Security and Aging. Their hearings last year created the basis for this bill. Their commitment to pensions of ordinary Americans and their sense of fairness greatly improved the bill before us.

There are many people who worked behind the scenes to get this bill completed. I would like to thank all of my staff for their diligence and commitment. In particular I thank:

HELP Committee Staff Director Katherine McGuire; Greg Dean, who played a central role on the investment advice and prohibited transactions bill language. He expertly managed discussions throughout the process and brought the various players together time and time again to move the bill forward; Diann Howland, my pension policy director, who bravely agreed to come back to the hill and take on her third major pension reform bill. In light of overwhelming odds, she brought a fresh perspective to complex issues every day and should be commended for her leadership in getting this bill done; David Thompson, he brought a superb understanding of the intricate and complex labor issues to the table; and Amy Angelier—my crackerjack budget staffer and policy advisor. She was on top of each and every aspect of the budget aspects of this bill and helped guide its success.

My staff worked closely with the staffs of my other Senate conferees and those individuals deserve thanks. They are Michael Myers, Portia Wu and Holly Fechner of Senator KENNEDY's HELP Committee staff; Kolan Davis, Mark Prater, John O'Neill, Judy Miller and Stu Sirkin on the staff of the Finance Committee for Senators GRASSLEY and BAUCUS. I wanted to especially commend Mark Prater for his leadership over the last week helping us maneuver through troubled waters.

I would also like to thank the nonpartisan legislative counsels and staff from the Joint Committee on Taxation for their very long hours and professionalism. Every person with a pension should join me in thanking Jim Fransen, Stacy Kern, Carolyn Smith, Patricia McDermott, and Nikole Flax.

Finally, I want to thank my chief of staff, Flip McConnaughey. He did an excellent job holding the office together and keeping a focus on Wyoming-specific issues when the pension conference kicked into full gear.

In conclusion, I want to express my appreciation to key people involved in this bill over the past 2 years. The pension bill we are about to pass could not have been drafted if partisanship and politics had not been laid aside for the greater good.

I thank Senators KENNEDY, GRASSLEY, and BAUCUS for their extremely hard work on this complex piece of legislation. I appreciate their commitment to the private pension system and their willingness to drive onward to solutions to the many tough decisions we had to make. It has truly been an honor to work so closely with such fine statesmen. I also thank Senators DEWINE and MIKULSKI for their extraordinary work as leaders of the Subcommittee on Retirement Security and Aging.

There are many people who worked behind the scenes to get this bill completed. I would like to thank all of my staff for their diligence and commitment. I will go into some of those in greater detail later. My staff worked with other Senate conferees and other individuals. I will mention those after we have the vote so people can be on their way.

I thank the nonpartisan Legislative Counsel's staff, Jim Fransen and Stacy Kern. And, finally, I thank my chief of staff, Flip McConnaughey.

I urge my colleagues to support this historic piece of legislation which the President will quickly sign into law. It will save a number of pension plans, but, more importantly, it will save the people that need these pensions.

The PRESIDING OFFICER. The Senator from Massachusetts.

Mr. KENNEDY. Mr. President, I believe we have 10 minutes on our side. I yield myself 7 minutes, and 3 minutes to the Senator from Maryland, Ms. MIKULSKI.

I know that the hour is late, but I want to take just a few minutes to speak on this critical piece of legislation.

First, I want to thank my colleagues who were instrumental to crafting this bill. Pensions are not an easy subject, and it has been an extraordinary effort over the last two years to develop this compromise legislation, which will help to strengthen retirement security of over 100 million Americans.

I thank our leadership for bringing this important bill to the floor today—Senators FRIST and REID. Americans are counting on us to act now, and I thank our leaders for making this possible.

I want to thank Chairman ENZI, who has been both tireless, and also a gracious and even-handed leader, both of the HELP Committee and of this conference. I also want to thank Chairman GRASSLEY of the Finance Committee for his leadership and his integrity in this process.

And tonight all of us are remembering our good friend and colleague Senator MAX BAUCUS, who has worked so hard over the last few years on this legislation. Our thoughts are with him and his family and the people of Montana in their time of loss.

Many other Senators also contributed significantly to this legislation. Senators DEWINE and MIKULSKI have worked to be sure that we address the need of manufacturing companies in this country; Senator MIKULSKI has been particularly interested in women's retirement security and protections for older workers, as well. Senator ISAKSON and Senator LOTT have continued to press issues important to airlines. And Senator HARKIN has tirelessly advocated for older workers in cash balance pensions.

There have also been many leaders in the House who made this legislation possible. I particularly thank Majority Leader BOEHNER for his contributions and leadership.

I also thank our staffs, who devoted late nights, gave up vacations and weekends to get the bill done and worked steadily on this issue. Senator ENZI: Katherine McGuire, Greg Dean, Diann Howland, David Thompson, and Ilyse Schuman. Senator GRASSLEY: Kolan Davis, Mark Prater, and John O'Neill. Senator BAUCUS: Russ Sullivan, Pat Heck, Judy Miller, and Stu Sirkin. Senator MIKULSKI: Ellen-Marie Whelan and Ben Olinsky. From the Joint Committee on Taxation: Carolyn Smith, Patricia McDermott, and Nikole Flax. And from the Senate Legislative Counsel, Jim Fransen and Stacy Kern.

I especially thank my own staff for their tireless efforts: Terri Holloway, Jeff Teitz, Jonathan McCracken, and Laura Capps. Michael Myers, my staff director, helps guide our work on so many issues. And special thanks to Holly Fechner and Portia Wu. Portia brings a mastery of the issues and a dedication to workers that made possible so much that is in this legislation. And Holly is a true leader who had the vision and skills to make it all happen. I thank her for her work on this important bill.

This bill is the most important action to safeguard the retirement of hard working Americans in a generation. It will help more than 100 million Americans today as they look forward to a financially secure retirement, and millions more in the future. It means greater retirement security for workers across the economic spectrum—from cashiers to flight attendants, from construction workers to auto workers.

The danger has been obvious. More and more firms are dropping their pensions. Half of all American workers now have no retirement savings plan at their job at all.

This bill says to millions of Americans who fear their pensions may disappear that help is on the way. We're helping their pension plans recover and imposing tough new rules to keep them that way.

It gives workers a greater voice in planning their retirements instead of just blind faith. It's their money and their hard work, and they should know what's going on.

This legislation touches almost every aspect of retirement planning, whether it's a pension, a 401(k) plan or personal savings. We owe it to our workers to give them the best information so they can make the best choices for themselves and this bill makes that possible.

The Pension Protection Act will strengthen the financial health of pension plans by doing as much as we can to guarantee that funds will be there to pay for employees hard-earned retirement benefits.

It provides opportunities to increase retirement savings by automatically enrolling people in workplace pension plans, and improving the Saver's Credit to help moderate-income workers. Workers who participate in retirement savings plans will have greater access to investment advice to help them manage their retirement savings.

It protects the retirement benefits of older workers when companies switch to new types of cash balance pension plans. And it includes specific provisions to strengthen women's retirement security.

In addition, it includes clear protections to prevent employees from being stranded by future Enron-type crises because firms force them to invest their retirement savings in company stock.

The need for action is clear, and it's gratifying that Democrats and Republicans, House and Senate, have been able to come together to enact these major reforms.

I urge my colleagues to support this legislation.

I yield the remainder of my time to the Senator from Maryland.

The PRESIDING OFFICER. The Senator from Maryland.

Ms. MIKULSKI. Mr. President, I hope Members take the time to listen to what we are saying here. We are about to make history. We are about to pass legislation that is going to make a difference. We are going to make sure that the lives of over 100 million people will be more secure because of what we have done tonight. We are going to make sure that good-guy businesses will have clear, certain rules so that they can continue to provide pensions. We are going to make sure that government, through heavyhandedness or unintended consequences, won't force these businesses into bankruptcy. We are going to protect the taxpayer to make sure that the pensions of hundreds of thousands of people aren't dumped into the Pension Benefit Guarant Corporation, leaving it to the taxpayer to do what the private sector should. And we succeeded because we worked together.

I thank Senator ENZI for his leadership and his collegiality, his inclusion and his civility; Senator KENNEDY for the leadership he provided to our side of the aisle and the very competent staff at his disposal; certainly to my colleague Senator DEWINE. We chaired the Subcommittee on Retirement Security and Aging and held some of the first hearings out of the box. We tried to go at it with intellectual rigor and with fortitude. We promised we would do no harm to those who relied on a pension, to those who provided a pension, and to the Pension Guaranty.

Do you know what? We did it. Then we moved it through the HELP Committee. The Finance Committee had already started their work, and ultimately we merged those two bills. But Senator DEWINE and I come from a manufacturing base, those blue-collar workers with dirt under their fingernails and bad backs who wonder what they are going to have at the end of the workday. We stood up for them. There was a concern that the use of credit ratings in determining whether a pension plan was at risk would force manufacturing companies going through difficult economic times into bankruptcy because of their pensions.

We held up the Senate. We said we wouldn't let the bill go on. But Senators GRASSLEY and BAUCUS reached out to us and said: Trust us; we can reach a compromise. Will you work with us? We wanted to know what that compromise was. They said: We will have to work it out. Do you know what we did? We trusted our colleagues on the Finance Committee and before long we had a sensible solution that was actuarially sound, fiscally reliable, and also met the needs of the pensions.

Tonight we come before you with something that we truly have done on a bipartisan basis, consulting with experts, working with able staff, trusting and working with each other, long hours, difficult nights, sometimes speed bumps and potholes. But now we have come to the end of the journey. I can't tell you how proud I am to ask my colleagues to vote for this bill. I am proud not only because I believe tonight we truly can make a difference, but also so we can use this as a model of how when we work together, we can do better.

I yield the floor.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. I yield 3 minutes to the Senator from Georgia.

Mr. ISAKSON. Mr. President, tonight I thank a number of people and acknowledge their very hard work: Chairman MIKE ENZI of the HELP Committee and Ranking Member KENNEDY have been indispensable; Senator GRASSLEY, who has been fantastic, along with his ranking member MAX BAUCUS; John O'Neill of the staff of the Finance Committee; Diann Howland and Kara Marchione of the HELP Committee staff; my staff, Ed Eigee, Glee Smith and Mike Quiello; and, in particular, Senators COLEMAN and LOTT, who have worked so tirelessly to bring us to this moment.

For a second I would like to focus on what this moment is. There are three distinct winners tonight. In the short run, the winners are tens of thousands of employees in the airline industry confronted within the next 30 to 60 days with a loss of up to 70 percent of their pensions with them going on the back of the PBGC. They will be grateful for the opportunity this bill gives to allow them and their pensions to be honored.

Secondly, in the long run, tens of millions of Americans employed by some of the greatest corporations in this country whose pensions have come into jeopardy over time because of changes in the workforce, changes in longevity, and the pressures that have been put on the pension system.

Most importantly, the big winner tonight is the taxpayers of the United States. Because this Congress, in a bipartisan fashion, has come together and said: We can modernize our pension laws. We can keep pensions from being defaulted upon and going on the back of the PBGC. And we can prevent the type of failures that in the past have cost the American taxpayers tens of millions of dollars.

We had an earlier bill that failed tonight. It consolidated many efforts to bring about changes for many Americans. But as we close this session tonight, with the adoption of this particular piece of legislation, we will find the best in this Senate, where Republicans and Democrats have come together to do what is right for the taxpayers.

Lastly, I want to say in particular to the two Senators from Texas and the two Senators from Ohio—Mrs. HUTCHISON, Mr. CORNYN, Mr. VOINOVICH, and MIKE DEWINE—how much I appreciate their consent for us to move tonight and to work with them to see to it that the concerns they had are addressed in the months and years ahead.

I yield the floor.

TYPE III SUPPORTING ORGANIZATIONS AND EXCESS BUSINESS HOLDINGS

Mr. ALLARD. Mr. President, I would like to engage my colleague, the distinguished Chairman of the Senate Finance Committee, Senator GRASSLEY, regarding a specific point involving the charitable reform provisions for Type III supporting organizations, particularly the authority of the Secretary to exempt an organization from the application of the excess business holdings rules. My colleague has worked hard to address the unintended consequences that may arise with regard to some of these changes as they related to the important work of many fine organizations that support worthy and noble causes. I have one of these organizations in my State of Colorado—the

Reisher Family Foundation—that benefits many underprivileged students throughout my State and provides them the means to attend college in my State.

Mr. GRASSLEY. Mr. President, I am happy to engage my distinguished colleague about what the intent with this exemption is, and how we have worked to limit the unintended consequences for legitimate charitable organizations. As you are aware, some of us with interest in this provision in working to address any unintended consequences thought it would be a good idea to give the Secretary the ability to exempt from the excess business holdings rules Type III supporting organizations in certain limited circumstances.

Mr. ALLARD. Mr. President, specifically, I want to draw the chairman's attention to the excess business holdings provision and the language that allows the Secretary to waive the application of the excess business holdings provisions if the holdings of the Type III supporting organization are held consistent with the purpose or function constituting the basis for its exemption under section 501. I want to emphasize that my understanding is correct that the Secretary should make a final determination very quickly after a currently existing Type III supporting organization seeks exemption from the excess business holdings rules. It is extremely important that the determination be made within 6 months after the organization seeks exemption so that the organization knows how it must structure its holdings. Is that my friend's understanding?

Mr. GRASSLEY. Mr. President, I agree with Senator ALLARD on his understanding and our intent that the Secretary should make a final determination very quickly after a currently existing Type III supporting organization seeks exemption from the excess business holdings rules. The determination should be made by the Secretary within 6 months after the exemption is sought. The joint committee will have a description of several factors that the Secretary should consider in making decisions to waive. The considered views of the State Attorney General should be a part of that decision. In addition, if the shares of the entity and related persons is not controlling or the individual and related persons are bound to ultimately contribute all but a de minimus share to the charity and have no direct or indirect control of that charity and its investments those are additional factors the Secretary can consider.

Mr. ALLARD. I commend the chairman for his work and for working with others, such as the distinguished ranking member on the Senate Finance Committee, Senator BAUCUS, and Senator SANTORUM on this much needed exemption. There is no question that we intend to encourage more charitable giving in this country. I thank my colleague for engaging me in this colloquy.

Mr. President, I yield the floor.

CREDIT COUNSELING ORGANIZATIONS

Mr. SESSIONS. Mr. President, I want to take a minute to let my colleagues know what the chairman of the Finance Committee, Senator Coleman, and I have discussed with respect to the consideration of a particular section of the Pension Protection Act of 2006—Section 1220. Namely, that section would establish additional standards in the Internal Revenue Code for tax exemption for credit counseling organizations.

The chairman was the genesis of these provisions, and it is through his hard work and persistence that they were ultimately included in the bill we are currently considering. The credit counseling reform language will go a long way toward ensuring that the hundreds of bona fide tax-exempt credit counseling organizations operating today across the country that serve an invaluable role in helping consumers understand, deal with, and manage their credit and debt problems will be able to continue as tax-exempt under Internal Revenue Code Section 501(c)(3), with all of the important obligations and benefits that this status entails. Ensuring the continuation of tax-exempt credit counseling organizations that meet the high standards set by the Federal Tax Code, along with standards set by state law and by Federal agencies such as the Federal Trade Commission and the U.S. Department of Justice, will mean that the necessary counseling, education and debt management plan services will be available to all financially distressed consumers who need them for many years to come. It also means that there will be sufficient tax-exempt credit counseling organizations available to fulfill the pre-bankruptcy counseling mandate of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2005. As for the purpose of Section 1220, I would like to turn to my colleague, Senator COLEMAN, who—as chairman of the Permanent Subcommittee on Investigations—conducted an investigation into abuses in the credit counseling industry.

Mr. COLEMAN. One provision of Section 1220 of the Pension Protection Act of 2006 would create a new Section 501 (q)(2)(A)(ii) of the Internal Revenue Code. This particular subsection contains one of several new requirements for credit counseling organizations to qualify for Federal tax exemption under Internal Revenue Code Section 501(c)(3). I wanted to clarify with the chairman that this particular provision is not intended to impose a limitation on all credit counseling organization revenues derived from debt management plans, but rather only on the revenues derived from what are commonly referred to as ''fair share'' payments from creditors to credit counseling agencies. These are payments made by creditors to credit counseling organizations that are attributable to the debt management plan services provided by credit counseling organizations to consumers whose debt is being repaid to the creditors. If the limitation were intended to include both ''fair share'' revenues paid by creditors and revenues received in the form of debt management plan fees paid by consumers, then virtually no existing credit counseling organizations, if any, would be able to qualify for tax-exempt status under Internal Revenue Code Section 501(c)(3). That is not the intent of Congress.

Mr. GRASSLEY. Mr. President, yes, the provision is intended to get at fair share type payments, but note that agencies and creditors cannot get around the provision merely by re-labeling fair share payments as something else. This is the intent of this provision. I am also aware of a specific issue affecting a few States and their existing State law, and the provision before us today specifically includes a transition period in part to allow the reconciliation of various State statutes with the new federal provision. I will work with interested Senators during this period on their concerns regarding existing organizations. I thank Mr. COLEMAN and Mr. SESSIONS for helping to clarify its intent.

MODIFICATIONS TO SECTIONS 801 AND 803

Mr. ALLEN. Mr. President, I would like to engage in a brief colloquy with the distinguished chairman of the Finance Committee, Senator GRASSLEY, regarding changes to the limitations on pension deductions in sections 801 and 803. The legislation, in section 801, increases the deduction limit for defined benefit plans for years after December 31, 2005. Increasing this limit will encourage employers to contribute more to their defined benefit plans.

However, if an employer has both a defined benefit plan and a defined contribution plan there is a separate deduction limit that applies to employers with a combination of plans. Thus, this legislation in section 803, also updates the limitation on deductions where an employer has a combination of such plans effective for contributions made for taxable years after December 31, 2005. The change in section 803 eliminates the deduction limit for combinations of defined benefit and defined contribution plans for employers that do not contribute more than 6 percent of compensation to a defined contribution plan.

If an employer has a combination of plans and wants to contribute more than 6 percent of compensation to a defined contribution plan, the legislation also has a provision in section 801 which permits employers to exclude defined benefit plans whose benefits are guaranteed by the PBGC, from the limits applicable to combinations of defined benefit plans and defined contribution plans. But, unlike the other two provisions I described above which permit employers to increase their contributions to defined benefit plans effective for years after December 31, 2005, it appears that this last related provision regarding guaranteed plans may inadvertently not have the same effective date as the other two.

It seems to me that if we are encouraging employers to fully fund their defined benefit pension plans, that the effective dates for these provisions should all be effective as of December 31, 2005. I am hopeful that we will examine this issue and can correct this technical oversight.

Mr. GRASSLEY. Mr. President, I appreciate my distinguished colleague from Virginia, Senator ALLEN, raising this concern. I can assure him that he is correct that it makes perfect sense for provisions intended to encourage employers to fund their defined benefit pension plans by increasing the deduction limits to have the same effective date. I also agree that this should especially be true for provisions that update deduction limits for employers with a combination of plans. I look forward to working with my colleague on addressing this oversight.

Mr. ALLEN. Mr. President, I thank the distinguished chairman of the Finance Committee for his willingness to work with me to address this issue.

SECTION 701

Mr. BURR. Mr. President, I would like to ask the chairman of the Committee on Health, Education, Labor, and Pensions a question regarding how section 701 of the new bill relates to capital preservation and loss protection. Would you please explain what types of plans are subject to each of the two rules and how the rules operate?

Mr. ENZI. The capital preservation rule applies to applicable defined benefit plans, such as cash balance and pension equity plans. To illustrate how the rule operates in the case of a cash balance plan, the rule requires that the cumulative effect of all the interest credits to an employee's hypothetical account may not reduce the account balance below the sum of all the pay credits made to the account.

Mr. BURR. The bill refers to ''contributions credited to the account'' rather than pay credits?

Mr. ENZI. Yes. The two terms are synonymous. Since the account in a cash balance plan is hypothetical, the contributions credited to it are hypothetical also. Hypothetical contributions is merely another name for pay credits.

The second rule, the loss protection rule, applies to all defined benefit plans that use any form of benefit indexing. Thus, the second rule applies not only to cash balance and pension equity plans but also to other defined benefit plans that index benefits.

The loss prevention rule would apply in the same way as the capital preservation rule in the above example of a cash balance plan. However, because the loss prevention rule applies to a broader group of plans than just applicable defined benefit plans, the rule is written in more general terms than the capital preservation rule, which applies to a narrower universe of plans.

To illustrate how the loss protection rule operates in the case of a defined benefit plan that indexes benefits by reference to changes in the Consumer Price Index, the rule requires that the cumulative effect of such indexing may not cause a decrease in an employee's benefit below what it would have been in the absence of such indexing. Although it is very unlikely, this would occur if there were a sustained period of deflation in which the overall change in the CPI were negative rather than positive. In that extremely unlikely case, the plan could not reflect the cumulative negative change in the CPI.

Mr. BURR. At what point are the rules applied?

Mr. ENZI. The capital preservation and loss protection rules are intended to provide long-term protection to employees, so the determination of whether the rules are satisfied is made at the time benefits commence but not beforehand. In the case of plans that index benefits after benefits begin, the determination is made by reference to the benefit in effect at the time benefits begin.

LUMP SUMS FROM HYBRID PENSION PLANS

Mr. GREGG. Mr. President, I would like to ask the chairman of the Committee on Health, Education, Labor, and Pensions, to clarify provisions of H.R. 4 that address the payment of lump sums from hybrid pension plans.

My first question relates to a clarification of the effective date of those provisions. As you are aware, under the so-called whipsaw method of calculating lump sums, younger workers would receive much larger lump sums than identically situated older workers.

This result is one that Congress never intended. Furthermore, the practical effect of the whipsaw calculation would be to reduce benefits for all participants, young and old, in cash balance plans. Therefore, the intent of the whipsaw provisions is to put this issue to rest. Accordingly, the provisions are effective for distributions made after the date of enactment, regardless of why they are made.

Mr. ENZI. Yes. The provisions do apply to all distributions made after the date of enactment.

Mr. GREGG. My second question relates to the definition of ''market rate of return'' in the whipsaw provisions. My understanding is that the term ''market rate of return'' is intended to allow plans to adjust benefits in ways that benefit participants. For example, a plan could provide a variable market rate of return and, in addition, protect participants by preventing the rate of return in their accounts from falling below a reasonable, minimum level without having to reduce the variable market rate of return. My further understanding is that the term ''market rate of return'' is intended to include a fixed rate of interest that is no greater than the yield on long-term, investment-grade corporate bonds at any time during a reasonable period before the rate is first applied under the plan; is this correct?

Mr. ENZI. Yes, it is.

CREDIT COUNSELING

Mr. BINGAMAN. Mr. President, I would like to engage in a brief colloquy with the distinguished chairman of the Finance Committee, Senator GRASSLEY, regarding the provision addressing tax-exempt credit counseling organizations. My understanding is that the provision is intended to strengthen the standards for credit counseling organizations claiming exempt status, helping to ensure that these organizations do not conduct substantial activities unrelated to their exempt purposes of providing charitable and educational counseling. I would ask Chairman GRASSLEY to confirm that understanding and to briefly explain the intent of the provision.

Mr. GRASSLEY. I am happy to confirm the understanding of my distinguished colleague from New Mexico, Senator BINGAMAN, regarding this provision. The provision is intended to buttress current exemption standards by providing additional standards that must be met for a credit counseling organization to claim exempt status. As the Senator knows, the IRS recently has challenged the exempt status of several credit counseling organizations because they are operated for a substantial non-exempt purpose, substantial private benefit and private inurement. Certain of these organizations exist merely to generate income from the sale of debt management plans, while providing minimal exempt purpose activities related to credit counseling. The standards imposed under this provision are intended to augment, not supplant, the IRS efforts and to ensure that exemption from consumer protection laws applies only to those organizations that can satisfy stricter tax-exempt standards. I also want to assure the distinguished Senator from New Mexico that we will continue to monitor developments in this industry to ensure that only those entities that serve a sufficient charitable and educational purpose can claim tax-exempt status and that such tax-exempt entities do not generate significant revenues from activities unrelated to their exempt purposes. If it turns out that the additional standards imposed by this legislation do not have the desired impact, you can be assured that we will not hesitate to revisit this area.

Mr. BINGAMAN. I want to thank the distinguished chairman of the Finance Committee for his clarification and his leadership on these important issues.

RELIEF FOR AIRLINES

Mr. NELSON of Florida. Mr. President, while we consider legislation regarding the hard-earned pension benefits of American workers, we have before us a good bill, but flawed bill, which is long overdue. It strengthens company pension plans and ensures that money promised is there to pay for millions of workers' and retirees' benefits. It also enhances retirement savings and retirement security by encouraging more companies to use automatic enrollment in 401(k) pension plans, which ensures workers save more for retirement.

Yet despite these positive steps and necessary reforms, I have grave reservations over the inequities contained in the airline relief portion of the bill.

We are not here to pick winners and losers in certain industries, yet the differential treatment contained in this legislation would offer one company an unfair advantage over another. Last year's Senate-passed bill contained equitable relief for all, which is the correct approach, and I am appreciative of the work the Senate Finance and the Health, Labor, Education and Pensions Committees put into that effort. This House-passed bill takes a different approach and deals a better hand to some at the expense of others.

It is not my intention to delay or hold up the bill because of this provision, but I am seeking assurances for the 13,475 American Airlines workers and retirees in Florida who are counting on us to make changes, in whatever way possible, that will put them on equal footing.

Mr. DURBIN. Mr. President, although I will support final passage of the long-awaited pension bill that aims to strengthen millions of workers' pensions, including those for airline workers, I want to express my concerns regarding one provision in particular. Similar to the Senate pension bill passed in October, this measure contains language that would provide financially troubled airlines more time to pay out their pension obligations and preserve their employees' pension plans. However, while the Senate-passed language was carefully crafted in such a way so as to not pick winners and losers between those airlines in bankruptcy that are freezing their defined benefit plans and those who have not entered bankruptcy and are intent on keeping their defined benefit plans, the House-passed language that we are soon to consider does pick winners and losers. The House measure gives those airlines that want to keep their defined benefit plans a much more unattractive interest rate than those airlines that freeze their plans. It is simply not fair to penalize those airlines that want to keep their pension plans.

It distresses me that those airlines that choose to keep their defined benefit plans will be punished and forced to compete on an uneven playing field. In June, concerned with the pensions of over 10,000 American Airlines' employees in my State and thousands of others across the Nation, I joined with Senator OBAMA and my fellow Senators from Oklahoma and Florida in sending a letter to the pension conferees reminding them of the importance of providing airline relief and treating all airlines equally. Unfortunately, this bill does not treat all airlines equally.

In talking to my colleagues in the Senate, I believe there is a general consensus that this differential should be corrected at the earliest possible legislative opportunity. If that assurance can be given by the Senate leaders on this pension legislation, I believe we should pass the House bill this week and work diligently to correct the inequity upon our return in September.

Mr. OBAMA. Mr. President, this is not a perfect bill. No 900-page bill could be. But it will push companies to stay true to the promises of retirement security that they have made to their employees. We have seen too many people hurt at companies that have gone through bankruptcy and dumped their pensions on the PBGC. We have also seen companies like Enron that misled their workers into putting all their retirement savings into employer stock. This bill takes steps to reduce the incentives and capacity for firms to take either of those courses of action.

But as I said, the bill is not perfect. Among the areas that could have used additional work is the disparate treatment among competitors contained in the airline relief portion of the bill.

The Senate-passed bill contained comparable relief for all airlines in an effort to keep from distorting the marketplace against or in favor of any one or two airlines. That was the correct approach. The House-passed bill treats different airlines differently and will distort the market in a way that is unnecessary and unfair to the 10,000 American Airlines workers and retirees in Illinois. Both as a matter of retirement policy and aviation policy, this bill should not favor one airline over another, and I join my colleagues who are calling for parity or near parity in treatment.

Mr. REID. Mr. President, I am glad that we are finally getting to the point where we can finish this very important pension reform legislation. It contains a number of measures that will improve the retirement security for millions of Americans.

One of the things that this bill does is provide targeted funding relief to the airline industry—an industry that was devastated by the events of September 11. In crafting the airline relief in the Senate bill, the managers struck the appropriate balance, being careful not to favor one group of companies over another. That balance is not reflected in the airline relief proposal that the House inserted into this bill at the last minute. Ironically, those airlines, like American, that want to keep their pension plans for their workers get a much less favorable interest rate and a shorter amortization period. As a result, those airlines that have done the right thing for their workers are penalized relative to those airlines that have opted to freeze their pension plans. That makes absolutely no sense.

While I agree with my colleagues that the pension reform bill should move forward this evening, I also strongly support their efforts to fix this portion of the bill in the very near future.

Mr. LAUTENBERG. Mr. President, this pension bill is a good bill, but it is not a perfect bill. It will make sure companies put real money behind their pension promises, in good times and bad. It will give workers more information about their pension plans so they understand the risks they face. It will create incentives to encourage more workers to save for their retirement.

Unfortunately, the bill is not fair to all airlines. The bill gives advantages for some carriers at the expense of others—especially disadvantaging those in New Jersey. As a result of this bill, some airlines will have to contribute hundreds of millions of dollars more to their pensions than others. That isn't fair, and it doesn't create a level competitive playing field.

The Senate agreed that this isn't fair, and that is why the Senate's version of airline relief treated all airlines equally. If the House Republican conferees had not hijacked this conference, I believe we wouldn't be in this position. But we have been put in a very difficult place. We are forced to choose between stopping this bill and endangering pensions for hundreds of thousands of workers and accepting an outcome that is blatantly unfair.

I hope and expect that when this bill passes, we will be able to work together to fix this problem at the first opportunity.

Mr. MENENDEZ. Mr. President, as we consider critical pension reform to help secure the retirement benefits of millions of our Nation's workers, I want first to commend my colleagues for all the hard work they have put into this bill and their efforts to strengthen our Nation's pension system. This bill will help ensure that companies can continue to provide pensions over the long term, it will protect the benefits of current beneficiaries, and it strengthens plans so that benefits will be there for workers for years to come.

And while I welcome this bipartisan bill and all that it will do to benefit the retirement security of workers, I would like to express my strong concern over the differential treatment of airlines in this bill. In allocating that relief, not all airlines are treated fairly, and therefore not on a level playing field. Some, such as Continental which has a significant economic and employee presence in New Jersey, are not given the same benefits and flexibility to make up the underfunding of their pension plans. What especially concerns me is that Continental went to great lengths to keep it from becoming financially unstable and to protect benefits for its employees, including voluntary wage reductions and freezing one of its pension plans. And despite those actions, because of the unequal treatment in this bill, the airline is at a competitive disadvantage, and over

10,000 workers in my state could be adversely affected.

As this legislation has been under negotiation for months and there is an urgency to pass a final bill, I do not want to hold up the pension bill from final passage. I do hope, however, that we can secure the support of our leadership and work with our colleagues to come to an agreement that would provide more equitable treatment for Continental Airlines and its employees. Retirement security is a pressing issue for many workers affected by this bill, including employees at Continental. Therefore, I urge my colleagues to work with us in addressing this issue when we return in September.

Mr. HARKIN. Mr. President, I do not believe that the pension bill should treat different, very competitive companies within the airline industry in the very disparate manner that it does. This was an unresolved issue in the pension conference when the House leaders decided not to complete the negotiations and instead sent us the measure before us. While I understand that an amendment tonight is not going to happen, I do believe that the Senate move to and insist that this wrong be fixed.

AIRLINE PENSION REFORM

Mrs. HUTCHINSON. Mr. President, I rise to engage the majority leader in colloquy related to H.R. 4, the Pension Protection Act. Senator TALENT has asked that I state for the information of our colleagues that he shares my concern in regard to the issue I am raising.

I support the efforts being made to reform and update our Nation's outdated pension laws and to protect the taxpayers by reducing the threat of insolvency on the part of the Pension Benefit Guaranty Corporation. But there is a section in the bill that is not equitable; it favors two airline companies over two others; and that must be remedied.

The bill affects the pension plans of four competing airline companies—American, Continental, Delta and Northwest. Two of these companies, Delta and Northwest, are currently operating in bankruptcy; American and Continental are not. When the Senate passed its version of the pension reform bill these four companies were treated equally. Our bill did not favor one over the other nor include provisions that would tilt the competitive playing field to the advantage of one or more of the companies.

But the legislation that has been sent to us by the House of Representatives unfortunately contains that type of unfair provision. The House bill allows Delta and Northwest to use an interest rate of 8.85 percent to calculate returns from pension assets and determine the amount of money that the companies must contribute each year to their pension plans to make up for unfunded liabilities. But the interest rate allowed to be used by American and Continental is not 8.85 percent. It is not 8 percent. It is not even 7 percent. These two companies must use the corporate bond yield, which is now about 6.2 percent.

Translated into dollars-and competitive advantage—the difference between 8.85 percent and 6.2 percent means that the annual payment of American and Continental could be hundreds of millions of dollars more than the payment due from Delta and Northwest, quickly mounting into the billions. I say to the majority leader that that is an inequity that must be removed. I am not arguing that the percentage used for Delta and Northwest be reduced or changed in any way. But I am arguing that the disparity between 8.85 percent and 6.2 percent is far too great and provides an unjust competitive advantage for Delta and Northwest. Is the leader able to provide any insight on his view of when and how the Senate would have an opportunity to address this issue?

Mr. VOINOVICH. I certainly endorse the comments of the Senator from Texas. The airline industry is very competitive with thin profit margins. The costs of labor and benefits are two of the few variables that affect a company's bottom line. The bill that came over to the Senate from the House, and which we are unable to amend today, puts several of the airlines at a severe competitive disadvantage because it does not apply the same rules to each airline's pension fund. Recognizing the importance of the other reform measures in this legislation, I understand the need to pass it and send it to the President for his signature. But before we do that, I would like to hear from the majority leader if he believes that he will be in a position before the year ends to revisit this question and help us reach a more equitable resolution.

Mr. DEWINE. I want to echo the comments of my colleagues. As the chairman of the HELP Subcommittee on Retirement Security and Aging, I have been working on pension reform legislation for the last year and a half. I believe it is essential that the Senate pass legislation this week that will strengthen defined benefit and multiemployer plans and that will encourage retirement savings by making the retirement provisions of EGTTRA permanent. And while I view this bill as an improvement over the bill the Senate passed last fall, with the elimination of the provision that used credit rating to determine at-risk funding status, I believe that this bill's airline relief provisions are greatly inferior to those of the Senate-passed bill. As my colleagues who spoke before me made clear, this is unacceptable and will need to be fixed when we return from the August recess.

Mr. CORNYN. I join my colleagues from Ohio and the senior Senator from Texas in their comments regarding H.R. 4, the Pension Protection Act. While providing the airline industry with relief, this bill does so unevenly and undercuts the ability of Continental Airlines and American Airlines to compete in a global economy. These Texas airlines have neither frozen their pension plans nor filed for bankruptcy. As Senator VOINOVICH stated, the airline industry operates on thin profit margins and disadvantaging two profitable airlines has ramifications not only for the airline industry, but also for consumers and airline employees. I believe it is crucial that Congress revisits this issue and provides more equitable relief for all airlines and not just a few.

Mr. INHOFE. I, too, want to echo the comments of my colleagues. I share their concern in regard to the issue that they have raised.

Mr. FRIST. I appreciate the comments of my colleagues. This pension bill—while not technically a conference report—essentially represents the bipartisan and bicameral agreement reached by House and Senate pension conferees after many months of negotiation. I am aware of the Senators' concern about the interest rate issue; I have had other Senators approach me as well.

Although we are not in a position to amend the bill before us, I can promise the Senators that I will continue to work with them on this issue after we return from the August recess. Until the Senate has had an opportunity to more fully examine the issues involved in this complex matter, we should consider it an issue that requires further discussion. As such, I think this issue needs to be reviewed further this year to assure an equitable result, recognizing of course that the House would have to agree to any changes we might propose.

Mrs. HUTCHISON. I thank the leader for his comments and his offer of assistance. I am told that the House majority leadership is aware of this matter and has given a commitment to work with interested colleagues to reach a resolution that assures no bias on the part of Congress toward any of the four airlines involved in this issue.

Mr. FEINGOLD. Mr. President, I will vote against the Pension Protection Act. While there are many constructive provisions in the bill, the package is deeply flawed in at least two respects. First, it will add to our already massive government debt. Thanks in large part to the expensive tax provisions that were added, the legislation will add another $66 billion over the next 10 years to the already massive debt with which we are burdening our children and grandchildren. To add insult to that injury, most of that cost stems from savings incentive provisions that overwhelmingly benefit those who least need it. The provisions that raise the contribution limits on tax-preferred savings accounts benefit only 1 in 16 households, and only 1 in 100 households with incomes under $50,000. If we want to encourage more savings, and we should, there are far better ways to do it.

The second matter that raises significant concerns is the so-called red zone provision which permits pension plans to cut the vested pension benefits of workers. Allowing a worker's vested benefits to be cut is unprecedented and grossly unfair. If workers are told that they may take early retirement at a certain level of earned pension, that promise should not be broken. But under this bill, the financial future on which some families were planning can now come crashing down on them. Retirement benefits which were promised to them and on which they were relying may now be taken away. And make no mistake; if Congress permits earned benefits to be taken, they will be taken.

There is a clear need for pension reform, and many of the provisions in this bill make sense. But I cannot vote for a measure that is so irresponsible for the fiscal future of our Nation and the personal economies of thousands of workers who will soon retire.

Mr. HATCH. Mr. President, the Pension Protection Act of 2006 has been a long time coming. In the Senate, the Health, Education, Labor, and Pensions Committee and the Finance Committee reported pension legislation last year. The full Senate passed pension legislation in November of 2005, The House passed pension legislation in December of 2005.

We had to reconcile those bills, which was no small achievement, and then we had to consider the real concerns that some of our colleagues had about the impact of this bill in their States. But we got it done.

We had our differences, but ultimately we agreed more than we disagreed. We understood the fundamental problem and sought to solve it through genuine bipartisan negotiations. We saw that our defined benefit pension system was in dire straits. Too many companies had severely underfunded pension plans. Companies had made promises to their employees, promises that those employees were depending on for their retirement. But the companies were falling short on those promises.

This was not good for the bottomline of the Pension Benefit Guaranty Corporation, PBGC, which is now, as the result of several high profile bankruptcies, running at a considerable deficit. This was not good for employees, who in the event of plan termination would receive dimes on the dollar for their pension plans. And ultimately, it was not good for the American people, who might have been stuck holding the bag if the PBGC was unable to meet its obligations.

We had to act to fix this. We had to ensure that companies were putting their money where their mouths were. If they made pension promises, they had to keep them, They had to fund their plans.

And this bill requires them to do just that.

It was not easy.

The conference committee assembled to reconcile House and Senate differences was incredibly unwieldy. We had multiple chairmen involved in both the House and the Senate. It was an important enough issue for American workers, American taxpayers, and the American economy that leadership from both the House and the Senate were involved in the negotiations. Not only Republicans and Democrats, but even the House and the Senate, did not see eye to eye on all of the issues. And our decisions would impact the business plans of some of our country's greatest corporations, the future of the defined benefit pension system, and the future retirement of American workers.

But we did it. The final result of all these negotiations is a good bill.

In short, we are going to require companies to fund 100 percent of their pension liabilities. This makes sense. Under current law, they are only required to fund 90 percent of their liabilities. I think that it makes sense to most Americans that if you make a promise, you should keep that promise, and companies should be funding the plans that they have promised to their employees.

At the same time, we recognize that these new obligations could prove a hardship for many. So we have allowed companies with underfunded plans 7 years to make up their pension shortfalls. And for the financially struggling airlines, the opportunity to make up for their pension underfunding will be extended from ten to seventeen years.

And we are going to severely curtail the practice of promising new benefits for tomorrow when you cannot even keep the promises you have already made. Employers with pension plans less than 80 percent funded will not be able to promise future additional benefits unless the earlier benefits are paid for.

We shore up the multi-employer plans, which have unique funding problems.

We provide legal clarity to hybrid ''cash balance'' plans that have elements of both defined benefit and defined contribution plans.

Firms that administer 401(k) plans for their employers will be able to provide investment advice to employees, so long as that advice is based on an independently certified and audited computer model.

And to encourage personal saving for retirement, this bill will allow companies to automatically enroll workers in 401(k) plans.

This bill makes several tax incentives that encourage retirement savings permanent. Most importantly, Americans can remain confident that they will be able to rely on the increased 401(k) and IRA contribution limits established in 2001 and scheduled to expire in 2010.

This is not a perfect bill. But it is a real achievement.

Not only our pension system, but our entire retirement system, will be better off as a result of it.

And I want to congratulate my colleague and fellow conferee, Chairman ENZI, for being able to bring everyone together in the end. I want to thank my colleague and fellow conferee, Chairman GRASSLEY, for his persistence.

Our pension system was broken. Critics might complain that nothing gets done in Washington, but our pension system is busted, and tonight, through tough bipartisan and bicameral work, we went a long way towards fixing it.

It is late in an election year, and it says a good deal about our country that we could put our differences aside and tackle this important issue.

The lives of American retirees, and the health of American industry, will be better as a result.

Mr. AKAKA. Mr. President, today I will vote not against pension reform but against the unfair tactics being used by the majority leadership in Congress. As a representative of my State of Hawaii, I must ensure that the voices of the people of Hawaii are heard and that their rights are not infringed upon or forgotten. This is an important distinction to make at this time because the vote that I cast today is in support of the rights of every member in Congress and the people they represent.

It is my understanding that the House and Senate conferees were close to an agreement on the conference report to H.R. 2830, the Pension Protection Act of 2005, but without notification, the House leadership introduced H.R. 4. While this measure does include many of the decisions made by the conferees, and is in some cases an improvement from the measures passed by the House and Senate, I must vehemently object to the process that the House leadership used. In looking to our future, I must ensure that the process we follow in the Congress does not negate the voices of the minority.

When the House leadership introduced H.R. 4 and then called for a vote on the measure, they sent a loud and clear message on how future measures may be considered by Congress. Supporting such a process would allow the majority to believe that they do not have to listen to anyone's concern. Rather than negotiating on legislation with all the conferees in order to amicably resolve any differences, we find ourselves looking from the outside in. This is no way in which to ensure that the ideals and beliefs for all will be given the due process of consideration that everyone deserves.

For these reasons, I am voting against H.R. 4, again, not because I am against pension reform and ensuring that working men and women retain their benefits and pensions, but against the majority leadership's efforts to nullify our voices. I believe that the conferees to H.R. 2830 were close to an agreement and should have been allowed to complete action to develop a true compromise piece of legislation.

Mr. CHAMBLISS. Mr. President, I rise today in support of the Pension

Protection Act. This has been a long process, but I am glad we were able to produce a bill that provides retirement security to millions of Americans while at the same time protects the taxpayers. These reforms provide tough rules to ensure that employers will keep their pension promises.

I would like to thank my colleague from Georgia, Senator ISAKSON, for all his hard work throughout this process. I appreciate it, and I know the folks back in Georgia appreciate it.

Many companies and their employees in my home State of Georgia support this legislation and will benefit from its provisions. For example, Kroger has grocery stores all over Georgia and employs 18,000 folks across the State, who are depending on their pensions when they retire. General Motors also has a large presence in Georgia with almost 14,000 retirees and 3,500 employees, many of whom are covered by a defined benefit pension plan. The United Parcel Service, UPS, is headquartered in Atlanta, GA, and over 127,000 of its employees participate in multiemployer pension plans.

The airline industry in particular has taken some economic hits over the years, and I am pleased that Congress was able to provide critical provisions for the airlines, ensuring that they will get the time they need to fulfill their pension obligations.

Delta Airlines is headquartered in Georgia, and has a longstanding history of service to passengers throughout the world and has been an exemplary corporate citizen. Like many other hard-working Americans, Delta's some 91,000 employees and retirees have devoted years of work and time to their employer.

While our airlines are in a unique situation, many of them like Delta maintain a strong commitment to keep the pension promises they made to their employees and retirees.

I would like to close by reiterating why we are here today: American workers deserve to know their pensions will be there when they retire. With the passage of this conference report, we can ease the fears of millions of employees and retirees by taking the steps necessary to help ensure that pension promises will be kept and employers, not the taxpayers, will be held accountable.

Mr. KOHL. Mr. President, I rise in support of H.R. 4, the Pension Protection Act. This bill is not a conference report, and I am troubled by the way that the House circumvented the process and endangered swift enactment of this important legislation. However, the bill that will soon be before the Senate does reflect the carefully negotiated agreement of the conferees and enjoys broad bipartisan support.

Our goal is to strengthen traditional pensions, which have been an important source of retirement income for hard-working Americans. Unfortunately, these pensions have been on the decline, as companies replace them with 401(k)s that shift risk to individual workers and generally do not guarantee retirement income for life. We must ensure that traditional pensions remain a viable option for companies and at the same time ensure that companies keep their promises and do not dump their plans on the Government at taxpayer expense.

This compromise strikes the right balance of requiring companies to contribute enough to their pension plans, without discouraging them from maintaining their plans. The bill enacts the commonsense requirement that companies must fully fund their plans, so that they can keep their promises to the 34 million workers and retirees who rely on their hard-earned benefits. It allows companies to put in more money when times are good. It also provides relief to Delta and Northwest, who have said that they will be forced to dump their plans if Congress does not enact this bill soon.

Aside from reforming traditional pensions, the bill also includes important provisions to boost retirement savings. Most importantly, it improves and makes permanent the saver's credit, which helps low- and moderate-income workers save. It encourages companies to automatically enroll workers in 401(k) plans and makes pensions more portable. And it provides protections to workers in the wake of the Enron accounting scandal.

While this bill is not perfect, I believe that it will go a long way toward improving the retirement security of all Americans, and I therefore support its enactment.

Mr. LEVIN. Mr. President, last November I cast one of only two votes against the Senate's version of pension reform. One of my primary concerns with that bill was that companies trying to do right by their workers would be unfairly penalized. I was concerned that on balance, that bill did more to drive companies away from offering guaranteed benefit pension plans than it did to strengthen the system. But the bill before us today is much improved, and I will support it.

Let me state upfront that it is through a highly unusual maneuver that we are taking up this issue in the form of a new bill sent over from the House last week rather than as a final House-Senate conference report. As part of their ongoing efforts to ram through a reckless near-repeal of the estate tax, House Republicans hijacked the pension conference process to remove a package of widely supported tax breaks so they could be paired up with their estate tax proposal in another bill. The abuse of process involved in that maneuver is serious.

But regardless of political games, defined-benefit pensions are facing a crisis today and reforms are needed to make sure that retirees receive the benefits they were promised. We need to make sure that companies are required to adequately back up the promises they have made to their workers. At the same time, we should make sure that reforms are designed to encourage the recovery and strengthening, rather than the termination, of underfunded and vulnerable pension plans.

Striking this delicate balance is not easy. I am pleased that two misguided provisions from the Senate bill were dropped in the conference negotiations that are reflected in this bill. The first of those two provisions would have required companies with solid pension plans but who also had poor credit ratings to use actuarial assumptions that require them to put away unnecessarily high amounts of money into their pension trusts. I am glad that this bill uses a more direct measure of a pension plan's financial health to determine whether additional money needs to be put into the plan.

The second provision of concern dealt with an actuarial method known as ''smoothing.'' Under current law, the amount of money companies are required to put into their pension plans is determined by using a four-year weighted average of the values of pension assets and/or liabilities. The Senate bill would have shortened smoothing to 12 months, which would have added significant volatility for companies when they are determining how much money they need to set aside for the pension plans. The bill before us today changes smoothing to a 2-year time period. I would have preferred the 3-year average proposed in the original House bill, but the 2 years in today's bill is an obvious improvement over the Senate's original 1 year.

Based on my concerns with these credit rating and smoothing provisions, Senator VOINOVICH and I wrote a letter to the House-Senate pension bill conference committee members, urging them to consider the potentially adverse impact these provisions could have on companies that offer defined benefit pension plans and the employees and retirees who are counting on the stable pensions they have been promised. I was pleased that one-third of the Senate joined us in signing this letter, and I appreciate the conferees addressing our concerns.

I am also pleased that this bill, like the Senate bill, will give airlines extra time to fund their pension obligations. I am told that this action means that Northwest and Delta will keep their plans when they emerge from bankruptcy, rather than turning their obligations over to the Government's pension insurer, the Pension Benefit Guaranty Corporation, PBGC. Passing the airline provision is a win-win. The companies should now not dump their plans on the Government, and the airlines' employees and retirees will get to keep their full earned pensions.

I am pleased this bill includes four tariff-related bills I authored that will help Michigan companies become more competitive.

I am also pleased that the bill encourages companies to use automatic enrollment and automatic increase in 401(k) pension plans to ensure that workers save more.

In addition, this bill includes long-overdue reforms to multiemployer pension plan law. These reforms will allow multiemployer pension plans to address any short-term funding crises as well as add new flexibility to advance fund and guard against a future crisis. Unfortunately, the bill also takes the unwise step of allowing underfunded multi-employer pension plans to cut benefits that workers have already earned. While I understand that shared sacrifice may be necessary in some instances, taking away earned benefits is unfair, and I hope this does not set a precedent for future pension laws.

I am also disappointed that this bill does nothing to pay for making permanent provisions enacted in the 2001 tax law to expand tax-preferred retirement and education savings accounts. The conference agreement makes these tax cuts permanent without offsetting their cost. According to Joint Committee on Taxation estimates, making these tax cuts permanent would cost $52.6 billion between 2007 and 2016. We are deep in a deficit ditch and already each American citizen's share of the debt is almost $29,000. Instead of just adding to our deep fiscal troubles, we should be closing down abusive tax shelters and offshore tax havens and coming up with other ways to pay for any further tax cuts.

While this bill is less than perfect, on balance I will support it because of the critical need to address retirement security for millions of Americans.

Mr. REED. Mr. President, the Pension Protection Act of 2006 would strengthen private pension plan funding and improve the financial position of the Pension Benefit Guarantee Corporation, PBGC. While the bill reflects difficult compromises, it is important that we act now to preserve the financial health of defined benefit pensions.

This legislation is an important step toward protecting the pensions of working Americans. Today's workers will live longer and work longer but also spend more time in retirement than ever before, so it is vital that the pension benefits promised to workers will actually be there when they retire.

The crisis in private pensions is just part of the growing problem of economic insecurity for many Americans. Although the economy has been growing, job growth has been modest, wages are not keeping pace with inflation, income inequality is growing, employer-provided health insurance coverage is falling, and private pensions are increasingly in jeopardy. Soaring prices for gasoline, home heating, health care, and college tuition is squeezing the take home pay of most workers. Many workers have little left over for retirement savings after making ends meet for basic living expenses.

Meanwhile, many employers shift the risk and responsibility of adequate retirement funds onto workers, as retirement prospects are more uncertain than ever. Twenty years ago, most workers with a pension plan could expect to receive a defined benefit based on years of service and salary. Today, defined contribution plans—which shift most of the investment risk and responsibility onto workers—have become the dominant form of pension coverage.

Despite the shift away from traditional pensions, defined benefit plans remain a critical source of retirement support, with 44 million workers and retirees relying on such plans as a source of stable retirement income. However, as we have seen with recent pension terminations in the airline industry, the real risk of defined benefit plan defaults further exacerbates workers' uncertainty and concern about their retirement prospects.

This bill tackles the growing problem of employers not setting aside enough money to cover their pension obligations. The Pension Benefit Guarantee Corporation, PBGC, estimates that total underfunding in PBGC-insured pension plans is about $450 billion, more than $100 billion of which is in plans sponsored by financially weak companies that are at reasonable risk of default.

However, the PBGC, which is the backstop to the defined benefit pension system, has funding issues of its own due to increased defaults by employers. At the end of 2005, the PBGC reported a cumulative deficit of $22.8 billion in its single-employer program. While the PBGC has sufficient assets to pay benefit obligations for a number of years, without changes in funding, the agency will eventually run out of money. The Congressional Budget Office estimates that PBGC's cumulative deficit will increase to $87 billion over the next 10 years, and suggests that there is a significant likelihood that all of PBGC's assets will be exhausted within the next 20 years.

The Pension Protection Act would tighten the funding rule for defined benefit plans by requiring that plans fund 100 percent of their liabilities, up from 90 percent under current law. Companies with underfunded plans would have seven years to make up any funding shortfall. Financially troubled airlines with underfunded plans would have 17 years to become fully funded.

The legislation would limit the use of credit balances to prevent companies with unfunded plans from avoiding plan contributions, prohibit companies with underfunded plans from increasing future benefits, and require an accurate accounting of each plan's true financial condition. Plans would also be required to provide more information about their current funding status to plan participants and beneficiaries.

In addition, the bill contains important, long overdue disclosure rules to protect the pension of workers, to avoid a situation like that of the Enron workers who lost their entire life savings. Under this bill, companies would be required to give workers quarterly benefit statements that show the value of their assets, and explain their right to and the importance to diversify their investments. The companies would also be required to give their employees a range of options for investing their 401(k) plans rather than just the in company stock and allow workers to sell the stock after three years.

A few of the other notable features of this bill are provisions that encourage low- and moderate-income workers to save for retirement by extending the "saver's credit," and requiring automatic enrollment in defined contribution pensions such as 401(k) plans.

The saver's credit provides a permanent non-refundable tax credit to taxpayers with incomes below certain limits if they make contributions to an IRA or an employer-sponsored plan. Early evidence indicates that the saver's credit has increased participation rates in retirement plans. The effects of the credit are limited, however, by its nonrefundability, the sharp phase-down of the credit rate for moderate-income taxpayers, and the lack of indexing of the income limits. This bill would address one of the current problems with the credit by indexing the income thresholds starting in 2007.

The Pension Protection Act would encourage companies to use automatic enrollment. Under automatic enrollment, companies can enroll employees in contributory pension plans and defer a specified percentage of their earnings into an account. Employees are free to opt out of the plan if they do not wish to participate. Under current rules, employees must make an active decision to participate in contributory plans.

Studies show that automatic enrollment dramatically increases participation rates. The increase is particularly likely to benefit younger workers and low-income workers, who tend to have the lowest participation rates.

One concern I have is that this legislation extends the higher contribution limits on 401(k) and IRA contributions enacted in 2001, which would do little to encourage retirement saving while adding over $36 billion to the budget deficit over the next 10 years. While tax-advantaged retirement saving by low- and moderate-income individuals is likely to represent new saving, high-income individuals are more likely to use expanded savings opportunities to shift existing savings from taxable accounts to tax-advantaged accounts. In its analysis of a similar proposal in the President's FY 2004 budget, CBO concluded that expanding tax-free savings accounts would have little effect on personal saving.

Nonetheless, the Pension Protection Act makes progress toward ensuring that workers will receive the retirement benefits they have earned. We must continue work to improve our pensions system to ensure that Americans who work hard their entire lives have the financial security they deserve. Part of this work will be to revisit some of the elements of this bill as well as to encourage employers to continue to offer retirement plans to hardworking Americans. The dilemma is that it took the majority 8 months to bring this bill forward and without it, more plans and workers are jeopardized. Congress must continue concerted efforts to address the real needs of American workers.

(At the request of Mr. REID, the following statement was ordered to be printed in the RECORD.)

● Mr. BAUCUS. Mr. President, first, I want to thank Chairman GRASSLEY, Senator KENNEDY, and Chairman ENZI for their hard work and cooperation on this bill.

I like the final product. It strikes a balance between getting plans funded and not forcing employers out of the defined benefit pension system. It provides certainty for cash balance plans. It makes certain that workers can diversify their investments out of employer stock. It makes changes that will help workers save for their retirements. And it assures that workers and retirees will receive clear information about the health of their plans and their individual situations.

I don't like for one minute, however, the process that got us here. Chairman GRASSLEY and I worked very closely to include tax extenders on this bill. We had an agreement with the House to do so. We were ready to sign the conference agreement. Instead, we had the rug pulled out from under us. The pension bill now comes to us without the extenders.

There is a reason for the conference process. It was a process that was working. I think that we should have continued down that path.

But as I said, this is a good pension bill of which we can be proud. We need to pass it.

I will not go through all the provisions in the bill. They are too numerous to do that. But there are some points that I want to highlight.

First let me address single-employer pension plan funding. When I spoke last November about the pension bill that was then pending in the Senate, I asked my colleagues to remember that we are here to protect workers' pension benefits. That has been our goal from day one. And that is what this bill does.

The current system is broken. The Pension Benefit Guaranty Corporation—the Federal corporation that guarantees defined benefit pension benefits—has a $23 billion deficit. The existing rules and temporary congressional fixes have created unpredictable funding requirements. As a result, employers are freezing their plans as a preliminary to leaving the defined benefit system altogether. And many view defined benefit plans as an antiquated vehicle for delivering retirement benefits.

How do we fix the system? We would all like to get the plans fully funded. We would all like not to increase funding requirements too much for employers who cannot afford it. We would all like to see defined benefit plans continue. That is especially true for the 44 million Americans now receiving retirement benefits from defined benefit plans or earning benefits under them.

Addressing these goals required a delicate balance. The balance that we struck is one of which I am proud. It reflects difficult compromises by all parties. There is no perfect answer here. But I think that we came as close as we could.

Employers will not be able to make promises that they don't fund. Employers and unions will not be able to negotiate for benefit increases without paying for them. Workers will have to push for better funding if they want to continue to earn benefits.

The medicine may not taste very good. But it is necessary to keep the patient alive.

At the same time, there are some patients that are so sick that they need more than harsh-tasting medicine. They need some understanding and a chance to recover. We are giving that chance to the airlines. Maybe that way we can avoid the harm that will come to the workers and retirees—and the PBGC—if the plans terminate.

Second, let me address cash balance plans. We have been struggling with the difficult problems of a new form of defined benefit plan called a ''cash balance plan'' for many years. Most pension experts recognize the cash balance design and other hybrid plan designs as the future of the defined benefit system. And that future is in limbo until we provide certainty as to the governing rules. Yet there is a real concern about age discrimination and what happens to workers who get caught up in the switch from a traditional plan to a cash balance plan.

This bill once again strikes a balance. It is a balance that is not likely to make anyone completely happy. We have dealt with the law going forward. We intend no inference to what the rules were prior to enactment. We will leave the past to the courts.

But in the future, employers and workers will know the guiding principles. I expect that as a result, we will see new life in the cash balance world. And we also make sure that workers are protected.

Third, let me address diversification. While defined benefit plans are important, many Americans today receive retirement benefits from their defined contribution plans. What a tragedy it was in Enron and other situations when workers had their entire retirement wrapped up in Enron stock. They could not get out even if they wanted to.

The new law will require plans to allow workers to diversify. Workers won't have to. It will be their choice. But they will have that choice.

Fourth, automatic enrollment: I am proud that this bill included a provision that I have been pushing for some time to allow 401(k) plans and 403(b) arrangements to automatically enroll workers unless they opt out. This means that the workers' salaries will be reduced to put savings into the retirement plan unless the worker instructs the employer not to do this withholding. And we let employers automatically increase the amount saved each year unless the worker says no. Many studies have found that this ''opt-out'' approach significantly increases workers'' retirement savings.

Fifth, let me address the saver's credit and permanence of provisions from the Economic Growth and Tax Relief Reconciliation Act of 2001, which people call EGTRRA. The bill makes permanent the EGTRRA savings provisions affecting plans and IRAs. I worked very closely with Chairman GRASSLEY to get the savings provisions included in EGTRRA in the first place. And I am very happy that this bill makes them permanent.

Perhaps more importantly, we made the saver's credit permanent. The saver's credit would have expired at the end of 2006. And for the first time, we indexed the saver's credit so that worker eligibility will not shrink over time because of inflation.

Sixth, we include the tax court modernization package. This package has passed Finance Committee three times. It is designed to help bring parity between the tax court and Article III courts. And it will modernize the tax court's pension system. This package is long overdue.

Seventh, we include important incentives for charitable giving. These include measures to promote land conservation. And these include a provision to encourage IRA rollovers to charitable organizations.'

I have been working since 2001 to allow ranchers and farmers to claim a special tax incentive to ensure their valuable production land preserved for generations of Montanans in the future. In fact, my first hearing as chairman of the Finance Committee in 2001 was on tax incentives for land conservation.

There are numerous other provisions in this 900–plus page bill of which we can all be proud. We have taken on a very difficult and complex subject and struck the right balance. I just regret that we could not do it in the proper way and finished the conference. There were important provisions included in the conference bill that are not included in the pension bill before us. We all know what they are and the reasons they are not included. I am sorry that the Senate process has come to such a sad state.

But after nearly 3 years, several hearings, and countless missed deadlines, the Senate is about to pass a monumental pension bill. It will enhance retirement security for millions of Americans.

There are many who deserve thanks for this legislation. I want to thank

Chairman ENZI and Senator KENNEDY from the Health, Education, Labor and Pensions Committee. They provided excellent leadership and cooperation.

I want to thank their staffs, many of whom spent sleepless nights getting this work done. In particular, I thank Diann Howland, David Thompson, Greg Dean, Portia Wu, Holly Fechner, and Terri Holloway. They played an important role developing the retirement security provisions in this bill.

I also to thank my good friend Senator GRASSLEY, the chairman of the Finance Committee, for his commitment to the retirement security of Americans. I want to thank some staff members in particular. I appreciate the cooperation we received from the Republican staff, especially Kolan Davis, Mark Prater, John O'Neill, Dean Zerbe, Elizabeth Paris, Chris Javens, Cathy Barre, Anne Freeman, Elizabeth Goff and Nick Wyatt.

I thank the staff of the Joint Committee on Taxation and Senate Legislative Counsel for their service, including Jim Fransen, Mark Mathiesen, Stacey Kern, Mark McGunagle, Carolyn Smith, Patricia McDermott, Nicole Flax, Roger Colinvaux, Ron Schultz and Gordon Clay.

I also thank my staff for their tireless effort and dedication, including Russ Sullivan, Pat Heck, Bill Dauster, Jon Selib, Melissa Mueller, Rebecca Baxter, and Ryan Abraham. I also thank our dedicated fellows, Stuart Sirkin, Tiffany Smith, Mary Baker, and Tom Louthan.

I especially want to express my sincere gratitude to Judy Miller. Her extraordinary efforts and contributions on this legislation went over and above the call of duty. I hold her in the highest esteem. And I can't thank her enough for her counsel and professionalism.

Finally, I thank our hardworking law clerks and interns: Christal Edwards, Justin Kraske, Joseph Adams, Tom Duppong, Jonathan Lebe, Robert Little, Chris Polhemus, Diana Ramos, Tara Rose, John Schiltz, Thad Seegmiller, Gwen Stoltz, and Matthew Wergin.

This legislation really was a team effort. And the product will do a lot of good. I am glad that we have finally reached the day where we can look forward to it soon becoming law.

A fair and good explanation of the bill can be found in The Technical Explanation of HR 4 prepared by the Joint Committee on Taxation.●

Mr. GRASSLEY. Mr. President, I rise today in support of the Pension 7 Protection Act of 2006.

Every Member of the U.S. Senate should be proud to support this bill.

This is a bill that is about one thing—improving the retirement security of all Americans.

It been a long road to get here.

There were times, I will tell you, when I wondered if we would ever get here.

But the fact that we are here today shows that when people stick to a goal and work together, you can get great things done for the American people.

I want to commend Chairman ENZI for his outstanding leadership and his perseverance in leading us here today.

I can tell you that it wasn't an easy job.

I am also very pleased to commend the great work of my colleague and good friend, Senator BAUCUS, who was my partner in the Finance Committee and all the way through conference on this legislation.

We worked together and our staffs worked together.

I wish he could be here with me today to see final passage of this legislation, but as we all know, he is attending to family matters that are far more important than anything we could be doing here in the U.S. Senate.

I also want to thank Senator KENNEDY, who worked tirelessly on this bill and was critical to the bipartisan bill before us.

Why is this a good bill?

I could spend all night talking about all of the positive reforms in this bill, but don't worry—I am not going to do that at 10 o'clock here tonight.

But I do want to highlight a few parts of this legislation that will make Americans more secure in their retirement.

First and foremost, this bill will ensure that American workers can depend on their pensions. They will know that their pension will actually be there for them when they retire.

This bill will also protect the PBGC from absorbing billions of dollars in pension liabilities from bankrupt airlines and give those airlines' employees an opportunity to receive the full pension they've been promised.

This bill will protect workers from the next Enron by prohibiting employers from stuffing company stock in their 401(k) plans.

This bill will make permanent the bipartisan retirement savings provisions from the 2001 tax relief bill—increased 401(k) and IRA limits, a permanent low-income Savers' Credit, greater portability of retirement assets, and a wide array of other pro-savings initiatives.

These provisions are vital to building a ''savers' society,'' and I am proud that these provisions originated in the Senate Finance Committee and were included in the 2001 tax bill at the insistence of myself and Senator BAUCUS.

This bill will also encourage greater participation in retirement plans by promoting automatic enrollment arrangements.

These are just a few of the key reforms in this bill. This is legislation that every Member of the Senate can truly be proud to support.

I look forward to seeing the President sign it into law.

I would like to incorporate by reference a technical explanation being prepared by the staff of the Joint Committee on Taxation that describes the legislative intent with respect to H.R. 4, the Pension Protection Act of 2006. This document expresses our understanding of the provisions in the bill, and it will be a useful reference in understanding the legislation. Chairman Thomas also made a statement on the floor of the House of Representatives last Friday that he had requested this technical explanation. The technical explanation will be published by the staff of the Joint Committee on Taxation as document number JCX–38–06, Technical Explanation of H.R. 4, The Pension Protection Act of 2006, as passed by the House on July 28, 2006, and as considered by the Senate on August 3, 2006.

The PRESIDING OFFICER. All time has expired. Under the previous order, the question is on the third reading of the bill.

The bill was read the third time.

Mr. KENNEDY. Mr. President, I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second? There is a sufficient second. The bill having been read the third time, the question is, Shall the bill pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. DURBIN. I announce that the Senator from Montana (Mr. BAUCUS) and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

The PRESIDING OFFICER. Are there any other Senators in the Chamber desiring to vote?

The result was announced—yeas 93, nays 5, as follows:

[Rollcall Vote No. 230 Leg.]

YEAS—93

Akaka	Durbin	Menendez
Alexander	Ensign	Mikulski
Allard	Enzi	Murkowski
Allen	Feinstein	Murray
Bayh	Frist	Nelson (FL)
Bennett	Graham	Nelson (NE)
Biden	Grassley	Obama
Bingaman	Gregg	Pryor
Bond	Hagel	Reed
Brownback	Harkin	Reid
Bunning	Hatch	Roberts
Burns	Hutchison	Rockefeller
Byrd	Inhofe	Salazar
Cantwell	Inouye	Santorum
Carper	Isakson	Sarbanes
Chafee	Jeffords	Schumer
Chambliss	Johnson	Sessions
Clinton	Kennedy	Shelby
Cochran	Kerry	Smith
Coleman	Kohl	Snowe
Collins	Kyl	Specter
Conrad	Landrieu	Stabenow
Craig	Lautenberg	Stevens
Crapo	Leahy	Sununu
Dayton	Levin	Talent
DeMint	Lincoln	Thomas
DeWine	Lott	Thune
Dodd	Lugar	Vitter
Dole	Martinez	Voinovich
Domenici	McCain	Warner
Dorgan	McConnell	Wyden

NAYS—5

Boxer	Coburn	Feingold
Burr	Cornyn	

NOT VOTING—2

Baucus	Lieberman

The bill (H.R. 4) was passed.

The PRESIDING OFFICER. The Senator from Wyoming.

Mr. ENZI. Mr. President, I wish to take a moment and do special thanks on the bill that was just passed. I congratulate everybody who has worked on the bill. It is going to make a difference for at least 145 million people in the United States. It is a very important bill, and it has been a long road with a lot of twists and a lot of difficulties. They all got ironed out with a very convincing vote.

I appreciate all the people who participated in this effort and were able to lend their expertise, their knowledge, their background, and put together something that will solve the pension difficulties for this country.

I particularly thank Senator KENNEDY, who is the ranking member on my committee. He worked with me through the drafting in committee, getting it through committee, then merging it with the Finance Committee, then getting it through the Senate as a whole, and then serving on the conference committee to get it all ironed out. He has been delightful to work with on this issue and other issues that deal with health, education, labor, as well as the pension bill.

I thank Senators GRASSLEY and BAUCUS for their extremely hard work. They brought the finance piece, the tax part together. They are experts in that area. They work together extremely well and extremely hard. Without their participation, this bill would not have been possible.

I appreciate everybody's commitment to the private pension system and their willingness to strive for solutions, not just to look at issues, and to make the tough decisions we had to make.

I also thank Senators DEWINE and MIKULSKI, again. They started the hearings on this bill before we ever got to the bill part, the drafting. They have worked together well on the aging issues of this country for a long time. They know them backward and forward.

As the bill went through the process, they made sure that specific instances they were aware of were known, the details were known, and we could consider ways to solve those as part of an entire package as opposed to piecemeal. They were extremely cooperative in working on it.

Through the final days of the conference committee, they were engaged in asking questions and making a difference for this bill. I can't say enough about Senators DEWINE and MIKULSKI and their extraordinary work.

But there are many people who worked behind the scenes to get this bill completed. I thank all of my staff for their diligence, commitment, expertise, and hard work. Since March, many of them have not had a weekend off. They have spent 12, 16, 18 hours a day working this bill. That is a huge commitment. I am sure a weight has been lifted from their backs. Without their expertise, we would not have been able to do it.

First off I would like to thank my staff director, Katherine McGuire. Without her, this bill never would be enacted. She had extraordinary efforts with the committee and then the conference committee and was able to pull people together to get an agreement. A lot of times, it meant not a compromise but finding a whole different way of doing it and engaging people and doing some research to find those other ways and even relying on some other committees to lend their expertise to do it. We made it through.

Greg Dean, our general counsel, played a central role in the investment advice and prohibited transactions bill language. That is a very specialized part. He helped me on the Banking Committee when I was subcommittee chairman there and then moved to this committee. He expertly managed discussions throughout the process, and he brought various players together time and again to move the bill forward. It is a very technical area, and it takes someone with that kind of technical expertise to do it.

I thank Ilyse Schuman, my chief counsel for the committee. She was able to pull together all the legal issues and was able to talk on that level with all of the other Senators and Members of the House to pull this off.

I thank Diann Howland, who is my pension policy director, who bravely agreed to come back to the Hill and take on her third major pension reform. In light of this, she brought a fresh perspective to the complex issues every day and has to be commended for leadership in getting this bill done. She probably knows more about pensions than anybody I have ever met and has been a valuable resource, knowing the history as well as being able to move forward on a new bill and get some things done that are different from what has been done before but things that have preserved pensions for people.

David Thompson brought a superb understanding of the intricate and complex legislation issues to the table and has a unique ability to explain these difficult issues in relatively few words and also explain some of the charts that went along with them. Again, I want to thank Amy Angelier who works as my budget staffer and approps staffer and policy adviser. She knows the intricacies of how the budget and the appropriations and the policy all have to fit together, whether it is pensions or whether it is banking or whether it is the rest of the issues we cover under Health, Education, Labor and Pensions. She was on top of each and every aspect of the budget aspects of this bill and helped guide it to success.

Now, my staff didn't do this alone. My staff worked closely with the staffs of my other Senate conferees, and those individuals deserve thanks. They are Michael Myers, Portia Wu, and Holly Fechner of Senator KENNEDY's HELP Committee staff; Kolan Davis, Mark Prater, John O'Neill, Judy Miller, Stu Sirkin, Russ Sullivan, Pat Heck, on the staff of the Finance Committee for Senators GRASSLEY and BAUCUS.

I especially commend Mark Prater for his leadership over the last week helping us to maneuver through troubled waters. He really knows the tax issues and knows the interplay between the moving parts in that whole area and was a tremendous help.

I would also like to thank the nonpartisan legislative counsels and the staff from the Joint Committee on Taxation for their very long hours and professionalism. They had to be in with all of the different times as all of these meetings were going on. Every person with a pension should join me in thanking Jim Fransen, Stacy Kern, Carolyn Smith, Patricia McDermott, and Nikole Flax.

Finally, I thank my chief of staff, Flip McConnaughey. He did an excellent job holding the office together and keeping a focus on Wyoming's specific issues when the pension conference kicked into full gear.

So I appreciate everybody's support of this legislation. I hope I haven't left anybody out. There have been so many people who have been involved in this, as I said, for just countless hours. It has been an incredible commitment of time and effort and knowledge, and I really appreciate that because without the kind of teamwork that we had on this, we would not have had the kind of approval we have.

I thank the Chair, and I yield the floor.

Mr. SANTORUM. Mr. President.

Mr. FRIST. Mr. President, if I could have one minute.

The PRESIDING OFFICER. The majority leader is recognized.

Mr. FRIST. I just wanted to thank Chairman ENZI for his tremendous leadership. So many people have been thanked over the course of the night, and it has been a very productive 4 weeks. But if you look at the committee chairman, he has probably been the busiest just overseeing the greatest number of bills, and then on top of that, having a very challenging conference, as we have all seen. It started with pensions, and for a period developed into about three or four other issues. I just wanted to thank him for his work, his tremendous work, his dedication, his passion, his independent but dedicated thinking where he listened to everybody and to his staff who have been tremendous on this particular bill, a very difficult bill, the pensions bill.

So on behalf of all of us, we thank Chairman ENZI.

Mr. ENZI. I thank the Senator.

Mr. GRASSLEY. Mr. President, after great effort by many people, the Senate has voted to agree to H.R. 4, the Pension Protection Act of 2006.

Credit must go to the dedicated members of my staff, who spent many hours over many months working on the issues that ultimately led to this bill. Kolan Davis, Mark Prater, John

O'Neill, Dean Zerbe, Elizabeth Paris, Chris Javens, Cathy Barre, Anne Freeman, Elizabeth Goff, and Nick Wyatt showed great dedication to the tasks before them.

As is usually the case, the cooperation of Senator BAUCUS and his staff was extremely valuable. I particularly want to thank Russ Sullivan, Patrick Heck, Bill Dauster, Judy Miller, Stuart Sirkin, Jon Selib, Melissa Mueller, Rebecca Baxter and Ryan Abraham.

I want to show my appreciation towards HELP Committee Chairman ENZI's staff, including Katherine McGuire, Greg Dean, Diann Howland and David Thompson. I want to thank Portia Wu and Holly Fechner along with the rest of HELP Committee Ranking Member KENNEDY's staff. I also want to thank the staff of Finance Committee member conferees on the pension bill. They include Evan Liddiard, Brendan Dunn, Manny Rossman, Wes Coulam, Jennifer Perkins, Jen Vesey, Amy Barber, Steve Bailey, and James Dennis.

I also want to mention Thomas Barthold, the acting chief of staff of the Joint Committee on Taxation and his staff. The efforts of Carolyn Smith, Patricia McDermott, and Nicole Flax were invaluable. Roger Colinvaux, Gordon Clay, and Ron Schultz provided great assistance with the charitable provisions that are in the bill. I also want to thank Theresa Pattara, who worked on my staff as a legislative fellow, for her work on the charitable provisions.

Finally, I want to show my appreciation to the staff of Senate Legislative Counsel, including Jim Fransen, Mark Mathiesen, Stacey Kern, and Mark McGunagle.

Mr. President, after great effort by many people, the Senate has voted to agree to H.R. 4, the Pension Protection Act of 2006.

Credit must go to the dedicated members of my staff, who spent many hours over many months working on the issues that ultimately led to this bill. Kolan Davis, Mark Prater, John O'Neill, Dean Zerbe, Elizabeth Paris, Chris Javens, Cathy Barre, Anne Freeman, Elizabeth Goff, and Nick Wyatt showed great dedication to the tasks before them.

As is usually the case, the cooperation of Senator BAUCUS and his staff was extremely valuable. I particularly want to thank Russ Sullivan, Patrick Heck, Bill Dauster, Judy Miller, Stuart Sirkin, Jon Selib, Melissa Mueller, Rebecca Baxter and Ryan Abraham.

I want to show my appreciation towards HELP Committee Chairman ENZI's staff, including Katherine McGuire, Greg Dean, Diann Howland and David Thompson. I want to thank Portia Wu and Holly Fechner along with the rest of HELP Committee Ranking Member KENNEDY's staff. I also want to thank the staff of Finance Committee Member conferees on the pension bill. They include Evan Liddiard, Brendan Dunn, Manny Rossman, Wes Coulam, Jennifer Perkins, Jen Vesey, Amy Barber, Steve Bailey, and James Dennis.

I also want to mention Thomas Barthold, the acting Chief of Staff of the Joint Committee on Taxation and his staff. The efforts of Carolyn Smith, Patricia McDermott, and Nicole Flax were invaluable. Roger Colinvaux [CallIn-Vo], Gordon Clay, and Ron Schultz provided great assistance with the charitable provisions that are in the bill. I also want to thank Theresa Pattara, who worked on my staff as a legislative fellow, for her work on the charitable provisions.

Finally, I want to show my appreciation to the staff of Senate Legislative Counsel, including Jim Fransen, Mark Mathiesen, Stacey Kern, and Mark McGunagle.

I yield the floor.

COMBATING AUTISM ACT OF 2005

Mr. SANTORUM. Mr. President, I understand the paper is in the process of being delivered to the desk on S. 843, so while that is happening, let me just make some remarks about the legislation.

The legislation that I am calling up on behalf of myself and Senator DODD and the two leaders who have been outstanding in helping us bring this bill to the floor tonight is the Combating Autism Act. I know Senator ENZI was just speaking, but I want to thank Senator ENZI and Senator KENNEDY also and the entire HELP Committee. If you want to talk about a team effort, this has been a tremendous team effort, starting initially with Senator DODD and myself and our staffs who have just done an outstanding job.

I thank particularly on my staff Jen Vessey, who has just put in—I won't say hours of time but days of time, in working together along with Senator DODD's staff and then subsequently the entire committee staff; in particular, Senators ENZI and KENNEDY's staff, as well as, as we brought this to the process, Senator FRIST and Senator REID.

This team was committed to getting this bill done and passed before the August break. We had many bumps along the way, but tonight, with a minor change in the bill, we are going to see this piece of legislation pass and pass by unanimous consent.

I am very excited about all of the work that has been put in by the entire autism community. I think, as Senator DODD will attest, there are very many arms of the autistic community, a lot of groups who have a very wide variety of people with respect to how to deal with Federal legislation regarding autism. But we were able to sit down and work together over months of time.

I thank some people in particular who have worked outside of the Congress, outside of the Halls of Congress: Bob and Suzanne Wright deserve special recognition as grandparents of an autistic child for their tremendous effort in pulling together these outside groups, along with Deirdre Imus, who, again, devoted an extraordinary amount of time and energy in bringing all of these disparate groups in the autism community across the country together to work toward a common goal, and that is to authorize an autism coordinator, authorize work and research to be done at NIH that looks into all of the issues regarding autism, including the causes of autism, how to best screen for autism, how to best diagnose autism, and how to best treat autism.

It is one of the few disorders that I am aware of that is so prevalent in America, and we have very few good answers on any one of those issues. It creates enormous amounts of frustration for parents and relatives and friends of children with autism that we just seem to have no answers, and we see an ever-increasing population of autistic children with fewer and fewer answers on how to diagnose, screen, test, and treat these young children.

So tonight is a real landmark. It is a step forward for a community that has been seeking someone to listen to them in Washington. It has been a real honor to work with Senator DODD. He has just been terrific, including tonight, when we ran into a bump and he was able to smooth that bump. We had one on our side. After lots of discussion, and thanks to the leader and his work here, we were able to deal with that, and now we are in a situation where we can move forward and pass this important piece of legislation. I believe the paper work is now ready.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 578, S. 843.

The PRESIDING OFFICER. The clerk will report the bill by title.

The assistant legislative clerk read as follows:

A bill (S. 843) to amend the Public Health Service Act to combat autism through research, screening, intervention and education.

There being no objection, the Senate proceeded to consider the bill which was reported from the Committee on Health, Education, Labor and Pensions with an amendment to strike all after the enacting clause and insert in lieu thereof the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Combating Autism Act of 2006''.

SEC. 2. ACTIVITIES TO IMPROVE AUTISM-RELATED RESEARCH.

Section 409C of the Public Health Service Act (42 U.S.C. 284g) is amended to read as follows:

''SEC. 409C. AUTHORITY OF THE DIRECTOR OF THE NATIONAL INSTITUTES OF HEALTH RELATING TO AUTISM.

''(a) STRATEGIC PLAN FOR AUTISM RESEARCH.—

''(1) IN GENERAL.—The Secretary, acting through the Director, shall develop and implement a strategic plan for the conduct and support of research related to autism spectrum disorder.

''(2) REQUIREMENTS.—The strategic plan developed under paragraph (1)—

''(A) shall—

''(i) be updated annually;