

and performance benefits for retirement savings, the real estate market has achieved greater levels of liquidity than ever before. This increased liquidity has provided real estate owners who have invested for the long term with more and more opportunities to maximize value by selling assets sooner than originally expected. REITs that rely on the safe harbor have been precluded from selling some of their investment assets because of the current 4-year requirement.

The safe harbor is intended to provide a clear dividing line between a REIT acting as an investor rather than a dealer. However, the 4-year requirement is arbitrary and not consistent with other Code provisions that define whether property is held for long term investments, e.g., the 1-year holding period to determine long-term capital gains treatment for individuals, and the 2-year holding period to distinguish whether the sale of a home is taxable because it is held for investment purposes. A 2-year holding period better reflects current economic realities.

In addition, the 10 percent limit that is now based on tax basis negatively impacts companies that are the least likely to have engaged in "dealer" activity. The most established REITs have typically held their properties the longest, resulting in low adjusted bases due to depreciation or amortization deductions. Thus, the aggregate bases of all the REITs properties will be relatively much lower for purposes of the safe harbor exception than for a REIT that routinely turns over its properties every 4 years. Accordingly, the REIT that holds its properties for the longer term is penalized.

In 1999, Congress adopted a provision that utilizes fair market value rules for purposes of calculating personal property rents associated with the rental of real property. The measurement change in Title III to the 10 percent test from tax basis to fair value is fully consistent with this 1999 provision.

Title IV parallels the treatment under the REIT rules of health care facilities to lodging facilities. Payments made from a subsidiary owned by a REIT to that REIT usually are not considered qualified income for REIT purposes. Congress in 1999 carved out an exception under which a REIT may establish a TRS that can lease lodging facilities from a REIT holding a controlling interest, with the payments to the REIT considered good "rents" under the REIT rules. Under these rules, a TRS is not allowed to operate or manage lodging or health care facilities; instead an independent contractor must do so.

When this change was made in 1999, health care operators did not object to bearing the risks associated with being liable as a long-term lessee. Recently, many operators of health care assets such as assisted living facilities have indicated that they would rather be independent operators of the facilities and instead rely on a REIT to bear all real estate-related financial risks. Most health care REITs now believe that the TRS restriction is interfering with their ability to manage their operations in the most efficient manner.

Title IV would allow a REIT's TRS to lease health care facilities from its controlling REIT so long as the facilities are operated and managed by an independent contractor. It also clarifies that a TRS's mere possession of a license which, for example, is sometimes required for State purposes, is not considered the operation or management of the facilities.

Governments around the world have recognized the success of REITs in the United States as creating "liquid real estate" for the first time in history. More than 20 countries have adopted REIT legislation, with the United Kingdom making the leap on January 1 and Germany expected to follow suit later this year. Although the Tax Code treats stock in a U.S. REIT as a qualified asset that generates qualifying income, current law does not afford the same treatment to the stock of non-U.S. REITs.

Instead of investing abroad either directly or in a joint venture, a U.S. REIT might want to invest through a REIT organized in that country. However, a company could lose its status as a U.S. REIT if it owns more than 10 percent of a foreign REIT's securities, even though the foreign company is the equivalent of a U.S. REIT. A U.S. REIT should have the flexibility in deciding what form its overseas real estate investment should take.

Title V would allow a U.S. REIT to acquire securities in a foreign REIT so long as that REIT has the same core attributes as a U.S. REIT. The Treasury Department would have the responsibility to analyze the foreign laws and rules to determine if the REITs organized in a particular country meet this test, much as it does in determining whether entities organized abroad are "per se" corporations under the "check the box" entity classification rules. In making these determinations, the Secretary should take into account whether the laws, stock market requirements, or market preferences in a country imbue listed foreign REITs with these characteristics: (1) At least 75 percent of the company's assets must be invested in real estate assets; (2) the foreign REIT either receives a dividends paid deduction or is exempt from corporate level tax; and (3) the foreign REIT is required to distribute at least 85 percent of its taxable income to shareholders on an annual basis.

Madam Speaker, I am pleased to introduce this bipartisan legislation.

SUPPORT COMPREHENSIVE
IMMIGRATION REFORM

HON. GABRIELLE GIFFORDS

OF ARIZONA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 16, 2007

Ms. GIFFORDS. Madam Speaker, I rise today to express my support for some provisions of President Bush's FY08 budget request regarding illegal immigration.

His plan includes hiring 3,000 new Border Patrol agents, improving technology and infrastructure along the border, and helping end the failed "catch and release" policy. The President's proposal also offers assistance to State and local law enforcement agencies.

My district in Southern Arizona continues to bear the burden of our Nation's failed immigration policy, especially in our schools, hospitals, and law enforcement agencies. The President's ideas will, to some degree, help alleviate this crisis.

However, these policies must be a part of a comprehensive immigration reform plan to effectively secure the border and stop illegal immigration.

We not only need better border security and more support for border patrol agents, but also

employer sanctions for those knowingly hiring illegal immigrants and a guest worker program. Most importantly, we need fair compensation for border communities struggling with the costs of illegal immigration.

I applaud the President for reaching out to Congress on this issue, and I look forward to working with the administration and Republicans and Democrats in Congress to pass comprehensive immigration reform.

HONORING ALAMEDA COUNTY
LIBRARY PROGRAM

HON. FORTNEY PETE STARK

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Friday, February 16, 2007

Mr. STARK. Madam Speaker, I rise today to pay tribute to the Alameda County Library. The Library's Write to Read Youth Literacy program at Juvenile Hall in San Leandro, CA, was honored on January 22, 2007 at a White House Ceremony in conjunction with the 2006 Coming Up Taller Awards. The Library's 8-year effort to help incarcerated youths read and write won a \$10,000 Federal grant, the Coming Up Taller award, and plaudits at the White House Ceremony.

The Coming Up Taller Awards recognize and support outstanding community arts and humanities programs that celebrate the creativity of America's young people, and provide them with new learning opportunities and a chance to contribute to their communities. The awards also highlight the contributions that historians, scholars, librarians, and visual and performing arts make to families and communities by mentoring children.

The Alameda County Library's Write to Read Youth Literacy program at Juvenile Hall has introduced the joy of reading to more than 4,000 incarcerated youths. Founded in 1999, Write to Read motivates and inspires young people housed in the Alameda County Juvenile Hall to strengthen their reading skills and make meaningful connections to authors and books that can positively influence the choices they make in their own lives.

Offered 3 days a week, the Write to Read program enables youths to take books to their rooms, meet with authors, and engage in tutoring and book discussions.

Alameda County Librarian Jean Hofacket was present at the White House ceremony to receive the library award along with Amy Cheney, juvenile hall librarian, and Hannah Kefala of Alameda, a former juvenile hall resident who now attends Chabot College in Hayward.

Ms. Kefala said meeting authors through the program helped her learn "my human rights" and gave her pointers "on how to improve my future." Her comments are a testament to the success of the Alameda County Library's Write to Read Youth Literacy program at Juvenile Hall.

I join the community in applauding the Alameda County Library's success and contributions to make a positive difference in the lives of youth incarcerated at the Juvenile Hall.