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House of Representatives

The House met at 10 a.m. and was called to order by the Speaker pro tempore (Mr. TERRY).

DESIGNATION OF THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore laid before the House the following communication from the Speaker:

WASHINGTON, DC,
January 28, 2004.

I hereby appoint the Honorable LEE TERRY to act as Speaker pro tempore on this day.

J. DENNIS HASTERT,
Speaker of the House of Representatives.

PRAYER

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

Gracious Lord, You are the source of strength for the faith-filled. You are the source of courage to those in need. You are the source of hope to all who place their trust in You.

Bless the Members of the House of Representatives as they face a schedule of ongoing challenges and opportunities in this 108th Congress. Give them hearts readily moved by the concerns of those who come to them in need. Grant to them also a broad vision that will embrace national interests so that they may raise the hopes of people for a better world in which to establish their homes and raise their children.

To You be the honor, glory, and power now and forever. Amen.

THE JOURNAL

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

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

PLEDGE OF ALLEGIANCE

The SPEAKER pro tempore. Will the gentleman from Kansas (Mr. TIAHRT) come forward and lead the House in the Pledge of Allegiance.

Mr. TIAHRT led the Pledge of Allegiance as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

CONGRATULATING THE BUTLER COUNTY COMMUNITY COLLEGE GRIZZLIES

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

Mr. TIAHRT. Mr. Speaker, I rise today to recognize the Butler County Community College Grizzlies for winning the National Junior College Athletic Association Championship in football.

On December 6, the Grizzlies, from El Dorado, Kansas, wrapped up an undefeated season with a 14–10 victory over Dixie State in the Dixie Rotary Bowl to win the Junior College National Championship for the third time in the last 6 years.

Butler County trailed the Dixie State Rebels 10–6 at halftime. However, the Grizzlies started the third quarter with a 14-play scoring drive, capped by a touchdown by the First Team All-American quarterback, Chad Wilmott. They went on to the 14–10 victory. That touchdown drive changed the momentum of the game.

I would like to commend the players, coaching staff, and the administration of Butler County for establishing the Grizzlies as a powerhouse in junior college football. A record of 12 wins and zero losses speaks volumes about the character and determination of the coaches and student athletes at Butler County. A team that produced four All-Americans and the Coach of the Year truly exemplifies the hard work and dedication that is synonymous with south central Kansas. I congratulate and thank the Butler County Grizzlies for an unforgettable season.

FROM SURPLUS TO DEFICIT

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

Mr. MORAN of Virginia. Mr. Speaker, the House Committee on the Budget had a hearing yesterday with the Congressional Budget Office. So it was about numbers, and normally numbers are boring and benign, but this laid out a nightmare scenario.

When President Bush took office, the Clinton administration, in concert with the Congressional Budget Office, estimated that there would be a surplus over the next 10 years of $5.6 trillion. We now have an estimate for the next 10 years not of a surplus but of a cumulative deficit of $4.8 trillion. What a fiscal reversal! Over $10 trillion.

I suppose we do not have to worry much about it because it is really going to be heaped on the backs of our children and grandchildren. We will retire on Medicare and Social Security before we will have to pay this number off.

For this fiscal year the Clinton administration had us in line to have a surplus of $400 billion. We now will have a deficit of $477 billion.

Getting rid of Saddam Hussein was a good thing to do. Tax cuts are always a popular thing to do. But somebody, someday is going to have to pay the piper. And I guess we've decided that somebody should be our kids after we retire. This is unfair. It is immoral, and it is irresponsible for this party to be such willing partners to this injustice.

DEFICIT

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

Mr. PITTS. Mr. Speaker, budget projections can be wrong. They often are. But I am also particularly concerned about the CBO report that forecast a several-trillion dollar deficit over the next 10 years. That is the highest level as a percentage of GDP since World War II.

To be clear, this deficit is driven by spending. We did what we had to do to protect our homeland and give our troops the support they need in the war on terror. But we also spent a lot more in other nondefense areas; and when we add increased government spending to an economic slowdown and the 9–11 attacks, we get deficits. There is no way around it.

Fortunately, the tax relief passed by this Congress and signed by the President has stimulated our economy. Now we have to turn our attention to getting government spending under control. We need to tighten our belts a little around here and do the right thing. We should freeze spending and balance the budget as early as we can. We need to get to work to cut the deficit, cut spending, and balance the budget.

BRING OUR BUDGET IN BALANCE WITH OUR PRIORITIES

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

Mr. EMANUEL. Mr. Speaker, in today's number reporting a deficit $500 billion, a historic number, it goes to prove that we cannot fight three wars with three tax cuts, having now produced a record deficit in the economy.

And what we need now is a balanced budget that is in balance with our priorities. Not all government spending is good, and not all tax cuts lead to the same economic benefit. We need a strategy and an agenda that brings our budget into balance with our priorities, where we can make sure that Americans can afford the education and the health care for their children that they need as well as make sure that we have the security and the investments in our defense that we need. And as we lay out our agenda and understand where we are as a country and the priorities, I think that today's deficit proves that while the economy is supposedly growing, the deficit should be going down, not going up. And the reason it is going up is because we neither have a strategy nor the priorities that are correct for this country and for the future of our country. So we must once again dedicate ourselves to the principle of bringing the budget into balance, in balance with our priorities.

TIME TO PUT OUR FISCAL HOUSE IN ORDER

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

Mr. PENCE. Mr. Speaker, the time has come for Congress to put our fiscal house in order.

This week the Congressional Budget Office released its economic and budget projections showing budget deficits over the next decade including nearly $500 billion for fiscal year 2004.

The American people know about the deficits. The American people also, however, know that this President inherited a recession, experienced and bravely led us through a national emergency and has led America into the war on terror; and these have all taken their toll. Having mostly, however, cleared these historic challenges, I believe that in the coming budget debate, the Republican majority must again demonstrate its commitment to fiscal discipline and limited government. The time has come for Congress to put our fiscal house in order again. We must resist the siren call to raise taxes, which our Democrat friends will bring to this floor again and again; put our fiscal house in order by holding the line on spending, renewing our commitment to limited government and fiscal discipline, which are true Republican values of the majority.

CONGRATULATING THE CAROLINA PANTHERS

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

Mr. WATT. Mr. Speaker, today I rise to congratulate our Carolina Panthers on going to the Super Bowl. I want to congratulate the owner, Jerry Richardson, and the other owners, Coach Fox, and the members of the team for their outstanding job they have done during the course of this year and cheer them on to victory in the Super Bowl.

It is amazing how something like this can bring a community together even in the face of adverse economy and job loss and deficits. This has been a rallying point for our community, and I applaud the Carolina Panthers and wish them well as they go on to the Super Bowl in Houston this weekend.

JOB GROWTH

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

Mr. DREIER. Mr. Speaker, to counter my friend, not in the area of football but on the issue of jobs, we all know that the economy is growing; but we continue to hear this argument that we are slow in the area of job growth.

We have seen the report yesterday of a dramatic increase in consumer confidence, the highest levels since mid-2002. Obviously, productivity is at unprecedented levels. Investment is higher. Fifty percent of the American people are members of the investment class. And the market is over 10,600.

So the interesting thing for us to note is that as we look at this job creation issue, it is important for us to observe that what we have regularly found is that the Department of Labor's payroll survey is the one that has been reporting not tremendous job growth. We must look at the household survey, which has shown that there have been 1.9 million new jobs created during this administration since November of 2001. It is important that while this rhetoric of jobless recovery is constantly put out there, the household survey takes into consideration something that the payroll survey does not, and that is the self-employed, those who are creating jobs in the private sector on their own. So it is important for us to responsibly look at these numbers, Mr. Speaker.

URGING SUPPORT FOR H.R. 2166, PUBLIC SAFETY EX-OFFENDER SELF-SUFFICIENCY ACT OF 2003

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

Mr. DAVIS of Illinois. Mr. Speaker, I listened with great interest last week as the President gave his State of the Union address and was quite pleased at one point when he mentioned the need to establish programs for ex-offenders, for people returning home after having been incarcerated. And I could not agree with him more.

So I urge my colleagues to get on board with me and support H.R. 2166, my Public Safety Ex-Offender Self-Sufficiency Act, which is designed to build 100,000 units of SRO-type housing for these individuals over a 5-year period.

If we really want to help people returning home from prison, let us start by giving them a place to stay.

RECOGNIZING JAY KISLAK

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

Ms. ROS-LEHTINEN. Mr. Speaker, I would like to recognize Jay Kislak, an outstanding member of the South Florida community.

Jay is the chairman of the Jay I. Kislak Foundation, which is engaged in a collection of rare books, manuscripts, maps, and indigenous art of the Americas.

Through his foundation, Jay has worked to ensure that present and future generations will have a deeper understanding of our glorious past.

As a testament to his expansive knowledge and appreciation for art, Jay was appointed by President Bush to be chairman of the Cultural Property Advisory Committee, a group tasked with directing the government's efforts to protect antiquities around the world.

I ask my colleagues to join me in recognizing Jay Kislak for his profound

contribution to the cultural enrichment of our community and our Nation.

BENEFITS OF PRESCRIPTION DRUG BENEFIT PLAN

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

Mr. KINGSTON. Mr. Speaker, if you go into almost any group of 30 to 40 people and ask how many of you have someone in your family who has to take three or four pills a day, each and every day for the rest of their lives in order to stay active and stay comfortable and stay healthy, probably 70 percent of the hands in the room would go up, because that is the reality in 2004. If we wind back the clock to 1965 and ask that question, not many people would raise their hands, because we did not have the miracle pills then that we do now.

In 1965, when we started Medicare, we could not foresee this pharmaceutical revolution that we have now. That is why this Congress, under the leadership of George Bush, has put in a prescription drug benefit program in our Medicare reform package.

The plan works like this: This April, all seniors will get a 25 percent discount card that can be used in any pharmacy. Just walk in, a 25 percent savings. Then in the year 2006 you will get about a 50 percent cost reduction on your prescription drugs, on average.

Keep in mind, this is a voluntary program. It is not the greatest thing in the world, but it certainly is a huge step forward, and I think seniors will really enjoy this benefit. I am glad the President took this leadership.

PROVIDING FOR CONSIDERATION OF S. 610, NASA FLEXIBILITY ACT OF 2003

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 502 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 502

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (S. 610) to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and shall not exceed one hour, with 40 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Science and 20 minutes equally divided and controlled by the chairman and ranking minority member of the Committee on Government Reform. After general debate the bill shall be considered for amendment under the five-minute rule. The bill shall be considered as read. During consideration of the bill for amendment, the Chairman of the Committee of the Whole may accord priority in recognition on the basis of whether the Member offering an amendment has caused it to be printed in the portion of the Congressional Record designated for that purpose in clause 8 of rule XVIII. Amendments so printed shall be considered as read. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

The SPEAKER pro tempore (Mr. TERRY). The gentleman from Florida (Mr. LINCOLN DIAZ-BALART) is recognized for 1 hour.

(Mr. LINCOLN DIAZ-BALART of Florida asked and was given permission to revise and extend his remarks.)

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 520 is an open rule that provides for the consideration of S. 610, the NASA Workforce Flexibility Act of 2003. The rule provides for 1 hour of debate, with 40 minutes equally divided and controlled by the chairman and ranking member of the Committee on Science, and 20 minutes equally divided between the chairman and ranking member of the Committee on Government Reform. The rule also provides one motion to recommit, with or without instructions.

Mr. Speaker, following the extraordinarily tragic Shuttle *Columbia* disaster, it was imperative that the United States take a deep look at its space program. The Columbia Accident Investigation Board and NASA continue to address needed safety concerns, but I think we must take steps to further innovation and scientific research, find new frontiers and unveil endless possibilities.

I believe NASA has undergone a positive transformation in recent weeks. With the stunning successes of the Mars rovers and President Bush announcing new long-term goals for manned space exploration, our national desire to comprehend the nature of our solar system and our universe has been reinvigorated. The underlying legislation provides NASA additional tools to recruit, train and keep the most talented scientists and engineers.

The legislation authorizes NASA to offer needed incentives to valued current and prospective employees, the same as most major corporations and research institutions would offer to compete. When the United States goes to space, Mr. Speaker, we need the brightest and the best in the industry to work to make our dreams of exploration a reality. As such, this legislation authorizes recruitment, relocation and retention bonuses as an incentive to NASA employees; term appointments to our most valued scientific minds; and the ability for Administrator O'Keefe to provide pay increases to those in critical positions and with superior qualifications. These are essential additions necessary for NASA to succeed in its newest missions.

Furthermore, the underlying legislation, Mr. Speaker, authorizes $10 million to begin a Science and Technology Scholarship Program. This funding is an important step for promoting the sciences in our high schools and colleges, while allowing less advantaged students a potential for higher studies.

Our superiority in science and the technologies, without any doubt, has declined since President Kennedy began our Nation on a path to the moon in 1961. It is our responsibility to ensure that when those highly trained NASA scientists retire, some of whom have participated in the entire history of our space program, that they know their replacements will be the best and the brightest from any background that this country has to offer.

I would like to quote Christa McAuliffe, a teacher, astronaut and American hero tragically lost in the explosion of the *Challenger* Space Shuttle. She said, ''Space is for everybody. It's not just for a few people in science or math, or for a select group of astronauts. That's our new frontier out there, and it is everybody's business to know about space.''

I believe that the underlying legislation, Mr. Speaker, will help NASA to continue our passionate exploration of the unknown. And we bring this legislation forward, Mr. Speaker, under an open rule. Any Member can bring forth to this House for the consideration of all of its membership any idea that Members may have. It is an open and a fair rule.

I would like to thank the gentleman from New York (Chairman BOEHLERT) and Senator VOINOVICH for their support on this issue. I urge Members to support both the rule and the underlying legislation.

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

Mr. MCGOVERN. Mr. Speaker, I yield myself such time as I may consume. I thank the gentleman from Florida, Mr. LINCOLN DIAZ-BALART, for yielding me time.

Mr. Speaker, I am pleased to rise in support of the NASA Workforce Flexibility Act of 2003, as well as the rule providing for its consideration. As the majority member of the committee previously mentioned, the underlying legislation will provide NASA with greater personnel management flexibilities to provide bonuses, hiring and other management tools in order to enhance the agency's ability to recruit and retain qualified employees.

I have always been a friend and supporter of NASA and the U.S. program. I, like so many other Americans, have relished in the Earth-shaking rumbling of powerful shuttle engines launched from the Kennedy Space Center. The instant illumination of the night sky still sends a rush of excitement throughout the United States. Children and adults alike dream of the day when they will have an opportunity to see our Earth from beyond its atmosphere.

The U.S. space program has done so much for Americans, not just inspiring and educating us on space exploration, but constantly improving our quality of life. The returns on those investments are accrued all around us. Technologies of NASA's space program have had and continue to have a profound effect on the U.S. and its people. Many products utilized in our homes and workplaces and used for health, fitness and recreation are the direct result of space technology spin-offs.

It is important for Congress to be aware of the issues facing NASA when it comes to hiring and retaining the best and brightest minds of the scientific community. NASA's workforce differs significantly from other Federal agencies in that more than 60 percent of its makeup is scientists and engineers. These statistics place NASA in a difficult position as the number of graduates in the physical sciences, both under- and post-graduate, continues to decrease.

The NASA Workforce Flexibility Act allows NASA to suit up and engage in the fierce competition with the private sector for the most qualified candidates, thus allowing it to become more competitive in recruiting and retaining the kind of workforce NASA will need in the 21st century.

But while NASA suits up, so must Congress. We must provide guidance to this important Federal agency to ensure that it is recruiting and signing up the most qualified candidates from all colleges, universities and the private sector.

Our colleague, the gentlewoman from Texas (Ms. JACKSON-LEE), offered an amendment to the underlying bill in committee that would have reinstated the Minority University and Research Programs as a division after NASA demoted it to program status. The amendment was, unfortunately, defeated. While I have been told that this program has not been stripped of any of its abilities to carry out its mission, I certainly hope that the defeat of this amendment is not the beginning of a striptease.

NASA scholarship opportunities should be equally distributed among institutions of higher education, including minority-serving institutions. Programs such as the one the gentlewoman from Texas (Ms. JACKSON-LEE) sought to reinstate provide the necessary outreach needed to bring the most qualified and diverse candidates to the table.

Mr. Speaker, despite the progress that has been made, it is critical that we continue to move forward in diversifying the workplace. Lags have been particularly visible for minorities in the math and physical sciences. Democrats stand united and prepared to work with the majority to further ensure that Federal agencies, NASA included, are held accountable for their recruiting and hiring practices. Agencies must not only make good-faith efforts to recruit, employ, train, promote and retain members of underrepresented groups, but they must also show us results.

Mr. Speaker, I too want to thank the members of the Committee on Science, in particular the gentleman from New York (Chairman BOEHLERT) and the ranking member, the gentleman from Tennessee (Mr. GORDON), for their incredible work. I also want to thank the members of the Committee on Government Reform, particularly the gentleman from Virginia (Chairman Tom Davis) and the ranking member, the gentleman from California (Mr. WAXMAN), for all of their good work.

As I mentioned previously, I support the underlying legislation and I will not oppose the rule. I urge my colleagues to do the same.

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

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, reiterating my support for the underlying legislation as well as the rule, I ask my colleagues to support both.

Mr. Speaker, I have no further requests for time, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

□ 1035

RECESS

The SPEAKER pro tempore (Mr. TERRY). Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 10 o'clock and 36 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 1055

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LINCOLN DIAZ-BALART) at 10 o'clock and 55 minutes a.m.

NASA FLEXIBILITY ACT OF 2003

The SPEAKER pro tempore. Pursuant to House Resolution 502 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 610.

□ 1056

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 610) to amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes, with Mr. ISAKSON in the chair.

The Clerk read the title of the bill.

The CHAIRMAN. Pursuant to the rule, the bill is considered as having been read the first time.

Under the rule, the gentleman from New York (Mr. BOEHLERT) and the gentleman from Tennessee (Mr. GORDON) each will control 20 minutes; and the gentleman from Virginia (Mr. TOM DAVIS) and the gentleman from Illinois (Mr. DAVIS) each will control 10 minutes.

The Chair recognizes the gentleman from New York (Mr. BOEHLERT).

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

Mr. Chairman, I rise in strong support of S. 610 and I urge my colleagues to approve it and send it to the White House for the President's signature.

This measure is a top priority of the entire administration, especially, of course, of the NASA Administrator. We have taken more than long enough to turn the bill into law.

The need for this bill, it seems to me, is beyond dispute. Events of the past year have highlighted NASA's need to attract and retain the best workforce imaginable, and yet NASA is on the brink of losing the talent that it already has.

Within just 5 years, 5 years, fully one-quarter of NASA's workforce will be eligible to retire. It is no wonder that the General Accounting Office has repeatedly cited strengthening human capital as one of NASA's top management challenges. We must stem the tide of the brain drain. S. 610 is a targeted, carefully crafted, moderate approach to giving NASA additional tools to meet that challenge. The bill does not make any radical departures from current law. Rather, it modifies and expands existing workforce authorities so that NASA can compete with the private sector in the labor market. That is just common sense.

Will changes in civil service laws solve all of NASA's workforce problems? Of course not. But NASA will not be better prepared to recruit and retain the workforce it needs if it is competing with one hand tied behind its back, as it is with current law.

This bill began as a proposal from NASA. We went over that proposal with a fine tooth comb, accepted some provisions, rejected others, and modified many more to clarify and target the new authority.

As a result of those negotiations and additional work in the other body, we

have finally ended up with the noncontroversial product that is before us today. A bill eagerly awaited by the administration, a bill that faces no opposition from organized labor, a bill that passed the Senate by unanimous consent.

□ 1100

In short, this is a bill that will make a real difference to NASA and the work we charge it to do without taking any untested approaches or crossing any ideological trip wires.

I should note that the bill before us is nearly identical to my original bill, H.R. 1085, as reported by the House Committee on Science almost 6 months ago.

The most significant difference between the two measures is that S. 610 no longer includes a provision that would have increased the number of employees who could participate in a personnel demonstration project. We are trying to minimize the number of people that can be in a pilot project. If we do not limit the number, we end up having a universal project. NASA was never able to give us any sense of how it would use the requested new authority, and I have no regrets that it has not remained in the bill.

I probably should also point out that we never included in H.R. 1085 authority the administration sought to allow private sector employees to work as government employees for a set period of time. This reverse Intergovernmental Personnel Act program seemed destined to confuse further the line between contract and government workers that already bedevils NASA.

The result of these kinds of decisions, once again, is that we have before us a bill that is not the least bit controversial, but is no less significant for that. It took a lot of work to get us to this point, but it will be worth it.

I want to thank the gentleman from Virginia (Chairman TOM DAVIS) and the rest of the Committee on Government Reform for working so closely with us on this measure. The gentleman from Virginia (Mr. TOM DAVIS) had his own NASA provision as a part of a larger workforce bill, H.R. 1836.

I also want to thank the gentleman from Tennessee (Mr. GORDON), our new ranking member, for getting us off to such an amicable start. It has been a pleasure to work with the gentleman from Tennessee (Mr. GORDON) all these years, and I welcome him to this position of new responsibility and authority and am confident he will serve us all well in this post and will carry on the tradition that we have established in the Committee on Science of working across the aisle, working together to sort out things, to minimize our differences and maximize the opportunities we have to address real problems and deal with them responsibly.

The gentleman from Tennessee (Mr. GORDON) was willing to look at this bill afresh in light of the work we had done with the Senate and events that had transpired since our markup. As a result, we are coming to the floor as a team. Not everyone in this Chamber would have been willing to do that, and I greatly appreciate it.

I also want to thank the gentleman from California (Mr. ROHRABACHER), the chairman of our Subcommittee on Space and Aeronautics, who contributed important scholarship provisions to the bill, and to welcome the gentleman from Texas (Mr. LAMPSON), the new ranking member of the subcommittee, my friend and colleague.

Mr. Chairman, as I have mentioned, this bill is ready for the President's signature. I urge my colleagues to oppose any amendments that might arise and to give this bill the overwhelming support it deserves and that NASA so needs.

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

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

First, Mr. Chairman, let me thank the gentleman from New York (Mr. BOEHLERT), my chairman, for his kind remarks; and let me concur in that our committee has a long tradition of working in a bipartisan manner. I cannot think of anyone that I would rather work with than our chairman, and I look forward to continuing that progress for our country.

Mr. Chairman, the NASA workforce is a critical national asset. We need to ensure that its strength is maintained if NASA is to undertake all the challenging activities envisioned for it in the coming decades. NASA's workforce is a highly skilled workforce. They truly are rocket scientists.

Yet the NASA workforce is under stress. Those stresses include infrastructure that is aging and in need of repair and upgrading, diversion of resources from existing tasks to provide money for proposed new initiatives, and outsourcing and privatization agendas that call into question the agency's commitment to careers at NASA. Last year, I would have added another item to that list, namely, a lack of long-term goals for the agency.

However, President Bush has now proposed an initiative to go back to the Moon and then at some point in the future send humans to Mars. I have long supported the idea that the space program needs some clear and compelling long-term goals. So I welcome the President's decision to propose an initiative. Of course, setting goals is an important first step, but we will still need to assess whether or not the President's plan to achieve these goals is viable. We will have a better idea of that once the fiscal year 2005 budget request is released next week and once NASA provides more information on specifics of the initiative.

Clearly, it will not send a good signal to NASA's workforce if the new initiative winds up being paid for by cannibalizing other important NASA activities. It will not be fair to the NASA workforce if they are tasked with a set of challenging and ambitious goals and a budget that is inadequate to achieve those goals.

Turning to S. 610, the NASA Flexibility Act of 2003, I believe that it is an improvement over the legislation considered by the Committee on Science last year. It modifies or eliminates a number of provisions that I and other Members have found objectionable; and at the same time, we should not lull ourselves into believing that this bill will solve all of NASA's workforce problems. For example, S. 610 includes a number of enhanced recruitment and retention bonuses. Yet I have been troubled by the indications from NASA's own data that NASA may not be using its existing authorities to the fullest extent due to competing budgetary pressures at the various centers, pressures that may well be increased.

Apparently my concerns are shared by NASA's inspector general. He has initiated an investigation into the extent to which NASA is making use of its existing workforce authorities. I look forward to hearing the results of that investigation.

With respect to the space shuttle, under the President's plan, the civil servants and contract personnel supporting the shuttle program will see their jobs disappear over the next 6 years. The best of those employees are not going to wait around for the inevitable. That fact puts the onus on NASA's management to ensure that the critical skills needed to fly the shuttle safely will be retained over the entire period. I certainly hope that NASA has a credible shuttle workforce retention plan ready to go. If not, NASA's management needs to put one in place as soon as possible if we are to avoid a hemorrhaging of critical skills from the shuttle program.

Finally, I remain concerned that S. 610 is a bill focused solely on the NASA workforce. However, the leadership of NASA has argued strongly that they need this legislation to maintain a strong workforce. As a result of that and as a result of the gentleman from New York (Chairman BOEHLERT) graciously accepting some improvements to the bill, I will support passage of S. 610 today; and I will be watching over the coming years to make sure that NASA's performance on workforce issues matches its stated intentions.

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

Mr. BOEHLERT. Mr. Chairman, I yield 3 minutes to the gentleman from California (Mr. ROHRABACHER), the distinguished chairman of the Subcommittee on Space and Aeronautics.

Mr. ROHRABACHER. Mr. Chairman, I rise in support of S. 610, the NASA Flexibility Act of 2003. NASA engineers, scientists, and technicians have been the space agency's true pioneers. These talented men and women dedicated to pushing the technological envelope are credited with opening new vistas of progress for all of humankind. We must look at them as a valuable, valuable asset.

With the recent announcement of our President, NASA's workforce will again be looked upon to extend the reach of our capabilities, to extend our reach to the Moon and then farther on into the heavens. Let us hope that the can-do spirit of the past will be reawakened in NASA as a result of the President's visionary goals-setting coupled with what I consider to be a very pragmatic strategy as set forward by the President.

Let us hope the young people throughout America will hear the President's words and are excited and activated by this new goal-setting by the President of the United States and thus by the executive branch of the United States Government.

As we begin a new chapter in America's space experience, we are doing our job on the legislative end. S. 610 will help ensure that talented and creative people continue to commit their time and services to America's space effort so we can achieve the goals that I just referred to.

An aging workforce today threatens the future of our civil space program. In response to this impending crisis, this legislation calls for remedies aimed at helping NASA become more flexible in recruiting, retaining, and restructuring its workforce to address the agency's critical needs. For example, major provisions of the bill authorize NASA to provide greater pay and bonuses to individuals critical to the goals, missions, and objectives of the agency, as well as to authorize and set up a scholarship for a service program in which NASA can pay a student's tuition in exchange for accepting employment at NASA upon graduation; and I am particularly proud of that provision.

The gentleman from New York's (Chairman BOEHLERT) continuing leadership and all of his hard work have been making this reform possible; and given the administration's new vision for NASA, there is no better time for us to be tackling this workforce problem. I thank the chairman; I thank the ranking member; I thank the people on both sides of the aisle. We have worked on this in a bipartisan spirit, and this will give us the ability to accomplish great things in the future for our country.

Mr. GORDON. Mr. Chairman, I yield 5 minutes to the gentleman from Texas (Mr. LAMPSON), the new ranking member of the Subcommittee on Space and Aeronautics.

Mr. LAMPSON. Mr. Chairman, I thank the gentleman from Tennessee (Mr. GORDON), the ranking member, and want to commend him on his ascension to being ranking member on the Committee on Science and thank him not only for what he is going to be doing as ranking member but for the great work the gentleman has done on the committee along the way.

It is a pleasure also to work with the gentleman from New York (Chairman BOEHLERT) and the gentleman from California (Mr. ROHRABACHER), the chairman of the Subcommittee on Space and Aeronautics, as well; and I look forward to that.

Mr. Chairman, I rise in support of S. 610; and even though it does not address all of the important issues facing the NASA workforce, including those outlined by the gentleman from Tennessee (Mr. GORDON) earlier, it is the only NASA workforce bill that we are likely to get out of this Congress this year, and as such, I intend to support it.

When a House version of this workforce legislation was marked up by the Committee on Science last year, I objected to the lack of any challenging goals for NASA's human space flight program. I offered an amendment to establish some specific goals. Unfortunately, my amendment was defeated on a party-line vote. I thought that was a mistake, and now it appears that President Bush agrees with me; and he has announced this ambitious, long-term exploration initiative that mirrors my amendment in earlier legislation that I had introduced; and I am very pleased to see that happen.

The challenge, however, will be in turning those goals into a reality in a manner that does not damage NASA's other important programs or take away from our commitments to those members of society who do indeed need our help.

Mr. Chairman, NASA's management has said that they need this workforce legislation. I am prepared to support it because I deeply care about the hard-working, dedicated men and women who work at NASA and especially at the Johnson Space Center, and I want to do whatever might help them achieve their full potential. Yet simply increasing the size of the bonuses available to NASA employees is not a cure-all, especially if NASA is not making full use of its existing bonus authority, a possibility that is being investigated, as we speak, by NASA's inspector general.

I do not believe that NASA's best and brightest are motivated primarily by money anyway. Rather, I think it is the chance to work on cutting-edge research and development and to attempt the near impossible that attracts them to NASA, and that is what is going to keep them there.

I remember a year or so ago getting up and leaving our table at the committee hearing and going out into the audience and sitting with about 20 or 25 college students and asking them, when we were talking about financial benefits that would supposedly motivate them to go to work for NASA, what it was that they wanted to see, and the response was destination goals: it will give me an opportunity to live my dream, give me an opportunity to go work on something that will make a difference to society.

That is also why I was so upset a few years ago when the NASA leadership decided to cancel the X–38 crew return vehicle project. The X–38/CRV was an exciting example of NASA employees coming up with an innovative, low-cost way of meeting an important space station requirement, and they were working hard to turn it into a reality. Yet it was cancelled just as it was nearing completion, and I might add, at a greater cost than it would have taken to complete it. The dedicated NASA team that had worked on that project was broken up and dispersed.

So where are we now? It appears that after several years of false starts on a more expensive project for the X–38/CRV, NASA leadership has now decided to pay the Russians to provide the same capability, create jobs in Russia.

I sponsored legislation to allow the United States to use the Soyuz after the *Columbia* tragedy, to give more flexibility to the administration.

□ 1115

The Congress is going to have to revisit the Iran Nonproliferation Act if we are going to rely on Soyuz, as the administration wants, to get us to and from the Space Station after the Shuttle is retired in 2010.

So whatever we may think of the wisdom of sending U.S. taxpayer dollars to Russia, it certainly does not strike me as being the way to reward innovation by the NASA workforce. Quite the contrary.

I intend to take a close look at NASA's plans for the Space Station and the Space Shuttle as we review the fiscal 2005 budget request over the coming months. We owe it to the NASA workforce to ask the tough questions. We need to ensure that they are being given sensible plans to implement, as well as the tools to carry them out. In the meantime, I think that S. 610 represents an improvement over legislation that we considered earlier, and I am prepared to support it.

Mr. BOEHLERT. Mr. Chairman, I yield 3 minutes to the distinguished gentleman from Michigan (Mr. EHLERS), a very valued member of the Committee on Science.

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

Mr. Chairman, today I rise in strong support of S. 610, the NASA Flexibility Act. The Committee on Science chairman, the gentleman from New York (Mr. BOEHLERT), and the Committee on Government Reform chairman, the gentleman from Virginia (Mr. TOM DAVIS) are to be commended for working closely with our colleagues in the other body, as well as with NASA and NASA's unions, in crafting the moderate, targeted and careful package of civil service modifications that resulted in S. 610.

All proposals from NASA, its unions, the House and Senate were considered, refined, debated and discussed in a series of hearings in both the House and Senate committees. Differences were debated openly and in a straightforward manner. These measures were

carefully crafted after a year and a half of thorough deliberation. This has been an arduous process, but the outcome is an excellent piece of legislation with S. 610.

The real winner from all this hard work that went into this legislation will be the scientists and engineers at NASA. NASA is having a difficult time recruiting and retaining the best and the brightest workforce, as many NASA employees from the Apollo era have retired; and unfortunately, the bright, prospective, new talent we need in the agency is instead sometimes attracted to jobs paying more than the government can provide.

NASA does many amazing things, as the Mars exploration rovers have demonstrated, but the agency also faces a number of challenges in addressing the recommendations of the Columbia Accident Investigation Board report. S. 610 will help to revitalize the agency, and I ask all Members to support this bill.

Let me also mention another important aspect of this issue. We cannot do good science without good scientists, and we cannot do good engineering without good engineers. In our Nation, unfortunately, the engineering enrollments have been declining for 20 years, in a steady, slow decline. We are having problems in this Nation with getting good, bright engineers and scientists to do the work we need, not only at NASA but elsewhere.

I am very pleased that the President recognized this important factor in his State of the Union speech when he mentioned the need to improve math and science education in this Nation. Today, over half of the graduate students in science and engineering in our Nation are from other countries. Our students are not competing well on graduate student admissions. And when we trace it back, it is because they were not excited about science by the time they finished the K–12 system, even though many are excited going into it. We must address that problem.

We have addressed it to the best of our ability through math-science partnerships in the National Science Foundation and in the Department of Education. We must continue to support that, plus we also have to provide the resources for our Nation's teachers and our education system to provide the education that our future scientists and engineers need.

I believe a combination of improving our K–12 system plus this bill will be a great asset not only for NASA but also for our Nation in the years ahead.

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

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

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, for years we have been sounding the alarm that the Federal Government faces grave danger when it comes to losing highly specialized employees. NASA is certainly no exception. In fact, it leads the pack. Fifteen percent of NASA's workforce is currently eligible to retire. A quarter of the agency will be eligible to retire over the next 5 years. Scientists and engineers over 60 outnumber those under 30 by nearly three to one. The potential loss of institutional knowledge is staggering.

Why are we in the midst of a human capital crisis? When it comes to the kind of very smart, very well-educated, highly specialized people who work in our space program? It is largely because we are competing directly with the higher-paying private sector firms. But it is also because when it comes to the civil service, preserving traditions has become a tradition unto itself, and I think it is time to change that tradition.

NASA, as well as the country as a whole, scored a major victory this month by safely landing two unmanned rovers on the face of Mars. In order to make sure that NASA's successes such as this outweigh its failures, we need to provide NASA with as much flexibility as possible in order to recruit and retain the best and the brightest that this country has to offer for our space program.

The simple fact is that NASA's personnel policies are dated and are holding the agency back. The modernization that this bipartisan legislation promises marks a significant step in the right direction for NASA, for the government, for science and for taxpayers.

It has been over a year since NASA Administrator Sean O'Keefe first came to Capitol Hill requesting these much-needed personnel flexibilities. And while I wish we could have responded sooner, I am pleased to be here today to see the legislation finally making its way through the process.

The Committee on Government Reform, which I chair, marked up similar legislation last May, and the House Committee on Science marked up the legislation last July. I want to thank my friend and colleague, the chairman of the Committee on Science, the gentleman from New York (Mr. BOEHLERT) for his tremendous efforts in moving this important legislation forward, as well as the subcommittee chairman, the gentleman from California (Mr. ROHRABACHER), and the ranking minority members as well; and I look forward to working with them in the future to improve workforce flexibilities available to NASA, as well as to other Federal agencies that work to expand the frontier of science.

One of the difficulties we have in recruiting employees today for NASA and other agencies, is that when they go to a job fair and they talk to a college recruiter, by the time they go back and go through all the rules and regulations in hiring, sometimes background checks, it is months before they can put an offer on the table. In the meantime, the private sector is up there with hiring bonuses, and they are up there with an offer on the table immediately with a job guarantee. We cannot compete in that kind of environment.

I know some of my friends on the Committee on Science on the other side of the aisle are concerned about paying bonuses, but this is commonplace in the private sector with which we are competing. We are talking about some of the brightest people in the world, scientists, engineers, literally rocket scientists that we want running our space program. We do not want to go second tier with people who are salaried and getting bogged down making sometimes one-tenth of what they could make in the private sector. It does not work that way.

So I support this legislation, and I am proud to see it moving forward.

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

Mr. DAVIS of Illinois. Mr. Chairman, I yield myself such time as I may consume.

Mr. Chairman, in July 2001, the Office of Personnel Management updated its report entitled Human Resources Flexibilities and Authorities in the Federal Government. The report states that the government as a single employer remains sound public policy. Consequently, it is important to retain government-wide approaches, authorities, entitlements, and requirements in several areas, including collective bargaining, merit system principles, due process protections related to adverse actions and, among other things, veterans preference in employment and retention.

If, as the report states, government as a single employer is sound public policy, the overly broad and hastily developed human resources authorities granted to the Department of Homeland Security, the Department of Defense, and now the National Aeronautics and Space Administration, NASA, are simply not the best sound public policy.

That is not to say that the current civil service system is not in need of reform. It is. Members of Congress, their staffs and stakeholders have worked diligently to improve agency-specific reform proposals as they speed to enactment, but that is not the way to create a fair and equitable civil service. Congress, the Office of Personnel Management and Federal employee groups should be concentrating our efforts on government-wide reforms rather than agency-by-agency requests.

The bill being considered today is no exception. Although S. 610 has been greatly improved since its initial introduction, it serves only to further fragment the civil service. I applaud the fact that the bill includes a provision that mandates that NASA's Administrator submit a plan for OPM approval detailing the workforce needs of NASA, how NASA intends to use new workforce flexibilities to meet those needs,

and how the agency has utilized existing flexibilities.

NASA is also required to submit a workforce plan to Congress and provide it to all employees at least 60 days before exercising any of the flexibilities in the plan. These are very prudent steps for Congress to require NASA to take. However, they are steps that should have been taken before granting NASA the authority.

Mr. Chairman, I would urge that the Subcommittee on Civil Service and Agency Organization of the Committee on Government Reform exercise its authority over NASA and other agencies that have received new human capital flexibilities. If nothing else, we can examine how effective these agencies are in implementing these new flexibilities before granting them to other agencies.

There has been a great deal of effort to reach bipartisan agreement on this legislation. I commend the chairman of the Committee on Government Reform, the gentleman from Virginia (Mr. TOM DAVIS), and the ranking member, the gentleman from California (Mr. WAXMAN), for the leadership and civility that they have displayed. So I am going to vote in favor of this legislation and further urge that we continue to take a good, hard look at the implementation of these flexibilities before granting them to other agencies on an individual-by-individual agency request. I still believe that agency-wide reform throughout the entire government is the best approach.

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

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

Mr. Chairman, I want to conclude my remarks by thanking our very capable staff of the Committee on Science on our side, David Goldston and Chris Shank, and this was the last bill worked on by our deceased former counsel, Mr. Barry Berringer, who always gave so much, such great value added to the committee with his outstanding work.

We cannot function in this Congress without the commitment, the ability and the hard work of dedicated professional staff, and we are blessed in the Committee on Science. But we are not the only ones. All across Capitol Hill, the people and the background are there every single day working hard to prepare us to deal responsibly in shaping public policy.

So I want to conclude my remarks by thanking the staff for their outstanding work.

Mr. Chairman, I submit for the RECORD letters to and from myself and the Chairman of the Committee on Government Reform regarding the appointment of conferees on this bill.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON GOVERNMENT REFORM,
Washington, DC, January 27, 2004.

Hon. SHERWOOD L. BOEHLERT,
Chairman, Committee on Science, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for working with me in developing the H.R. 1085, the NASA Flexibility Act of 2003. As you know, the Committee on Government Reform reported the bill, H.R. 1836, the Civil Service and National Security Personnel Improvement Act. Included in that Act was Title III, Subtitle B, National Aeronautics and Space Administration. The House is scheduled to consider S. 610, the Senate companion to H.R. 1085 tomorrow. Although S. 610 has been held at the Speaker's desk it is my understanding that the bill would have been referred to the Committees on Science and on Government Reform.

I support moving this important legislation forward expeditiously; however, I do so only with the understanding that this procedural route should not be construed to prejudice the Committee on Government Reform's or the Committee on Science's jurisdictional interest and prerogatives on this bill or any other similar legislation.

I respectfully request your support for the appointment of outside conferees from the Committee on Government Reform should this bill or a similar bill be considered in a conference with the Senate. Finally, I would ask that you include a copy of our exchange of letters on this matter in the Congressional Record during floor consideration of S. 610. Thank you for your assistance and cooperation in this matter.

Sincerely,

TOM DAVIS,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON SCIENCE,
Washington, DC, January 27, 2004.

Hon. TOM DAVIS,
Chairman, Committee on Government Reform, House of Representatives, Washington, DC.

DEAR MR. CHAIRMAN: Thank you for your letter concerning H.R. 1085, the NASA Flexibility Act of 2003, and S. 610, the Senate's companion bill. As you know, the House will consider S. 610 on the floor tomorrow.

It is also my understanding that had S. 610 not been held at the Speaker's desk, it would have been referred to the Committee on Science and to the Committee on Government Reform. I agree that by agreeing to have the bill held at the desk, the Committee on Science and the Committee on Government Reform have not adversely affected their respective jurisdictional interests or their prerogatives in this bill or similar legislation.

I would be happy to support your request for conferees on this bill or similar legislation should a conference with the Senate become necessary.

Thank you for your consideration and attention to this bill.

Sincerely,

SHERWOOD BOEHLERT,
Chairman.

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

□ 1130

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

In conclusion, I want to thank the gentleman from Virginia (Mr. TOM DAVIS) and the gentleman from New York (Mr. BOEHLERT) for bringing forth a better bill, and also thank the gentleman from Texas (Mr. LAMPSON) for improving the bill and for the gentleman's accession as the ranking member on the Subcommittee on Space and Aeronautics and let the gentleman know he could not possibly find a better partner than the gentleman from California (Mr. ROHRABACHER) as the chairman of their subcommittee.

Again, I thank the gentleman from New York (Chairman BOEHLERT) for helping us make this a better bill. I want to say to our Members that I intend to support this bill and recommend that they support it in final passage.

Mrs. JO-ANN DAVIS of Virginia. Mr. Chairman, I am pleased to be here today to speak in favor of S. 610, the NASA Flexibility Act of 2003.

Since its creation in 1958, NASA has been the foremost symbol of American ingenuity, daring and accomplishment. Its talented employees have helped us explore new worlds and peek into distant galaxies. Time and again, NASA has shaped our Nation's future.

But in one respect, NASA is still stuck in the past. This bill will help us transform NASA's personnel system into a modern, flexible and responsive system, one that is absolutely necessary for a 21st Century workforce.

This legislation gives NASA powerful tools to win the recruitment and retention battles it faces everyday. Just last year, NASA Administrator Sean O'Keefe described the agency's personnel situation as ''alarming,'' given that 1 out of every 4 of the agency's scientists and engineers is eligible to retire, and that those above the age of 60 outnumber those below the age of 30 by a nearly 3-to-1 ratio. NASA faces a potential ''brain drain''—and that is not a scenario we can allow to happen.

By authorizing higher pay for certain exceptional employees, offering more vacation time to mid-career hires, and allowing for recruitment, retention and relocation bonuses, S. 610 addresses these concerns.

And this legislation has been created to address some of the concerns of employees, too. In exchange for these flexibilities, NASA is required to submit a written plan to the Office of Personnel Management stating the workforce needs of NASA, how NASA will use increased workforce flexibilities to meet those needs, and how NASA has used existing flexibilities. A workforce plan must also be submitted to Congress and to all employees at least 60 days before exercising any part of the plan. Prior to submitting a plan to Congress, however, a proposed plan must be provided to employee representatives and NASA is required to give their recommendations ''full and fair consideration.''

These are provisions that I had pushed for in the House version of this bill, H.R. 1085, and I am pleased that they will be included in the final version that is poised to become law.

Mr. Chairman, I urge passage of S. 610.

Ms. JACKSON-LEE of Texas. Mr. Chairman, it is with mild apprehension that I rise today in support of S. 610, the NASA Flexibility Act. My vote today is not really an endorsement of this bill. Instead it is a vote of confidence for the people at NASA, and a demonstration of my heart-felt desire to work together in a bipartisan fashion here in Congress, with the Administrator at NASA, and with the administration, to help NASA achieve the greatness of which it is capable.

NASA is at a turning point. The past two decades have seen drastic cuts in the NASA budgets and the NASA workforce. Its mission has been unambitious, and its programs have seemed to drift. We have lost two space shuttles and 14 brave astronauts. But today, there is unprecedented hope for the future. Two rovers on the surface of Mars are beaming back

data that could help us unlock some of the greatest mysteries of our universe. They have captured the imaginations of the American people, with over 30 million people logging on to the NASA website in the last weeks. The President has launched a dialog that could lead to a bold new mission for NASA, to go back to the Moon, then on to Mars, and beyond. The excitement in my district of Houston is palpable.

If we start this new phase on the right foot, there is nothing that NASA, driven by the American spirit, cannot accomplish. But if we stumble, we could set back human space exploration for generations. That would be tragic for our scientists, our society, and our economy.

When the Workforce Flexibility bill first came to us in the Science Committee, I was absolutely against it. It gave too much latitude to the Administrator to tinker with the loyal NASA workforce through huge demonstration projects. It allowed big bonuses for political appointees—and I don't hear anyone arguing that there is a critical need for more political appointees in this town. After some intense bipartisan work in the Science Committee, and with help from the unions, and with some strong leadership from Senator HOLLINGS, the most egregious parts of the bill have been removed.

But the most important reason I was against the bill before us in Fall, is that I felt it was irresponsible to give the Administrator of NASA the flexibility to move faster—when we had no idea where he was going. We were hearing that they needed the ability to bring in key personnel, but they couldn't tell us what project those people were going to work on, because NASA was severely lacking in vision and mission. This is why I and many other of our colleagues supported Congressman NICK LAMPSON's Space Exploration Act of 2003, which would have set a series of bold, yet attainable goals for NASA. I am pleased that the President has heard our call, and has put forth his plan for the future of the manned-space mission of NASA.

We are far from finalizing that plan, but there has been a surge of momentum and enthusiasm, and I hope we capitalize on it. The bold new mission will take creativity at every level of NASA. That is why I am lending my voice in support of this workforce bill. But I am still concerned. I hope this and future NASA administrators are judicious in their use of this new ''flexibility.'' My district is a stone's-throw from Johnson Space Center, and I consider the people there my friends and neighbors. They come to Houston out of a noble sense of purpose, to do something extraordinary and be a part of something unlike anything else in the history of this planet.

Sure, bonuses and travel expenses like those authorized in this bill can make it a bit more comfortable for those in government jobs—but that is not what will keep the best people at NASA. They want a sense of purpose—and that will come from a bold mission. They want a sense of community—and that will come from stability and fairness in the workplace. They want to feel that they are making a difference—and that will come from changing the culture at NASA so that bright thoughtful people are heard and respected. And they want to feel safe—and that will come from making safety a priority and not an afterthought as it has been in the past.

To make NASA all it should be, we will all need to work together. I will do my part, and by supporting this bill I am giving the Administrator the tools he says he needs to do his. But, I will be following closely as the future of NASA unfolds. Today we are hearing a new level of interest and commitment from the administration. However, as we have seen with education, and homeland security, and HIV/AIDS—often the words are not backed up by adequate funding and political capital. I hope that will not be the case with NASA.

This act creates scholarship for work programs that will help get the best young people to choose NASA for their careers. I hope various retention bonuses will enable the Administrator to encourage top people to stay through the transition that will occur over the next decade as we move from the space shuttle and the space station, into the work beyond. For example, we must harvest the talents of the fabulous space shuttle team in Houston, and not risk letting them run to private industry while Congress or the administration sits on its hands.

It should be an exciting year for NASA, and space enthusiasts around the world. I hope this act will help drive NASA to greatness. I support it and urge my colleagues to do the same.

Mr. GORDON. Mr. Chairman, I yield back the balance of my time.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the bill is considered read for amendment under the 5-minute rule.

The text of S. 610 is as follows:

S. 610

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''NASA Flexibility Act of 2003''.

SEC. 2. COMPENSATION FOR CERTAIN EXCEPTED PERSONNEL.

(a) IN GENERAL.—Subparagraph (A) of section 203(c)(2) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A)) is amended by striking ''the highest rate of grade 18 of the General Schedule of the Classification Act of 1949, as amended,'' and inserting ''the rate of basic pay payable for level III of the Executive Schedule,''.

(b) EFFECTIVE DATE.—The amendment made by this section shall take effect on the first day of the first pay period beginning on or after the date of enactment of this Act.

SEC. 3. WORKFORCE AUTHORITIES.

(a) IN GENERAL.—Subpart I of part III of title 5, United States Code, is amended by inserting after chapter 97, as added by section 841(a)(2) of the Homeland Security Act of 2002 (Public Law 107–296; 116 Stat. 2229), the following:

''CHAPTER 98—NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

''§ 9801. Definitions

''For purposes of this chapter—

''(1) the term 'Administration' means the National Aeronautics and Space Administration;

''(2) the term 'Administrator' means the Administrator of the National Aeronautics and Space Administration;

''(3) the term 'critical need' means a specific and important safety, management, engineering, science, research, or operations requirement of the Administration's mission that the Administration is unable to fulfill because the Administration lacks the appropriate employees because—

''(A) of the inability to fill positions; or

''(B) employees do not possess the requisite skills;

''(4) the term 'employee' means an individual employed in or under the Administration;

''(5) the term 'workforce plan' means the plan required under section 9802(a);

''(6) the term 'appropriate committees of Congress' means—

''(A) the Committees on Government Reform, Science, and Appropriations of the House of Representatives; and

''(B) the Committees on Governmental Affairs, Commerce, Science, and Transportation, and Appropriations of the Senate;

''(7) the term 'redesignation bonus' means a bonus under section 9804 paid to an individual described in subsection (a)(2) thereof;

''(8) the term 'supervisor' has the meaning given such term by section 7103(a)(10); and

''(9) the term 'management official' has the meaning given such term by section 7103(a)(11).

''§ 9802. Planning, notification, and reporting requirements

''(a) Not later than 90 days before exercising any of the workforce authorities made available under this chapter, the Administrator shall submit a written plan to the appropriate committees of Congress. Such plan shall be approved by the Office of Personnel Management.

''(b) A workforce plan shall include a description of—

''(1) each critical need of the Administration and the criteria used in the identification of that need;

''(2)(A) the functions, approximate number, and classes or other categories of positions or employees that—

''(i) address critical needs; and

''(ii) would be eligible for each authority proposed to be exercised under this chapter; and

''(B) how the exercise of those authorities with respect to the eligible positions or employees involved would address each critical need identified under paragraph (1);

''(3)(A) any critical need identified under paragraph (1) which would not be addressed by the authorities made available under this chapter; and

''(B) the reasons why those needs would not be so addressed;

''(4) the specific criteria to be used in determining which individuals may receive the benefits described under sections 9804 and 9805 (including the criteria for granting bonuses in the absence of a critical need), and

how the level of those benefits will be determined;

''(5) the safeguards or other measures that will be applied to ensure that this chapter is carried out in a manner consistent with merit system principles;

''(6) the means by which employees will be afforded the notification required under subsections (c) and (d)(1)(B);

''(7) the methods that will be used to determine if the authorities exercised under this chapter have successfully addressed each critical need identified under paragraph (1);

''(8)(A) the recruitment methods used by the Administration before the enactment of this chapter to recruit highly qualified individuals; and

''(B) the changes the Administration will implement after the enactment of this chapter in order to improve its recruitment of highly qualified individuals, including how it intends to use—

''(i) nongovernmental recruitment or placement agencies; and

''(ii) Internet technologies; and

''(9) any workforce-related reforms required to resolve the findings and recommendations of the Columbia Accident Investigation Board, the extent to which those recommendations were accepted, and, if necessary, the reasons why any of those recommendations were not accepted.

''(c) Not later than 60 days before first exercising any of the workforce authorities made available under this chapter, the Administrator shall provide to all employees the workforce plan and any additional information which the Administrator considers appropriate.

''(d)(1)(A) The Administrator may from time to time modify the workforce plan. Any modification to the workforce plan shall be submitted to the Office of Personnel Management for approval by the Office before the modification may be implemented.

''(B) Not later than 60 days before implementing any such modifications, the Administrator shall provide an appropriately modified plan to all employees of the Administration and to the appropriate committees of Congress.

''(2) Any reference in this chapter or any other provision of law to the workforce plan shall be considered to include any modification made in accordance with this subsection.

''(e) Before submitting any written plan under subsection (a) (or modification under subsection (d)) to the Office of Personnel Management, the Administrator shall—

''(1) provide to each employee representative representing any employees who might be affected by such plan (or modification) a copy of the proposed plan (or modification);

''(2) give each representative 30 calendar days (unless extraordinary circumstances require earlier action) to review and make recommendations with respect to the proposed plan (or modification); and

''(3) give any recommendations received from any such representatives under paragraph (2) full and fair consideration in deciding whether or how to proceed with respect to the proposed plan (or modification).

''(f) None of the workforce authorities made available under this chapter may be exercised in a manner inconsistent with the workforce plan.

''(g) Whenever the Administration submits its performance plan under section 1115 of title 31 to the Office of Management and Budget for any year, the Administration shall at the same time submit a copy of such plan to the appropriate committees of Congress.

''(h) Not later than 6 years after the date of enactment of this chapter, the Administrator shall submit to the appropriate committees of Congress an evaluation and analysis of the actions taken by the Administration under this chapter, including—

''(1) an evaluation, using the methods described in subsection (b)(7), of whether the authorities exercised under this chapter successfully addressed each critical need identified under subsection (b)(1);

''(2) to the extent that they did not, an explanation of the reasons why any critical need (apart from the ones under subsection (b)(3)) was not successfully addressed; and

''(3) recommendations for how the Administration could address any remaining critical need and could prevent those that have been addressed from recurring.

''(i) The budget request for the Administration for the first fiscal year beginning after the date of enactment of this chapter and for each fiscal year thereafter shall include a statement of the total amount of appropriations requested for such fiscal year to carry out this chapter.

''§ 9803. Restrictions

''(a) None of the workforce authorities made available under this chapter may be exercised with respect to any officer who is appointed by the President, by and with the advice and consent of the Senate.

''(b) Unless specifically stated otherwise, all workforce authorities made available under this chapter shall be subject to section 5307.

''(c)(1) None of the workforce authorities made available under section 9804, 9805, 9806, 9807, 9809, 9812, 9813, 9814, or 9815 may be exercised with respect to a political appointee.

''(2) For purposes of this subsection, the term 'political appointee' means an employee who holds—

''(A) a position which has been excepted from the competitive service by reason of its confidential, policy-determining, policy-making, or policy-advocating character; or

''(B) a position in the Senior Executive Service as a noncareer appointee (as such term is defined in section 3132(a)).

''§ 9804. Recruitment, redesignation, and relocation bonuses

''(a) Notwithstanding section 5753, the Administrator may pay a bonus to an individual, in accordance with the workforce plan and subject to the limitations in this section, if—

''(1) the Administrator determines that the Administration would be likely, in the absence of a bonus, to encounter difficulty in filling a position; and

''(2) the individual—

''(A) is newly appointed as an employee of the Federal Government;

''(B) is currently employed by the Federal Government and is newly appointed to another position in the same geographic area; or

''(C) is currently employed by the Federal Government and is required to relocate to a different geographic area to accept a position with the Administration.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed—

''(1) 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period multiplied by the service period specified under subsection (d)(1)(B)(i); or

''(2) 100 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a) as of the beginning of the service period.

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the individual entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating that amount; and

''(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

''(2) For purposes of determinations under subsections (b)(1) and (c)(1), the employee's service period shall be expressed as the number equal to the full years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(e) Before paying a bonus under this section, the Administration shall establish a plan for paying recruitment, redesignation, and relocation bonuses, subject to approval by the Office of Personnel Management.

''(f) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

''§ 9805. Retention bonuses

''(a) Notwithstanding section 5754, the Administrator may pay a bonus to an employee, in accordance with the workforce plan and subject to the limitations in this section, if the Administrator determines that—

''(1) the unusually high or unique qualifications of the employee or a special need of the Administration for the employee's services makes it essential to retain the employee; and

''(2) the employee would be likely to leave in the absence of a retention bonus.

''(b) If the position is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 50 percent of the employee's annual rate of basic pay (including comparability payments under sections 5304 and 5304a).

''(c) If the position is not described as addressing a critical need in the workforce plan under section 9802(b)(2)(A), the amount of a bonus may not exceed 25 percent of the employee's annual rate of basic pay (excluding comparability payments under sections 5304 and 5304a).

''(d)(1)(A) Payment of a bonus under this section shall be contingent upon the employee entering into a service agreement with the Administration.

''(B) At a minimum, the service agreement shall include—

''(i) the required service period;

''(ii) the method of payment, including a payment schedule, which may include a lump-sum payment, installment payments, or a combination thereof;

''(iii) the amount of the bonus and the basis for calculating the amount; and

''(iv) the conditions under which the agreement may be terminated before the agreed-upon service period has been completed, and the effect of the termination.

''(2) The employee's service period shall be expressed as the number equal to the full

years and twelfth parts thereof, rounding the fractional part of a month to the nearest twelfth part of a year. The service period may not be less than 6 months and may not exceed 4 years.

''(3) Notwithstanding paragraph (1), a service agreement is not required if the Administration pays a bonus in biweekly installments and sets the installment payment at the full bonus percentage rate established for the employee, with no portion of the bonus deferred. In this case, the Administration shall inform the employee in writing of any decision to change the retention bonus payments. The employee shall continue to accrue entitlement to the retention bonus through the end of the pay period in which such written notice is provided.

''(e) A bonus under this section may not be considered to be part of the basic pay of an employee.

''(f) An employee is not entitled to a retention bonus under this section during a service period previously established for that employee under section 5753 or under section 9804.

''(g) No more than 25 percent of the total amount in bonuses awarded under subsection (a) in any year may be awarded to supervisors or management officials.

''§ 9806. Term appointments

''(a) The Administrator may authorize term appointments within the Administration under subchapter I of chapter 33, for a period of not less than 1 year and not more than 6 years.

''(b) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration without further competition if—

''(1) such individual was appointed under open, competitive examination under subchapter I of chapter 33 to the term position;

''(2) the announcement for the term appointment from which the conversion is made stated that there was potential for subsequent conversion to a career-conditional or career appointment;

''(3) the employee has completed at least 2 years of current continuous service under a term appointment in the competitive service;

''(4) the employee's performance under such term appointment was at least fully successful or equivalent; and

''(5) the position to which such employee is being converted under this section is in the same occupational series, is in the same geographic location, and provides no greater promotion potential than the term position for which the competitive examination was conducted.

''(c) Notwithstanding chapter 33 or any other provision of law relating to the examination, certification, and appointment of individuals in the competitive service, the Administrator may convert an employee serving under a term appointment to a permanent appointment in the competitive service within the Administration through internal competitive promotion procedures if the conditions under paragraphs (1) through (4) of subsection (b) are met.

''(d) An employee converted under this section becomes a career-conditional employee, unless the employee has otherwise completed the service requirements for career tenure.

''(e) An employee converted to career or career-conditional employment under this section acquires competitive status upon conversion.

''§ 9807. Pay authority for critical positions

''(a) In this section, the term 'position' means—

''(1) a position to which chapter 51 applies, including a position in the Senior Executive Service;

''(2) a position under the Executive Schedule under sections 5312 through 5317;

''(3) a position established under section 3104; or

''(4) a senior-level position to which section 5376(a)(1) applies.

''(b) Authority under this section—

''(1) may be exercised only with respect to a position that—

''(A) is described as addressing a critical need in the workforce plan under section 9802(b)(2)(A); and

''(B) requires expertise of an extremely high level in a scientific, technical, professional, or administrative field;

''(2) may be exercised only to the extent necessary to recruit or retain an individual exceptionally well qualified for the position; and

''(3) may be exercised only in retaining employees of the Administration or in appointing individuals who were not employees of another Federal agency as defined under section 5102(a)(1).

''(c)(1) Notwithstanding section 5377, the Administrator may fix the rate of basic pay for a position in the Administration in accordance with this section. The Administrator may not delegate this authority.

''(2) The number of positions with pay fixed under this section may not exceed 10 at any time.

''(d)(1) The rate of basic pay fixed under this section may not be less than the rate of basic pay (including any comparability payments) which would otherwise be payable for the position involved if this section had never been enacted.

''(2) The annual rate of basic pay fixed under this section may not exceed the per annum rate of salary payable under section 104 of title 3.

''(3) Notwithstanding any provision of section 5307, in the case of an employee who, during any calendar year, is receiving pay at a rate fixed under this section, no allowance, differential, bonus, award, or similar cash payment may be paid to such employee if, or to the extent that, when added to basic pay paid or payable to such employee (for service performed in such calendar year as an employee in the executive branch or as an employee outside the executive branch to whom chapter 51 applies), such payment would cause the total to exceed the per annum rate of salary which, as of the end of such calendar year, is payable under section 104 of title 3.

''§ 9808. Assignments of intergovernmental personnel

''For purposes of applying the third sentence of section 3372(a) (relating to the authority of the head of a Federal agency to extend the period of an employee's assignment to or from a State or local government, institution of higher education, or other organization), the Administrator may, with the concurrence of the employee and the government or organization concerned, take any action which would be allowable if such sentence had been amended by striking 'two' and inserting 'four'.

''§ 9809. Science and technology scholarship program

''(a)(1) The Administrator shall establish a National Aeronautics and Space Administration Science and Technology Scholarship Program to award scholarships to individuals that is designed to recruit and prepare students for careers in the Administration.

''(2) Individuals shall be selected to receive scholarships under this section through a competitive process primarily on the basis of academic merit, with consideration given to financial need and the goal of promoting the participation of individuals identified in section 33 or 34 of the Science and Engineering Equal Opportunities Act.

''(3) To carry out the Program the Administrator shall enter into contractual agreements with individuals selected under paragraph (2) under which the individuals agree to serve as full-time employees of the Administration, for the period described in subsection (f)(1), in positions needed by the Administration and for which the individuals are qualified, in exchange for receiving a scholarship.

''(b) In order to be eligible to participate in the Program, an individual must—

''(1) be enrolled or accepted for enrollment as a full-time student at an institution of higher education in an academic field or discipline described in the list made available under subsection (d);

''(2) be a United States citizen or permanent resident; and

''(3) at the time of the initial scholarship award, not be an employee (as defined in section 2105).

''(c) An individual seeking a scholarship under this section shall submit an application to the Administrator at such time, in such manner, and containing such information, agreements, or assurances as the Administrator may require.

''(d) The Administrator shall make publicly available a list of academic programs and fields of study for which scholarships under the Program may be utilized and shall update the list as necessary.

''(e)(1) The Administrator may provide a scholarship under the Program for an academic year if the individual applying for the scholarship has submitted to the Administrator, as part of the application required under subsection (c), a proposed academic program leading to a degree in a program or field of study on the list made available under subsection (d).

''(2) An individual may not receive a scholarship under this section for more than 4 academic years, unless the Administrator grants a waiver.

''(3) The dollar amount of a scholarship under this section for an academic year shall be determined under regulations issued by the Administrator, but shall in no case exceed the cost of attendance.

''(4) A scholarship provided under this section may be expended for tuition, fees, and other authorized expenses as established by the Administrator by regulation.

''(5) The Administrator may enter into a contractual agreement with an institution of higher education under which the amounts provided for a scholarship under this section for tuition, fees, and other authorized expenses are paid directly to the institution with respect to which the scholarship is provided.

''(f)(1) The period of service for which an individual shall be obligated to serve as an employee of the Administration is, except as provided in subsection (h)(2), 24 months for each academic year for which a scholarship under this section is provided. Under no circumstances shall the total period of obligated service be more than 4 years.

''(2)(A) Except as provided in subparagraph (B), obligated service under paragraph (1) shall begin not later than 60 days after the individual obtains the educational degree for which the scholarship was provided.

''(B) The Administrator may defer the obligation of an individual to provide a period of service under paragraph (1) if the Administrator determines that such a deferral is appropriate. The Administrator shall prescribe

the terms and conditions under which a service obligation may be deferred through regulation.

''(g)(1) Scholarship recipients who fail to maintain a high level of academic standing, as defined by the Administrator by regulation, who are dismissed from their educational institutions for disciplinary reasons, or who voluntarily terminate academic training before graduation from the educational program for which the scholarship was awarded, shall be in breach of their contractual agreement and, in lieu of any service obligation arising under such agreement, shall be liable to the United States for repayment within 1 year after the date of default of all scholarship funds paid to them and to the institution of higher education on their behalf under the agreement, except as provided in subsection (h)(2). The repayment period may be extended by the Administrator when determined to be necessary, as established by regulation.

''(2) Scholarship recipients who, for any reason, fail to begin or complete their service obligation after completion of academic training, or fail to comply with the terms and conditions of deferment established by the Administrator pursuant to subsection (f)(2)(B), shall be in breach of their contractual agreement. When recipients breach their agreements for the reasons stated in the preceding sentence, the recipient shall be liable to the United States for an amount equal to—

''(A) the total amount of scholarships received by such individual under this section; plus

''(B) the interest on the amounts of such awards which would be payable if at the time the awards were received they were loans bearing interest at the maximum legal prevailing rate, as determined by the Treasurer of the United States,

multiplied by 3.

''(h)(1) Any obligation of an individual incurred under the Program (or a contractual agreement thereunder) for service or payment shall be canceled upon the death of the individual.

''(2) The Administrator shall by regulation provide for the partial or total waiver or suspension of any obligation of service or payment incurred by an individual under the Program (or a contractual agreement thereunder) whenever compliance by the individual is impossible or would involve extreme hardship to the individual, or if enforcement of such obligation with respect to the individual would be contrary to the best interests of the Government.

''(i) For purposes of this section—

''(1) the term 'cost of attendance' has the meaning given that term in section 472 of the Higher Education Act of 1965;

''(2) the term 'institution of higher education' has the meaning given that term in section 101(a) of the Higher Education Act of 1965; and

''(3) the term 'Program' means the National Aeronautics and Space Administration Science and Technology Scholarship Program established under this section.

''(j)(1) There is authorized to be appropriated to the Administration for the Program $10,000,000 for each fiscal year.

''(2) Amounts appropriated under this section shall remain available for 2 fiscal years.

''§ 9810. Distinguished scholar appointment authority

''(a) In this section—

''(1) the term 'professional position' means a position that is classified to an occupational series identified by the Office of Personnel Management as a position that—

''(A) requires education and training in the principles, concepts, and theories of the occupation that typically can be gained only through completion of a specified curriculum at a recognized college or university; and

''(B) is covered by the Group Coverage Qualification Standard for Professional and Scientific Positions; and

''(2) the term 'research position' means a position in a professional series that primarily involves scientific inquiry or investigation, or research-type exploratory development of a creative or scientific nature, where the knowledge required to perform the work successfully is acquired typically and primarily through graduate study.

''(b) The Administration may appoint, without regard to the provisions of section 3304(b) and sections 3309 through 3318, but subject to subsection (c), candidates directly to General Schedule professional, competitive service positions in the Administration for which public notice has been given (in accordance with regulations of the Office of Personnel Management), if—

''(1) with respect to a position at the GS–7 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant baccalaureate degrees, a baccalaureate degree in a field of study for which possession of that degree in conjunction with academic achievements meets the qualification standards as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.0 or higher on a 4.0 scale and a grade point average of 3.5 or higher for courses in the field of study required to qualify for the position;

''(2) with respect to a position at the GS–9 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position;

''(3) with respect to a position at the GS–11 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position; or

''(4) with respect to a research position at the GS–12 level, the individual—

''(A) received, within 2 years before the effective date of the appointment, from an accredited institution authorized to grant graduate degrees, a graduate degree in a field of study for which possession of that degree meets the qualification standards at this grade level as prescribed by the Office of Personnel Management for the position to which the individual is being appointed; and

''(B) achieved a cumulative grade point average of 3.5 or higher on a 4.0 scale in graduate coursework in the field of study required for the position.

''(c) In making any selections under this section, preference eligibles who meet the criteria for distinguished scholar appointments shall be considered ahead of nonpreference eligibles.

''(d) An appointment made under this authority shall be a career-conditional appointment in the competitive civil service.

''§ 9811. Travel and transportation expenses of certain new appointees

''(a) In this section, the term 'new appointee' means—

''(1) a person newly appointed or reinstated to Federal service to the Administration to—

''(A) a career or career-conditional appointment or an excepted service appointment to a continuing position;

''(B) a term appointment;

''(C) an excepted service appointment that provides for noncompetitive conversion to a career or career-conditional appointment;

''(D) a career or limited term Senior Executive Service appointment;

''(E) an appointment made under section 203(c)(2)(A) of the National Aeronautics and Space Act of 1958 (42 U.S.C. 2473(c)(2)(A));

''(F) an appointment to a position established under section 3104; or

''(G) an appointment to a position established under section 5108; or

''(2) a student trainee who, upon completion of academic work, is converted to an appointment in the Administration that is identified in paragraph (1) in accordance with an appropriate authority.

''(b) The Administrator may pay the travel, transportation, and relocation expenses of a new appointee to the same extent, in the same manner, and subject to the same conditions as the payment of such expenses under sections 5724, 5724a, 5724b, and 5724c to an employee transferred in the interests of the United States Government.

''§ 9812. Annual leave enhancements

''(a) In this section—

''(1) the term 'newly appointed employee' means an individual who is first appointed—

''(A) as an employee of the Federal Government; or

''(B) as an employee of the Federal Government following a break in service of at least 90 days after that individual's last period of Federal employment, other than—

''(i) employment under the Student Educational Employment Program administered by the Office of Personnel Management;

''(ii) employment as a law clerk trainee;

''(iii) employment under a short-term temporary appointing authority while a student during periods of vacation from the educational institution at which the student is enrolled;

''(iv) employment under a provisional appointment if the new appointment is permanent and immediately follows the provisional appointment; or

''(v) employment under a temporary appointment that is neither full-time nor the principal employment of the individual;

''(2) the term 'period of qualified non-Federal service' means any period of service performed by an individual that—

''(A) was performed in a position the duties of which were directly related to the duties of the position in the Administration which that individual will fill as a newly appointed employee; and

''(B) except for this section, would not otherwise be service performed by an employee for purposes of section 6303; and

''(3) the term 'directly related to the duties of the position' means duties and responsibilities in the same line of work which require similar qualifications.

''(b)(1) For purposes of section 6303, the Administrator may deem a period of qualified non-Federal service performed by a newly appointed employee to be a period of service of equal length performed as an employee.

''(2) A decision under paragraph (1) to treat a period of qualified non-Federal service as if

it were service performed as an employee shall continue to apply so long as that individual serves in or under the Administration.

''(c)(1) Notwithstanding section 6303(a), the annual leave accrual rate for an employee of the Administration in a position paid under section 5376 or 5383, or for an employee in an equivalent category whose rate of basic pay is greater than the rate payable at GS–15, step 10, shall be 1 day for each full biweekly pay period.

''(2) The accrual rate established under this subsection shall continue to apply to the employee so long as such employee serves in or under the Administration.

''§ 9813. Limited appointments to Senior Executive Service positions

''(a) In this section—

''(1) the term 'career reserved position' means a position in the Administration designated under section 3132(b) which may be filled only by—

''(A) a career appointee; or

''(B) a limited emergency appointee or a limited term appointee—

''(i) who, immediately before entering the career reserved position, was serving under a career or career-conditional appointment outside the Senior Executive Service; or

''(ii) whose limited emergency or limited term appointment is approved in advance by the Office of Personnel Management;

''(2) the term 'limited emergency appointee' has the meaning given under section 3132; and

''(3) the term 'limited term appointee' means an individual appointed to a Senior Executive Service position in the Administration to meet a bona fide temporary need, as determined by the Administrator.

''(b) The number of career reserved positions which are filled by an appointee as described under subsection (a)(1)(B) may not exceed 10 percent of the total number of Senior Executive Service positions allocated to the Administration.

''(c) Notwithstanding sections 3132 and 3394(b)—

''(1) the Administrator may appoint an individual to any Senior Executive Service position in the Administration as a limited term appointee under this section for a period of—

''(A) 4 years or less to a position the duties of which will expire at the end of such term; or

''(B) 1 year or less to a position the duties of which are continuing; and

''(2) in rare circumstances, the Administrator may authorize an extension of a limited appointment under—

''(A) paragraph (1)(A) for a period not to exceed 2 years; and

''(B) paragraph (1)(B) for a period not to exceed 1 year.

''(d) A limited term appointee who has been appointed in the Administration from a career or career-conditional appointment outside the Senior Executive Service shall have reemployment rights in the agency from which appointed, or in another agency, under requirements and conditions established by the Office of Personnel Management. The Office shall have the authority to direct such placement in any agency.

''(e) Notwithstanding section 3394(b) and section 3395—

''(1) a limited term appointee serving under a term prescribed under this section may be reassigned to another Senior Executive Service position in the Administration, the duties of which will expire at the end of a term of 4 years or less; and

''(2) a limited term appointee serving under a term prescribed under this section may be reassigned to another continuing Senior Executive Service position in the Administration, except that the appointee may not serve in 1 or more positions in the Administration under such appointment in excess of 1 year, except that in rare circumstances, the Administrator may approve an extension up to an additional 1 year.

''(f) A limited term appointee may not serve more than 7 consecutive years under any combination of limited appointments.

''(g) Notwithstanding section 5384, the Administrator may authorize performance awards to limited term appointees in the Administration in the same amounts and in the same manner as career appointees.

''§ 9814. Qualifications pay

''(a) Notwithstanding section 5334, the Administrator may set the pay of an employee paid under the General Schedule at any step within the pay range for the grade of the position, if such employee—

''(1) possesses unusually high or unique qualifications; and

''(2) is assigned—

''(A) new duties, without a change of position; or

''(B) to a new position.

''(b) If an exercise of the authority under this section relates to a current employee selected for another position within the Administration, a determination shall be made that the employee's contribution in the new position will exceed that in the former position, before setting pay under this section.

''(c) Pay as set under this section is basic pay for such purposes as pay set under section 5334.

''(d) If the employee serves for at least 1 year in the position for which the pay determination under this section was made, or a successor position, the pay earned under such position may be used in succeeding actions to set pay under chapter 53.

''(e) Before setting any employee's pay under this section, the Administrator shall submit a plan to the Office of Personnel Management and the appropriate committees of Congress, that includes—

''(1) criteria for approval of actions to set pay under this section;

''(2) the level of approval required to set pay under this section;

''(3) all types of actions and positions to be covered;

''(4) the relationship between the exercise of authority under this section and the use of other pay incentives; and

''(5) a process to evaluate the effectiveness of this section.

''§ 9815. Reporting requirement

''The Administrator shall submit to the appropriate committees of Congress, not later than February 28 of each of the next 6 years beginning after the date of enactment of this chapter, a report that provides the following:

''(1) A summary of all bonuses paid under subsections (b) and (c) of section 9804 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

''(2) A summary of all bonuses paid under subsections (b) and (c) of section 9805 during the preceding fiscal year. Such summary shall include the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount, under each of those subsections.

''(3) The total number of term appointments converted during the preceding fiscal year under section 9806 and, of that total number, the number of conversions that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(4) The number of positions for which the rate of basic pay was fixed under section 9807 during the preceding fiscal year, the number of positions for which the rate of basic pay under such section was terminated during the preceding fiscal year, and the number of times the rate of basic pay was fixed under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(5) The number of scholarships awarded under section 9809 during the preceding fiscal year and the number of scholarship recipients appointed by the Administration during the preceding fiscal year.

''(6) The total number of distinguished scholar appointments made under section 9810 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(7) The average amount paid per appointee, and the largest amount paid to any appointee, under section 9811 during the preceding fiscal year for travel and transportation expenses.

''(8) The total number of employees who were awarded enhanced annual leave under section 9812 during the preceding fiscal year; of that total number, the number of employees who were serving in a position addressing a critical need described in the workforce plan pursuant to section 9802(b)(2); and, for employees in each of those respective groups, the average amount of additional annual leave such employees earned in the preceding fiscal year (over and above what they would have earned absent section 9812).

''(9) The total number of appointments made under section 9813 during the preceding fiscal year and, of that total number, the number of appointments that were made to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(10) The number of employees for whom the Administrator set the pay under section 9814 during the preceding fiscal year and the number of times pay was set under such section to address a critical need described in the workforce plan pursuant to section 9802(b)(2).

''(11) A summary of all recruitment, relocation, redesignation, and retention bonuses paid under authorities other than this chapter and excluding the authorities provided in sections 5753 and 5754 of this title, during the preceding fiscal year. Such summary shall include, for each type of bonus, the total amount of bonuses paid, the total number of bonuses paid, the percentage of the amount of bonuses awarded to supervisors and management officials, and the average percentage used to calculate the total average bonus amount.''.

(b) CLERICAL AMENDMENT.—The table of chapters for part III of title 5, United States Code, is amended by adding at the end the following:

''98. National Aeronautics and Space Administration ..... 9801''.

The CHAIRMAN. During consideration of the bill for amendment, the Chair may accord priority in recognition to a Member offering an amendment that he has printed in the designated place in the CONGRESSIONAL RECORD. Those amendments will be considered read.

Are there any amendments to the bill?

AMENDMENT OFFERED BY MR. FLAKE

Mr. FLAKE. Mr. Chairman, I offer an amendment.

The Clerk read as follows:

Amendment offered by Mr. FLAKE:

Page 9, after line 15, insert the following:

''(j) The budget requests for the Administration for the second fiscal year beginning after the date of enactment of this chapter and for each fiscal year thereafter shall include a statement that demonstrates that the amount that was requested to carry out this chapter for the previous year was equal to or less than reductions in specific item budget requests made for that same year.

Page 42, line 2, strike the closing quotation marks and the last period.

Page 42, after line 2, insert the following:

''(12) A statement including the following:

''(A) The total amount of appropriations requested for the previous fiscal year to carry out this chapter.

''(B) Total outlays expended during the previous fiscal year to carry out this chapter.

''(C) A summary of all cost-cutting initiatives implemented and carried out by the Administration during the previous fiscal year to carry out this chapter.

''(D) An estimate of the total amount of appropriations to be requested by the Administration for the next fiscal year to carry out this chapter.

''(E) A written plan to implement cost-cutting initiatives during the next fiscal year to carry out this chapter. Such plan shall demonstrate that the estimated savings resulting from cost-cutting initiatives to be implemented during the next fiscal year shall be equal to or exceed the estimate of the appropriations request for the next fiscal year to carry out this chapter.''.

Mr. FLAKE. Mr. Chairman, what the Flake amendment does, and I listened to the discussion about the merits of the bill, and I am compelled that we do need to do this. This is a good bill. We need to give NASA the flexibility they need to hire good people and retain them. I am not questioning the merits of the bill at all. I am simply saying in this era of big deficits and the spending problem that we have in Congress, we ought to ensure that any new authorization is met with some spending restraint on the other side and we pay for the money we are spending here.

The Flake amendment would require NASA to submit to Congress a plan to offset new spending authorized under this legislation with budget reductions elsewhere in the NASA budget. The Flake amendment gives NASA the flexibility to choose which budget request to target for reduction. We are not telling them how to do it; we are simply saying please match this funding with similar reductions.

The report that NASA must give when they get this money must demonstrate that spending requests for provisions authorized under this legislation are matched with corresponding budget cuts in other specific budget items. Adoption of the Flake amendment gives Congress the opportunity to ensure that new spending authorization for must-have workplace flexibility is met with spending restraints.

The CBO estimates that S. 610 will cost $80 million over the 2004–2008 period. There has been no indication that the new authorized spending will be prioritized against the spending accounts. While the workforce flexibility afforded to NASA under S. 610 is positive and market-oriented, NASA should identify areas of spending that can be reduced to offset new costs.

In November, Congress passed a $400 billion Medicare bill. The Senate passed the final omnibus package which totaled over $370 billion in spending. That has been signed into law. Two days ago, the CBO announced that we have a $477 billion projected deficit. If you include draws on the trust fund, that brings it all of the way up to just under $700 billion for the coming year. It is time to exercise some fiscal restraint. That is what the Flake amendment is designed to do.

Mr. BOEHLERT. Mr. Chairman, I rise in opposition to the amendment.

I want to thank the gentleman for his explanation of the amendment. The gentleman from Arizona is a very thoughtful Member, and he contributes significantly to the deliberations of this body. However, let me say a couple of things.

First of all, this legislation will give flexibility to NASA to work within the existing constraints. No new money, we are not coming up with a ton of new money or anything else. We are saying they have an existing budget for personnel and they have more flexibility with it. We are treating them like a business. I think that is very important.

We have to stem the tide of this brain drain. It is very serious. As the gentleman from Virginia (Mr. TOM DAVIS) pointed out, within 5 years, 25 percent of the workforce is eligible for retirement. We have 15 percent eligible for retirement right now. Those over 60 outnumber by three to one those under 30. It is a very serious problem. We tried to address it in a very responsible way. We did not address like some people around here suggest we address problems, give them a blank check. We did not do that. We said, no, they have to use their existing personnel accounts, no additional money; but we give them flexibility. Having said that, let me point out something else. There is a very practical reason why we should not accept this amendment and should go forward today. We have to get the bill to the President for his signature. This is a bill that has passed unanimously in the Senate, a bill that is going to pass by substantial margin here in the House, hopefully unanimously.

If we amend it, here is what is going to happen. This is something which has been cooking for months now. We just got the amendment today, and that is why I appreciate the explanation. I had not seen the amendment before. We received a thorough, sound, reasoned explanation; but if we pass this amendment, the bill is amended, and it goes back to the Senate, and we start all over again back and forth like a ping-pong match. We have preconferenced this bill. We worked it out with the Senate. They send it back here, we vote ''aye'' today, it goes to the President, he signs it, and we get on with the job of giving NASA the flexibility it needs.

I would urge my colleagues to vote against the amendment. I thank the gentleman from Arizona (Mr. FLAKE) for his thoughtful presentation.

Mr. FLAKE. Mr. Chairman, will the gentleman yield?

Mr. BOEHLERT. I yield to the gentleman from Arizona.

Mr. FLAKE. Mr. Chairman, I think it is not unreasonable to ask to go back to the Senate. I think Members agree this flexibility is needed. It is market-oriented. We need to make sure that NASA retains and hires good people.

Many of my colleagues that I have spoken to in the last day on this subject have indicated that they were informed this would not cost anything, this would be totally from NASA's own budget. Yet the CBO estimates that it will cost $80 billion over the next 4 years. If that is the case that it draws only on NASA's budget, if it is the case that it does not cost anything, I would submit that there is no problem here, that it does not increase spending.

So all our amendment says is to the degree it does, if it is going to increase spending and if we are going to have to authorize new spending, it should be matched with spending reductions elsewhere in the budget.

The NASA budget for personnel is $2 billion a year. I do not believe it is unreasonable to ask for those kinds of spending reductions.

Mr. TOM DAVIS of Virginia. Mr. Chairman, will the gentleman yield?

Mr. BOEHLERT. I yield to the gentleman from Virginia.

Mr. TOM DAVIS of Virginia. Mr. Chairman, my question is what are the CBO costs on this?

Mr. FLAKE. Mr. Chairman, will the gentleman yield?

Mr. BOEHLERT. I yield to the gentleman from Arizona.

Mr. FLAKE. Mr. Chairman, I would say to the gentleman that the personnel costs for NASA are $2 billion per year, with a ''B.'' The costs that CBO projects for this are $80 million.

Mr. BOEHLERT. Reclaiming my time, that is within the existing personnel allocation. This is not additional money, additional to the $2 billion. They are saying if NASA took advantage of all these programs, scholarships, retention incentives, moving expenses, the types of things that happen every single day in the business community, they have to do it with the existing personnel budget, no new money.

I am like the gentleman from Arizona, perhaps not as fiscally conservative, but I am moving in that direction. But the point is this does not add money; it allows more flexibility. The estimates that the gentleman from Arizona are referring to are estimates on what this could cost from the existing budget by using the flexibility that we are proposing.

Mr. TOM DAVIS of Virginia. Mr. Chairman, I move to strike the last word.

Again, the gentleman from Arizona (Mr. FLAKE) and I have worked together on so many battles. I respect what the gentleman is trying to do here, but I have to oppose this amendment for several reasons.

First of all, as the chairman of the Committee on Science noted, if we amend this bill today, it goes back to the other body, the black hole. We have been waiting a long time to get these personnel changes into effect so we can go out and retain part of that workforce that is now contemplating retiring, and we can start retaining the best and brightest out of our universities. Every day we delay that, we lose flexibility to do that.

The NASA budget is $15.5 billion. The personnel costs are only $2 billion. If we want to go after NASA's budget or start holding it down, the way to control that is by their section 302(b) allocation through the appropriations process. It is designed that NASA will eat these costs under the current appropriations. They may pay a little more for personnel in some areas and may pay less in some areas, but they have to do it under the budget that we pass. This appropriates no additional money, but it does give them flexibility to pay people at the top, our top rocket scientists, top engineers, and top program managers, the kind of dollars that will keep them in the program and recruit some of our best people into our space program instead of going out into the private sector where they can gain a lot more money.

The costs of failure of not doing this are much greater. A failed launch, cost delays, those costs are literally astronomical, if we are to do that; and that is what we are trying to eliminate here, the downside of not passing this. It is a cost-avoidance issue.

We control this through the budget process, the section 302(b) allocations that we make and budget, and there are no additional monies appropriated. These costs will be eaten up within the NASA budget, and there is plenty of flexibility to do this. There is a $15.5 billion budget, $2 billion for personnel costs, and $80 million can be reallocated without any additional cost to American taxpayers; and we can retain and recruit some of the quality people that are needed to run this space program and keep it going on the right track.

It is for those reasons that I urge my colleagues to vote against this amendment.

Mr. GORDON. Mr. Chairman, I move to strike the requisite number of words.

Mr. Chairman, we were not given notice of this amendment; but on quick and brief review, it seems to be a well-intentioned amendment that does not improve the bill. It seeks to solve a problem that does not exist, so I want to concur with the gentleman from Virginia (Mr. TOM DAVIS) and the gentleman from New York (Mr. BOEHLERT) in opposing this amendment.

Mr. FLAKE. Mr. Chairman, I ask unanimous consent to strike the requisite number of words.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

Mr. FLAKE. Mr. Chairman, I would like to engage in a colloquy with the sponsor of the bill. There seems to be some confusion as to whether or not this is new authorization for additional spending over and above NASA's personnel costs which have already been approved.

Mr. BOEHLERT. Mr. Chairman, will the gentleman yield?

Mr. FLAKE. I yield to the gentleman from New York.

□ 1145

Mr. BOEHLERT. Mr. Chairman, that is a legitimate concern expressed by the gentleman. Let me assure him, this is not additional money. This says to NASA, using your existing personnel allocation, we are giving you flexibility.

We say constantly, why does government not operate more like business, like they do in the real world? We are trying to give NASA that opportunity. We are not giving them a blank check. We are not giving them the key to the Treasury. We are just saying, existing dollars, you have more flexibility to retain the workforce you need to do the job we expect you to do.

Mr. FLAKE. Let me rephrase the question. If NASA takes advantage of the new flexibility given them to the fullest extent, will it have an additional draw on the Treasury or will it be totally within NASA's existing budget?

Mr. BOEHLERT. My counsel just advises me, it depends on what the appropriators do in future appropriations. But the answer is clearly ''no.'' I know what the gentleman's intent is, his intent as I understand it, and that is why I appreciate the thoughtful presentation he gave on the floor today. I wish we had had it earlier. As Chairman ROHRABACHER has said, he takes a back seat to no one in being concerned about how we spend money around here.

So I agree with the basic intention. It is not to have additional money spent for NASA on personnel. It is to give them flexibility on the existing money we appropriate for them. Who knows, with the President's vision outlined, for this new Mars vision, eventually a generation or two ahead of us and the Moon in this generation, if the Congress decides to be supportive of that, there are going to be budget differences; but I want to assure the gentleman that our intent is to give NASA the flexibility to use existing dollars, not to add to the allocation or appropriation for NASA on personnel or any other thing.

Mr. FLAKE. So the CBO estimates of the cost are simply within NASA's own budget?

Mr. BOEHLERT. That is right.

Mr. FLAKE. With that explanation, I will withdraw the amendment assuming that we are on the same page.

Mr. BOEHLERT. I thank the gentleman.

Mr. FLAKE. Mr. Chairman, I ask unanimous consent to withdraw the amendment.

The CHAIRMAN. Is there objection to the request of the gentleman from Arizona?

There was no objection.

The CHAIRMAN. Are there any other amendments?

Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. FLAKE) having assumed the chair, Mr. ISAKSON, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 610) to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes, pursuant to House Resolution 502, he reported the Senate bill back to the House.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, was read the third time, and passed, and a motion to reconsider was laid on the table.

RECESS

The SPEAKER pro tempore. Pursuant to clause 12(a) of rule I, the Chair declares the House in recess subject to the call of the Chair.

Accordingly (at 11 o'clock and 49 minutes a.m.), the House stood in recess subject to the call of the Chair.

□ 1300

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. LAHOOD) at 1 p.m.

MESSAGE FROM THE PRESIDENT

A message in writing from the President of the United States was communicated to the House by Ms. Wanda Evans, one of his secretaries.

PROVIDING FOR CONSIDERATION OF S. 1920, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2003

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 503 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 503

Resolved, That at any time after the adoption of this resolution the Speaker may, pursuant to clause 2(b) of rule XVIII, declare the House resolved into the Committee of the Whole House on the state of the Union for consideration of the bill (S. 1920) to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted. The first reading of the bill shall be dispensed with. General debate shall be confined to the bill and the amendments made in order by this resolution and shall not exceed one hour equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. After general debate the bill shall be considered for amendment under the five-minute rule. It shall be in order to consider as an original bill for the purpose of amendment under the five-minute rule an amendment in the nature of a substitute consisting of the text of H.R. 975 as passed by the House. That amendment in the nature of a substitute shall be considered as read. All points of order against that amendment in the nature of a substitute are waived. No amendment to that amendment in the nature of a substitute shall be in order except those printed in the report of the Committee on Rules. Each such amendment may be offered only in the order printed in the report, may be offered only by a Member designated in the report, shall be considered as read, shall be debatable for the time specified in the report equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question in the House or in the Committee of the Whole. All points of order against such amendments are waived. At the conclusion of consideration of the bill for amendment the Committee shall rise and report the bill to the House with such amendments as may have been adopted. Any Member may demand a separate vote in the House on any amendment adopted in the Committee of the Whole to the bill or to the amendment in the nature of a substitute made in order as original text. The previous question shall be considered as ordered on the bill and amendments thereto to final passage without intervening motion except one motion to recommit with or without instructions.

SEC. 2. If the Senate bill, as amended, is passed, then it shall be in order to move that the House insist on its amendment to S. 1920 and request a conference thereon.

The SPEAKER pro tempore. The gentleman from Texas (Mr. SESSIONS) is recognized for 1 hour.

Mr. SESSIONS. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to the gentleman, my friend, from Massachusetts (Mr. MCGOVERN), pending which I yield myself such time as I may consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, the resolution before us today is a fair rule that provides 1 hour of general debate on the bill and on the amendments made in order under the rule to be equally divided and controlled by the chairman and ranking minority member of the Committee on the Judiciary. It provides that it shall be in order to consider as an original bill for the purpose of amendment under the 5-minute rule a substitute amendment consisting of H.R. 975 as passed by the House, and it shall be considered as read.

The rule waives all points of order against the amendment in the nature of a substitute and makes in order only the amendments preprinted in the Committee on Rules report. It provides that the amendments made in order may be offered only in the order printed in the report and may be offered only by a Member designated in the report, and shall be considered as read and debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent.

The rule also provides that these amendments shall not be subject to amendment and shall not be subject to a demand for a division of the question in the House or in the Committee of the Whole. It waives all points of order against the amendments preprinted in the report, provides one motion to recommit with or without instructions, and provides that if the Senate bill, as amended, is passed, then it shall be in order to move that the House insist on its amendment to S. 1920 and to request a conference thereon.

Mr. Speaker, I am pleased today that this House will have the opportunity to once again during the 108th Congress consider and send to the Senate much-needed bankruptcy reform legislation under this fair rule. I am proud of the tireless efforts on behalf of many Members and their staffs, who have put in countless hours towards the passage of this legislation over the last four Congresses.

Their efforts allow us today to again urge Senate action to ensure that our Nation's bankruptcy laws operate fairly, efficiently, and free of abuse. Congress has the opportunity to once again end, once and for all, the loophole to debtors who are able to repay some portion of their debts to game the system and increase the cost of credit, goods and services for other law-abiding citizens. Between 2002 and 2003, the Federal court system reported that there was a 9.6 percent increase in bankruptcy filings to over 1.650 million filings, and these filings have a real cost not only to every consumer but also to simple, everyday Americans.

In 1998, debtors who filed for bankruptcy relief discharged more than $44 billion of debt. When amortizing on a daily basis, this amounts to a loss of at least $110 million every day; or put more simply, bankruptcies cost each American family that pays their bills on time $450 a year in the form of higher costs for credit, goods and services. As the other body continues to stall on this legislation to protect the system from further abuse, these numbers and totals only continue to mount.

It has been estimated that if current practices continue, one out of every seven households will have filed for bankruptcy by the end of this decade, with many of these losses as a result of the misuse of the law by irresponsible, high-income filers. The Credit Union National Association, known as CUNA, reported last year that credit unions have lost nearly $3 billion from bankruptcies since Congress began considering bankruptcy reform legislation in 1998.

We should not forget the other indirect costs associated with bankruptcy fraud. Because the law currently allows people to game the system for their own benefit, the number of Federal bankruptcy filings per judgeship has increased from 71.1 percent, from 2,998 per Federal judge in 1992 to 5,130 in 2003, the largest caseload in our Federal court system. This backlog in this workflow slows down the progress for a countless number of legitimate bankruptcy filings and increases disrespect for the entire judicial system.

This bill is crafted to ensure the debtor's right to a fresh start while protecting the system from flagrant abusers by those who can, should, and, we believe, will be paying their own bills. Bankruptcy should not be a convenience or just another financial planning tool, and this legislation will ensure that it will remain a safety net for those who genuinely need it while trying to prevent bad actors from imposing their costs on everyone else.

Congress has spoken on this issue many times before. As is widely known, Mr. Speaker, the 105th, 106th and 107th Congresses passed legislation addressing bankruptcy reform. In the 105th Congress, the conference passed the House, but time expired before the Senate voted on final passage. In the 106th Congress, a conference report received overwhelming bipartisan support in both Chambers. However, President Clinton chose to pocket veto the bill. In the 107th Congress, and again earlier this last year, we came extremely close again to the final passage of a conference report; but in the end, it was not accomplished.

Today, due to the outstanding work and leadership of our Committee on the Judiciary chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), we have the historic opportunity to make modern bankruptcy reform a reality.

As we debate and vote today, we should keep in mind the two important tenets fulfilled by this version of bankruptcy reform. First, the bankruptcy system should provide the amount of debt relief that an individual needs, no more and no less; and that bankruptcy should be a last resort and not a convenient response to a financial crisis.

One important part of this legislation that I would like to highlight is also known as the ''homestead provision.'' Protection of one's homestead is something that is very important to me and many people in Texas and other States across this great Nation. The homestead provision in this legislation maintains the long-held standard that allows States to decide if a homestead should be protected, yet prohibits those who would purchase a home before filing a bankruptcy as a means to

evade creditors. By tightening our current laws and making it more difficult to escape fraud by declaring bankruptcy, we are expressing no tolerance for those who would game the system to make up for their own wrongdoing.

Modern bankruptcy reform has taken a long and somewhat arduous journey, which makes the much-anticipated result of our work today even more rewarding. It has required not only hard work but also some difficult decisions on the part of this Congress. The result is what I believe to be a carefully balanced package that protects women, children, family farmers, low-income individuals, and provides access to bankruptcy for all Americans who have a legitimate need.

I believe that today's vote will finally make modern bankruptcy reform a reality.

Mr. Speaker, I urge my colleagues to vote with me in supporting this rule and the important underlying legislation.

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

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

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

Mr. MCGOVERN. Mr. Speaker, I want to thank the gentleman from Texas (Mr. SESSIONS) for yielding me the customary 30 minutes.

Mr. Speaker, I had hoped that the procedural abuses that marked the first session of the 108th Congress would be left behind. I had hoped that we would start the new year on a positive note. We have an opportunity today to come together from both sides of the aisle and pass good legislation to help the good people who are struggling to keep their family farms alive.

The Senate has sent us a simple one-page bill, a bipartisan, noncontroversial bill that would extend bankruptcy protections for America's struggling family farmers. We could pass S. 1920 as it is, and tonight it could be on the President's desk to be signed into law. That would restore the chapter 12 bankruptcy protections for family farmers that expired at the end of last year.

Instead, we have before us an election-year dog and pony show. House Republicans have replaced this simple bill to extend a helping hand to family farms with a controversial 500-page bankruptcy overhaul bill, the same legislation that this body passed in March of 2003. They have transformed a bill to help family farmers into a symbolic protest against the other body for not taking up the bankruptcy bill.

Mr. Speaker, the House has routinely approved extensions of chapter 12 so that our family farmers are protected from the hardships of the global economy and so they can access the necessary funds to run their farms. Now is the time of the year when farmers must borrow in order to prepare for spring planting. If this House fails to extend bankruptcy protections for our family farmers today, many will not be able to convince their local banks to provide them with the necessary cash and credit to buy new seed. It is that simple, Mr. Speaker.

Are we going to help our family farmers today? Are we going to pass the extension of chapter 12 that unanimously passed in the other body? Are we going to send it to the President today for his signature? Or are we going to engage in political theatrics and once again subvert the legislative process?

Several members of the other body have already announced that they will not, I repeat they will not, accept S. 1920 back if the House attaches the larger bankruptcy bill to it. So what are we doing here other than punishing and putting in peril the livelihoods of our family farmers?

Mr. Speaker, I would humbly like to make a suggestion to the Republican leadership. Instead of using struggling family farmers to send a message to the other body, I suggest that they simply walk across the Capitol and consult with their fellow Republican leaders in the other body.

□ 1315

They should leave family farmers who need this bankruptcy protection out of their disputes.

Mr. Speaker, we have many critical problems facing our Nation today. Unemployment, an economy that is not creating jobs, and a health care crisis are just a few of the problems we are facing here today. Instead of this piece of political theater this afternoon, we could help struggling American families by passing a clean version of S. 1920, and then we could take up measures to extend unemployment insurance. Instead, we continue to ignore the almost 8.5 million unemployed Americans and the thousands more who have lost hope and who have given up looking for a job.

People are losing their jobs, running out of unemployment compensation, and are being forced to pay their mortgages and buy food using their credit cards. Their personal debt becomes so great that they have no choice but to file for bankruptcy, which speaks to the need for genuine bankruptcy reform.

Instead of addressing the fundamental issues facing Americans, we are wasting our time with this political sleight of hand, rehashing a controversial bill that passed last year, but has no future in the other body. Family farmers are being used as political pawns. The procedures and rules of the other body are being disregarded and the rules of this body are being manipulated and twisted in the process.

Mr. Speaker, the language this rule substitutes for S. 1920, the language from H.R. 975, the larger bankruptcy reform bill passed last year, is still very flawed. The rhetoric around bankruptcy overhaul paints a vivid picture of scheming people running up huge debts, buying extravagant houses and expensive cars just before they run to their local bankruptcy court to avoid paying their bills. But the reality is that only 3 percent of people who file for bankruptcy are these kinds of cheaters.

In order to stop these 3 percent who abuse the system, this bill takes the dramatic, sweeping step of harming the 97 percent of the people who are forced to seek protection under the Bankruptcy Code because of illness, unemployment or divorce. In fact, nearly half of the people who file for bankruptcy protection do so because of medical bills and the financial consequences of illness or injury. Middle-class families are only one serious illness away from financial collapse, and the impact of medical costs is highest on women, families headed by women and among older people.

Mr. Speaker, I am also very disappointed that the substituted language still does not include provisions to hold perpetrators of violence against women's health care clinics accountable for their actions. As part of a coordinated strategy, perpetrators of clinic violence have filed for bankruptcy to avoid paying judgments against them for violating Federal law. This bill would allow them to discharge these judgments and get away with breaking Federal law and trampling the constitutional rights of women.

Mr. Speaker, the Congress should be seeking the enforcement of Federal law and protection for the meaningful exercise of constitutional rights, not attempting to undermine it.

Mr. Speaker, this body still has an opportunity to do the right thing by our family farmers. A substitute will be offered by our colleague, the gentlewoman from Wisconsin (Ms. BALDWIN), to permanently authorize Chapter 12 of the Bankruptcy Code, which would, once and for all, guarantee these bankruptcy protections for our farmers. I urge my colleagues on both sides of the aisle to support the Baldwin substitute and to stop holding our family farmers hostage in a game to coerce through legislation that primarily benefits wealthy corporate contributors at the expense of struggling farmers.

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

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

Mr. MCGOVERN. Mr. Speaker, I yield 5 minutes to the gentlewoman from California (Ms. LOFGREN).

Ms. LOFGREN. Mr. Speaker, there is only one reason why Republicans are seeking to attach H.R. 975, the 500-page bankruptcy bill, to S. 1920, a 2-page farm bankruptcy renewal. They want to force the Senate to agree to radical bankruptcy changes that do not include protections for women and abortion clinics.

The bankruptcy bill has been held up for the past 3 years because Republicans refuse to agree to the Schumer

amendment. The Schumer amendment, approved by the Senate by an 80-to-17 margin, prevents criminals convicted of crimes against women and abortion clinics from filing for bankruptcy protection to escape fines or civil judgments.

Since the Republican leadership does not have the vote to defeat the Schumer amendment, they want to use procedural tactics to prevent it from being considered at all. Today, I delivered a letter to the Speaker, signed by every Democratic woman Member of the House, 41 in all, stating our unity in opposing these tactics. It is wrong to hold family farmers hostage so the majority can push through a controversial bankruptcy bill that helps big banks and credit card companies. It is wrong to use procedural tactics to prevent an honest and open debate on language that would provide greater protections for women.

But it is not only Democratic women in the House who oppose these tactics; farmers do not want to be held hostage either. The National Farmers Union, the National Family Farm Coalition, and Farm Aid oppose the majority's tactics. The National Farmers Union said, ''Any delay in approving an extension of Chapter 12 places agricultural producers and their families who are faced with bankruptcy in a serious and untenable position. We understand there are some in Congress who wish to utilize the extension of the ag provisions as a means to leverage support for a broader bankruptcy reform measure that contains highly controversial and divisive provisions unrelated to the farm bankruptcy law. We reject this legislative strategy as an insensitive, cruel and malicious effort that will only serve to increase the level of distress of farm families who are already experiencing severe financial difficulties.''

And from the National Family Farm Coalition, I quote: ''We urge you to pass this 6-month extension and not hold family farmers hostage to the highly controversial overall bankruptcy reform bill. Every day of delay by Congress has a direct cost to our Nation's family farmers.''

And this from Farm Aid: ''The reasons for the creation of the separate Bankruptcy Code that enables farmers to stay on the land while reorganizing their farm operation is as urgent now as it was in 1986 when first created by Congress. This lapse in coverage directly results in farmers having to face foreclosure and liquidation instead of seeking a reasonable negotiation with their creditors that works for farm families, their creditors and businesses in their rural community.''

It is also opposed by unions and civil and women's rights organizations, like the AFL–CIO, AFSCME, Teamsters, United Auto Workers, the National Organization for Women, NARAL, Consumers Union, the Leadership Conference on Civil Rights and the NAACP.

It is not only the tactics that are the problem. H.R. 975 is a deeply flawed bill. It assumes that middle-class Americans who file for bankruptcy are spendthrifts that abuse the system, and that is not true. Over 91 percent of individuals who have filed for bankruptcy have suffered a recent job loss, medical problem or divorce. The leading cause of personal bankruptcy is unemployment. Two out of three individuals that file for bankruptcy have lost jobs. Half have experienced a serious health problem.

H.R. 975 will also hurt seniors. The average household debt for those over 65 and older has skyrocketed 164 percent, most of it related to medical costs. H.R. 975 also hurts women. In 1999, over 200,000 women filing for bankruptcy were owed child support or alimony.

The proponents of this bill say they want to restore personal responsibility and integrity to the bankruptcy system. Fine. But do not punish people who are in trouble because they lost a job or are dogged by huge medical bills or cannot get a deadbeat dad to pay child support. These are the people that account for a majority of personal bankruptcies, not spendthrifts abusing the system.

I urge my colleagues to oppose this rule and to oppose this attempt to hold family farmers hostage to help big banks and credit card companies.

Mr. MCGOVERN. Mr. Speaker, I yield 4 minutes to the distinguished gentlewoman from Wisconsin (Ms. BALDWIN).

Ms. BALDWIN. Mr. Speaker, I thank the gentleman for yielding me this time, and I rise today to oppose the rule.

I strongly oppose this rule because it would delay the renewal of Chapter 12 family farm bankruptcy protection that is needed desperately by our family farmers. We should not be amending this bill and sending it back to the other body for more debate. This House should take up the 6-month extension bill, pass it without amendment, and send it to the President immediately. Chapter 12 farm bankruptcy protection expired on December 31, 2003. There is no good excuse for additional delay of Chapter 12 extension.

The Committee on the Judiciary chairman, the House leadership and the financial services industry have proposed under this rule that we gut this noncontroversial 6-month extension bill before us to try to force a conference committee on the massive bankruptcy overhaul bill. Groups representing family farmers are opposed to this parliamentary maneuver that will delay the extension of Chapter 12 protection.

On January 23, the National Farmers Union wrote to Speaker HASTERT and Minority Leader Pelosi that ''We reject this legislative strategy as an insensitive, cruel and malicious effort that will only serve to increase the level of distress of farm families who are already experiencing severe financial difficulties.'' The National Family Farm Coalition and Farm Aid have also sent letters urging immediate action to extend Chapter 12 and opposing sending this legislation back to the other body.

Mr. Speaker, the bankruptcy overhaul bill that this rule moves forward is bad for several reasons. Among them is an attempt in this bill to shield people convicted of crimes against women and abortion clinics from fines and damages. Too often, I am sorry to say, criminals who commit these acts of violence have been able to avoid monetary penalties by declaring bankruptcy. Our bankruptcy laws should not be used and manipulated by criminals to avoid their punishment.

Again, the base bill, Senate 1920, could be on the President's desk by the end of this day. It is noncontroversial. Our body has passed this bill unanimously in previous sessions. We are not accomplishing anything by the parliamentary maneuvers that we are engaged in today.

Since I have been in Congress, the family farm protections in the Bankruptcy Code have expired six times, and we have acted to extend these provisions eight times. We should stop using family farmers as leverage to pass larger bankruptcy protections. I know these families; I represent many of them. I hear their struggles, I hear their stories. Let us act today to extend family farmer bankruptcy protection.

I do want to thank the Committee on Rules and the chairman of that committee, the gentleman from California (Mr. DREIER), for making my substitute amendment in order. However, our farmers need immediate relief, and the only way to achieve that goal expeditiously is to defeat the rule and to take up Senate bill 1920 immediately.

Mr. Speaker, I submit for the RECORD letters from the National Farmers Union, the National Family Farm Coalition and Farm Aid.

FARM AID,
Somerville, MA, January 27, 2004.

Hon. JAMES SENSENBRENNER, Jr.,
Chair, House Judiciary Committee, House of Representatives, Washington, DC.

DEAR REPRESENTATIVE SENSENBRENNER: I am writing to urgently ask you to take action this week to reinstate Chapter 12 Bankruptcy provisions for our nation's family farmers. Since the expiration of Chapter 12 on December 31, 2003, thousands of America's family farmers facing serious financial problems have not been able to consider filing a Chapter 12 bankruptcy.

Farm Aid operates a national family farmer hotline. Every day, we receive desperate calls from farm families facing financial crisis. The stresses these families are under could and should be alleviated immediately by reinstating Chapter 12.

The reasons for the creation of a separate bankruptcy code that enable farmers to stay on the land while reorganizing their farm operation is as urgent now as it was in 1986 when first created by Congress. This lapse in coverage directly results in farmers having to face foreclosure and liquidation instead of seeking a reasonable negotiation with their creditors that works for farm families, their creditors and businesses in their rural community.

I urge you to pass this six-month extension so that the livelihoods of thousands of family farmers are not linked to the cumbersome and controversial overall bankruptcy reform bill. When Congress passed the last extension in July 2003, the vote was 397–3. Every day of delay by Congress has a direct cost to our nation's family farmers. The immediate reinstatement of Chapter 12 bankruptcy will restore an important option for family farmers facing economic crisis.

On behalf of America's family farmers, I thank you.

Sincerely,

MARK SMITH,
Campaign Director.

NATIONAL FAMILY FARM COALITION,
Washington, DC, January 26, 2004.

Hon. JAMES SENSENBRENNER, Jr.,
Chair, House Judiciary Committee, House of Representatives, Washington, DC

DEAR REPRESENTATIVE SENSENBRENNER: The National Family Farm Coalition representing family farmers and rural residents across the country urges you to take action this week to immediately reinstate Chapter 12 Bankruptcy provisions for our nation's family farmers. Since January 1, 2004 farmers facing serious financial problems resulting from record low commodity prices and serious drought conditions have not been able to consider filing a Chapter 12 bankruptcy.

The reasons for the creation of a separate bankruptcy code that enable farmers to stay on the land while reorganizing is as urgent now as it was in 1986 when first created by Congress. This lapse in coverage directly results in farmers having to face foreclosure and liquidation instead of seeking a reasonable negotiation with their creditors that works for farm families, their creditors and businesses in their rural community.

We urge you to pass this six month extension and not hold family farmers hostage to the highly controversial overall bankruptcy reform bill. When Congress passed the last extension in the July 2003, the vote was 397–3. Every day of delay by Congress has a direct cost to our nation's family farmers. We urge immediate reinstatement of Chapter 12 bankruptcy restoring an important option for family farmers facing economic crisis.

On behalf of family farmers we thank you.

Sincerely,

GEORGE NAYLOR,
Iowa farmer and President, NFFC.

NATIONAL FARMERS UNION,
Washington, DC, January 23, 2004.

Hon. DENNIS J. HASTERT,
Speaker, House of Representatives, Washington, DC.

Hon. NANCY PELOSI,
Democratic Leader, House of Representatives, Washington, DC.

DEAR SPEAKER HASTERT AND DEMOCRATIC LEADER PELOSI: On behalf of the family farmer and rancher members of the National Farmers Union I write to encourage the House of Representatives to immediately adopt the language contained in S. 1920 which passed the Senate late last year and extended the chapter 12 provisions of title 11 of the United States Code for an additional six months retroactive to January 1, 2004.

The Chapter 12 provisions, which allow the development of alternative financial reorganization plans for farmers and ranchers within the bankruptcy code, expired at the end of 2003 when the House failed to take action on the Senate bill even though these provisions have been considered non-controversial by both parties over the course of several years. Any delay in approving an extension of Chapter 12 places agricultural producers and their families who are faced with bankruptcy in a serious and untenable position.

We understand there are some in Congress who wish to utilize the extension of the agriculture provisions as a means to leverage support for a broader bankruptcy reform measure that contains highly controversial and divisive provisions unrelated to the farm bankruptcy law. We reject this legislative strategy as an insensitive, cruel and malicious effort that will only serve to increase the level of distress of farm families who are already experiencing severe financial difficulties.

Thank you for your attention to this important issue.

Sincerely,

DAVID J. FREDERICKSON,
President.

Mr. MCGOVERN. Mr. Speaker, I yield 3 minutes to the distinguished gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, I guess I continue to be amazed at the extent to which the majority in this House will go to try to serve the interests of their particular favorite constituencies, even to the point of doing substantial harm to people who are struggling in this country. And that is certainly the case with respect to farmers.

□ 1330

To hold this bill, the original bill, the extension of the family farm provisions of the bankruptcy law, a totally noncontroversial bill which could have been put on the suspension calendar and passed without any dispute whatsoever, to hold it hostage to a bill that has been in process for several years now and has not been able to be passed by both the House and the Senate or reach the President's desk for signature just strikes me as being extremely insensitive, even if one did not know the surrounding statistics. But when one knows the statistics related to bankruptcies over the last year, it is even more alarming that this kind of Russian roulette would be played with this bill.

Business bankruptcies actually fell last year if you exclude family farms from the business category by 7.4 percent. Personal individual bankruptcies increased by about the same percentage, about 7 percent. But chapter 12 bankruptcies, those designed to meet the needs of financially distressed family farmers, increased by 116.8 percent.

Now, what happens then if this Russian roulette does not play itself out in the way that the majority would like it to play itself out and the family farm provisions expire? This would be the kind of irresponsible activity which I think is inexcusable. I think we should oppose this rule and oppose the bill if it gets amended to include the bankruptcies reform provisions.

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

In closing, if I can restate one of the frustrations that many of us on this side of the aisle have, we are all very concerned about our small family farmers, and we are worried that the relief they seek will be delayed indefinitely because this new version of the bill, which includes the very controversial and, in my opinion, flawed bankruptcy overhaul bill which this House passed, will go nowhere in the other body, and this is all show business that we are doing here right now.

Mr. Speaker, I ask the gentleman or any Member on the other side of the aisle, given the fact that the Republicans control the House and the Senate, has Republican leadership here in the House been given assurances by the Republican leadership in the other body that they have the necessary votes to move this conference forward? I am looking for an assurance or an answer to that question.

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

Mr. MCGOVERN. I yield to the gentleman from Texas.

Mr. SESSIONS. Mr. Speaker, the fact of the matter is that we are intensely interested in passing this piece of legislation today, moving it to the Senate, believing that our colleagues on the other side of the building will see the wisdom of this bill and move this very expeditiously. This is to make permanent relief for farmers. I believe that the wisdom of the entire bill will be seen by that body, and then we will be able to have it on the President's desk very quickly for signature.

Mr. MCGOVERN. Mr. Speaker, I appreciate the gentleman's spin; but we passed this bankruptcy reform bill last March, and the other body has not moved on our version because they have some problems with it. If I am interpreting the statements in the press from the other body correctly, there are Members who will filibuster this. For the bill to move forward in the face of the filibuster, the other body needs to muster 60 votes, which I am told from reliable sources they do not have.

That is why I ask the question if those on the gentleman's side of the aisle know something that we do not know. If those press accounts are true, what we are doing here is not helping small family farmers, we are just going through the motions. This is a big waste of time for everybody.

My suggestion would be that we should move forward with relief for family farmers. We know that will pass here easily and will pass the other body swiftly. We could send it to the President today and we have done something good rather than engage in this type of politics.

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

Mr. MCGOVERN. I yield to the gentleman from Texas.

Mr. SESSIONS. Mr. Speaker, time after time after time sitting in the Committee on Rules, we hear about all of the pieces of legislation that will never go anywhere and will never move. We have heard this about bankruptcies many times, about our budgets; and we have heard this about bills that are related to welfare reform and tax bills. It is amazing how often the

other body and whoever sits as our great President, whether it be President Clinton or President Bush, have found the ability and a way to work with the leadership of both bodies. That is part of what this experiment is about.

We have great confidence that the American people, who are the special interests to each and every one of us, the special interests and the needs of farmers and the needs of Americans, will be heard by our President, by each Member of the Senate and this body; and that is why we are moving this legislation forward.

I do not think that we would ask someone ahead of time what they are going to do with that, but rather to allow them the chance to debate and work through the changes. Compromise happens all of the time.

Mr. MCGOVERN. Mr. Speaker, reclaiming my time, I guess that answer means, no, we do not have assurance from the other body that they will move on this; and, no, we cannot give assurances to the family farmers who are watching us here today that in fact the relief that they seek will be enacted anytime soon.

My follow-up question will be if the gentleman gets his way and his leadership gets its way and this bill moves forward with the House-passed bankruptcy reform bill attached to it, it goes over to the other body and they decide to filibuster it, is there agreement on how long we are going to wait until we help our family farmers, or will this go on indefinitely?

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

Mr. MCGOVERN. I yield to the gentleman from Texas.

Mr. SESSIONS. The American people will have a lot to say about that as they talk with Members of the other body; and based upon that wisdom and as a result of what the leadership does, we will catch a good signal. We believe it will be on their agenda, and we are proud of what we are doing.

Mr. MCGOVERN. Mr. Speaker, I thank the gentleman for his response; but it is not satisfactory, not only to those of us on this side of the aisle, but to those who may be watching this who are hopeful that we will actually do something of substance and that we will help family farmers looking for relief.

Mr. Speaker, the problem here is that we have an opportunity to do something good, to actually help some people; and we are turning this into political theatrics. I think that is unfortunate. I oppose the rule.

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

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

I appreciate what the gentleman is saying. I appreciate that he wants to know what the agreements are between the bodies as they work together. I respect that, but I would say to the gentleman that I respect more the 315 votes from this body that chose to speak on the subject the last time we voted.

Perhaps it is true there are some frustrations that come about as a result of the business which we engage in. Certainly there are frustrations that 315 people, time after time after time that vote for this important bill, are thwarted in the process; but I believe rather than becoming frustrated, it is up to us to think through how we will accomplish those things that are necessary, to retry, to renegotiate, to do those things that are dealing with negativism of, oh, it will never happen, to keep searching, and that is what the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary, has done. He looked at a piece of legislation with 315 vote, and knew how important it was. Rather than accepting a defeatist mentality, he took the attitude he would be proactive and work on behalf of our special constituencies that all of us as Members of Congress have, the American people.

Mr. Speaker, 315 votes is a clear and simple overwhelming majority of this body. I am proud of what we are doing. Obviously, what we are trying to do here is to make sure that we pass this bill. Since 1986, this ad hoc approach which has talked about reauthorizing chapter 12 relief has allowed this relief for small farms to lapse six times. Today we are going to make it permanent. Today we are providing an answer. Today it is a change. I am proud of what we are doing. Our great chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), has not only worked diligently on behalf of farmers but also on behalf of consumers of this country. I think we will pass this bill. I think it is the right thing, and I welcome the opportunity to join the chairman down at the White House when our great President signs this legislation into law.

Mr. Speaker, I yield back the balance of my time, and I move the previous question on the resolution.

The previous question was ordered.

The resolution was agreed to.

A motion to reconsider was laid on the table.

GENERAL LEAVE

Mr. SENSENBRENNER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 1920.

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

There was no objection.

BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2003

The SPEAKER pro tempore (Mr. SESSIONS). Pursuant to House Resolution 503 and rule XVIII, the Chair declares the House in the Committee of the Whole House on the State of the Union for the consideration of the Senate bill, S. 1920.

□ 1343

IN THE COMMITTEE OF THE WHOLE

Accordingly, the House resolved itself into the Committee of the Whole House on the State of the Union for the consideration of the Senate bill (S. 1920) to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted, with Mr. LAHOOD in the chair.

The Clerk read the title of the Senate bill.

The CHAIRMAN. Pursuant to the rule, the Senate bill is considered as having been read the first time.

Under the rule, the gentleman from Wisconsin (Mr. SENSENBRENNER) and the gentleman from North Carolina (Mr. WATT) each will control 30 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

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

Mr. Chairman, the amendment in the nature of a substitute to S. 1920 made in order by the rule replaces the text of that bill with the text of H.R. 975, the bankruptcy bill passed by the House by an overwhelming bipartisan vote of 315–113 on March 19, 2003.

The administration has without qualification endorsed this legislation. Nevertheless, this bill has languished in the other body now for almost a year. The question that has been asked is, why are we engaged in what admittedly may appear to be a redundant undertaking? While the other body is often described as the saucer in which the coffee cools, H.R. 975 has become nearly frozen in that proverbial saucer.

□ 1345

Today I seek to reignite congressional consideration of bankruptcy reform.

Some of my colleagues may also ask, ''Why now? What's the rush?'' There are many answers. A major reason is that the current bankruptcy system is broken, and it gets worse every day that we fail to act. Bankruptcy filings continue to break record after record, straining the system's resources. The proliferation of bankruptcy filings is not just a temporary event, but part of a consistent upward trend. In 4 years, the number of bankruptcy filings has jumped by 150 percent to nearly 1.7 million cases as of fiscal year 2003.

Another reason has to do with the growing extent of fraud and abuse in the current bankruptcy system. Bankruptcy relief should be available to honest debtors, but current law allows, if not encourages, dishonest debtors to file abusive bankruptcies that overburden the system. According to the Justice Department, bankruptcy fraud and abuse is ''serious and far-reaching.''

While some debtors fraudulently conceal assets, others try to discharge debt despite their ability to repay their obligations. The current system is overburdened and ill equipped to aggressively detect and deter identity theft and other basic forms of bankruptcy fraud, let alone more creative schemes such as the so-called ''credit card bust-outs.'' The Justice Department reports that debtors are obtaining credit cards despite having little or no income, incurring huge debts, paying those debts with worthless checks, and then filing for bankruptcy relief to discharge their massive liabilities. We need to give our law enforcement agencies and the judiciary the tools necessary to fight fraud and abuse in the bankruptcy system.

A third reason, I admit, has to do with money. According to some analyses, the increase in consumer bankruptcy filings has significant adverse financial consequences for our Nation's economy and the economic well-being of our citizens. For instance, it has been estimated that in 1997 alone, more than $40 billion of debt was discharged as a result of bankruptcy cases. These losses, according to one estimate, translate into a $400 annual ''tax'' on every household in our Nation in the form of higher prices and higher interest rates. For the sake of our family farmers, we ought to relieve them of this $400 tax so that they can do a better job in producing food and fiber for our Nation's tables as well as for export.

More importantly, there are moral reasons for supporting the need for bankruptcy reform. The current system allows deadbeat parents to use bankruptcy to avoid their child support obligations. Likewise, it permits corporate criminals to use bankruptcy to shield their mansions from the claims of those whom they have defrauded.

Let me be perfectly clear. If this bill is voted down in the substitute amendment that has been made in order by the Committee on Rules, deadbeat parents will have a better opportunity to use bankruptcy to escape their court-ordered child support enforcement obligations. That means that the people who are opposing this move are giving these deadbeat parents a get-out-of-obligation-free card so that they can stiff their custodial former spouses. We plug that loophole.

Furthermore, this bill plugs the so-called ''homestead exemption'' that has allowed corporate criminals to be able to use bankruptcy to shield their assets and huge mansions in the States that have unlimited homestead exemptions from bankruptcy and leave employees in the lurch, employees that could use those assets to be able to allow them to find new jobs as a result of a corporation going bankrupt as a result of executive and management abuse.

Perhaps among the most important reasons to support bankruptcy reform is that it will help some of the most needy and deserving members of our society. As the title of the bill indicates, these reforms are not just about preventing abuse, but they also provide long overdue consumer protections. For example, domestic support claimants will receive very much-needed, special protections under this legislation. These reforms will ensure that families with pensions and education IRAs will not have to use these assets to pay creditors. Those protections will not be there if this bill is voted down.

As part of their monthly credit card billing statements, consumers will be given more meaningful disclosures about the consequences of making minimum monthly payments. It will require the appointment of an ombudsman to serve as a watchdog for patients in health care facilities in bankruptcy. It more than doubles employee priority wage claims.

If this bill is voted down, those that vote ''no'' turn their back on all of these improvements. These are just a few examples of the many benefits that consumers will finally be able to enjoy once bankruptcy reforms are enacted.

I urge my colleagues to move forward with bankruptcy reform. This is a comprehensive bill. It is a good bill. It does not hurt the ability of somebody who is truly down and out to be able to file for bankruptcy and get their discharge and start anew. But what it will do is plug the loophole of those who wish to use the Bankruptcy Code as a financial planning tool, a financial planning tool that ends up stiffing every family that pays their bills on time and, as agreed upon, $400 a year in a hidden tax. That is a hidden tax that the lack of bankruptcy reform has stuck on all of our constituents who ought to be our special interest.

I urge my colleagues to support the enactment of the amendment in the nature of a substitute to S. 1920.

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

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

Mr. Chairman, let me begin by offering my unequivocal support for S. 1920 that would provide for an extension of chapter 12 of the Bankruptcy Code which expired last December. That piece of legislation is noncontroversial and necessary to ensure that the farmers in our country have access to the bankruptcy protections they so earnestly deserve as they struggle to keep our food supply thriving and to maintain their farms.

As ranking member of the Subcommittee on Commercial and Administrative Law and a former conferee on H.R. 975, I continue to oppose the substance of H.R. 975 and further believe that the current maneuver to force the hand of the Senate is irresponsible and will only result in further delay in extending the family farmer protections everyone agrees should be extended.

The gentleman from Wisconsin's amendment tacks on to this otherwise noncontroversial bill H.R. 975, the product of a conference on which I served last term minus the negotiated provision that would prevent those who commit acts of violence against women and abortion clinics from avoiding penalties by declaring bankruptcy. This bill did not pass last year, and I believe it will meet the same fate this year. Therefore, the only result will be that the family farmer will be held hostage to efforts to leverage support for the larger bankruptcy reform.

My opposition to H.R. 975 has not changed. I believe that the omnibus bankruptcy reform bill is an unfortunate convergence of expedience and politics. There obviously is abuse in the bankruptcy system and reform is necessary, but I continue to believe that H.R. 975 is not a rational way to respond to abuse to set up a separate set of rules for what is, in effect, a pauper's bankruptcy court system and a different set of rules for a higher income bankruptcy court system.

Mr. Chairman, I believe that we should stop playing games with the family farmer. Like the National Farmers Union, and I quote from their letter to the House leadership, I ''reject this legislative strategy as an insensitive, cruel and malicious effort that will only serve to increase the level of distress of farm families who are already experiencing severe financial difficulties.'' I urge my colleagues to vote against this bill and for a process that will respect the plight of the farmers of this country.

In response to the comments of the gentleman from Wisconsin, let me submit to this body that the primary reason we have an increasing number of bankruptcies, although there may be some abuse and I do not argue with that, but the primary reason we are having an increase in the number of bankruptcies in this country is job loss and economics which is being driven by this administration.

Second, I want to know how many times the House has to beat itself on the chest on this issue and try to force this issue. We have got a bill that is already in conference, I thought, in the other body; and this bill, if the Senate wanted to take it up, would take it up. So what are we doing beating our chests again this year saying we support bankruptcy reform?

And finally, I would just submit that this is an effort to find someone to blame for the failure to pass the bankruptcy reform legislation. The last time I checked, the Republicans were in control of the House, the Republicans were in control of the Senate, the Republicans were in control of the Presidency. It would seem to me, if you are in control of this process and you want to pass the bankruptcy reform bill, you would pass the bankruptcy reform bill and we would not be here going through this charade, blaming it on somebody else for failure to pass this bill. It is a convenient way to blame others, but it is a terrible way to do business.

NATIONAL FARMERS UNION,
January 23, 2004.

Hon. DENNIS J. HASTERT,
Speaker, House of Representatives, Washington, DC.
Hon. NANCY PELOSI,
Democratic Leader, House of Representatives, Washington, DC.

DEAR SPEAKER HASTERT AND DEMOCRATIC LEADER PELOSI: On behalf of the family farmer and rancher members of the National Farmers Union I write to encourage the House of Representatives to immediately adopt the language contained in S. 1920 which passed the Senate late last year and extended the chapter 12 provisions of title 11 of the United States Code for an additional six months retroactive to January 1, 2004.

The Chapter 12 provisions, which allow the development of alternative financial reorganization plans for farmers and ranchers within the bankruptcy code, expired at the end of 2003 when the House failed to take action on the Senate bill even though these provisions have been considered non-controversial by both parties over the course of several years. Any delay in approving an extension of Chapter 12 places agricultural producers and their families who are faced with bankruptcy in a serious and untenable position.

We understand there are some in Congress who wish to utilize the extension of the agriculture provisions as a means to leverage support for a broader bankruptcy reform measure that contains highly controversial and divisive provisions unrelated to the farm bankruptcy law. We reject this legislative strategy as an insensitive, cruel and malicious effort that will only serve to increase the level of distress of farm families who are already experiencing severe financial difficulties.

Thank you for your attention to this important issue.

Sincerely,

DAVID J. FREDERICKSON,
President.

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

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

There have been times when I have been the chairman of the committee where we have given the other body a choice. I seem to recall that in the last Congress the House passed two versions of the visa and border security bill. One contained provisions extending section 245(i) of the Immigration and Nationality Act and one did not, and the Senate chose to take up the bill that did not contain section 245(i) and passed it. Both bills, I believe, were supported both by the gentleman from North Carolina and myself. So sometimes giving the other body a choice speeds things along, and that is what this bill proposes to do.

Mr. Chairman, I yield 1 minute to the gentlewoman from Tennessee (Mrs. BLACKBURN).

Mrs. BLACKBURN. Mr. Chairman, I would like to rise in support of the amendment and to commend the chairman of the Committee on the Judiciary for offering this important amendment.

As we have noted, last March this body did pass important bankruptcy reform; and that is very important to my folks in Tennessee, but unfortunately it has languished over on the Senate side. I have heard from credit unions and banks in Tennessee. Their message is very clear. Bankruptcy is all too often used as the first resort instead of the last resort, and this makes it increasingly difficult for them to operate in a State where small business is our major employer. As the number of bankruptcy filings continues to rise, bankruptcy losses have a heavier impact upon those credit union members and on the banks who are fiscally responsible. What we have seen since 1998 when bankruptcies topped 1 million in their filings, they are up over 150 percent. We know the trend is continuing upward.

I do feel this amendment is a compassionate one. People who seek bankruptcy because of job loss, medical problems, divorce and other personal problems will be unaffected.

Mr. Chairman, it is time for us to move forward.

ANNOUNCEMENT BY THE CHAIRMAN

The CHAIRMAN. Members are reminded not to criticize the Senate.

□ 1400

Mr. WATT. Mr. Chairman, I yield 4 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I rise to plead for our Nation's family farmers and family fishing operations. And some people may ask why the representative from Manhattan and Brooklyn is rising to plead for family farmers. When I was a child, we had a family farm which we lost to foreclosure because of policies similar to what the majority party is urging on us today. This is the 11th time we have been here to debate a temporary extension of chapter 12. To string farmers along, especially in these very hard times, is simply unconscionable; but this is even worse. Instead of passing this bill last year, the chapter 12 extension bill, when we could have sent it directly to the President, the majority refused to act and allow chapter 12 to sunset. Even now they refuse to act and instead are using family farmers again to try to pass an overall bankruptcy bill that is not going to pass again because the Senate will not go along with it; so they are just using it as a charade and putting at risk all the farmers. But a bill that should not pass anyway. A bill whose main and essentially only effect is to enable the big banks and the credit card companies to reach their hands into the pockets of low- and middle-income people who, because usually of either a divorce or being laid off from their jobs or health emergency, are in bankruptcy and at that time to enable the big banks and the credit card companies to put their hands into these low- and middle-income pockets and take more money out of it for the big banks and the credit card companies in 60 or 70 different ways. That is what this bill does. And this bill is a lot more important, the majority would have us believe, than extending chapter 12 for the benefits of family farmers and family fishing operators.

Even if we pass this bill as amended by putting on the entire bankruptcy reform bill, so-called, on the back of the chapter 12 extension, and even if the Senate agrees to allow the House to circumvent them entirely, family farmers would still have to sit and wait while Congress fiddles.

We do have another choice. We could reject this maneuver entirely and send the 6-month extension to the President today. We could adopt the gentlewoman from Wisconsin's (Ms. BALDWIN) substitute and enact a part of this bill that is both uncontroversial and necessary immediately to make chapter 12 permanent and update it to provide needed relief. But the Republican leadership appears unwilling to do either. They appear intent on using the plight of family farmers yet again to advance the agenda of the credit industry and to do so by threatening and hurting the family farmers by engaging in a legislative maneuver that has already resulted in chapter 12's expiring and that they know will now result in its being allowed to lapse further.

This is simply wrong. I urge my colleagues to reject this outrageous stunt. This bill has been on the verge of passing ''any minute'' since 1997. How much longer must our farmers and fishermen and women wait? They have waited long enough. I urge my colleagues to support the gentlewoman from Wisconsin and save our family farms and stop using the plight of the family farmers to try to put the entire agenda of the banks and the credit card companies on the backs of the family farmers. Pass a family farm bill; then bring in a bankruptcy bill. We will debate it on the merits or demerits of that, I would say the demerits; but stop trying to put that entire burden on the family farmers' backs because their backs are already broken.

Mr. SENSENBRENNER. Mr. Chairman, I yield 5 minutes to the gentleman from Alabama (Mr. BACHUS).

Mr. BACHUS. Mr. Chairman, I thank the chairman for yielding me this time.

Mr. Chairman, I rise in strong support of this bill and would urge this body to adopt it. I would like to adopt the words of Edith Jones, who served on the Bankruptcy Commission and is on the Fifth Circuit Court of Appeals, when she said ''bankruptcy reform legislation is essential to restoring integrity to personal and business bankruptcies, redressing the imbalances and opportunities for manipulation that plague current law, and encouraging individual responsibility in financial affairs.'' However, and I say this to the gentleman from Wisconsin (Chairman SENSENBRENNER), he has done an outstanding job on this legislation. It is very much a thankless job, and it is with some hesitancy that I rise simply to point out one provision that I share with Judge Jones when she says, however, ''Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character

with the rest of this important legislation and should be eliminated.''

Section 414 of the present legislation, I think, is a large snake. It is the proverbial fox in the henhouse. And what section 414 does is it eliminates the disinterested rule. That rule has existed in bankruptcy law for 66 years. Under current law, a person that advises the trustee must be ''disinterested'' in order to avoid conflicts of interest. Section 414 eliminates that exclusion. Consequently, section 414 would allow the same entities that may be engaged in negligence or even fraud prior to bankruptcy to advise the trustee during the bankruptcy process.

Our experience alone with the recent wave of corporate scandals means that we need to carefully examine any provision that would weaken the conflict of interest standards. Weakening those standards in the bankruptcy code promotes conflicts of interest rather than corporate reform.

Let me quote the Wall Street Journal addressing this section 414: ''Relaxing the disinterestedness rules will serve to reward firms that had some part of the company's demise . . . By allowing firms that helped the company into bankruptcy continue to stay on the payroll, the firms are being rewarded for essentially failing at the task for which they were hired.''

Eliot Spitzer has testified against section 414. He says, ''The inherent conflict of interest created by section 414 and the perverse incentives created by such a section ought to be clear to all,'' and I would agree with him. And here we have the Attorney General of New York and we have the very conservative Judge Jones agreeing on this point, as did almost all the bankruptcy commissioners.

No convincing case has been made for drastically weakening the current standard as section 414 does. Indeed, one would be hard pressed to offer any public policy rationale for this change. As Judge Jones said, section 414 is totally out of character with the rest of this important legislation. And I include a copy of her letter.

Let me conclude by saying that section 414, which is contrary to the legislation's goal of creating a fair and more streamlined bankruptcy system, must be addressed at conference. Nonetheless, I strongly support this much-needed bankruptcy reform legislation which will limit abuses of the bankruptcy system without affecting bankruptcy protection to all who truly need it.

U.S. COURT OF APPEALS FIFTH CIRCUIT,
March 11, 2003.

Hon. F. JAMES SENSENBRENNER, JR.,
Chairman, House Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I understand that the House Committee on the Judiciary will consider H.R. 975, bankruptcy reform legislation, on the morning of March 11, 2003. I also understand that the Committee may consider whether or not to retain Section 414 of the bill, which would amend the ''disinterested person'' standard codified at 11 U.S.C. §101(14). As a former member of the National Bankruptcy Review Commission and, in that capacity, a consistent advocate of maintaining strict disinterestedness standards for bankruptcy professionals, I urge the Committee not to change existing law. I support Congressman Bachus's effort to remove Section 414.

The National Bankruptcy Review Commission was asked to recommend a modification of the disinterestedness standard in order to accommodate, as I recall, the geographic growth and increasing sophistication of professional firms of all kinds involved in Chapter 11 bankruptcy practice. Despite fervent lobbying by prominent bankruptcy professionals and scholars, the Commission resisted making such a recommendation. We voted (by a lopsided majority, I believe) to retain the standard as it has existed since the 1930's.

The Commission report cites two reasons for retaining a strict prophylactic standard for all bankruptcy professionals. These are worth brief restatement. First, such a standard can alone protect integrity in the bankruptcy process. If professionals who have previously been associated with the debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. Strict disinterestedness, required by current law, eliminates such conflicts or potential conflicts.

Second, enforcing a strict standard of disinterestedness is necessary to maintain public confidence in the integrity of the bankruptcy system. A bankruptcy case should not be subject to the criticism that professional fees are generated to no purpose or for a bad purpose such as delay. The courts' efforts to ensure that fees remain reasonable are enhanced when, because of the complete disinterestedness of participating professionals, no hidden motives may be imputed to the actors in the case.

One need not focus solely on today's high-profile bankruptcy cases to realize that the challenge of maintaining disinterested professional services has permeated modern corporate reorganization law. The Commission, for instance, voted to retain the original standard in the wake of the criminal conviction of a prominent bankruptcy lawyer and several well-known instances in which law firms were required to disgorge part of their fees—all for violating disinterestedness standards. Given the ongoing nature of the problem, I do not see how any professional group can advocate, consistent with the public interest, eliminating the statutory requirement of disinterestedness. Moreover, as it appears likely that many future complex bankruptcy cases will arise in which the role of investment bankers will have to be explored, it seems particularly unwise to grant that group—alone among bankruptcy professionals—a status insulated from the strict disinterestedness requirement.

Since the close of the Commission's work in October 1997, I have been a proponent of the bankruptcy reform legislation that has been repeatedly passed by Congress. I still believe the bankruptcy reform legislation is essential to restoring integrity to personal and business bankruptcies, redressing the imbalances and opportunities for manipulation that plague current law, and encouraging individual responsibility in financial affairs. Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character with the rest of this important legislation, however, and it should be eliminated.

Very truly yours,

EDITH H. JONES.

Mr. WATT. Mr. Chairman, I yield myself 30 seconds.

I am a little perplexed by the gentleman's statement. He was yielded 4 minutes. He took 3 minutes and 50 seconds to talk about the problems with the bill and 10 seconds to praise the bill; yet he is going to support it. If there is no public policy justification for this provision, it seems to me that the gentleman would be voting against this bill.

Mr. Chairman, I yield 4 minutes to the gentlewoman from the District of Columbia (Ms. NORTON).

Ms. NORTON. Mr. Chairman, I thank the gentleman for yielding me this time, and I want to thank the chairman and all who have worked so hard on this bill and have been delayed for so long.

I rise to take strong exception to putting this bill once again in jeopardy by reinserting anti-choice language, language that was agreed upon in a bipartisan fashion and that again would put this bill in jeopardy.

As I understand the anti-choice movement, and I respect them for the view which I believe is sincere, the movement disavows violence. Each and every time there is violence in their name, the movement is clear that violence shall not occur in their name. And not only do I not have any reason to doubt them, I have every reason to believe they are sincere.

Why in the world then would we want to take out the bipartisan Hatch-Schumer language that was agreed upon and do so unilaterally? After all, the point of this bill is to remedy the abuse of the bankruptcy laws. Is it not an abuse to avoid a lawful judgment of a court of law rendered through imposition of fines after finding that a party had, for example, committed violence? Would anybody condone going into bankruptcy in order to avoid that lawful judgment? I see no reason why anybody would want to sign up for that, much less jeopardize this bill.

Mr. Chairman, I just want to say at the beginning of this session we have gotten to the point where bipartisan compromise does not matter anymore in this House. We know conference reports do not matter. We know that Democrats did not even get to conference. But the notion that Mr. SCHUMER and Mr. HATCH could reach a compromise on something as controversial in its underlying content as choice and then have that torn up by the House should be unthinkable. I do not think Mr. HATCH would have agreed to it, and as I understood it, the gentleman from Illinois (Mr. HYDE) agreed to it, that it was a kind of compromise. The gentleman from Wisconsin (Mr. SENSENBRENNER), all of them agreed that this was what should be done to get the bill through. Why throw it in their face and in our face by taking that compromise out of the bill? This used to be known as breaking one's word; and one thing I thought good politicians, let alone ethical men and women, never did was to

break their word. This is a breaking of the word. I ask them to reconsider. Please let us begin this session, 2004, bright. Let us not go back to the bad old days of 2003.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Chairman, I thank the gentleman from Wisconsin (Chairman SENSENBRENNER) for his patience with trying to get this bankruptcy legislation through in a form that can be supported across the board and in fact in a form where it deals with the issue of bankruptcy. The Congress has been working on this legislation for a number of years, actually since before I got here; and this passage of this bill is long overdue.

Since Congress began working on this legislation, bankruptcy filings continue to rise. In fact, data recently released by the Administrative Office of United States Courts showed personal bankruptcies continued to rise at a record-setting pace of 7.4 percent last year.

Some of this is necessary. Some of this is abuse of the bankruptcy system. It has had a negative impact on our economy, amounting to a loss of $110 million a day. The abuse of the bankruptcy code continues with opportunistic filings and abusive loopholes in the code. One most notable, as I serve on the Committee on Financial Services, dealing with corporate crooks, this bill closes the mansion loophole for greedy corporate culprits.

□ 1415

Under current bankruptcy law, debtors living in certain States can shield from their creditors virtually all of the equity in their homes. That includes a $3 million estate.

Congress spent a considerable amount of time discussing the issue of corporate responsibility, and this bill closes that loophole to continue the work we began last year. Some debtors have moved to particular States in order to take advantage of this loophole. This bill closes the loophole. It requires those debtors to reside in the State for at least 2 years before they can claim a homestead exemption; they have to have owned that home for at least 40 months; and most importantly, it caps the amount at $125,000, a reasonable amount for a family to keep a roof over their heads, but certainly not $3 million that they can just save from their prosecution.

This legislation also helps women and children in bankruptcy. It prioritizes the collection and payment of spousal and child support, giving them the highest payment priority under the bankruptcy law. The legislation also allows child and domestic violence proceedings to continue, notwithstanding the debtor's filing for bankruptcy protection.

Mr. Chairman, it is crazy for us not to move this bill at our, finally, hopefully, last opportunity.

Mr. WATT. Mr. Chairman, I yield 5 minutes to the gentleman from Michigan (Mr. CONYERS) the ranking member of Committee on the Judiciary.

Mr. CONYERS. Mr. Chairman, I thank the gentleman from North Carolina, the manager of the bill, and I rise and take this time not to go over a piece of legislation that has been around here since 1997, started in 1996 with a commission, has been up and down and around, and here we are today taking the bill up yet another time.

Well, is it sufficient that 35 national organizations, civil rights groups, unions, public interest research groups, consumer organizations, women's organizations, law organizations, the Neighborhood Assistance Corporation, Legal Defense and Education Fund, 34 organizations, I would appreciate it if anybody could tell me why they think all of these organizations do not get the picture, do not understand why this bill should be rejected yet another time?

But my emphasis this evening is upon the parliamentary process by which the bankruptcy bill was brought to the floor today, and that is to say that the bill is being brought to a conference and the Senate has never passed this bill. This bill is being brought on the sham of a Chapter 12, 6-month, noncontroversial extension entitled ''The Debts of the Family Farmer,'' and that is being used to force a several-hundred-page bill into conference.

The Senate has not acted. It is shameful that the leadership, the Committee on Rules of this House, would permit this bill, as large, as controversial, as complex as it is, to be taken, that little tale, and brought in here yet again. In other words, we are holding the farm families of America hostage by substituting the controversial omnibus bankruptcy bill to push anticonsumer changes to bankruptcy laws and bypass the Senate debate on the bill.

So I would like to point out that there happens to be a very big problem on the other side. Notwithstanding the parliamentary shenanigans in the House, again with this attempt to end-run around the Senate, the antichoice lawmakers have to answer this one question: Why do they oppose the compromise of Hyde-Schumer that would hold people who illegally harass, intimidate, commit crimes of violence, blockade and blow up clinics and innocent people, who abuse the bankruptcy system, to evade their lawful debts?

Will somebody on this floor, to whom I will yield, explain to me why they would support criminal conduct as a reason not to allow this bill to go through? I will yield to anybody.

And I would like someone else, further, to explain to me, who has stronger views on abortion than the gentleman from Illinois (Chairman HYDE) of the Committee on International Relations? He is the cosponsor of the bill that you are trying so desperately to keep this provision out of.

I think this is another example of the disgraceful, dishonest tactics being used in this House to get through anything by any means necessary, and I object to it very strenuously.

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

Mr. Chairman, the gentleman from Michigan (Mr. CONYERS) is very right in saying that there were extensive negotiations relative to the so-called Hatch-Schumer abortion protestors' amendment during the conference in the last Congress. Those negotiations lasted the better part of a year. There were both public and private meetings with the principals involved.

At the end of the process, the gentleman from Illinois (Mr. HYDE) and the Senator from New York, Mr. SCHUMER, reached an agreement on compromise language that was put into the conference report on H.R. 333, which was the bankruptcy bill in the last Congress.

The gentleman from Illinois (Mr. HYDE) lived up to his word. He supported the rule that made that conference report in order. Unfortunately, that rule was rejected on November 14, 2002, by a roll call vote of 172 ''yes'' to 243 ''no.'' I notice my friend from Michigan was one of the 243 that voted ''no.'' If he wanted to get that language enacted into law, he could have supported bringing up the conference report on H.R. 333. For whatever reason, he chose not to do so.

But to answer the arguments that he made on the merits, it is that fines and forfeitures from offenses, both criminal and civil, have never been dischargeable in bankruptcy, irrespective of the offense that gave rise to the fine and forfeiture being imposed. So to say that the omission of language relating to abortion clinic protestors is a way of shielding criminal activity is a complete red herring. Fines and forfeitures that are imposed on abortion clinic protestors in a court of law are not dischargeable in bankruptcy today under the existing law nor, should this bill be enacted, under the provisions of this bill.

Now, having said that, I feel very strongly that abortion really should not become an issue in the debate on a bankruptcy bill. The position of this House has always been that abortion is not a part of the bankruptcy debate. There is a time and place to debate issues relating to abortion, but this is not it.

The other body has always disagreed. At some times in the last Congress we had a provision in the conference report that did reach a compromise on this issue. The House refused to consider it. There are other times when the conference in previous Congresses omitted the Schumer language that was passed by the Senate, and the conference report was passed by the Senate by a vote of 70-to-28 on December 7,

2000. That bill would have become law without the abortion clinic protestor language, except that President Clinton pocket-vetoed the bill.

So I just do not like to see the entire issue of abortion being mixed into it. But I think that the arguments that are made that the omission of the Hyde-Schumer language is an issue of bad faith is a complete red herring. We were not able to pass the bill with it in; we were able to pass it without it.

Mr. Chairman, I yield 1½ minutes to the gentleman from Michigan (Mr. SMITH).

Mr. SMITH of Michigan. Mr. Chairman, with regard to the original bill that came over from the Senate, the gentlewoman from Wisconsin (Ms. BALDWIN) and I, have introduced, cosponsored, about six bills either to make the Chapter 12 permanent or to at least extend it. I would just like to tell my colleagues that in calling the bankruptcy judges that handled these farm cases, there has never been a farm case thrown out because the law expired. Sometimes it has been reacting late, but we have always made it retroactive in every case so those farmers that wanted to use the provisions of Chapter 12 have been able to do that.

So I would like to make Chapter 12 permanent, but I would also like to make some of the corrections that incorporate some of my language in a larger bankruptcy bill. I hope we can do that. I think it is important for our financial institutions to have some of the additional concerns that are addressed in this bill. This bill will also at the same time expand the availability of loaned money, of available credit money, to more people.

So I would hope we would pass the bill as provided by the Committee on Rules and send the bankruptcy bill in total over to the Senate and, hopefully, resolve it in conference for final passage.

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

Mr. CONYERS. Mr. Chairman, will the gentleman yield?

Mr. WATT. I yield to the gentleman from Michigan.

Mr. CONYERS. Mr. Chairman, I thank the gentleman for yielding to me.

I would just like to respond to the distinguished chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER), who feels very strongly that the abortion consideration has no place in this bill.

Well, I will be happy to report that to the predecessor chairman of the Committee on the Judiciary, the gentleman from Illinois (Mr. HYDE). He will be happy to know that you do not feel it does and that a whole group of Senators, not to mention a fairly substantial number of Members of the House, all think that it does, and to think that by running an end-run around this provision with an arcane debt farmers provision, it is not going to work.

Now, for my friend, the gentleman from Michigan (Mr. SMITH), who has served with great distinction in the Congress, I will be happy to let his farmers know that everything is okay, that the provision has expired; but somehow he can get into court, or somebody, and they can just continue on, that with the judges, even though the provision has no effect, that the farmers are okay. I am sure they will be very comforted to hear that.

Mr. WATT. Reclaiming my time, Mr. Chairman, let me also just make a couple of responses to the statement of the gentleman from Wisconsin (Mr. SENSENBRENNER).

Number one, it is interesting that the chairman thinks that the abortion issue should not be part of the bankruptcy bill. Seemingly, everybody who abuses the bankruptcy process other than people who have had judgments against them for destroying or damaging bankruptcy clinics would be an appropriate subject for this. I thought this whole thing was to try to get to people who are abusing the system. If that is not an abuse, then I am not sure I understand what it is.

Second, in response to the gentleman's comments about this bill preserving criminal discharges, this is not about criminal discharges, this is about people who have gotten judgments against abortion clinic bombers or damagers, civil judgments, and had those defendants thumb their noses at those judgments by saying ''I am just going to declare bankruptcy so I do not have to pay this judgment.''

□ 1430

So if that is not an abuse, then I do not understand what an abuse is. If this bill is about dealing with abuse, then it seems to me people who fall into the category of abortion clinic abusers of the process should be equally accountable.

Mr. Chairman, I yield 4 minutes to the gentleman from Virginia (Mr. SCOTT).

Mr. SCOTT of Virginia. Mr. Chairman, I rise in opposition to the bill in its present form. Instead of passing the bipartisan bill to help family farmers, we have substituted a controversial bill that violates traditional bankruptcy principles.

For centuries, American bankruptcy laws had the principle that if people get over their heads in debt, they can cash in all of their assets, pay off all the debts they can, and then get a fresh start. For policy reasons, a few assets have historically been exempted and a few debts have historically been nondischargeable, especially those that have been incurred by fraud, a result of crime, or through abuse of the bankruptcy system. Yet the principle has always been the same: cash in all you have and get a fresh start.

This bill violates the basic principle. People who incurred debts because of illness, unemployment, business failure and have debts they can never pay off will be denied an opportunity to get a fresh start. They will be stripped of every penny of income after basic expenses of food and rent without reasonable allowance for unforeseen emergencies such as automobile repairs, which will inevitably come up. People in these circumstances will be in economic slavery for 5 years and will probably be worse off at the end of 5 years than they were before.

The bill has no rational measure of determining a person's ability to pay off debts. If someone can pay off $10,000 in his debts over 5 years, that is $167 a month, then he is not entitled to a discharge. A person could cosign a spouse's business loan only to have the spouse die or disappear. If that person has a $50,000 salary, he may find himself owing $1 million, never even able to make interest payments, and that person would be denied relief under this bill. A person with hospital bills could have hospital bills of hundreds of thousands of dollars. That person will be denied relief under this bill. This will cause many Americans who have unforeseen business failures, health problems, or unemployment to find themselves unable to pay their debts and be trapped with no way out. And for 5 years that person would have nothing to lose.

Mr. Chairman, if our goal is to create a situation where people are stressed out with nothing to lose and to maximize the chances that a person would totally lose control and terrorize a community or its coworkers, this is it. Last year in Washington, D.C., we saw the impact of financial distress. A North Carolina farmer drove his tractor into the pond near the National Mall and was quoted as saying, ''I am broke. I am busted. I am out.'' No one in the community is safe when we have increased the number of neighbors who feel like they have nothing to lose.

Finally, Mr. Chairman, we have to consider the impact the bill will have on small business entrepreneurs. How many people will be willing to take a chance on a new business if any failure will result not just in bankruptcy but no relief for the family for 5 years? No bank in the future will lend a business any cash, especially one in financial distress that actually needs the money without the personal signature of the owner. And so who will risk not only loss of everything but also risk family poverty with no relief for 5 years if the business fails?

Long ago we decided that there would be no debtors prisons in America. This bill represents an effort to take a giant step backwards towards that bygone era.

So I urge my colleagues to reject this bill in its present form so that we can return to the original bill and help family farmers.

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

The gentleman from North Carolina (Mr. WATT) seemed to imply that because this bill does not contain the so-

called Schumer language as compromised, people who protested abortion clinics will end up being able to stiff the owners and operators and the folks who work at that clinic of any judgment that might be obtained.

Now, the current law, Bankruptcy Code section 523(a)(6) makes nondischargeable debts incurred by willful or malicious injury by the debtor to another entity or to the property of another entity. That law is not changed in this bill. So if somebody trashes an abortion clinic for whatever reason and gets a civil judgment against them, that civil judgment is nondischargeable because the actions were willful and malicious.

Mr. Chairman, again, I looked at this roll call when the rule was voted down to bring up the legislation that did what the gentleman wanted to do, and that was the compromise Schumer-Hyde language in last Congress's bankruptcy bill. We did what my colleague asked, and he still voted ''no.''

So I think that the arguments that have been made are really a red herring to try to defeat an overall bankruptcy reform that the House has supported overwhelmingly on many occasions since this issue first came up at least 7 years ago.

Mr. Chairman, I yield 2 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, first of all I would like to associate myself with the comments of the gentleman from Wisconsin (Mr. SENSENBRENNER) on these two points that he has just made and then point out in response to the gentleman from Virginia (Mr. SCOTT) this bill is about getting money from people who have it. It is not about oppressing the poor. And I think the structure of the bill, if you look at it fairly, will show that I rise in support of Senate 1920.

The amendment in the nature of a substitute of the gentleman from Wisconsin (Mr. SENSENBRENNER) merely makes technical corrections to H.R. 975, which was passed by the House early last year. Given the uncontroversial nature of these revisions, I urge my colleagues to support the amendment.

Last March the House passed H.R. 975 by an overwhelming bipartisan vote of 315 to 113. The administration has endorsed this legislation. The House has voted affirmatively on five separate occasions to pass this bill. Today we are reconsidering this bill in an attempt to reignite a stalled process. We must take action. America's bankruptcy system is, in fact, broken. It gets worse every day with more filings that break record after record, putting an enormous strain on the judiciary's resources. I have seen numbers that indicate the exponential growth to the number of bankruptcy filings.

I believe the increase in consumer bankruptcy filings will have adverse financial consequences for the American economy. In 1997 alone, more than $40 billion was discharged as a result of bankruptcy cases. This loss translates into a $400 annual tax on every household in our Nation in the form of higher prices and higher interest rates.

I urge my colleagues to support the enactment of the amendment in the nature of a substitute to S. 1920.

Mr. SCOTT of Virginia. Mr. Chairman, will the gentleman yield?

Mr. CANNON. I yield to the gentleman from Virginia.

Mr. SCOTT of Virginia. Mr. Chairman, if the gentleman from Utah (Mr. CANNON) suggested that what I said was not accurate, I ask what did I say that was not accurate?

Mr. CANNON. Mr. Chairman, reclaiming my time, what I would like to point out is if you look at the structure of the bill, this is not intended to keep people in slavery or economic servitude. It is intended to take money from those people who are gaming the system who have a large ability to earn income.

Mr. SCOTT of Virginia. If the gentleman would yield, I said that people who have $2 million in debt that could pay $10,000 of that debt that they obviously can never pay will not be able to get relief under this bill. Is that true?

Mr. WATT. Mr. Chairman, I yield as much time as he may consume to the gentleman from Virginia (Mr. SCOTT) to pursue this discussion.

Mr. SCOTT of Virginia. Mr. Chairman, I said that somebody who can pay off $10,000 but can never pay off the $2 million, are they denied relief under this bill?

Mr. CANNON. Mr. Chairman, if the gentleman will continue to yield, will they be able to pay off the $10,000?

Mr. SCOTT of Virginia. They can pay $10,000 on a $2 million debt. The fact is they can never pay off the debt. They will be denied relief under the bill. Is that right?

Mr. CANNON. If they can pay off $10,000? In other words, is it possible that someone who owes millions and millions of dollars in debt may be held responsible for $10,000? We would certainly hope so.

Mr. SCOTT of Virginia. Mr. Chairman, reclaiming my time, so that someone who owes $2 million in debt can pay $10,000 and can never pay it will be in economic slavery because every dime they make over food and rent will go into the fund to help pay the $10,000.

Mr. WATT. Mr. Chairman, I yield such time as he may consume to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Chairman, I think the gentleman from Utah (Mr. CANNON) misunderstands the question of the gentleman from Virginia (Mr. SCOTT). The question as I understand it was not if someone owes $2 million and can pay $10,000 should be then forced to pay $10,000. Yes. The question was, is it not true that under this bill if he owes $2 million, can afford to pay only $10,000, he can never get relief even if he pays the $10,000 he can afford to.

Mr. CANNON. Mr. Chairman, will the gentleman yield?

Mr. NADLER. I yield to the gentleman from Utah.

Mr. CANNON. Mr. Chairman, it is my understanding of this bill that the court can impose a structured pay-out. And that is $10,000, and he can pay $10,000, then he is relieved under the bill.

Mr. SCOTT of Virginia. Mr. Chairman, if the gentleman will yield, so every dime that they make over food and rent goes into the fund to help pay the $10,000. If that is all they can pay, they have to pay that so they are down to food and rent for 5 years although they can only pay $10,000 on a $2 million debt. They cannot get relief from the $2 million under this bill. And the gentleman agrees with that.

Mr. CANNON. Mr. Chairman, I believe I understand the gentleman's question, and the point is that the person can get discharged in the course of bankruptcy including a payment, but that payment is not related to what his grocery bill is. It is related to what he can earn and presumably based upon the judgment and discretion of the court what should be paid in addition to a general discharge.

Mr. WATT. Mr. Chairman, it is obvious that maybe all of my colleagues need to read this bill. Mr. Chairman, I reserve the balance of my time.

Mr. SENSENBRENNER. Mr. Chairman, I am prepared to close the general debate.

Mr. WATT. Mr. Chairman, I yield myself the balance of the time, although I doubt that I will use it.

Let me just correct a couple of things that have been put out here that seem to me to need correction. First of all, child support and alimony are already nondischargeable and all of the women's and children's advocacy groups oppose this bill. So do not be misled by this claim that somehow or another this bill is going to do something to help women's and children's advocacy groups with child support.

Second, the implication has been made that there is somehow a cap on the homestead exemption in this bill, and that is not the case. We tried to get one on several occasions. It has never worked. It has always failed. And so anybody who is proceeding on the assumption that there is some kind of cap in this bill should dissuade themselves of that notion.

Having made those corrections and comments, Mr. Chairman, I presume the gentleman from Wisconsin (Mr. SENSENBRENNER) will have the last word. I encourage my colleagues to vote against the bill on the grounds that it will play Russian roulette with family farmers. We ought to proceed with the family farmer bill, which needs to be extended to protect family farmers and not get them caught up in all of this other politics about abortion and in a larger bankruptcy reform bill.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, the bill that is in the substitute made in order by the Committee on Rules, which is the version of the bill that passed the House last March by about a three to one margin, is better for family farmers than what the Senate sent over to us. But the Senate sent over to us what is merely a 6-month extension of chapter 12 of the bankruptcy code.

The substitute amendment made in order at the Committee on Rules makes chapter 12 permanent. So you have a choice of saying that the other body's bill should be on the President's desk tonight, which means we will go through this entire debate again in 6 months, the end of June, when the Senate bill's provisions expire, or we will be able to pass this bill and take care of the chapter 12 problem permanently.

To protect our family farmers and to give them certainty in the law, let us do the permanent extension, pass the substitute amendment, and then pass the bill with its other provisions because that will protect everybody from being stiffed by the $400 per household that is passed down in the cost of higher goods and services and interest rates as a result of the current bankruptcy system.

Ms. JACKSON-LEE of Texas. Mr. Chairman, I rise in opposition to S. 1920, the bill to extend for 6 months the period for which Chapter 12 of Title 11 of the United States Code is reenacted. This legislation covers a significant amount of ground-consumer filings, small business bankruptcy, ancillary and cross-border cases, financial contract provisions, amendments to chapter 12 governing family farmer reorganization, and health care and employee benefits. These issues affect many constituents; therefore, we as creators of legislation must not take lightly the consideration of its passage. On its face, S. 1920 temporarily extends Chapter 12, the family farmer bankruptcy protection provision, for 6 months, retroactive to January 1, 2004 through June 30, 2004.

If we allow the amendment offered by Mr. SENSENBRENNER to pass favorably, it will essentially incorporate H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act. H.R. 975 passed the House last March by vote of 315 but did not surpass the Senate by virtue of a contentious debate related to preventing abortion protesters from filing for bankruptcy to avoid civil fines and judgment.

H.R. 975 is a significant departure from the current bankruptcy laws that would make it more difficult for individuals to obtain relief from their debts through bankruptcy proceedings. Attorneys practicing in this field would be faced with more complicated technical requirements, and judgment debtors would be faced with additional filing requirements and a ''means test.''

The ''means test'' entails the use of a formula for debtors to determine their eligibility for Chapter 7 or Chapter 13 bankruptcy relief based on their ability to repay debt, relying in part on Internal Revenue Service (IRS) calculations of estimated living expenses. Debtors whose remaining income over a 5-year period—after allowable expenses are deducted—is sufficient to repay at least 25 percent of their unsecured debt or $100 a month over 5 years, whichever is greater, or $10,000, would not be eligible for relief under Chapter 7. Under the measure, the current monthly income of the debtor would be calculated using the 6-month period ending on the last day of the month immediately before the bankruptcy filing was made. Monthly income would not include Social Security benefits and payments to victims of war crimes or crimes against humanity, or victims or international or domestic terrorism. Under the measure, if a debtor's income meets or exceeds the means-test threshold, there would be a ''presumption of abuse.'' Under current law, there is a presumption in favor of granting the debtor a discharge'' i.e., forgiving the debt, so this proposal will severely curtail the rights currently enjoyed by taxpayers. Under this measure, debtors can refute the presumption of abuse by demonstrating ''special circumstances'' that justify additional expenses or adjustment to their income to challenge the means-test formula. The debtors would have to itemize and document each additional expense or income adjustment—a very onerous and laborious ordeal.

This legislation is simply the wrong measure proffered at the wrong time. It will do nothing to address the critical problems facing our country. It will unfairly benefit the credit card and banking industries, rewarding large financial institutions-those paid for by those least able to afford it. The bill includes an extreme means test to determine whether a family can file for bankruptcy protection that helps them get out of debt, or whether the family must enter into a stringent repayment plan under Chapter 13 of the IRS Code.

Currenlty, less than one-third of Chapter 13 plans are successfully completed, and this rigid ''one-size-fits-all'' means test would result in an even greater number of failed repayment plans, increased administrative costs to the courts, and unnecessary constraints on families in genuine need of bankruptcy relief. The bill, along with the amendment that incorporates H.R. 975 hurts families. The problem with escalating personal bankruptcy filings is not that families are abusing the bankruptcy system. Ninety percent of bankruptcies are attributable to a crisis in the debtor's family such job loss, divorce, or excessive medical bills. In addition, credit card companies are extending credit far too easily. Credit card companies want all the benefits of a deregulated credit industry, with high interest rates and low minimum-payment requirements. They continue to irresponsibility extend credit to already debt-laden consumers and then run to Congress for help to apply pressure to consumers already struggling in this troubled economy.

While the bill purports to elevate the priority of child support payments, in reality, credit card companies would receive repayment of debt at the same rate as child support obligations. Those provisions would have a severe impact on the most vulnerable members of society, including women and children who rely on alimony and child support payments to live. The bill's homestead exemption cap does little to address the problem of wealthy debtors shielding their assets from creditors by purchasing million-dollars homes. Sophisticated, wealthy debtors can easily plan ahead and evade the cap. Under the bill, with a little planning, chief executive officers like Ken Lay, formerly of Enron, would be able to keep their homes, while lower-income renters—the former janitors at Enron, for example—could end up homeless.

The bill also imposes artificial deadlines and cumbersome new paperwork requirements on small businesses trying to reorganize and unnecessarily limits the discretion of bankruptcy judges in crafting the best possible result for small business debtors and creditors. The overbroad requirements called for will force many viable small businesses to permanently close their doors. The bill is great for credit card companies, but bad for everyone else. In fact, it hurts those who most need the second chance offered by bankruptcy.

I do, however, support amendment No. 2 of House Report No. 108–407 offered by Ms. BALDWIN of Wisconsin. This amendment would make Chapter 12 of Title 11 of the U.S. Bankruptcy Code that deals with ''family farmer'' reorganization permanent and would expand the eligibility requirements found within that Chapter. The number of Chapter 12 filings has risen in the past two years. Allowing this law to lapse would be irresponsible for us as legislators. Farmers with debts up to $1.5 million can qualify for Chapter 12 protection if 80 percent of that debt is related to farm operations. In normal bankruptcy proceedings, all assets are subject to liquidation, but under Chapter 12, land and equipment is exempt, allowing a family farmer to keep farming.

From its incipiency, this has always been a bad bill—one that kicks honest debtors when they are already down on their luck—but the timing could not be worse. The policy message that is being conveyed with this legislative scheme amounts to a slap in the face of the families of our brave men and women in uniform who fought and are still fighting in the expensive ''Operation Iraqi Freedom,'' a war that has to date not been substantially justified. This bill should be defeated so that Congress instead of using the public's time and money to pay back credit card companies for their campaign contributions, can get back to work addressing the very real problems facing our country.

For the reasons stated above, Mr. Chairman, I oppose this bill.

Mr. OXLEY. Mr. Chairman, I rise today in support of S. 1920, and the amendment offered by the distinguished chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER).

As you know, the gentleman's amendment consists of the text of H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003. That bill was additionally referred to the Committee on Financial Services, which I chair, based on its jurisdiction over banks and banking, credit, and securities and exchanges.

Mr. Chairman, this legislation is vitally important to the Nation. In particular, those provisions addressing the ''netting'' of financial contracts are an important part of ensuring that our economic recovery continues, as the Chairman of the Federal Reserve Board of Governors, Alan Greenspan, has said time and time again.

Accordingly, I wholeheartedly support any effort to move this legislation forward to enactment. For the record, I am submitting an exchange of letters between the Chairman of the Committee on the Judiciary and myself regarding H.R. 975. I appreciate his willingness

to work constructively with the Committee on Financial Services and look forward to working with him to achieve enactment of these important reforms.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON FINANCIAL SERVICES,
Washington, DC, March 14, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, Committee on the Judiciary
Washington, DC.

DEAR JIM: On March 12, 2003, the Committee on the Judiciary ordered reported H.R. 975, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003. As you know, the Committee on Financial Services was granted an additional referral upon the bill's introduction pursuant to the Committee's jurisdiction under Rule X of the Rules of the House of Representatives over banks and banking, credit, and securities and exchanges.

Because of your willingness to consult with the Committee on Financial Services regarding this matter, your continuing support for our requested changes, and the need to move this legislation expeditiously, I will waive consideration of the bill by the Financial Services Committee. By agreeing to waive its consideration of the bill, the Financial Services Committee does not waive its jurisdiction over H.R. 975. In addition, the Committee on Financial Services reserves its authority to seek conferees on any provisions of the bill that are within the Financial Services Committee's jurisdiction during any House-Senate conference that may be convened on this legislation. I ask your commitment to support any request by the Committee on Financial Services for conferees on H.R. 975 or related legislation.

I request that you include this letter and your response as part of your committee's report on the bill and the Congressional Record during consideration of the legislation on the House floor.

Thank you for your attention to these matters.

Sincerely,

MICHAEL G. OXLEY,
Chairman.

HOUSE OF REPRESENTATIVES,
COMMITTEE ON THE JUDICIARY,
Washington, DC, March 17, 2003.

Hon. MICHAEL G. OXLEY,
Chairman, Committee on Financial Services,
House of Representatives, Washington, DC.

DEAR MICHAEL: This letter responds to your letter dated March 14, 2003, concerning H.R. 975, the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.''

I agree that the bill contains matters within the Financial Services Committee's jurisdiction and appreciate your willingness to be discharged from further consideration of H.R. 975 so we may proceed to the floor.

Pursuant to your request, a copy of your letter and this letter will be included in the report of the Committee on the Judiciary on H.R. 975.

Sincerely,

F. JAMES SENSENBRENNER, Jr.
Chairman.

Mr. CANTOR. Mr. Chairman, I rise today to speak in favor of bankruptcy reform, an issue this body has voted in favor of time and time again.

This reform is long overdue and will go a long way to stop abuses of the bankruptcy code.

This measure will permanently extend the agricultural chapter of the bankruptcy code and will add new protections for the American people, including a ''bill of rights'' for those who file for bankruptcy.

Additionally, this measure will provide new protections for parents and will strengthen their ability to collect child support. This legislation will also fix the system so that high income debtors attempting to protect their excessive lifestyles will be held accountable and not continue to live lavishly at the expense of working families.

By establishing a means test for those who file for bankruptcy, this legislation will ensure that those who can repay their debts will no longer be able to abuse the system. These abuses negatively affect the economy by raising the price of goods while simultaneously lowering the availability of credit. This measure is a victory for the majority of Americans who play by the rules over those who choose to play by their own.

Mr. Chairman, the time has come for us to pass bankruptcy reform. These reforms are necessary to protect the American people; and I urge passage of this legislation.

Mr. BISHOP of Georgia. Mr. Chairman, I rise today in support of S. 1920 and for the rule which preserves the institution of bankruptcy, and provides an important safety net for American families, individuals, and businesses.

At first glance, the bill before us, S. 1920, provides for a 6 month extension of Chapter 12 bankruptcy protection for America's family farmers. I am again happy to support this greatly needed extension, but there's more to this bill than that.

The rule that we are also considering today substitutes into S. 1920 the text of the much larger bankruptcy reform bill (H.R. 975) which we in the House passed on March 19, 2003 by a vote of 315–113. This was great news and progress in preserving the institution of bankruptcy protection. Unfortunately, the bill has not yet been taken up in the Senate—not surprisingly since previous House versions of bankruptcy protection have died on the vine in the Senate when extraneous provisions were included.

So today we have an opportunity for a second bite at that apple. The provisions in S. 1920 (and H.R. 975 by incorporation) preserve bankruptcy by ensuring this protection to those who really need it as a result of unforeseeable medical bills, unemployment, and other legitimate needs. I am also extremely pleased that it also includes a permanent extension of Chapter 12 family farmer bankruptcy protection, and I'd like to also acknowledge the efforts of Representative BALDWIN, whose amendment we are also considering, similarly makes permanent this important protection. Importantly, H.R. 975 ensures that more family farmers will be eligible for Chapter 12 by easing some of the income and debt limitations that currently restrict access to this type of bankruptcy relief. While reasonable minds may differ as to the best vehicle for family farmer bankruptcy protection, currently family farmers are without the bankruptcy protection they need. This is completely unacceptable.

Broadly speaking, Mr. Chairman, the bankruptcy system in America is broken and needs to be fixed. Bankruptcy filings have soared in recent years, with thousands of filers who are capable of repaying their debts, simply walking away from their debts and obligations through the current bankruptcy filing system.

We need a greater and more sustainable safety net for all Americans, and we need it now. The bill before us protects those who truly need it most, while also including protections for business so that they can get back on track and get back to work.

This bill is a good deal for Americans, Mr. Chairman, saving American taxpayers billions of dollars each and every year. It is a powerful and greatly needed measure that protects consumers and creditors against those who would abuse the system, while ensuring a fresh start to those who legitimately need the safety net that is the bankruptcy system.

Let me be perfectly clear—one way or another, we must pass family farmer bankruptcy protection now in order to lift up America's farmers by making this protection permanent. I believe that the bill before us holds this promise. But if this bill fails for any number of political obstacles between the House and the Senate, we must still honor our responsibility to ensure that our family farmers are protected. I know that I will, and I urge my colleagues to do the same.

Mr. BEREUTER. Mr. Chairman, this Member rises today to express his support for S. 1920, as amended. The Rules Committee has reported-out a rule (H. Res. 503) which upon passage, automatically modifies this bill by substituting the text of H.R. 975 which the House passed on March 19, 2003. This Member was a cosponsor of this earlier passed measure.

It is important to note that bankruptcy reforms bills have passed both the House and Senate in the 105th, 106th, and 107th Congresses. In the 105th Congress, the House passed a bankruptcy reform conference report, while the Senate failed to pass the conference report. In the 106th Congress, former President Bill Clinton pocket vetoed a bankruptcy reform conference report. During the 107th Congress, the rule under which the bankruptcy reform conference report was to be considered was defeated in the House because of a tenuous connection drawn to the subject of abortion clinics by conferees from the other body.

This Member would thank the distinguished gentleman from Wisconsin (Mr. SENSENBRENNER), the Chairman of the Judiciary Committee, for his efforts in bringing, S. 1920, as amended to the House Floor for consideration. This Member supports S. 1920, as amended, for numerous reasons; however, the most important reasons include the following:

First, this Member supports the provision which provides for a means testing (needs-based) formula when determining whether an individual should file for Chapter 7 or Chapter 13 bankruptcy. Chapter 7 bankruptcy allows a debtor to be discharged of his or personal liability for many unsecured debts. In addition, there is no requirement that a Chapter 7 filer repay many of his or her debts. However, Chapter 13 bankruptcy filers commit to repay some portion of his or her debts under a repayment plan.

Some Chapter 7 filers actually have the capacity to repay some of what they owe, but they choose Chapter 7 bankruptcy and are able to walk away from these debts. For example, the stories in which an individual filed for Chapter 7 bankruptcy and then proceeds to take a nice vacation and/or buys a new car are too common. Moreover, the status quo is costing the average American individual and family increased costs for consumer goods and credit because of the amount of debt which is never repaid to creditors.

As a response to these concerns, the needs-based test of this legislation will help ensure that high income filers, who could repay some of what they owe, are required to file Chapter 13 bankruptcy as compared to Chapter 7. This needs-based system takes a debtor's income, expenses, obligations and any special circumstances into account to determine whether he or she has the capacity to repay a portion of their debts.

Second, this Member supports the additional monthly expense items that are exempted from consideration under the needs-based test which determines, under this legislation, whether a person can file either a Chapter 7 or 13 version of bankruptcy. These expenses include the following: reasonable expenses incurred to maintain the safety of the debtor and debtor's family from domestic violence; an additional food and clothing allowance if demonstrated to be reasonable and necessary; and actual expenses for the care and support of an elderly, chronically ill, or disabled member of the debtor's household or immediate family.

Third, this Member supports the permanent extension of Chapter 12 bankruptcy in this legislation since it allows family farmers to reorganize their debts as compared to liquidating their assets. Using the Chapter 12 bankruptcy provision has been an important and necessary option for family farmers to reorganize their assets in manner which balances the interests of creditors and the future success of the involved farmer.

It is important to note that S. 1920, as passed by the other body on November 25, 2003, would extend Chapter 12 bankruptcy for family farms and ranches through July 1, 2004. Chapter 12 bankruptcy expired on January 1, 2004.

If Chapter 12 bankruptcy provisions are not permanently extended for family farmers, its expiration on January 1, 2004, would continue to be a very painful blow to an agricultural sector already reeling from low commodity prices. Not only will many family farmers have no viable option but to end their operations, it likely will also cause land values to plunge. Such a decrease in value of farmland will affect the ability of family farmers to obtain adequate credit to maintain a viable farm operation. It will impact the manner in which banks conduct their agricultural lending activities. Furthermore, this Member has received many contacts from his constituents supporting the extension of Chapter 12 bankruptcy because of the situation now being faced by our Nation's farm families. It is clear that the agricultural sector is hurting and by a permanent extension of the Chapter 12 authorization, Congress can avoid one more negative possibility.

Lastly, this Member supports the provisions in this legislation, which requires that people convicted of a felony or who owe a debt from a securities fraud violation in the 5 years before filing for bankruptcy cannot claim an unlimited homestead exemption. This Member believes that this provision in the conference report is imperative in light of the recent corporate scandals at Enron and WorldCom. For example, this provision would apply to the $7 million penthouse in Houston of Kenneth Lay (if he still owns it), the former chairman of Enron, if he both files for personal bankruptcy in the future and owes a debt due to any conviction of securities fraud. In addition, this provision may also be relevant to Scott D. Sullivan, the former chief financial officer of WorldCom, who at one time was building a $15 million mansion in Boca Raton, Florida.

In closing, for these aforementioned reasons and many others, this Member urges his colleagues to support S. 1920, as amended.

Mr. SMITH of Texas. Mr. Chairman I support this bill. It allows consumers to benefit from the changes to the bankruptcy system that were approved by this House last year.

It's time for Congress to enact permanent meaningful bankruptcy reform. Recent surveys show that 70 percent of Americans support reforming our nation's bankruptcy laws. Unless we take action, consumers will continue to be negatively impacted by the current system and fraudulent filings will continue to be rewarded rather than discouraged.

In 1980, 300,000 bankruptcy petitions were filed. This past year, over 1.2 million were reported during just the first nine months. Many of these filings are legitimate attempts by debtors to pay their debts and obtain a fresh start. However, bankruptcy is too often used as a way to avoid responsibilities.

Unnecessary Bankruptcy filings continue to increase at dramatic rates. This is bad for consumers and bad for our economy. The costs of these filings are passed on to America's businesses and consumers, who should not have to absorb these debts. We must ensure that debtors actually belong in bankruptcy and are not using the system to avoid their obligations.

This legislation encourages personal responsibility, protects consumers, and ensures that bankruptcy is used only as a last resort and is not abused by those who can afford to repay their debts.

Bankruptcy reform is good for consumers, family farmers, and our economy. I urge my colleagues to support this bill.

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

□ 1445

The CHAIRMAN. All time for general debate has expired.

Pursuant to the rule, the amendment in the nature of a substitute consisting of the text of H.R. 975 as passed by the House shall be considered as an original bill for the purpose of amendment under the 5-minute rule and shall be considered read.

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

H.R. 975

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

SECTION 1. SHORT TITLE; REFERENCES; TABLE OF CONTENTS.

(a) SHORT TITLE.—This Act may be cited as the ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2003''.

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

TITLE I—NEEDS-BASED BANKRUPTCY

SEC. 101. CONVERSION.

Section 706(c) of title 11, United States Code, is amended by inserting ''or consents to'' after ''requests''.

SEC. 102. DISMISSAL OR CONVERSION.

(a) IN GENERAL.—Section 707 of title 11, United States Code, is amended—

(1) by striking the section heading and inserting the following:

''§ 707. Dismissal of a case or conversion to a case under chapter 11 or 13'';

and

(2) in subsection (b)—

(A) by inserting ''(1)'' after ''(b)'';

(B) in paragraph (1), as so redesignated by subparagraph (A) of this paragraph—

(i) in the first sentence—

(I) by striking ''but not at the request or suggestion of'' and inserting ''trustee (or bankruptcy administrator, if any), or'';

(II) by inserting '', or, with the debtor's consent, convert such a case to a case under chapter 11 or 13 of this title,'' after ''consumer debts''; and

(III) by striking ''a substantial abuse'' and inserting ''an abuse''; and

(ii) by striking the next to last sentence; and

(C) by adding at the end the following:

''(2)(A)(i) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter, the court shall presume abuse exists if the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv), and multiplied by 60 is not less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims in the case, or $6,000, whichever is greater; or

''(II) $10,000.

''(ii)(I) The debtor's monthly expenses shall be the debtor's applicable monthly expense amounts specified under the National Standards and Local Standards, and the debtor's actual monthly expenses for the categories specified as Other Necessary Expenses issued by the Internal Revenue Service for the area in which the debtor resides, as in effect on the date of the order for relief, for the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case, if the spouse is not otherwise a dependent. Notwithstanding any other provision of this clause, the monthly expenses of the debtor shall not include any payments for debts. In addition, the debtor's monthly expenses shall include the debtor's reasonably necessary expenses incurred to maintain the safety of the debtor and the family of the debtor from family violence as identified under section 309 of the Family Violence Prevention and Services Act, or other applicable Federal law. The expenses included in the debtor's monthly expenses described in the preceding sentence shall be kept confidential by the court. In addition, if it is demonstrated that it is reasonable and necessary, the debtor's monthly expenses may also include an additional allowance for food and clothing of up to 5 percent of the food and clothing categories as specified by the National Standards issued by the Internal Revenue Service.

''(II) In addition, the debtor's monthly expenses may include, if applicable, the continuation of actual expenses paid by the debtor that are reasonable and necessary for care and support of an elderly, chronically ill, or disabled household member or member of the debtor's immediate family (including parents, grandparents, siblings, children, and grandchildren of the debtor, the dependents of the debtor, and the spouse of the debtor in a joint case who is not a dependent) and who is unable to pay for such reasonable and necessary expenses.

''(III) In addition, for a debtor eligible for chapter 13, the debtor's monthly expenses may include the actual administrative expenses of administering a chapter 13 plan for the district in which the debtor resides, up to an amount of 10 percent of the projected plan payments, as determined under schedules issued by the Executive Office for United States Trustees.

''(IV) In addition, the debtor's monthly expenses may include the actual expenses for each dependent child less than 18 years of age, not to exceed $1,500 per year per child, to attend a private or public elementary or secondary school if the debtor provides documentation of such expenses and a detailed explanation of why such expenses are reasonable and necessary, and why such expenses are not already accounted for in the National Standards, Local Standards, or Other Necessary Expenses referred to in subclause (I).

''(V) In addition, the debtor's monthly expenses may include an allowance for housing and utilities, in excess of the allowance specified by the Local Standards for housing and utilities issued by the Internal Revenue Service, based on the actual expenses for home energy costs if the debtor provides documentation of such actual expenses and demonstrates that such actual expenses are reasonable and necessary.

''(iii) The debtor's average monthly payments on account of secured debts shall be calculated as the sum of—

''(I) the total of all amounts scheduled as contractually due to secured creditors in each month of the 60 months following the date of the petition; and

''(II) any additional payments to secured creditors necessary for the debtor, in filing a plan under chapter 13 of this title, to maintain possession of the debtor's primary residence, motor vehicle, or other property necessary for the support of the debtor and the debtor's dependents, that serves as collateral for secured debts;

divided by 60.

''(iv) The debtor's expenses for payment of all priority claims (including priority child support and alimony claims) shall be calculated as the total amount of debts entitled to priority, divided by 60.

''(B)(i) In any proceeding brought under this subsection, the presumption of abuse may only be rebutted by demonstrating special circumstances that justify additional expenses or adjustments of current monthly income for which there is no reasonable alternative.

''(ii) In order to establish special circumstances, the debtor shall be required to itemize each additional expense or adjustment of income and to provide—

''(I) documentation for such expense or adjustment to income; and

''(II) a detailed explanation of the special circumstances that make such expenses or adjustment to income necessary and reasonable.

''(iii) The debtor shall attest under oath to the accuracy of any information provided to demonstrate that additional expenses or adjustments to income are required.

''(iv) The presumption of abuse may only be rebutted if the additional expenses or adjustments to income referred to in clause (i) cause the product of the debtor's current monthly income reduced by the amounts determined under clauses (ii), (iii), and (iv) of subparagraph (A) when multiplied by 60 to be less than the lesser of—

''(I) 25 percent of the debtor's nonpriority unsecured claims, or $6,000, whichever is greater; or

''(II) $10,000.

''(C) As part of the schedule of current income and expenditures required under section 521, the debtor shall include a statement of the debtor's current monthly income, and the calculations that determine whether a presumption arises under subparagraph (A)(i), that show how each such amount is calculated.

''(3) In considering under paragraph (1) whether the granting of relief would be an abuse of the provisions of this chapter in a case in which the presumption in subparagraph (A)(i) of such paragraph does not arise or is rebutted, the court shall consider—

''(A) whether the debtor filed the petition in bad faith; or

''(B) the totality of the circumstances (including whether the debtor seeks to reject a personal services contract and the financial need for such rejection as sought by the debtor) of the debtor's financial situation demonstrates abuse.

''(4)(A) The court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may order the attorney for the debtor to reimburse the trustee for all reasonable costs in prosecuting a motion filed under section 707(b), including reasonable attorneys' fees, if—

''(i) a trustee files a motion for dismissal or conversion under this subsection; and

''(ii) the court—

''(I) grants such motion; and

''(II) finds that the action of the attorney for the debtor in filing under this chapter violated rule 9011 of the Federal Rules of Bankruptcy Procedure.

''(B) If the court finds that the attorney for the debtor violated rule 9011 of the Federal Rules of Bankruptcy Procedure, the court, on its own initiative or on the motion of a party in interest, in accordance with such procedures, may order—

''(i) the assessment of an appropriate civil penalty against the attorney for the debtor; and

''(ii) the payment of such civil penalty to the trustee, the United States trustee (or the bankruptcy administrator, if any).

''(C) The signature of an attorney on a petition, pleading, or written motion shall constitute a certification that the attorney has—

''(i) performed a reasonable investigation into the circumstances that gave rise to the petition, pleading, or written motion; and

''(ii) determined that the petition, pleading, or written motion—

''(I) is well grounded in fact; and

''(II) is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law and does not constitute an abuse under paragraph (1).

''(D) The signature of an attorney on the petition shall constitute a certification that the attorney has no knowledge after an inquiry that the information in the schedules filed with such petition is incorrect.

''(5)(A) Except as provided in subparagraph (B) and subject to paragraph (6), the court, on its own initiative or on the motion of a party in interest, in accordance with the procedures described in rule 9011 of the Federal Rules of Bankruptcy Procedure, may award a debtor all reasonable costs (including reasonable attorneys' fees) in contesting a motion filed by a party in interest (other than a trustee or United States trustee (or bankruptcy administrator, if any)) under this subsection if—

''(i) the court does not grant the motion; and

''(ii) the court finds that—

''(I) the position of the party that filed the motion violated rule 9011 of the Federal Rules of Bankruptcy Procedure; or

''(II) the attorney (if any) who filed the motion did not comply with the requirements of clauses (i) and (ii) of paragraph (4)(C), and the motion was made solely for the purpose of coercing a debtor into waiving a right guaranteed to the debtor under this title.

''(B) A small business that has a claim of an aggregate amount less than $1,000 shall not be subject to subparagraph (A)(ii)(I).

''(C) For purposes of this paragraph—

''(i) the term 'small business' means an unincorporated business, partnership, corporation, association, or organization that—

''(I) has fewer than 25 full-time employees as determined on the date on which the motion is filed; and

''(II) is engaged in commercial or business activity; and

''(ii) the number of employees of a wholly owned subsidiary of a corporation includes the employees of—

''(I) a parent corporation; and

''(II) any other subsidiary corporation of the parent corporation.

''(6) Only the judge or United States trustee (or bankruptcy administrator, if any) may file a motion under section 707(b), if the current monthly income of the debtor, or in a joint case, the debtor and the debtor's spouse, as of the date of the order for relief, when multiplied by 12, is equal to or less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(7)(A) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if the current monthly income of the debtor and the debtor's spouse combined, as of the date of the order for relief when multiplied by 12, is equal to or less than—

''(i) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(ii) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(iii) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.

''(B) In a case that is not a joint case, current monthly income of the debtor's spouse shall not be considered for purposes of subparagraph (A) if—

''(i)(I) the debtor and the debtor's spouse are separated under applicable nonbankruptcy law; or

''(II) the debtor and the debtor's spouse are living separate and apart, other than for the purpose of evading subparagraph (A); and

''(ii) the debtor files a statement under penalty of perjury—

''(I) specifying that the debtor meets the requirement of subclause (I) or (II) of clause (i); and

''(II) disclosing the aggregate, or best estimate of the aggregate, amount of any cash or money payments received from the debtor's spouse attributed to the debtor's current monthly income.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (10) the following:

''(10A) 'current monthly income'—

''(A) means the average monthly income from all sources that the debtor receives (or in a joint case the debtor and the debtor's spouse receive) without regard to whether such income is taxable income, derived during the 6-month period ending on—

''(i) the last day of the calendar month immediately preceding the date of the commencement of the case if the debtor files the schedule of current income required by section 521(a)(1)(B)(ii); or

''(ii) the date on which current income is determined by the court for purposes of this title if the debtor does not file the schedule of current income required by section 521(a)(1)(B)(ii); and

''(B) includes any amount paid by any entity other than the debtor (or in a joint case the debtor and the debtor's spouse), on a regular basis for the household expenses of the debtor or the debtor's dependents (and in a joint case the debtor's spouse if not otherwise a dependent), but excludes benefits received under the Social Security Act, payments to victims of war crimes or crimes against humanity on account of their status as victims of such crimes, and payments to victims of international terrorism (as defined in section 2331 of title 18) or domestic terrorism (as defined in section 2331 of title 18) on account of their status as victims of such terrorism;''.

(c) UNITED STATES TRUSTEE AND BANKRUPTCY ADMINISTRATOR DUTIES.—Section 704 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The trustee shall—''; and

(2) by adding at the end the following:

''(b)(1) With respect to a debtor who is an individual in a case under this chapter—

''(A) the United States trustee (or the bankruptcy administrator, if any) shall review all materials filed by the debtor and, not later than 10 days after the date of the first meeting of creditors, file with the court a statement as to whether the debtor's case would be presumed to be an abuse under section 707(b); and

''(B) not later than 5 days after receiving a statement under subparagraph (A), the court shall provide a copy of the statement to all creditors.

''(2) The United States trustee (or bankruptcy administrator, if any) shall, not later than 30 days after the date of filing a statement under paragraph (1), either file a motion to dismiss or convert under section 707(b) or file a statement setting forth the reasons the United States trustee (or the bankruptcy administrator, if any) does not consider such a motion to be appropriate, if the United States trustee (or the bankruptcy administrator, if any) determines that the debtor's case should be presumed to be an abuse under section 707(b) and the product of the debtor's current monthly income, multiplied by 12 is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner; or

''(B) in the case of a debtor in a household of 2 or more individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals.''.

(d) NOTICE.—Section 342 of title 11, United States Code, is amended by adding at the end the following:

''(d) In a case under chapter 7 of this title in which the debtor is an individual and in which the presumption of abuse arises under section 707(b), the clerk shall give written notice to all creditors not later than 10 days after the date of the filing of the petition that the presumption of abuse has arisen.''.

(e) NONLIMITATION OF INFORMATION.—Nothing in this title shall limit the ability of a creditor to provide information to a judge (except for information communicated ex parte, unless otherwise permitted by applicable law), United States trustee (or bankruptcy administrator, if any), or trustee.

(f) DISMISSAL FOR CERTAIN CRIMES.—Section 707 of title 11, United States Code, is amended by adding at the end the following:

''(c)(1) In this subsection—

''(A) the term 'crime of violence' has the meaning given such term in section 16 of title 18; and

''(B) the term 'drug trafficking crime' has the meaning given such term in section 924(c)(2) of title 18.

''(2) Except as provided in paragraph (3), after notice and a hearing, the court, on a motion by the victim of a crime of violence or a drug trafficking crime, may when it is in the best interest of the victim dismiss a voluntary case filed under this chapter by a debtor who is an individual if such individual was convicted of such crime.

''(3) The court may not dismiss a case under paragraph (2) if the debtor establishes by a preponderance of the evidence that the filing of a case under this chapter is necessary to satisfy a claim for a domestic support obligation.''.

(g) CONFIRMATION OF PLAN.—Section 1325(a) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (6) the following:

''(7) the action of the debtor in filing the petition was in good faith;''.

(h) APPLICABILITY OF MEANS TEST TO CHAPTER 13.—Section 1325(b) of title 11, United States Code, is amended—

(1) in paragraph (1)(B), by inserting ''to unsecured creditors'' after ''to make payments''; and

(2) by striking paragraph (2) and inserting the following:

''(2) For purposes of this subsection, the term 'disposable income' means current

monthly income received by the debtor (other than child support payments, foster care payments, or disability payments for a dependent child made in accordance with applicable nonbankruptcy law to the extent reasonably necessary to be expended for such child) less amounts reasonably necessary to be expended—

''(A)(i) for the maintenance or support of the debtor or a dependent of the debtor, or for a domestic support obligation, that first becomes payable after the date the petition is filed; and

''(ii) for charitable contributions (that meet the definition of 'charitable contribution' under section 548(d)(3) to a qualified religious or charitable entity or organization (as defined in section 548(d)(4)) in an amount not to exceed 15 percent of gross income of the debtor for the year in which the contributions are made; and

''(B) if the debtor is engaged in business, for the payment of expenditures necessary for the continuation, preservation, and operation of such business.

''(3) Amounts reasonably necessary to be expended under paragraph (2) shall be determined in accordance with subparagraphs (A) and (B) of section 707(b)(2), if the debtor has current monthly income, when multiplied by 12, greater than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4.''.

(i) SPECIAL ALLOWANCE FOR HEALTH INSURANCE.—Section 1329(a) of title 11, United States Code, is amended—

(1) in paragraph (2) by striking ''or'' at the end;

(2) in paragraph (3) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) reduce amounts to be paid under the plan by the actual amount expended by the debtor to purchase health insurance for the debtor (and for any dependent of the debtor if such dependent does not otherwise have health insurance coverage) if the debtor documents the cost of such insurance and demonstrates that—

''(A) such expenses are reasonable and necessary;

''(B)(i) if the debtor previously paid for health insurance, the amount is not materially larger than the cost the debtor previously paid or the cost necessary to maintain the lapsed policy; or

''(ii) if the debtor did not have health insurance, the amount is not materially larger than the reasonable cost that would be incurred by a debtor who purchases health insurance, who has similar income, expenses, age, and health status, and who lives in the same geographical location with the same number of dependents who do not otherwise have health insurance coverage; and

''(C) the amount is not otherwise allowed for purposes of determining disposable income under section 1325(b) of this title;

and upon request of any party in interest, files proof that a health insurance policy was purchased.''.

(j) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, is amended by striking ''and 523(a)(2)(C)'' each place it appears and inserting ''523(a)(2)(C), 707(b), and 1325(b)(3)''.

(k) DEFINITION OF 'MEDIAN FAMILY INCOME'.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (39) the following:

''(39A) 'median family income' means for any year—

''(A) the median family income both calculated and reported by the Bureau of the Census in the then most recent year; and

''(B) if not so calculated and reported in the then current year, adjusted annually after such most recent year until the next year in which median family income is both calculated and reported by the Bureau of the Census, to reflect the percentage change in the Consumer Price Index for All Urban Consumers during the period of years occurring after such most recent year and before such current year;''.

(k) CLERICAL AMENDMENT.—The table of sections for chapter 7 of title 11, United States Code, is amended by striking the item relating to section 707 and inserting the following:

''707. Dismissal of a case or conversion to a case under chapter 11 or 13.''.

SEC. 103. SENSE OF CONGRESS AND STUDY.

(a) SENSE OF CONGRESS.—It is the sense of Congress that the Secretary of the Treasury has the authority to alter the Internal Revenue Service standards established to set guidelines for repayment plans as needed to accommodate their use under section 707(b) of title 11, United States Code.

(b) STUDY.—

(1) IN GENERAL.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and the Committee on the Judiciary of the House of Representatives containing the findings of the Director regarding the utilization of Internal Revenue Service standards for determining—

(A) the current monthly expenses of a debtor under section 707(b) of title 11, United States Code; and

(B) the impact that the application of such standards has had on debtors and on the bankruptcy courts.

(2) RECOMMENDATION.—The report under paragraph (1) may include recommendations for amendments to title 11, United States Code, that are consistent with the findings of the Director under paragraph (1).

SEC. 104. NOTICE OF ALTERNATIVES.

Section 342(b) of title 11, United States Code, is amended to read as follows:

''(b) Before the commencement of a case under this title by an individual whose debts are primarily consumer debts, the clerk shall give to such individual written notice containing—

''(1) a brief description of—

''(A) chapters 7, 11, 12, and 13 and the general purpose, benefits, and costs of proceeding under each of those chapters; and

''(B) the types of services available from credit counseling agencies; and

''(2) statements specifying that—

''(A) a person who knowingly and fraudulently conceals assets or makes a false oath or statement under penalty of perjury in connection with a case under this title shall be subject to fine, imprisonment, or both; and

''(B) all information supplied by a debtor in connection with a case under this title is subject to examination by the Attorney General.''.

SEC. 105. DEBTOR FINANCIAL MANAGEMENT TRAINING TEST PROGRAM.

(a) DEVELOPMENT OF FINANCIAL MANAGEMENT AND TRAINING CURRICULUM AND MATERIALS.—The Director of the Executive Office for United States Trustees (in this section referred to as the ''Director'') shall consult with a wide range of individuals who are experts in the field of debtor education, including trustees who serve in cases under chapter 13 of title 11, United States Code, and who operate financial management education programs for debtors, and shall develop a financial management training curriculum and materials that can be used to educate debtors who are individuals on how to better manage their finances.

(b) TEST.—

(1) SELECTION OF DISTRICTS.—The Director shall select 6 judicial districts of the United States in which to test the effectiveness of the financial management training curriculum and materials developed under subsection (a).

(2) USE.—For an 18-month period beginning not later than 270 days after the date of the enactment of this Act, such curriculum and materials shall be, for the 6 judicial districts selected under paragraph (1), used as the instructional course concerning personal financial management for purposes of section 111 of title 11, United States Code.

(c) EVALUATION.—

(1) IN GENERAL.—During the 18-month period referred to in subsection (b), the Director shall evaluate the effectiveness of—

(A) the financial management training curriculum and materials developed under subsection (a); and

(B) a sample of existing consumer education programs such as those described in the Report of the National Bankruptcy Review Commission (October 20, 1997) that are representative of consumer education programs carried out by the credit industry, by trustees serving under chapter 13 of title 11, United States Code, and by consumer counseling groups.

(2) REPORT.—Not later than 3 months after concluding such evaluation, the Director shall submit a report to the Speaker of the House of Representatives and the President pro tempore of the Senate, for referral to the appropriate committees of the Congress, containing the findings of the Director regarding the effectiveness of such curriculum, such materials, and such programs and their costs.

SEC. 106. CREDIT COUNSELING.

(a) WHO MAY BE A DEBTOR.—Section 109 of title 11, United States Code, is amended by adding at the end the following:

''(h)(1) Subject to paragraphs (2) and (3), and notwithstanding any other provision of this section, an individual may not be a debtor under this title unless such individual has, during the 180-day period preceding the date of filing of the petition by such individual, received from an approved nonprofit budget and credit counseling agency described in section 111(a) an individual or group briefing (including a briefing conducted by telephone or on the Internet) that outlined the opportunities for available credit counseling and assisted such individual in performing a related budget analysis.

''(2)(A) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved nonprofit budget and credit counseling agencies for such district are not reasonably able to provide adequate services to the additional individuals who would otherwise seek credit counseling from such agencies by reason of the requirements of paragraph (1).

''(B) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in subparagraph (A) shall review such determination not later than 1 year after the date of such determination, and not less frequently than

annually thereafter. Notwithstanding the preceding sentence, a nonprofit budget and credit counseling agency may be disapproved by the United States trustee (or the bankruptcy administrator, if any) at any time.

''(3)(A) Subject to subparagraph (B), the requirements of paragraph (1) shall not apply with respect to a debtor who submits to the court a certification that—

''(i) describes exigent circumstances that merit a waiver of the requirements of paragraph (1);

''(ii) states that the debtor requested credit counseling services from an approved nonprofit budget and credit counseling agency, but was unable to obtain the services referred to in paragraph (1) during the 5-day period beginning on the date on which the debtor made that request; and

''(iii) is satisfactory to the court.

''(B) With respect to a debtor, an exemption under subparagraph (A) shall cease to apply to that debtor on the date on which the debtor meets the requirements of paragraph (1), but in no case may the exemption apply to that debtor after the date that is 30 days after the debtor files a petition, except that the court, for cause, may order an additional 15 days.''.

(b) CHAPTER 7 DISCHARGE.—Section 727(a) of title 11, United States Code, is amended—

(1) in paragraph (9), by striking ''or'' at the end;

(2) in paragraph (10), by striking the period and inserting ''; or''; and

(3) by adding at the end the following:

''(11) after filing the petition, the debtor failed to complete an instructional course concerning personal financial management described in section 111, except that this paragraph shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional courses under this section (The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in this paragraph shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.).''.

(c) CHAPTER 13 DISCHARGE.—Section 1328 of title 11, United States Code, is amended by adding at the end the following:

''(g)(1) The court shall not grant a discharge under this section to a debtor unless after filing a petition the debtor has completed an instructional course concerning personal financial management described in section 111.

''(2) Paragraph (1) shall not apply with respect to a debtor who resides in a district for which the United States trustee (or the bankruptcy administrator, if any) determines that the approved instructional courses are not adequate to service the additional individuals who would otherwise be required to complete such instructional course by reason of the requirements of paragraph (1).

''(3) The United States trustee (or the bankruptcy administrator, if any) who makes a determination described in paragraph (2) shall review such determination not later than 1 year after the date of such determination, and not less frequently than annually thereafter.''.

(d) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''The debtor shall—''; and

(2) by adding at the end the following:

''(b) In addition to the requirements under subsection (a), a debtor who is an individual shall file with the court—

''(1) a certificate from the approved nonprofit budget and credit counseling agency that provided the debtor services under section 109(h) describing the services provided to the debtor; and

''(2) a copy of the debt repayment plan, if any, developed under section 109(h) through the approved nonprofit budget and credit counseling agency referred to in paragraph (1).''.

(e) GENERAL PROVISIONS.—

(1) IN GENERAL.—Chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''§ 111. Nonprofit budget and credit counseling agencies; financial management instructional courses

''(a) The clerk shall maintain a publicly available list of—

''(1) nonprofit budget and credit counseling agencies that provide 1 or more services described in section 109(h) currently approved by the United States trustee (or the bankruptcy administrator, if any); and

''(2) instructional courses concerning personal financial management currently approved by the United States trustee (or the bankruptcy administrator, if any), as applicable.

''(b) The United States trustee (or bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency or an instructional course concerning personal financial management as follows:

''(1) The United States trustee (or bankruptcy administrator, if any) shall have thoroughly reviewed the qualifications of the nonprofit budget and credit counseling agency or of the provider of the instructional course under the standards set forth in this section, and the services or instructional courses that will be offered by such agency or such provider, and may require such agency or such provider that has sought approval to provide information with respect to such review.

''(2) The United States trustee (or bankruptcy administrator, if any) shall have determined that such agency or such instructional course fully satisfies the applicable standards set forth in this section.

''(3) If a nonprofit budget and credit counseling agency or instructional course did not appear on the approved list for the district under subsection (a) immediately before approval under this section, approval under this subsection of such agency or such instructional course shall be for a probationary period not to exceed 6 months.

''(4) At the conclusion of the applicable probationary period under paragraph (3), the United States trustee (or bankruptcy administrator, if any) may only approve for an additional 1-year period, and for successive 1-year periods thereafter, an agency or instructional course that has demonstrated during the probationary or applicable subsequent period of approval that such agency or instructional course—

''(A) has met the standards set forth under this section during such period; and

''(B) can satisfy such standards in the future.

''(5) Not later than 30 days after any final decision under paragraph (4), an interested person may seek judicial review of such decision in the appropriate district court of the United States.

''(c)(1) The United States trustee (or the bankruptcy administrator, if any) shall only approve a nonprofit budget and credit counseling agency that demonstrates that it will provide qualified counselors, maintain adequate provision for safekeeping and payment of client funds, provide adequate counseling with respect to client credit problems, and deal responsibly and effectively with other matters relating to the quality, effectiveness, and financial security of the services it provides.

''(2) To be approved by the United States trustee (or the bankruptcy administrator, if any), a nonprofit budget and credit counseling agency shall, at a minimum—

''(A) have a board of directors the majority of which—

''(i) are not employed by such agency; and

''(ii) will not directly or indirectly benefit financially from the outcome of the counseling services provided by such agency;

''(B) if a fee is charged for counseling services, charge a reasonable fee, and provide services without regard to ability to pay the fee;

''(C) provide for safekeeping and payment of client funds, including an annual audit of the trust accounts and appropriate employee bonding;

''(D) provide full disclosures to a client, including funding sources, counselor qualifications, possible impact on credit reports, and any costs of such program that will be paid by such client and how such costs will be paid;

''(E) provide adequate counseling with respect to a client's credit problems that includes an analysis of such client's current financial condition, factors that caused such financial condition, and how such client can develop a plan to respond to the problems without incurring negative amortization of debt;

''(F) provide trained counselors who receive no commissions or bonuses based on the outcome of the counseling services provided by such agency, and who have adequate experience, and have been adequately trained to provide counseling services to individuals in financial difficulty, including the matters described in subparagraph (E);

''(G) demonstrate adequate experience and background in providing credit counseling; and

''(H) have adequate financial resources to provide continuing support services for budgeting plans over the life of any repayment plan.

''(d) The United States trustee (or the bankruptcy administrator, if any) shall only approve an instructional course concerning personal financial management—

''(1) for an initial probationary period under subsection (b)(3) if the course will provide at a minimum—

''(A) trained personnel with adequate experience and training in providing effective instruction and services;

''(B) learning materials and teaching methodologies designed to assist debtors in understanding personal financial management and that are consistent with stated objectives directly related to the goals of such instructional course;

''(C) adequate facilities situated in reasonably convenient locations at which such instructional course is offered, except that such facilities may include the provision of such instructional course by telephone or through the Internet, if such instructional course is effective; and

''(D) the preparation and retention of reasonable records (which shall include the debtor's bankruptcy case number) to permit evaluation of the effectiveness of such instructional course, including any evaluation of satisfaction of instructional course requirements for each debtor attending such instructional course, which shall be available for inspection and evaluation by the Executive Office for United States Trustees, the United States trustee (or the bankruptcy administrator, if any), or the chief bankruptcy judge for the district in which such instructional course is offered; and

''(2) for any 1-year period if the provider thereof has demonstrated that the course meets the standards of paragraph (1) and, in addition—

''(A) has been effective in assisting a substantial number of debtors to understand personal financial management; and

''(B) is otherwise likely to increase substantially the debtor's understanding of personal financial management.

''(e) The district court may, at any time, investigate the qualifications of a nonprofit budget and credit counseling agency referred to in subsection (a), and request production of documents to ensure the integrity and effectiveness of such agency. The district court may, at any time, remove from the approved list under subsection (a) a nonprofit budget and credit counseling agency upon finding such agency does not meet the qualifications of subsection (b).

''(f) The United States trustee (or the bankruptcy administrator, if any) shall notify the clerk that a nonprofit budget and credit counseling agency or an instructional course is no longer approved, in which case the clerk shall remove it from the list maintained under subsection (a).

''(g)(1) No nonprofit budget and credit counseling agency may provide to a credit reporting agency information concerning whether a debtor has received or sought instruction concerning personal financial management from such agency.

''(2) A nonprofit budget and credit counseling agency that willfully or negligently fails to comply with any requirement under this title with respect to a debtor shall be liable for damages in an amount equal to the sum of—

''(A) any actual damages sustained by the debtor as a result of the violation; and

''(B) any court costs or reasonable attorneys' fees (as determined by the court) incurred in an action to recover those damages.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, is amended by adding at the end the following:

''111. Nonprofit budget and credit counseling agencies; financial management instructional courses.''.

(f) LIMITATION.—Section 362 of title 11, United States Code, is amended by adding at the end the following:

''(i) If a case commenced under chapter 7, 11, or 13 is dismissed due to the creation of a debt repayment plan, for purposes of subsection (c)(3), any subsequent case commenced by the debtor under any such chapter shall not be presumed to be filed not in good faith.

''(j) On request of a party in interest, the court shall issue an order under subsection (c) confirming that the automatic stay has been terminated.''.

SEC. 107. SCHEDULES OF REASONABLE AND NECESSARY EXPENSES.

For purposes of section 707(b) of title 11, United States Code, as amended by this Act, the Director of the Executive Office for United States Trustees shall, not later than 180 days after the date of enactment of this Act, issue schedules of reasonable and necessary administrative expenses of administering a chapter 13 plan for each judicial district of the United States.

TITLE II—ENHANCED CONSUMER PROTECTION

Subtitle A—Penalties for Abusive Creditor Practices

SEC. 201. PROMOTION OF ALTERNATIVE DISPUTE RESOLUTION.

(a) REDUCTION OF CLAIM.—Section 502 of title 11, United States Code, is amended by adding at the end the following:

''(k)(1) The court, on the motion of the debtor and after a hearing, may reduce a claim filed under this section based in whole on an unsecured consumer debt by not more than 20 percent of the claim, if—

''(A) the claim was filed by a creditor who unreasonably refused to negotiate a reasonable alternative repayment schedule proposed on behalf of the debtor by an approved nonprofit budget and credit counseling agency described in section 111;

''(B) the offer of the debtor under subparagraph (A)—

''(i) was made at least 60 days before the date of the filing of the petition; and

''(ii) provided for payment of at least 60 percent of the amount of the debt over a period not to exceed the repayment period of the loan, or a reasonable extension thereof; and

''(C) no part of the debt under the alternative repayment schedule is nondischargeable.

''(2) The debtor shall have the burden of proving, by clear and convincing evidence, that—

''(A) the creditor unreasonably refused to consider the debtor's proposal; and

''(B) the proposed alternative repayment schedule was made prior to expiration of the 60-day period specified in paragraph (1)(B)(i).''.

(b) LIMITATION ON AVOIDABILITY.—Section 547 of title 11, United States Code, is amended by adding at the end the following:

''(h) The trustee may not avoid a transfer if such transfer was made as a part of an alternative repayment schedule between the debtor and any creditor of the debtor created by an approved nonprofit budget and credit counseling agency.''.

SEC. 202. EFFECT OF DISCHARGE.

Section 524 of title 11, United States Code, is amended by adding at the end the following:

''(i) The willful failure of a creditor to credit payments received under a plan confirmed under this title, unless the order confirming the plan is revoked, the plan is in default, or the creditor has not received payments required to be made under the plan in the manner required by the plan (including crediting the amounts required under the plan), shall constitute a violation of an injunction under subsection (a)(2) if the act of the creditor to collect and failure to credit payments in the manner required by the plan caused material injury to the debtor.

''(j) Subsection (a)(2) does not operate as an injunction against an act by a creditor that is the holder of a secured claim, if—

''(1) such creditor retains a security interest in real property that is the principal residence of the debtor;

''(2) such act is in the ordinary course of business between the creditor and the debtor; and

''(3) such act is limited to seeking or obtaining periodic payments associated with a valid security interest in lieu of pursuit of in rem relief to enforce the lien.''.

SEC. 203. DISCOURAGING ABUSE OF REAFFIRMATION AGREEMENT PRACTICES.

(a) IN GENERAL.—Section 524 of title 11, United States Code, as amended section 202, is amended—

(1) in subsection (c), by striking paragraph (2) and inserting the following:

''(2) the debtor received the disclosures described in subsection (k) at or before the time at which the debtor signed the agreement;''; and

(2) by adding at the end the following:

''(k)(1) The disclosures required under subsection (c)(2) shall consist of the disclosure statement described in paragraph (3), completed as required in that paragraph, together with the agreement specified in subsection (c), statement, declaration, motion and order described, respectively, in paragraphs (4) through (8), and shall be the only disclosures required in connection with entering into such agreement.

''(2) Disclosures made under paragraph (1) shall be made clearly and conspicuously and in writing. The terms 'Amount Reaffirmed' and 'Annual Percentage Rate' shall be disclosed more conspicuously than other terms, data or information provided in connection with this disclosure, except that the phrases 'Before agreeing to reaffirm a debt, review these important disclosures' and 'Summary of Reaffirmation Agreement' may be equally conspicuous. Disclosures may be made in a different order and may use terminology different from that set forth in paragraphs (2) through (8), except that the terms 'Amount Reaffirmed' and 'Annual Percentage Rate' must be used where indicated.

''(3) The disclosure statement required under this paragraph shall consist of the following:

''(A) The statement: 'Part A: Before agreeing to reaffirm a debt, review these important disclosures:';

''(B) Under the heading 'Summary of Reaffirmation Agreement', the statement: 'This Summary is made pursuant to the requirements of the Bankruptcy Code';

''(C) The 'Amount Reaffirmed', using that term, which shall be—

''(i) the total amount of debt that the debtor agrees to reaffirm by entering into an agreement of the kind specified in subsection (c), and

''(ii) the total of any fees and costs accrued as of the date of the disclosure statement, related to such total amount.

''(D) In conjunction with the disclosure of the 'Amount Reaffirmed', the statements—

''(i) 'The amount of debt you have agreed to reaffirm'; and

''(ii) 'Your credit agreement may obligate you to pay additional amounts which may come due after the date of this disclosure. Consult your credit agreement.'.

''(E) The 'Annual Percentage Rate', using that term, which shall be disclosed as—

''(i) if, at the time the petition is filed, the debt is an extension of credit under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate determined under paragraphs (5) and (6) of section 127(b) of the Truth in Lending Act, as applicable, as disclosed to the debtor in the most recent periodic statement prior to entering into an agreement of the kind specified in subsection (c) or, if no such periodic statement has been given to the debtor during the prior 6 months, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of each such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under subclause (I) and the simple interest rate under subclause (II);

''(ii) if, at the time the petition is filed, the debt is an extension of credit other than under an open end credit plan, as the terms 'credit' and 'open end credit plan' are defined in section 103 of the Truth in Lending Act, then—

''(I) the annual percentage rate under section 128(a)(4) of the Truth in Lending Act, as disclosed to the debtor in the most recent disclosure statement given to the debtor prior to the entering into an agreement of the kind specified in subsection (c) with respect to the debt, or, if no such disclosure statement was given to the debtor, the annual percentage rate as it would have been so disclosed at the time the disclosure statement is given to the debtor, or to the extent this annual percentage rate is not readily available or not applicable, then

''(II) the simple interest rate applicable to the amount reaffirmed as of the date the disclosure statement is given to the debtor, or if different simple interest rates apply to different balances, the simple interest rate applicable to each such balance, identifying the amount of such balance included in the amount reaffirmed, or

''(III) if the entity making the disclosure elects, to disclose the annual percentage rate under (I) and the simple interest rate under (II).

''(F) If the underlying debt transaction was disclosed as a variable rate transaction on the most recent disclosure given under the Truth in Lending Act, by stating 'The interest rate on your loan may be a variable interest rate which changes from time to time, so that the annual percentage rate disclosed here may be higher or lower.'.

''(G) If the debt is secured by a security interest which has not been waived in whole or in part or determined to be void by a final order of the court at the time of the disclosure, by disclosing that a security interest or lien in goods or property is asserted over some or all of the debts the debtor is reaffirming and listing the items and their original purchase price that are subject to the asserted security interest, or if not a purchase-money security interest then listing by items or types and the original amount of the loan.

''(H) At the election of the creditor, a statement of the repayment schedule using 1 or a combination of the following—

''(i) by making the statement: 'Your first payment in the amount of $_____ is due on _____ but the future payment amount may be different. Consult your reaffirmation agreement or credit agreement, as applicable.', and stating the amount of the first payment and the due date of that payment in the places provided;

''(ii) by making the statement: 'Your payment schedule will be:', and describing the repayment schedule with the number, amount, and due dates or period of payments scheduled to repay the debts reaffirmed to the extent then known by the disclosing party; or

''(iii) by describing the debtor's repayment obligations with reasonable specificity to the extent then known by the disclosing party.

''(I) The following statement: 'Note: When this disclosure refers to what a creditor ''may'' do, it does not use the word ''may'' to give the creditor specific permission. The word ''may'' is used to tell you what might occur if the law permits the creditor to take the action. If you have questions about your reaffirming a debt or what the law requires, consult with the attorney who helped you negotiate this agreement reaffirming a debt. If you don't have an attorney helping you, the judge will explain the effect of your reaffirming a debt when the hearing on the reaffirmation agreement is held.'.

''(J)(i) The following additional statements:

'''Reaffirming a debt is a serious financial decision. The law requires you to take certain steps to make sure the decision is in your best interest. If these steps are not completed, the reaffirmation agreement is not effective, even though you have signed it.

'''1. Read the disclosures in this Part A carefully. Consider the decision to reaffirm carefully. Then, if you want to reaffirm, sign the reaffirmation agreement in Part B (or you may use a separate agreement you and your creditor agree on).

'''2. Complete and sign Part D and be sure you can afford to make the payments you are agreeing to make and have received a copy of the disclosure statement and a completed and signed reaffirmation agreement.

'''3. If you were represented by an attorney during the negotiation of your reaffirmation agreement, the attorney must have signed the certification in Part C.

'''4. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, you must have completed and signed Part E.

'''5. The original of this disclosure must be filed with the court by you or your creditor. If a separate reaffirmation agreement (other than the one in Part B) has been signed, it must be attached.

'''6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court unless the reaffirmation is presumed to be an undue hardship as explained in Part D.

'''7. If you were not represented by an attorney during the negotiation of your reaffirmation agreement, it will not be effective unless the court approves it. The court will notify you of the hearing on your reaffirmation agreement. You must attend this hearing in bankruptcy court where the judge will review your reaffirmation agreement. The bankruptcy court must approve your reaffirmation agreement as consistent with your best interests, except that no court approval is required if your reaffirmation agreement is for a consumer debt secured by a mortgage, deed of trust, security deed, or other lien on your real property, like your home.

'''Your right to rescind (cancel) your reaffirmation agreement. You may rescind (cancel) your reaffirmation agreement at any time before the bankruptcy court enters a discharge order, or before the expiration of the 60-day period that begins on the date your reaffirmation agreement is filed with the court, whichever occurs later. To rescind (cancel) your reaffirmation agreement, you must notify the creditor that your reaffirmation agreement is rescinded (or canceled).

'''What are your obligations if you reaffirm the debt? A reaffirmed debt remains your personal legal obligation. It is not discharged in your bankruptcy case. That means that if you default on your reaffirmed debt after your bankruptcy case is over, your creditor may be able to take your property or your wages. Otherwise, your obligations will be determined by the reaffirmation agreement which may have changed the terms of the original agreement. For example, if you are reaffirming an open end credit agreement, the creditor may be permitted by that agreement or applicable law to change the terms of that agreement in the future under certain conditions.

'''Are you required to enter into a reaffirmation agreement by any law? No, you are not required to reaffirm a debt by any law. Only agree to reaffirm a debt if it is in your best interest. Be sure you can afford the payments you agree to make.

'''What if your creditor has a security interest or lien? Your bankruptcy discharge does not eliminate any lien on your property. A ''lien'' is often referred to as a security interest, deed of trust, mortgage or security deed. Even if you do not reaffirm and your personal liability on the debt is discharged, because of the lien your creditor may still have the right to take the security property if you do not pay the debt or default on it. If the lien is on an item of personal property that is exempt under your State's law or that the trustee has abandoned, you may be able to redeem the item rather than reaffirm the debt. To redeem, you make a single payment to the creditor equal to the current value of the security property, as agreed by the parties or determined by the court.'.

''(ii) In the case of a reaffirmation under subsection (m)(2), numbered paragraph 6 in the disclosures required by clause (i) of this subparagraph shall read as follows:

'''6. If you were represented by an attorney during the negotiation of your reaffirmation agreement, your reaffirmation agreement becomes effective upon filing with the court.'.

''(4) The form of such agreement required under this paragraph shall consist of the following:

'''Part B: Reaffirmation Agreement. I (we) agree to reaffirm the debts arising under the credit agreement described below.

'''Brief description of credit agreement:

'''Description of any changes to the credit agreement made as part of this reaffirmation agreement:

'''Signature: Date:

'''Borrower:

'''Co-borrower, if also reaffirming these debts:

'''Accepted by creditor:

'''Date of creditor acceptance:'.

''(5) The declaration shall consist of the following:

''(A) The following certification:

'''Part C: Certification by Debtor's Attorney (If Any).

'''I hereby certify that (1) this agreement represents a fully informed and voluntary agreement by the debtor; (2) this agreement does not impose an undue hardship on the debtor or any dependent of the debtor; and (3) I have fully advised the debtor of the legal effect and consequences of this agreement and any default under this agreement.

'''Signature of Debtor's Attorney: Date:'.

''(B) If a presumption of undue hardship has been established with respect to such agreement, such certification shall state that in the opinion of the attorney, the debtor is able to make the payment.

''(C) In the case of a reaffirmation agreement under subsection (m)(2), subparagraph (B) is not applicable.

''(6)(A) The statement in support of such agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

'''Part D: Debtor's Statement in Support of Reaffirmation Agreement.

'''1. I believe this reaffirmation agreement will not impose an undue hardship on my dependents or me. I can afford to make the payments on the reaffirmed debt because my monthly income (take home pay plus any other income received) is $_____, and my actual current monthly expenses including monthly payments on post-bankruptcy debt and other reaffirmation agreements total $_____, leaving $_____ to make the required payments on this reaffirmed debt. I understand that if my income less my monthly expenses does not leave enough to make the payments, this reaffirmation agreement is presumed to be an undue hardship on me and must be reviewed by the court. However, this presumption may be overcome if I explain to the satisfaction of the court how I can afford to make the payments here: _____.

'''2. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(B) Where the debtor is represented by an attorney and is reaffirming a debt owed to a

creditor defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act, the statement of support of the reaffirmation agreement, which the debtor shall sign and date prior to filing with the court, shall consist of the following:

''`I believe this reaffirmation agreement is in my financial interest. I can afford to make the payments on the reaffirmed debt. I received a copy of the Reaffirmation Disclosure Statement in Part A and a completed and signed reaffirmation agreement.'.

''(7) The motion that may be used if approval of such agreement by the court is required in order for it to be effective, shall be signed and dated by the movant and shall consist of the following:

''`Part E: Motion for Court Approval (To be completed only if the debtor is not represented by an attorney.). I (we), the debtor(s), affirm the following to be true and correct:

''`I am not represented by an attorney in connection with this reaffirmation agreement.

''`I believe this reaffirmation agreement is in my best interest based on the income and expenses I have disclosed in my Statement in Support of this reaffirmation agreement, and because (provide any additional relevant reasons the court should consider):

''`Therefore, I ask the court for an order approving this reaffirmation agreement.'.

''(8) The court order, which may be used to approve such agreement, shall consist of the following:

''`Court Order: The court grants the debtor's motion and approves the reaffirmation agreement described above.'.

''(l) Notwithstanding any other provision of this title the following shall apply:

''(1) A creditor may accept payments from a debtor before and after the filing of an agreement of the kind specified in subsection (c) with the court.

''(2) A creditor may accept payments from a debtor under such agreement that the creditor believes in good faith to be effective.

''(3) The requirements of subsections (c)(2) and (k) shall be satisfied if disclosures required under those subsections are given in good faith.

''(m)(1) Until 60 days after an agreement of the kind specified in subsection (c) is filed with the court (or such additional period as the court, after notice and a hearing and for cause, orders before the expiration of such period), it shall be presumed that such agreement is an undue hardship on the debtor if the debtor's monthly income less the debtor's monthly expenses as shown on the debtor's completed and signed statement in support of such agreement required under subsection (k)(6)(A) is less than the scheduled payments on the reaffirmed debt. This presumption shall be reviewed by the court. The presumption may be rebutted in writing by the debtor if the statement includes an explanation that identifies additional sources of funds to make the payments as agreed upon under the terms of such agreement. If the presumption is not rebutted to the satisfaction of the court, the court may disapprove such agreement. No agreement shall be disapproved without notice and a hearing to the debtor and creditor, and such hearing shall be concluded before the entry of the debtor's discharge.

''(2) This subsection does not apply to reaffirmation agreements where the creditor is a credit union, as defined in section 19(b)(1)(A)(iv) of the Federal Reserve Act.''.

(b) LAW ENFORCEMENT.—

(1) IN GENERAL.—Chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''§ 158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules

''(a) IN GENERAL.—The Attorney General of the United States shall designate the individuals described in subsection (b) to have primary responsibility in carrying out enforcement activities in addressing violations of section 152 or 157 relating to abusive reaffirmations of debt. In addition to addressing the violations referred to in the preceding sentence, the individuals described under subsection (b) shall address violations of section 152 or 157 relating to materially fraudulent statements in bankruptcy schedules that are intentionally false or intentionally misleading.

''(b) UNITED STATES ATTORNEYS AND AGENTS OF THE FEDERAL BUREAU OF INVESTIGATION.—The individuals referred to in subsection (a) are—

''(1) the United States attorney for each judicial district of the United States; and

''(2) an agent of the Federal Bureau of Investigation for each field office of the Federal Bureau of Investigation.

''(c) BANKRUPTCY INVESTIGATIONS.—Each United States attorney designated under this section shall, in addition to any other responsibilities, have primary responsibility for carrying out the duties of a United States attorney under section 3057.

''(d) BANKRUPTCY PROCEDURES.—The bankruptcy courts shall establish procedures for referring any case that may contain a materially fraudulent statement in a bankruptcy schedule to the individuals designated under this section.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 9 of title 18, United States Code, is amended by adding at the end the following:

''158. Designation of United States attorneys and agents of the Federal Bureau of Investigation to address abusive reaffirmations of debt and materially fraudulent statements in bankruptcy schedules.''.

SEC. 204. PRESERVATION OF CLAIMS AND DEFENSES UPON SALE OF PREDATORY LOANS.

Section 363 of title 11, United States Code, is amended—

(1) by redesignating subsection (o) as subsection (p), and

(2) by inserting after subsection (n) the following:

''(o) Notwithstanding subsection (f), if a person purchases any interest in a consumer credit transaction that is subject to the Truth in Lending Act or any interest in a consumer credit contract (as defined in section 433.1 of title 16 of the Code of Federal Regulations (January 1, 2002), as amended from time to time), and if such interest is purchased through a sale under this section, then such person shall remain subject to all claims and defenses that are related to such consumer credit transaction or such consumer credit contract, to the same extent as such person would be subject to such claims and defenses of the consumer had such interest been purchased at a sale not under this section.''.

SEC. 205. GAO STUDY AND REPORT ON REAFFIRMATION AGREEMENT PROCESS.

(a) STUDY.—The Comptroller General of the United States shall conduct a study of the reaffirmation agreement process that occurs under title 11 of the United States Code, to determine the overall treatment of consumers within the context of such process, and shall include in such study consideration of—

(1) the policies and activities of creditors with respect to reaffirmation agreements; and

(2) whether consumers are fully, fairly, and consistently informed of their rights pursuant to such title.

(b) REPORT TO THE CONGRESS.—Not later than 18 months after the date of the enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report on the results of the study conducted under subsection (a), together with recommendations for legislation (if any) to address any abusive or coercive tactics found in connection with the reaffirmation agreement process that occurs under title 11 of the United States Code.

Subtitle B—Priority Child Support

SEC. 211. DEFINITION OF DOMESTIC SUPPORT OBLIGATION.

Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (12A); and

(2) by inserting after paragraph (14) the following:

''(14A) 'domestic support obligation' means a debt that accrues before or after the date of the order for relief in a case under this title, including interest that accrues on that debt as provided under applicable nonbankruptcy law notwithstanding any other provision of this title, that is—

''(A) owed to or recoverable by—

''(i) a spouse, former spouse, or child of the debtor or such child's parent, legal guardian, or responsible relative; or

''(ii) a governmental unit;

''(B) in the nature of alimony, maintenance, or support (including assistance provided by a governmental unit) of such spouse, former spouse, or child of the debtor or such child's parent, without regard to whether such debt is expressly so designated;

''(C) established or subject to establishment before or after the date of the order for relief in a case under this title, by reason of applicable provisions of—

''(i) a separation agreement, divorce decree, or property settlement agreement;

''(ii) an order of a court of record; or

''(iii) a determination made in accordance with applicable nonbankruptcy law by a governmental unit; and

''(D) not assigned to a nongovernmental entity, unless that obligation is assigned voluntarily by the spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative for the purpose of collecting the debt;''.

SEC. 212. PRIORITIES FOR CLAIMS FOR DOMESTIC SUPPORT OBLIGATIONS.

Section 507(a) of title 11, United States Code, is amended—

(1) by striking paragraph (7);

(2) by redesignating paragraphs (1) through (6) as paragraphs (2) through (7), respectively;

(3) in paragraph (2), as so redesignated, by striking ''First'' and inserting ''Second'';

(4) in paragraph (3), as so redesignated, by striking ''Second'' and inserting ''Third'';

(5) in paragraph (4), as so redesignated—

(A) by striking ''Third'' and inserting ''Fourth''; and

(B) by striking the semicolon at the end and inserting a period;

(6) in paragraph (5), as so redesignated, by striking ''Fourth'' and inserting ''Fifth'';

(7) in paragraph (6), as so redesignated, by striking ''Fifth'' and inserting ''Sixth'';

(8) in paragraph (7), as so redesignated, by striking ''Sixth'' and inserting ''Seventh''; and

(9) by inserting before paragraph (2), as so redesignated, the following:

''(1) First:

''(A) Allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition in a case under this title, are owed to or recoverable by a spouse, former spouse, or child of the debtor, or such child's parent, legal guardian, or responsible relative, without regard to whether the claim is filed by such person or is filed by a governmental unit on behalf of such person, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition shall be applied and distributed in accordance with applicable nonbankruptcy law.

''(B) Subject to claims under subparagraph (A), allowed unsecured claims for domestic support obligations that, as of the date of the filing of the petition, are assigned by a spouse, former spouse, child of the debtor, or such child's parent, legal guardian, or responsible relative to a governmental unit (unless such obligation is assigned voluntarily by the spouse, former spouse, child, parent, legal guardian, or responsible relative of the child for the purpose of collecting the debt) or are owed directly to or recoverable by a governmental unit under applicable nonbankruptcy law, on the condition that funds received under this paragraph by a governmental unit under this title after the date of the filing of the petition be applied and distributed in accordance with applicable nonbankruptcy law.

''(C) If a trustee is appointed or elected under section 701, 702, 703, 1104, 1202, or 1302, the administrative expenses of the trustee allowed under paragraphs (1)(A), (2), and (6) of section 503(b) shall be paid before payment of claims under subparagraphs (A) and (B), to the extent that the trustee administers assets that are otherwise available for the payment of such claims.''.

SEC. 213. REQUIREMENTS TO OBTAIN CONFIRMATION AND DISCHARGE IN CASES INVOLVING DOMESTIC SUPPORT OBLIGATIONS.

Title 11, United States Code, is amended—

(1) in section 1129(a), by adding at the end the following:

''(14) If the debtor is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, the debtor has paid all amounts payable under such order or such statute for such obligation that first become payable after the date of the filing of the petition.'';

(2) in section 1208(c)—

(A) in paragraph (8), by striking ''or'' at the end;

(B) in paragraph (9), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(10) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.'';

(3) in section 1222(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(4) in section 1222(b)—

(A) by redesignating paragraph (11) as paragraph (12); and

(B) by inserting after paragraph (10) the following:

''(11) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1228(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims;'';

(5) in section 1225(a)—

(A) in paragraph (5), by striking ''and'' at the end;

(B) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(7) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation.'';

(6) in section 1228(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid'' after ''completion by the debtor of all payments under the plan'';

(7) in section 1307(c)—

(A) in paragraph (9), by striking ''or'' at the end;

(B) in paragraph (10), by striking the period at the end and inserting ''; or''; and

(C) by adding at the end the following:

''(11) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.'';

(8) in section 1322(a)—

(A) in paragraph (2), by striking ''and'' at the end;

(B) in paragraph (3), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(4) notwithstanding any other provision of this section, a plan may provide for less than full payment of all amounts owed for a claim entitled to priority under section 507(a)(1)(B) only if the plan provides that all of the debtor's projected disposable income for a 5-year period beginning on the date that the first payment is due under the plan will be applied to make payments under the plan.'';

(9) in section 1322(b)—

(A) in paragraph (9), by striking ''; and'' and inserting a semicolon;

(B) by redesignating paragraph (10) as paragraph (11); and

(C) inserting after paragraph (9) the following:

''(10) provide for the payment of interest accruing after the date of the filing of the petition on unsecured claims that are nondischargeable under section 1328(a), except that such interest may be paid only to the extent that the debtor has disposable income available to pay such interest after making provision for full payment of all allowed claims; and'';

(10) in section 1325(a), as amended by section 102, by inserting after paragraph (7) the following:

''(8) the debtor has paid all amounts that are required to be paid under a domestic support obligation and that first become payable after the date of the filing of the petition if the debtor is required by a judicial or administrative order, or by statute, to pay such domestic support obligation; and'';

(11) in section 1328(a), in the matter preceding paragraph (1), by inserting '', and in the case of a debtor who is required by a judicial or administrative order, or by statute, to pay a domestic support obligation, after such debtor certifies that all amounts payable under such order or such statute that are due on or before the date of the certification (including amounts due before the petition was filed, but only to the extent provided for by the plan) have been paid'' after ''completion by the debtor of all payments under the plan''.

SEC. 214. EXCEPTIONS TO AUTOMATIC STAY IN DOMESTIC SUPPORT OBLIGATION PROCEEDINGS.

Section 362(b) of title 11, United States Code, is amended by striking paragraph (2) and inserting the following:

''(2) under subsection (a)—

''(A) of the commencement or continuation of a civil action or proceeding—

''(i) for the establishment of paternity;

''(ii) for the establishment or modification of an order for domestic support obligations;

''(iii) concerning child custody or visitation;

''(iv) for the dissolution of a marriage, except to the extent that such proceeding seeks to determine the division of property that is property of the estate; or

''(v) regarding domestic violence;

''(B) of the collection of a domestic support obligation from property that is not property of the estate;

''(C) with respect to the withholding of income that is property of the estate or property of the debtor for payment of a domestic support obligation under a judicial or administrative order or a statute;

''(D) of the withholding, suspension, or restriction of a driver's license, a professional or occupational license, or a recreational license, under State law, as specified in section 466(a)(16) of the Social Security Act;

''(E) of the reporting of overdue support owed by a parent to any consumer reporting agency as specified in section 466(a)(7) of the Social Security Act;

''(F) of the interception of a tax refund, as specified in sections 464 and 466(a)(3) of the Social Security Act or under an analogous State law; or

''(G) of the enforcement of a medical obligation, as specified under title IV of the Social Security Act;''.

SEC. 215. NONDISCHARGEABILITY OF CERTAIN DEBTS FOR ALIMONY, MAINTENANCE, AND SUPPORT.

Section 523 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) by striking paragraph (5) and inserting the following:

''(5) for a domestic support obligation;''; and

(B) by striking paragraph (18);

(2) in subsection (c), by striking ''(6), or (15)'' each place it appears and inserting ''or (6)''; and

(3) in paragraph (15), as added by Public Law 103–394 (108 Stat. 4133)—

(A) by inserting ''to a spouse, former spouse, or child of the debtor and'' before ''not of the kind'';

(B) by inserting ''or'' after ''court of record,''; and

(C) by striking ''unless—'' and all that follows through the end of the paragraph and inserting a semicolon.

SEC. 216. CONTINUED LIABILITY OF PROPERTY.

Section 522 of title 11, United States Code, is amended—

(1) in subsection (c), by striking paragraph (1) and inserting the following:

''(1) a debt of a kind specified in paragraph (1) or (5) of section 523(a) (in which case, notwithstanding any provision of applicable

nonbankruptcy law to the contrary, such property shall be liable for a debt of a kind specified in section 523(a)(5));'';

(2) in subsection (f)(1)(A), by striking the dash and all that follows through the end of the subparagraph and inserting ''of a kind that is specified in section 523(a)(5); or''; and

(3) in subsection (g)(2), by striking ''subsection (f)(2)'' and inserting ''subsection (f)(1)(B)''.

SEC. 217. PROTECTION OF DOMESTIC SUPPORT CLAIMS AGAINST PREFERENTIAL TRANSFER MOTIONS.

Section 547(c)(7) of title 11, United States Code, is amended to read as follows:

''(7) to the extent such transfer was a bona fide payment of a debt for a domestic support obligation;''.

SEC. 218. DISPOSABLE INCOME DEFINED.

Section 1225(b)(2)(A) of title 11, United States Code, is amended by inserting ''or for a domestic support obligation that first becomes payable after the date of the filing of the petition'' after ''dependent of the debtor''.

SEC. 219. COLLECTION OF CHILD SUPPORT.

(a) DUTIES OF TRUSTEE UNDER CHAPTER 7.—Section 704 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (a)—

(A) in paragraph (8), by striking ''and'' at the end;

(B) in paragraph (9), by striking the period and inserting a semicolon; and

(C) by adding at the end the following:

''(10) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c); and''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(10) to which subsection (a)(10) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(10) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title;

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency; and

''(iii) include in the notice provided under clause (i) an explanation of the rights of such holder to payment of such claim under this chapter;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 727, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (a)(10) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.''.

(b) DUTIES OF TRUSTEE UNDER CHAPTER 11.—Section 1106 of title 11, United States Code, is amended—

(1) in subsection (a)—

(A) in paragraph (6), by striking ''and'' at the end;

(B) in paragraph (7), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(8) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (a)(8) to which subsection (a)(8) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (a)(8) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice required by clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice required by clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1141, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (a)(8) or the State child enforcement support agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making such disclosure.''.

(c) DUTIES OF TRUSTEE UNDER CHAPTER 12.—Section 1202 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (c).''; and

(2) by adding at the end the following:

''(c)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1228, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2), (4), or (14A) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.''.

(d) DUTIES OF TRUSTEE UNDER CHAPTER 13.—Section 1302 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''and'' at the end;

(B) in paragraph (5), by striking the period and inserting ''; and''; and

(C) by adding at the end the following:

''(6) if with respect to the debtor there is a claim for a domestic support obligation, provide the applicable notice specified in subsection (d).''; and

(2) by adding at the end the following:

''(d)(1) In a case described in subsection (b)(6) to which subsection (b)(6) applies, the trustee shall—

''(A)(i) provide written notice to the holder of the claim described in subsection (b)(6) of such claim and of the right of such holder to use the services of the State child support enforcement agency established under sections 464 and 466 of the Social Security Act for the State in which such holder resides, for assistance in collecting child support during and after the case under this title; and

''(ii) include in the notice provided under clause (i) the address and telephone number of such State child support enforcement agency;

''(B)(i) provide written notice to such State child support enforcement agency of such claim; and

''(ii) include in the notice provided under clause (i) the name, address, and telephone number of such holder; and

''(C) at such time as the debtor is granted a discharge under section 1328, provide written notice to such holder and to such State child support enforcement agency of—

''(i) the granting of the discharge;

''(ii) the last recent known address of the debtor;

''(iii) the last recent known name and address of the debtor's employer; and

''(iv) the name of each creditor that holds a claim that—

''(I) is not discharged under paragraph (2) or (4) of section 523(a); or

''(II) was reaffirmed by the debtor under section 524(c).

''(2)(A) The holder of a claim described in subsection (b)(6) or the State child support enforcement agency of the State in which such holder resides may request from a creditor described in paragraph (1)(C)(iv) the last known address of the debtor.

''(B) Notwithstanding any other provision of law, a creditor that makes a disclosure of a last known address of a debtor in connection with a request made under subparagraph (A) shall not be liable by reason of making that disclosure.''.

SEC. 220. NONDISCHARGEABILITY OF CERTAIN EDUCATIONAL BENEFITS AND LOANS.

Section 523(a) of title 11, United States Code, is amended by striking paragraph (8) and inserting the following:

''(8) unless excepting such debt from discharge under this paragraph would impose an undue hardship on the debtor and the debtor's dependents, for—

''(A)(i) an educational benefit overpayment or loan made, insured, or guaranteed by a governmental unit, or made under any program funded in whole or in part by a governmental unit or nonprofit institution; or

''(ii) an obligation to repay funds received as an educational benefit, scholarship, or stipend; or

''(B) any other educational loan that is a qualified education loan, as defined in section 221(d)(1) of the Internal Revenue Code of 1986, incurred by a debtor who is an individual;''.

Subtitle C—Other Consumer Protections

SEC. 221. AMENDMENTS TO DISCOURAGE ABUSIVE BANKRUPTCY FILINGS.

Section 110 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by striking ''or an employee of an attorney'' and inserting ''for the debtor or an employee of such attorney under the direct supervision of such attorney'';

(2) in subsection (b)—

(A) in paragraph (1), by adding at the end the following: ''If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to—

''(A) sign the document for filing; and

''(B) print on the document the name and address of that officer, principal, responsible person, or partner.''; and

(B) by striking paragraph (2) and inserting the following:

''(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

''(B) The notice under subparagraph (A)—

''(i) shall inform the debtor in simple language that a bankruptcy petition preparer is not an attorney and may not practice law or give legal advice;

''(ii) may contain a description of examples of legal advice that a bankruptcy petition preparer is not authorized to give, in addition to any advice that the preparer may not give by reason of subsection (e)(2); and

''(iii) shall—

''(I) be signed by the debtor and, under penalty of perjury, by the bankruptcy petition preparer; and

''(II) be filed with any document for filing.'';

(3) in subsection (c)—

(A) in paragraph (2)—

(i) by striking ''(2) For purposes'' and inserting ''(2)(A) Subject to subparagraph (B), for purposes''; and

(ii) by adding at the end the following:

''(B) If a bankruptcy petition preparer is not an individual, the identifying number of the bankruptcy petition preparer shall be the Social Security account number of the officer, principal, responsible person, or partner of the bankruptcy petition preparer.''; and

(B) by striking paragraph (3);

(4) in subsection (d)—

(A) by striking ''(d)(1)'' and inserting ''(d)''; and

(B) by striking paragraph (2);

(5) in subsection (e)—

(A) by striking paragraph (2); and

(B) by adding at the end the following:

''(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

''(B) The legal advice referred to in subparagraph (A) includes advising the debtor—

''(i) whether—

''(I) to file a petition under this title; or

''(II) commencing a case under chapter 7, 11, 12, or 13 is appropriate;

''(ii) whether the debtor's debts will be discharged in a case under this title;

''(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title;

''(iv) concerning—

''(I) the tax consequences of a case brought under this title; or

''(II) the dischargeability of tax claims;

''(v) whether the debtor may or should promise to repay debts to a creditor or enter into a reaffirmation agreement with a creditor to reaffirm a debt;

''(vi) concerning how to characterize the nature of the debtor's interests in property or the debtor's debts; or

''(vii) concerning bankruptcy procedures and rights.'';

(6) in subsection (f)—

(A) by striking ''(f)(1)'' and inserting ''(f)''; and

(B) by striking paragraph (2);

(7) in subsection (g)—

(A) by striking ''(g)(1)'' and inserting ''(g)''; and

(B) by striking paragraph (2);

(8) in subsection (h)—

(A) by redesignating paragraphs (1) through (4) as paragraphs (2) through (5), respectively;

(B) by inserting before paragraph (2), as so redesignated, the following:

''(1) The Supreme Court may promulgate rules under section 2075 of title 28, or the Judicial Conference of the United States may prescribe guidelines, for setting a maximum allowable fee chargeable by a bankruptcy petition preparer. A bankruptcy petition preparer shall notify the debtor of any such maximum amount before preparing any document for filing for a debtor or accepting any fee from the debtor.'';

(C) in paragraph (2), as so redesignated—

(i) by striking ''Within 10 days after the date of the filing of a petition, a bankruptcy petition preparer shall file a'' and inserting ''A'';

(ii) by inserting ''by the bankruptcy petition preparer shall be filed together with the petition,'' after ''perjury''; and

(iii) by adding at the end the following: ''If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).'';

(D) by striking paragraph (3), as so redesignated, and inserting the following:

''(3)(A) The court shall disallow and order the immediate turnover to the bankruptcy trustee any fee referred to in paragraph (2) found to be in excess of the value of any services—

''(i) rendered by the bankruptcy petition preparer during the 12-month period immediately preceding the date of the filing of the petition; or

''(ii) found to be in violation of any rule or guideline promulgated or prescribed under paragraph (1).

''(B) All fees charged by a bankruptcy petition preparer may be forfeited in any case in which the bankruptcy petition preparer fails to comply with this subsection or subsection (b), (c), (d), (e), (f), or (g).

''(C) An individual may exempt any funds recovered under this paragraph under section 522(b).''; and

(E) in paragraph (4), as so redesignated, by striking ''or the United States trustee'' and inserting ''the United States trustee (or the bankruptcy administrator, if any) or the court, on the initiative of the court,'';

(9) in subsection (i)(1), by striking the matter preceding subparagraph (A) and inserting the following:

''(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor—'';

(10) in subsection (j)—

(A) in paragraph (2)—

(i) in subparagraph (A)(i)(I), by striking ''a violation of which subjects a person to criminal penalty'';

(ii) in subparagraph (B)—

(I) by striking ''or has not paid a penalty'' and inserting ''has not paid a penalty''; and

(II) by inserting ''or failed to disgorge all fees ordered by the court'' after ''a penalty imposed under this section,'';

(B) by redesignating paragraph (3) as paragraph (4); and

(C) by inserting after paragraph (2) the following:

''(3) The court, as part of its contempt power, may enjoin a bankruptcy petition preparer that has failed to comply with a previous order issued under this section. The injunction under this paragraph may be issued on the motion of the court, the trustee, or the United States trustee (or the bankruptcy administrator, if any).''; and

(11) by adding at the end the following:

''(l)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

''(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer—

''(A) advised the debtor to exclude assets or income that should have been included on applicable schedules;

''(B) advised the debtor to use a false Social Security account number;

''(C) failed to inform the debtor that the debtor was filing for relief under this title; or

''(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer.

''(3) A debtor, trustee, creditor, or United States trustee (or the bankruptcy administrator, if any) may file a motion for an order imposing a fine on the bankruptcy petition preparer for any violation of this section.

''(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee, who shall deposit an amount equal to such fines in a special account of the United States Trustee System Fund referred to in section 586(e)(2) of title 28. Amounts deposited under this subparagraph shall be available to fund the enforcement of this section on a national basis.

''(B) Fines imposed under this subsection in judicial districts served by bankruptcy administrators shall be deposited as offsetting receipts to the fund established under section 1931 of title 28, and shall remain available until expended to reimburse any appropriation for the amount paid out of such appropriation for expenses of the operation and maintenance of the courts of the United States.''.

SEC. 222. SENSE OF CONGRESS.

It is the sense of Congress that States should develop curricula relating to the subject of personal finance, designed for use in elementary and secondary schools.

SEC. 223. ADDITIONAL AMENDMENTS TO TITLE 11, UNITED STATES CODE.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended by inserting after paragraph (9) the following:

''(10) Tenth, allowed claims for death or personal injury resulting from the operation of a motor vehicle or vessel if such operation was unlawful because the debtor was intoxicated from using alcohol, a drug, or another substance.''.

SEC. 224. PROTECTION OF RETIREMENT SAVINGS IN BANKRUPTCY.

(a) IN GENERAL.—Section 522 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (2)—

(i) in subparagraph (A), by striking ''and'' at the end;

(ii) in subparagraph (B), by striking the period at the end and inserting ''; and'';

(iii) by adding at the end the following:

''(C) retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''; and

(iv) by striking ''(2)(A) any property'' and inserting:

''(3) Property listed in this paragraph is—

''(A) any property'';

(B) by striking paragraph (1) and inserting:

''(2) Property listed in this paragraph is property that is specified under subsection (d), unless the State law that is applicable to the debtor under paragraph (3)(A) specifically does not so authorize.'';

(C) by striking ''(b) Notwithstanding'' and inserting ''(b)(1) Notwithstanding'';

(D) by striking ''paragraph (2)'' each place it appears and inserting ''paragraph (3)'';

(E) by striking ''paragraph (1)'' each place it appears and inserting ''paragraph (2)'';

(F) by striking ''Such property is—''; and

(G) by adding at the end the following:

''(4) For purposes of paragraph (3)(C) and subsection (d)(12), the following shall apply:

''(A) If the retirement funds are in a retirement fund that has received a favorable determination under section 7805 of the Internal Revenue Code of 1986, and that determination is in effect as of the date of the filing of the petition in a case under this title, those funds shall be presumed to be exempt from the estate.

''(B) If the retirement funds are in a retirement fund that has not received a favorable determination under such section 7805, those funds are exempt from the estate if the debtor demonstrates that—

''(i) no prior determination to the contrary has been made by a court or the Internal Revenue Service; and

''(ii)(I) the retirement fund is in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986; or

''(II) the retirement fund fails to be in substantial compliance with the applicable requirements of the Internal Revenue Code of 1986 and the debtor is not materially responsible for that failure.

''(C) A direct transfer of retirement funds from 1 fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986, under section 401(a)(31) of the Internal Revenue Code of 1986, or otherwise, shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such direct transfer.

''(D)(i) Any distribution that qualifies as an eligible rollover distribution within the meaning of section 402(c) of the Internal Revenue Code of 1986 or that is described in clause (ii) shall not cease to qualify for exemption under paragraph (3)(C) or subsection (d)(12) by reason of such distribution.

''(ii) A distribution described in this clause is an amount that—

''(I) has been distributed from a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986; and

''(II) to the extent allowed by law, is deposited in such a fund or account not later than 60 days after the distribution of such amount.''; and

(2) in subsection (d)—

(A) in the matter preceding paragraph (1), by striking ''subsection (b)(1)'' and inserting ''subsection (b)(2)''; and

(B) by adding at the end the following:

''(12) Retirement funds to the extent that those funds are in a fund or account that is exempt from taxation under section 401, 403, 408, 408A, 414, 457, or 501(a) of the Internal Revenue Code of 1986.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, is amended—

(1) in paragraph (17), by striking ''or'' at the end;

(2) in paragraph (18), by striking the period and inserting a semicolon; and

(3) by inserting after paragraph (18) the following:

''(19) under subsection (a), of withholding of income from a debtor's wages and collection of amounts withheld, under the debtor's agreement authorizing that withholding and collection for the benefit of a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, that is sponsored by the employer of the debtor, or an affiliate, successor, or predecessor of such employer—

''(A) to the extent that the amounts withheld and collected are used solely for payments relating to a loan from a plan under section 408(b)(1) of the Employee Retirement Income Security Act of 1974 or is subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title;''.

(c) EXCEPTIONS TO DISCHARGE.—Section 523(a) of title 11, United States Code, as amended by section 215, is amended by inserting after paragraph (17) the following:

''(18) owed to a pension, profit-sharing, stock bonus, or other plan established under section 401, 403, 408, 408A, 414, 457, or 501(c) of the Internal Revenue Code of 1986, under—

''(A) a loan permitted under section 408(b)(1) of the Employee Retirement Income Security Act of 1974, or subject to section 72(p) of the Internal Revenue Code of 1986; or

''(B) a loan from a thrift savings plan permitted under subchapter III of chapter 84 of title 5, that satisfies the requirements of section 8433(g) of such title;

but nothing in this paragraph may be construed to provide that any loan made under a governmental plan under section 414(d), or a contract or account under section 403(b), of the Internal Revenue Code of 1986 constitutes a claim or a debt under this title; or''.

(d) PLAN CONTENTS.—Section 1322 of title 11, United States Code, is amended by adding at the end the following:

''(f) A plan may not materially alter the terms of a loan described in section 362(b)(19) and any amounts required to repay such loan shall not constitute 'disposable income' under section 1325.''.

(e) ASSET LIMITATION.—

(1) LIMITATION.—Section 522 of title 11, United States Code, is amended by adding at the end the following:

''(n) For assets in individual retirement accounts described in section 408 or 408A of the Internal Revenue Code of 1986, other than a simplified employee pension under section 408(k) of such Code or a simple retirement account under section 408(p) of such Code, the aggregate value of such assets exempted under this section, without regard to amounts attributable to rollover contributions under section 402(c), 402(e)(6), 403(a)(4), 403(a)(5), and 403(b)(8) of the Internal Revenue Code of 1986, and earnings thereon, shall not exceed $1,000,000 in a case filed by a debtor who is an individual, except that such amount may be increased if the interests of justice so require.''.

(2) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, are amended by inserting ''522(n),'' after ''522(d),''.

SEC. 225. PROTECTION OF EDUCATION SAVINGS IN BANKRUPTCY.

(a) EXCLUSIONS.—Section 541 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (4), by striking ''or'' at the end;

(B) by redesignating paragraph (5) as paragraph (9); and

(C) by inserting after paragraph (4) the following:

''(5) funds placed in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) not later than 365 days before the date of the filing of the petition in a case under this title, but—

''(A) only if the designated beneficiary of such account was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were placed in such account;

''(B) only to the extent that such funds—

''(i) are not pledged or promised to any entity in connection with any extension of credit; and

''(ii) are not excess contributions (as described in section 4973(e) of the Internal Revenue Code of 1986); and

''(C) in the case of funds placed in all such accounts having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;

''(6) funds used to purchase a tuition credit or certificate or contributed to an account in accordance with section 529(b)(1)(A) of the Internal Revenue Code of 1986 under a qualified State tuition program (as defined in section 529(b)(1) of such Code) not later than 365 days before the date of the filing of the petition in a case under this title, but—

''(A) only if the designated beneficiary of the amounts paid or contributed to such tuition program was a child, stepchild, grandchild, or stepgrandchild of the debtor for the taxable year for which funds were paid or contributed;

''(B) with respect to the aggregate amount paid or contributed to such program having the same designated beneficiary, only so much of such amount as does not exceed the total contributions permitted under section 529(b)(7) of such Code with respect to such beneficiary, as adjusted beginning on the date of the filing of the petition in a case under this title by the annual increase or decrease (rounded to the nearest tenth of 1 percent) in the education expenditure category of the Consumer Price Index prepared by the Department of Labor; and

''(C) in the case of funds paid or contributed to such program having the same designated beneficiary not earlier than 720 days nor later than 365 days before such date, only so much of such funds as does not exceed $5,000;''; and

(2) by adding at the end the following:

''(e) In determining whether any of the relationships specified in paragraph (5)(A) or (6)(A) of subsection (b) exists, a legally adopted child of an individual (and a child who is a member of an individual's household, if placed with such individual by an authorized placement agency for legal adoption by such individual), or a foster child of an individual (if such child has as the child's principal place of abode the home of the debtor and is a member of the debtor's household) shall be treated as a child of such individual by blood.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by section 106, is amended by adding at the end the following:

''(c) In addition to meeting the requirements under subsection (a), a debtor shall file with the court a record of any interest that a debtor has in an education individual retirement account (as defined in section 530(b)(1) of the Internal Revenue Code of 1986) or under a qualified State tuition program (as defined in section 529(b)(1) of such Code).''.

SEC. 226. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (2) the following:

''(3) 'assisted person' means any person whose debts consist primarily of consumer debts and the value of whose nonexempt property is less than $150,000;'';

(2) by inserting after paragraph (4) the following:

''(4A) 'bankruptcy assistance' means any goods or services sold or otherwise provided to an assisted person with the express or implied purpose of providing information, advice, counsel, document preparation, or filing, or attendance at a creditors' meeting or appearing in a proceeding on behalf of another or providing legal representation with respect to a case or proceeding under this title;''; and

(3) by inserting after paragraph (12) the following:

''(12A) 'debt relief agency' means any person who provides any bankruptcy assistance to an assisted person in return for the payment of money or other valuable consideration, or who is a bankruptcy petition preparer under section 110, but does not include—

''(A) any person who is an officer, director, employee, or agent of a person who provides such assistance or of the bankruptcy petition preparer;

''(B) a nonprofit organization that is exempt from taxation under section 501(c)(3) of the Internal Revenue Code of 1986;

''(C) a creditor of such assisted person, to the extent that the creditor is assisting such assisted person to restructure any debt owed by such assisted person to the creditor;

''(D) a depository institution (as defined in section 3 of the Federal Deposit Insurance Act) or any Federal credit union or State credit union (as those terms are defined in section 101 of the Federal Credit Union Act), or any affiliate or subsidiary of such depository institution or credit union; or

''(E) an author, publisher, distributor, or seller of works subject to copyright protection under title 17, when acting in such capacity.''.

(b) CONFORMING AMENDMENT.—Section 104(b) of title 11, United States Code, is amended by inserting ''101(3),'' after ''sections'' each place it appears.

SEC. 227. RESTRICTIONS ON DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 526. Restrictions on debt relief agencies

''(a) A debt relief agency shall not—

''(1) fail to perform any service that such agency informed an assisted person or prospective assisted person it would provide in connection with a case or proceeding under this title;

''(2) make any statement, or counsel or advise any assisted person or prospective assisted person to make a statement in a document filed in a case or proceeding under this title, that is untrue and misleading, or that upon the exercise of reasonable care, should have been known by such agency to be untrue or misleading;

''(3) misrepresent to any assisted person or prospective assisted person, directly or indirectly, affirmatively or by material omission, with respect to—

''(A) the services that such agency will provide to such person; or

''(B) the benefits and risks that may result if such person becomes a debtor in a case under this title; or

''(4) advise an assisted person or prospective assisted person to incur more debt in contemplation of such person filing a case under this title or to pay an attorney or bankruptcy petition preparer fee or charge for services performed as part of preparing for or representing a debtor in a case under this title.

''(b) Any waiver by any assisted person of any protection or right provided under this section shall not be enforceable against the debtor by any Federal or State court or any other person, but may be enforced against a debt relief agency.

''(c)(1) Any contract for bankruptcy assistance between a debt relief agency and an assisted person that does not comply with the material requirements of this section, section 527, or section 528 shall be void and may not be enforced by any Federal or State court or by any other person, other than such assisted person.

''(2) Any debt relief agency shall be liable to an assisted person in the amount of any fees or charges in connection with providing bankruptcy assistance to such person that such debt relief agency has received, for actual damages, and for reasonable attorneys' fees and costs if such agency is found, after notice and a hearing, to have—

''(A) intentionally or negligently failed to comply with any provision of this section, section 527, or section 528 with respect to a case or proceeding under this title for such assisted person;

''(B) provided bankruptcy assistance to an assisted person in a case or proceeding under this title that is dismissed or converted to a case under another chapter of this title because of such agency's intentional or negligent failure to file any required document including those specified in section 521; or

''(C) intentionally or negligently disregarded the material requirements of this title or the Federal Rules of Bankruptcy Procedure applicable to such agency.

''(3) In addition to such other remedies as are provided under State law, whenever the chief law enforcement officer of a State, or an official or agency designated by a State, has reason to believe that any person has violated or is violating this section, the State—

''(A) may bring an action to enjoin such violation;

''(B) may bring an action on behalf of its residents to recover the actual damages of assisted persons arising from such violation, including any liability under paragraph (2); and

''(C) in the case of any successful action under subparagraph (A) or (B), shall be awarded the costs of the action and reasonable attorneys' fees as determined by the court.

''(4) The district courts of the United States for districts located in the State shall have concurrent jurisdiction of any action under subparagraph (A) or (B) of paragraph (3).

''(5) Notwithstanding any other provision of Federal law and in addition to any other remedy provided under Federal or State law, if the court, on its own motion or on the motion of the United States trustee or the debtor, finds that a person intentionally violated this section, or engaged in a clear and consistent pattern or practice of violating this section, the court may—

''(A) enjoin the violation of such section; or

''(B) impose an appropriate civil penalty against such person.

''(d) No provision of this section, section 527, or section 528 shall—

''(1) annul, alter, affect, or exempt any person subject to such sections from complying with any law of any State except to the extent that such law is inconsistent with those sections, and then only to the extent of the inconsistency; or

''(2) be deemed to limit or curtail the authority or ability—

''(A) of a State or subdivision or instrumentality thereof, to determine and enforce qualifications for the practice of law under the laws of that State; or

''(B) of a Federal court to determine and enforce the qualifications for the practice of law before that court.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 525, the following:

''526. Restrictions on debt relief agencies.''.

SEC. 228. DISCLOSURES.

(a) DISCLOSURES.—Subchapter II of chapter 5 of title 11, United States Code, as amended by section 227, is amended by adding at the end the following:

"§ 527. Disclosures

''(a) A debt relief agency providing bankruptcy assistance to an assisted person shall provide—

''(1) the written notice required under section 342(b)(1); and

''(2) to the extent not covered in the written notice described in paragraph (1), and not later than 3 business days after the first date on which a debt relief agency first offers to provide any bankruptcy assistance services to an assisted person, a clear and conspicuous written notice advising assisted persons that—

''(A) all information that the assisted person is required to provide with a petition and thereafter during a case under this title is required to be complete, accurate, and truthful;

''(B) all assets and all liabilities are required to be completely and accurately disclosed in the documents filed to commence the case, and the replacement value of each asset as defined in section 506 must be stated in those documents where requested after reasonable inquiry to establish such value;

''(C) current monthly income, the amounts specified in section 707(b)(2), and, in a case under chapter 13 of this title, disposable income (determined in accordance with section 707(b)(2)), are required to be stated after reasonable inquiry; and

''(D) information that an assisted person provides during their case may be audited pursuant to this title, and that failure to provide such information may result in dismissal of the case under this title or other sanction, including a criminal sanction.

''(b) A debt relief agency providing bankruptcy assistance to an assisted person shall provide each assisted person at the same time as the notices required under subsection (a)(1) the following statement, to the extent applicable, or one substantially similar. The statement shall be clear and conspicuous and shall be in a single document separate from other documents or notices provided to the assisted person:

'''IMPORTANT INFORMATION ABOUT BANKRUPTCY ASSISTANCE SERVICES FROM AN ATTORNEY OR BANKRUPTCY PETITION PREPARER.

'''If you decide to seek bankruptcy relief, you can represent yourself, you can hire an attorney to represent you, or you can get help in some localities from a bankruptcy petition preparer who is not an attorney. THE LAW REQUIRES AN ATTORNEY OR BANKRUPTCY PETITION PREPARER TO GIVE YOU A WRITTEN CONTRACT SPECIFYING WHAT THE ATTORNEY OR BANKRUPTCY PETITION PREPARER WILL DO FOR YOU AND HOW MUCH IT WILL COST. Ask to see the contract before you hire anyone.

'''The following information helps you understand what must be done in a routine bankruptcy case to help you evaluate how much service you need. Although bankruptcy can be complex, many cases are routine.

'''Before filing a bankruptcy case, either you or your attorney should analyze your eligibility for different forms of debt relief available under the Bankruptcy Code and which form of relief is most likely to be beneficial for you. Be sure you understand the relief you can obtain and its limitations. To file a bankruptcy case, documents called a Petition, Schedules and Statement of Financial Affairs, as well as in some cases a Statement of Intention need to be prepared correctly and filed with the bankruptcy court. You will have to pay a filing fee to the bankruptcy court. Once your case starts, you will have to attend the required first meeting of creditors where you may be questioned by a court official called a 'trustee' and by creditors.

'''If you choose to file a chapter 7 case, you may be asked by a creditor to reaffirm a debt. You may want help deciding whether to do so. A creditor is not permitted to coerce you into reaffirming your debts.

'''If you choose to file a chapter 13 case in which you repay your creditors what you can afford over 3 to 5 years, you may also want help with preparing your chapter 13 plan and with the confirmation hearing on your plan which will be before a bankruptcy judge.

'''If you select another type of relief under the Bankruptcy Code other than chapter 7 or chapter 13, you will want to find out what should be done from someone familiar with that type of relief.

'''Your bankruptcy case may also involve litigation. You are generally permitted to represent yourself in litigation in bankruptcy court, but only attorneys, not bankruptcy petition preparers, can give you legal advice.'.

''(c) Except to the extent the debt relief agency provides the required information itself after reasonably diligent inquiry of the assisted person or others so as to obtain such information reasonably accurately for inclusion on the petition, schedules or statement of financial affairs, a debt relief agency providing bankruptcy assistance to an assisted person, to the extent permitted by nonbankruptcy law, shall provide each assisted person at the time required for the notice required under subsection (a)(1) reasonably sufficient information (which shall be provided in a clear and conspicuous writing) to the assisted person on how to provide all the information the assisted person is required to provide under this title pursuant to section 521, including—

''(1) how to value assets at replacement value, determine current monthly income, the amounts specified in section 707(b)(2) and, in a chapter 13 case, how to determine disposable income in accordance with section 707(b)(2) and related calculations;

''(2) how to complete the list of creditors, including how to determine what amount is owed and what address for the creditor should be shown; and

''(3) how to determine what property is exempt and how to value exempt property at replacement value as defined in section 506.

''(d) A debt relief agency shall maintain a copy of the notices required under subsection (a) of this section for 2 years after the date on which the notice is given the assisted person.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227, is amended by inserting after the item relating to section 526 the following:

''527. Disclosures.''.

SEC. 229. REQUIREMENTS FOR DEBT RELIEF AGENCIES.

(a) ENFORCEMENT.—Subchapter II of chapter 5 of title 11, United States Code, as amended by sections 227 and 228, is amended by adding at the end the following:

"§ 528. Requirements for debt relief agencies

''(a) A debt relief agency shall—

''(1) not later than 5 business days after the first date on which such agency provides any bankruptcy assistance services to an assisted person, but prior to such assisted person's petition under this title being filed, execute a written contract with such assisted person that explains clearly and conspicuously—

''(A) the services such agency will provide to such assisted person; and

''(B) the fees or charges for such services, and the terms of payment;

''(2) provide the assisted person with a copy of the fully executed and completed contract;

''(3) clearly and conspicuously disclose in any advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public (whether in general media, seminars or specific mailings, telephonic or electronic messages, or otherwise) that the services or benefits are with respect to bankruptcy relief under this title; and

''(4) clearly and conspicuously use the following statement in such advertisement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.

''(b)(1) An advertisement of bankruptcy assistance services or of the benefits of bankruptcy directed to the general public includes—

''(A) descriptions of bankruptcy assistance in connection with a chapter 13 plan whether or not chapter 13 is specifically mentioned in such advertisement; and

''(B) statements such as 'federally supervised repayment plan' or 'Federal debt restructuring help' or other similar statements that could lead a reasonable consumer to believe that debt counseling was being offered when in fact the services were directed to providing bankruptcy assistance with a chapter 13 plan or other form of bankruptcy relief under this title.

''(2) An advertisement, directed to the general public, indicating that the debt relief agency provides assistance with respect to credit defaults, mortgage foreclosures, eviction proceedings, excessive debt, debt collection pressure, or inability to pay any consumer debt shall—

''(A) disclose clearly and conspicuously in such advertisement that the assistance may involve bankruptcy relief under this title; and

''(B) include the following statement: 'We are a debt relief agency. We help people file for bankruptcy relief under the Bankruptcy Code.' or a substantially similar statement.''.

(b) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, as amended by section 227 and 228, is amended by inserting after the item relating to section 527, the following:

''528. Requirements for debt relief agencies.''.

SEC. 230. GAO STUDY.

(a) STUDY.—Not later than 270 days after the date of enactment of this Act, the Comptroller General of the United States shall conduct a study of the feasibility, effectiveness, and cost of requiring trustees appointed under title 11, United States Code, or the bankruptcy courts, to provide to the Office of Child Support Enforcement promptly after the commencement of cases by debtors who are individuals under such title, the names and social security account numbers of such debtors for the purposes of allowing such Office to determine whether such debtors have outstanding obligations for child support (as determined on the basis of information in the Federal Case Registry or other national database).

(b) REPORT.—Not later than 300 days after the date of enactment of this Act, the Comptroller General shall submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report containing the results of the study required by subsection (a).

SEC. 231. PROTECTION OF PERSONALLY IDENTIFIABLE INFORMATION.

(a) LIMITATION.—Section 363(b)(1) of title 11, United States Code, is amended by striking the period at the end and inserting the following:

'', except that if the debtor in connection with offering a product or a service discloses to an individual a policy prohibiting the

transfer of personally identifiable information about individuals to persons that are not affiliated with the debtor and if such policy is in effect on the date of the commencement of the case, then the trustee may not sell or lease personally identifiable information to any person unless—

''(A) such sale or such lease is consistent with such policy; or

''(B) after appointment of a consumer privacy ombudsman in accordance with section 332, and after notice and a hearing, the court approves such sale or such lease—

''(i) giving due consideration to the facts, circumstances, and conditions of such sale or such lease; and

''(ii) finding that no showing was made that such sale or such lease would violate applicable nonbankruptcy law.''.

(b) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (41) the following:

''(41A) 'personally identifiable information' means—

''(A) if provided by an individual to the debtor in connection with obtaining a product or a service from the debtor primarily for personal, family, or household purposes—

''(i) the first name (or initial) and last name of such individual, whether given at birth or time of adoption, or resulting from a lawful change of name;

''(ii) the geographical address of a physical place of residence of such individual;

''(iii) an electronic address (including an e-mail address) of such individual;

''(iv) a telephone number dedicated to contacting such individual at such physical place of residence;

''(v) a social security account number issued to such individual; or

''(vi) the account number of a credit card issued to such individual; or

''(B) if identified in connection with 1 or more of the items of information specified in subparagraph (A)—

''(i) a birth date, the number of a certificate of birth or adoption, or a place of birth; or

''(ii) any other information concerning an identified individual that, if disclosed, will result in contacting or identifying such individual physically or electronically;''.

SEC. 232. CONSUMER PRIVACY OMBUDSMAN.

(a) CONSUMER PRIVACY OMBUDSMAN.—Title 11 of the United States Code is amended by inserting after section 331 the following:

''§ 332. Consumer privacy ombudsman

''(a) If a hearing is required under section 363(b)(1)(B), the court shall order the United States trustee to appoint, not later than 5 days before the commencement of the hearing, 1 disinterested person (other than the United States trustee) to serve as the consumer privacy ombudsman in the case and shall require that notice of such hearing be timely given to such ombudsman.

''(b) The consumer privacy ombudsman may appear and be heard at such hearing and shall provide to the court information to assist the court in its consideration of the facts, circumstances, and conditions of the proposed sale or lease of personally identifiable information under section 363(b)(1)(B). Such information may include presentation of—

''(1) the debtor's privacy policy;

''(2) the potential losses or gains of privacy to consumers if such sale or such lease is approved by the court;

''(3) the potential costs or benefits to consumers if such sale or such lease is approved by the court; and

''(4) the potential alternatives that would mitigate potential privacy losses or potential costs to consumers.

''(c) A consumer privacy ombudsman shall not disclose any personally identifiable information obtained by the ombudsman under this title.''.

(b) COMPENSATION OF CONSUMER PRIVACY OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended in the matter preceding subparagraph (A), by inserting ''a consumer privacy ombudsman appointed under section 332,'' before ''an examiner''.

(c) CONFORMING AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''332. Consumer privacy ombudsman.''.

SEC. 233. PROHIBITION ON DISCLOSURE OF NAME OF MINOR CHILDREN.

(a) PROHIBITION.—Title 11 of the United States Code, as amended by section 106, is amended by inserting after section 111 the following:

''§ 112. Prohibition on disclosure of name of minor children

''The debtor may be required to provide information regarding a minor child involved in matters under this title but may not be required to disclose in the public records in the case the name of such minor child. The debtor may be required to disclose the name of such minor child in a nonpublic record that is maintained by the court and made available by the court for examination by the United States trustee, the trustee, and the auditor (if any) serving under section 586(f) of title 28, in the case. The court, the United States trustee, the trustee, and such auditor shall not disclose the name of such minor child maintained in such nonpublic record.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 1 of title 11, United States Code, as amended by section 106, is amended by inserting after the item relating to section 111 the following:

''112. Prohibition on disclosure of name of minor children.''.

(c) CONFORMING AMENDMENT.—Section 107(a) of title 11, United States Code, is amended by inserting ''and subject to section 112'' after ''section''.

TITLE III —DISCOURAGING BANKRUPTCY ABUSE

SEC. 301. TECHNICAL AMENDMENTS.

Section 523(a)(17) of title 11, United States Code, is amended—

(1) by striking ''by a court'' and inserting ''on a prisoner by any court'';

(2) by striking ''section 1915(b) or (f)'' and inserting ''subsection (b) or (f)(2) of section 1915''; and

(3) by inserting ''(or a similar non-Federal law)'' after ''title 28'' each place it appears.

SEC. 302. DISCOURAGING BAD FAITH REPEAT FILINGS.

Section 362(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''and'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(3) if a single or joint case is filed by or against debtor who is an individual in a case under chapter 7, 11, or 13, and if a single or joint case of the debtor was pending within the preceding 1-year period but was dismissed, other than a case refiled under a chapter other than chapter 7 after dismissal under section 707(b)—

''(A) the stay under subsection (a) with respect to any action taken with respect to a debt or property securing such debt or with respect to any lease shall terminate with respect to the debtor on the 30th day after the filing of the later case;

''(B) on the motion of a party in interest for continuation of the automatic stay and upon notice and a hearing, the court may extend the stay in particular cases as to any or all creditors (subject to such conditions or limitations as the court may then impose) after notice and a hearing completed before the expiration of the 30-day period only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed; and

''(C) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors, if—

''(I) more than 1 previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was pending within the preceding 1-year period;

''(II) a previous case under any of chapters 7, 11, and 13 in which the individual was a debtor was dismissed within such 1-year period, after the debtor failed to—

''(aa) file or amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be a substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney);

''(bb) provide adequate protection as ordered by the court; or

''(cc) perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under chapter 7, 11, or 13 or any other reason to conclude that the later case will be concluded—

''(aa) if a case under chapter 7, with a discharge; or

''(bb) if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; and

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, that action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to actions of such creditor; and

''(4)(A)(i) if a single or joint case is filed by or against a debtor who is an individual under this title, and if 2 or more single or joint cases of the debtor were pending within the previous year but were dismissed, other than a case refiled under section 707(b), the stay under subsection (a) shall not go into effect upon the filing of the later case; and

''(ii) on request of a party in interest, the court shall promptly enter an order confirming that no stay is in effect;

''(B) if, within 30 days after the filing of the later case, a party in interest requests the court may order the stay to take effect in the case as to any or all creditors (subject to such conditions or limitations as the court may impose), after notice and a hearing, only if the party in interest demonstrates that the filing of the later case is in good faith as to the creditors to be stayed;

''(C) a stay imposed under subparagraph (B) shall be effective on the date of the entry of the order allowing the stay to go into effect; and

''(D) for purposes of subparagraph (B), a case is presumptively filed not in good faith (but such presumption may be rebutted by clear and convincing evidence to the contrary)—

''(i) as to all creditors if—

''(I) 2 or more previous cases under this title in which the individual was a debtor were pending within the 1-year period;

''(II) a previous case under this title in which the individual was a debtor was dismissed within the time period stated in this paragraph after the debtor failed to file or

amend the petition or other documents as required by this title or the court without substantial excuse (but mere inadvertence or negligence shall not be substantial excuse unless the dismissal was caused by the negligence of the debtor's attorney), failed to provide adequate protection as ordered by the court, or failed to perform the terms of a plan confirmed by the court; or

''(III) there has not been a substantial change in the financial or personal affairs of the debtor since the dismissal of the next most previous case under this title, or any other reason to conclude that the later case will not be concluded, if a case under chapter 7, with a discharge, and if a case under chapter 11 or 13, with a confirmed plan that will be fully performed; or

''(ii) as to any creditor that commenced an action under subsection (d) in a previous case in which the individual was a debtor if, as of the date of dismissal of such case, such action was still pending or had been resolved by terminating, conditioning, or limiting the stay as to such action of such creditor.''.

SEC. 303. CURBING ABUSIVE FILINGS.

(a) IN GENERAL.—Section 362(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) with respect to a stay of an act against real property under subsection (a), by a creditor whose claim is secured by an interest in such real property, if the court finds that the filing of the petition was part of a scheme to delay, hinder, and defraud creditors that involved either—

''(A) transfer of all or part ownership of, or other interest in, such real property without the consent of the secured creditor or court approval; or

''(B) multiple bankruptcy filings affecting such real property.

If recorded in compliance with applicable State laws governing notices of interests or liens in real property, an order entered under paragraph (4) shall be binding in any other case under this title purporting to affect such real property filed not later than 2 years after the date of the entry of such order by the court, except that a debtor in a subsequent case under this title may move for relief from such order based upon changed circumstances or for good cause shown, after notice and a hearing. Any Federal, State, or local governmental unit that accepts notices of interests or liens in real property shall accept any certified copy of an order described in this subsection for indexing and recording.''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by section 224, is amended by inserting after paragraph (19), the following:

''(20) under subsection (a), of any act to enforce any lien against or security interest in real property following entry of the order under subsection (d)(4) as to such real property in any prior case under this title, for a period of 2 years after the date of the entry of such an order, except that the debtor, in a subsequent case under this title, may move for relief from such order based upon changed circumstances or for other good cause shown, after notice and a hearing;

''(21) under subsection (a), of any act to enforce any lien against or security interest in real property—

''(A) if the debtor is ineligible under section 109(g) to be a debtor in a case under this title; or

''(B) if the case under this title was filed in violation of a bankruptcy court order in a prior case under this title prohibiting the debtor from being a debtor in another case under this title;''.

SEC. 304. DEBTOR RETENTION OF PERSONAL PROPERTY SECURITY.

Title 11, United States Code, is amended—

(1) in section 521(a), as so designated by section 106—

(A) in paragraph (4), by striking '', and'' at the end and inserting a semicolon;

(B) in paragraph (5), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(6) in a case under chapter 7 of this title in which the debtor is an individual, not retain possession of personal property as to which a creditor has an allowed claim for the purchase price secured in whole or in part by an interest in such personal property unless the debtor, not later than 45 days after the first meeting of creditors under section 341(a), either—

''(A) enters into an agreement with the creditor pursuant to section 524(c) with respect to the claim secured by such property; or

''(B) redeems such property from the security interest pursuant to section 722.

If the debtor fails to so act within the 45-day period referred to in paragraph (6), the stay under section 362(a) is terminated with respect to the personal property of the estate or of the debtor which is affected, such property shall no longer be property of the estate, and the creditor may take whatever action as to such property as is permitted by applicable nonbankruptcy law, unless the court determines on the motion of the trustee filed before the expiration of such 45-day period, and after notice and a hearing, that such property is of consequential value or benefit to the estate, orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee.''; and

(2) in section 722, by inserting ''in full at the time of redemption'' before the period at the end.

SEC. 305. RELIEF FROM THE AUTOMATIC STAY WHEN THE DEBTOR DOES NOT COMPLETE INTENDED SURRENDER OF CONSUMER DEBT COLLATERAL.

Title 11, United States Code, is amended—

(1) in section 362, as amended by section 106—

(A) in subsection (c), by striking ''(e), and (f)'' and inserting ''(e), (f), and (h)'';

(B) by redesignating subsection (h) as subsection (k) and transferring such subsection so as to insert it after subjection (j) as added by section 106; and

(C) by inserting after subsection (g) the following:

''(h)(1) In a case in which the debtor is an individual, the stay provided by subsection (a) is terminated with respect to personal property of the estate or of the debtor securing in whole or in part a claim, or subject to an unexpired lease, and such personal property shall no longer be property of the estate if the debtor fails within the applicable time set by section 521(a)(2)—

''(A) to file timely any statement of intention required under section 521(a)(2) with respect to such personal property or to indicate in such statement that the debtor will either surrender such personal property or retain it and, if retaining such personal property, either redeem such personal property pursuant to section 722, enter into an agreement of the kind specified in section 524(c) applicable to the debt secured by such personal property, or assume such unexpired lease pursuant to section 365(p) if the trustee does not do so, as applicable; and

''(B) to take timely the action specified in such statement, as it may be amended before expiration of the period for taking action, unless such statement specifies the debtor's intention to reaffirm such debt on the original contract terms and the creditor refuses to agree to the reaffirmation on such terms.

''(2) Paragraph (1) does not apply if the court determines, on the motion of the trustee filed before the expiration of the applicable time set by section 521(a)(2), after notice and a hearing, that such personal property is of consequential value or benefit to the estate, and orders appropriate adequate protection of the creditor's interest, and orders the debtor to deliver any collateral in the debtor's possession to the trustee. If the court does not so determine, the stay provided by subsection (a) shall terminate upon the conclusion of the hearing on the motion.''; and

(2) in section 521, as amended by sections 106 and 225—

(A) in subsection (a)(2) by striking ''consumer'';

(B) in subsection (a)(2)(B)—

(i) by striking ''forty-five days after the filing of a notice of intent under this section'' and inserting ''30 days after the first date set for the meeting of creditors under section 341(a)''; and

(ii) by striking ''forty-five day'' and inserting ''30-day'';

(C) in subsection (a)(2)(C) by inserting '', except as provided in section 362(h)'' before the semicolon; and

(D) by adding at the end the following:

''(d) If the debtor fails timely to take the action specified in subsection (a)(6) of this section, or in paragraphs (1) and (2) of section 362(h), with respect to property which a lessor or bailor owns and has leased, rented, or bailed to the debtor or as to which a creditor holds a security interest not otherwise voidable under section 522(f), 544, 545, 547, 548, or 549, nothing in this title shall prevent or limit the operation of a provision in the underlying lease or agreement that has the effect of placing the debtor in default under such lease or agreement by reason of the occurrence, pendency, or existence of a proceeding under this title or the insolvency of the debtor. Nothing in this subsection shall be deemed to justify limiting such a provision in any other circumstance.''.

SEC. 306. GIVING SECURED CREDITORS FAIR TREATMENT IN CHAPTER 13.

(a) IN GENERAL.—Section 1325(a)(5)(B)(i) of title 11, United States Code, is amended to read as follows:

''(i) the plan provides that—

''(I) the holder of such claim retain the lien securing such claim until the earlier of—

''(aa) the payment of the underlying debt determined under nonbankruptcy law; or

''(bb) discharge under section 1328; and

''(II) if the case under this chapter is dismissed or converted without completion of the plan, such lien shall also be retained by such holder to the extent recognized by applicable nonbankruptcy law; and''.

(b) RESTORING THE FOUNDATION FOR SECURED CREDIT.—Section 1325(a) of title 11, United States Code, is amended by adding at the end the following:

''For purposes of paragraph (5), section 506 shall not apply to a claim described in that paragraph if the creditor has a purchase money security interest securing the debt that is the subject of the claim, the debt was incurred within the 910-day preceding the date of the filing of the petition, and the collateral for that debt consists of a motor vehicle (as defined in section 30102 of title 49) acquired for the personal use of the debtor, or if collateral for that debt consists of any other thing of value, if the debt was incurred during the 1-year period preceding that filing.''.

(c) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (13) the following:

''(13A) 'debtor's principal residence'—

''(A) means a residential structure, including incidental property, without regard to whether that structure is attached to real property; and

''(B) includes an individual condominium or cooperative unit, a mobile or manufactured home, or trailer;''; and

(2) by inserting after paragraph (27), the following:

''(27A) 'incidental property' means, with respect to a debtor's principal residence—

''(A) property commonly conveyed with a principal residence in the area where the real property is located;

''(B) all easements, rights, appurtenances, fixtures, rents, royalties, mineral rights, oil or gas rights or profits, water rights, escrow funds, or insurance proceeds; and

''(C) all replacements or additions;''.

SEC. 307. DOMICILIARY REQUIREMENTS FOR EXEMPTIONS.

Section 522(b)(3) of title 11, United States Code, as so designated by section 106, is amended—

(1) in subparagraph (A)—

(A) by striking ''180 days'' and inserting ''730 days''; and

(B) by striking '', or for a longer portion of such 180-day period than in any other place'' and inserting ''or if the debtor's domicile has not been located at a single State for such 730-day period, the place in which the debtor's domicile was located for 180 days immediately preceding the 730-day period or for a longer portion of such 180-day period than in any other place''; and

(2) by adding at the end the following:

''If the effect of the domiciliary requirement under subparagraph (A) is to render the debtor ineligible for any exemption, the debtor may elect to exempt property that is specified under subsection (d).''.

SEC. 308. REDUCTION OF HOMESTEAD EXEMPTION FOR FRAUD.

Section 522 of title 11, United States Code, as amended by section 224, is amended—

(1) in subsection (b)(3)(A), as so designated by this Act, by inserting ''subject to subsections (o) and (p),'' before ''any property''; and

(2) by adding at the end the following:

''(o) For purposes of subsection (b)(3)(A), and notwithstanding subsection (a), the value of an interest in—

''(1) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(2) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

''(3) a burial plot for the debtor or a dependent of the debtor; or

''(4) real or personal property that the debtor or a dependent of the debtor claims as a homestead;

shall be reduced to the extent that such value is attributable to any portion of any property that the debtor disposed of in the 10-year period ending on the date of the filing of the petition with the intent to hinder, delay, or defraud a creditor and that the debtor could not exempt, or that portion that the debtor could not exempt, under subsection (b), if on such date the debtor had held the property so disposed of.''.

SEC. 309. PROTECTING SECURED CREDITORS IN CHAPTER 13 CASES.

(a) STOPPING ABUSIVE CONVERSIONS FROM CHAPTER 13.—Section 348(f)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''and'' at the end;

(2) in subparagraph (B)—

(A) by striking ''in the converted case, with allowed secured claims'' and inserting ''only in a case converted to a case under chapter 11 or 12, but not in a case converted to a case under chapter 7, with allowed secured claims in cases under chapters 11 and 12''; and

(B) by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(C) with respect to cases converted from chapter 13—

''(i) the claim of any creditor holding security as of the date of the petition shall continue to be secured by that security unless the full amount of such claim determined under applicable nonbankruptcy law has been paid in full as of the date of conversion, notwithstanding any valuation or determination of the amount of an allowed secured claim made for the purposes of the case under chapter 13; and

''(ii) unless a prebankruptcy default has been fully cured under the plan at the time of conversion, in any proceeding under this title or otherwise, the default shall have the effect given under applicable nonbankruptcy law.''.

(b) GIVING DEBTORS THE ABILITY TO KEEP LEASED PERSONAL PROPERTY BY ASSUMPTION.—Section 365 of title 11, United States Code, is amended by adding at the end the following:

''(p)(1) If a lease of personal property is rejected or not timely assumed by the trustee under subsection (d), the leased property is no longer property of the estate and the stay under section 362(a) is automatically terminated.

''(2)(A) If the debtor in a case under chapter 7 is an individual, the debtor may notify the creditor in writing that the debtor desires to assume the lease. Upon being so notified, the creditor may, at its option, notify the debtor that it is willing to have the lease assumed by the debtor and may condition such assumption on cure of any outstanding default on terms set by the contract.

''(B) If, not later than 30 days after notice is provided under subparagraph (A), the debtor notifies the lessor in writing that the lease is assumed, the liability under the lease will be assumed by the debtor and not by the estate.

''(C) The stay under section 362 and the injunction under section 524(a)(2) shall not be violated by notification of the debtor and negotiation of cure under this subsection.

''(3) In a case under chapter 11 in which the debtor is an individual and in a case under chapter 13, if the debtor is the lessee with respect to personal property and the lease is not assumed in the plan confirmed by the court, the lease is deemed rejected as of the conclusion of the hearing on confirmation. If the lease is rejected, the stay under section 362 and any stay under section 1301 is automatically terminated with respect to the property subject to the lease.''.

(c) ADEQUATE PROTECTION OF LESSORS AND PURCHASE MONEY SECURED CREDITORS.—

(1) CONFIRMATION OF PLAN.—Section 1325(a)(5)(B) of title 11, United States Code, as amended by section 306, is amended—

(A) in clause (i), by striking ''and'' at the end;

(B) in clause (ii), by striking ''or'' at the end and inserting ''and''; and

(C) by adding at the end the following:

''(iii) if—

''(I) property to be distributed pursuant to this subsection is in the form of periodic payments, such payments shall be in equal monthly amounts; and

''(II) the holder of the claim is secured by personal property, the amount of such payments shall not be less than an amount sufficient to provide to the holder of such claim adequate protection during the period of the plan; or''.

(2) PAYMENTS.—Section 1326(a) of title 11, United States Code, is amended to read as follows:

''(a)(1) Unless the court orders otherwise, the debtor shall commence making payments not later than 30 days after the date of the filing of the plan or the order for relief, whichever is earlier, in the amount—

''(A) proposed by the plan to the trustee;

''(B) scheduled in a lease of personal property directly to the lessor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment; and

''(C) that provides adequate protection directly to a creditor holding an allowed claim secured by personal property to the extent the claim is attributable to the purchase of such property by the debtor for that portion of the obligation that becomes due after the order for relief, reducing the payments under subparagraph (A) by the amount so paid and providing the trustee with evidence of such payment, including the amount and date of payment.

''(2) A payment made under paragraph (1)(A) shall be retained by the trustee until confirmation or denial of confirmation. If a plan is confirmed, the trustee shall distribute any such payment in accordance with the plan as soon as is practicable. If a plan is not confirmed, the trustee shall return any such payments not previously paid and not yet due and owing to creditors pursuant to paragraph (3) to the debtor, after deducting any unpaid claim allowed under section 503(b).

''(3) Subject to section 363, the court may, upon notice and a hearing, modify, increase, or reduce the payments required under this subsection pending confirmation of a plan.

''(4) Not later than 60 days after the date of filing of a case under this chapter, a debtor retaining possession of personal property subject to a lease or securing a claim attributable in whole or in part to the purchase price of such property shall provide the lessor or secured creditor reasonable evidence of the maintenance of any required insurance coverage with respect to the use or ownership of such property and continue to do so for so long as the debtor retains possession of such property.''.

SEC. 310. LIMITATION ON LUXURY GOODS.

Section 523(a)(2)(C) of title 11, United States Code, is amended to read as follows:

''(C)(i) for purposes of subparagraph (A)—

''(I) consumer debts owed to a single creditor and aggregating more than $500 for luxury goods or services incurred by an individual debtor on or within 90 days before the order for relief under this title are presumed to be nondischargeable; and

''(II) cash advances aggregating more than $750 that are extensions of consumer credit under an open end credit plan obtained by an individual debtor on or within 70 days before the order for relief under this title, are presumed to be nondischargeable; and

''(ii) for purposes of this subparagraph—

''(I) the terms 'consumer', 'credit', and 'open end credit plan' have the same meanings as in section 103 of the Truth in Lending Act; and

''(II) the term 'luxury goods or services' does not include goods or services reasonably necessary for the support or maintenance of the debtor or a dependent of the debtor.''.

SEC. 311. AUTOMATIC STAY.

(a) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224 and 303, is amended by inserting after paragraph (21), the following:

''(22) subject to subsection (n), under subsection (a)(3), of the continuation of any

eviction, unlawful detainer action, or similar proceeding by a lessor against a debtor involving residential property in which the debtor resides as a tenant under a lease or rental agreement and with respect to which the lessor has obtained before the date of the filing of the bankruptcy petition, a judgment for possession of such property against the debtor;

''(23) subject to subsection (o), under subsection (a)(3), of an eviction action that seeks possession of the residential property in which the debtor resides as a tenant under a lease or rental agreement based on endangerment of such property or the illegal use of controlled substances on such property, but only if the lessor files with the court, and serves upon the debtor, a certification under penalty of perjury that such an eviction action has been filed, or that the debtor, during the 30-day period preceding the date of the filing of the certification, has endangered property or illegally used or allowed to be used a controlled substance on the property;

''(24) under subsection (a), of any transfer that is not avoidable under section 544 and that is not avoidable under section 549;''.

(b) LIMITATIONS.—Section 362 of title 11, United States Code, as amended by sections 106 and 305, is amended by adding at the end the following:

''(l)(1) Except as otherwise provided in this subsection, subsection (b)(22) shall apply on the date that is 30 days after the date on which the bankruptcy petition is filed, if the debtor files with the petition and serves upon the lessor a certification under penalty of perjury that—

''(A) under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment for possession was entered; and

''(B) the debtor (or an adult dependent of the debtor) has deposited with the clerk of the court, any rent that would become due during the 30-day period after the filing of the bankruptcy petition.

''(2) If, within the 30-day period after the filing of the bankruptcy petition, the debtor (or an adult dependent of the debtor) complies with paragraph (1) and files with the court and serves upon the lessor a further certification under penalty of perjury that the debtor (or an adult dependent of the debtor) has cured, under nonbankrupcty law applicable in the jurisdiction, the entire monetary default that gave rise to the judgment under which possession is sought by the lessor, subsection (b)(22) shall not apply, unless ordered to apply by the court under paragraph (3).

''(3)(A) If the lessor files an objection to any certification filed by the debtor under paragraph (1) or (2), and serves such objection upon the debtor, the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the certification filed by the debtor under paragraph (1) or (2) is true.

''(B) If the court upholds the objection of the lessor filed under subparagraph (A)—

''(i) subsection (b)(22) shall apply immediately and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's objection.

''(4) If a debtor, in accordance with paragraph (5), indicates on the petition that there was a judgment for possession of the residential rental property in which the debtor resides and does not file a certification under paragraph (1) or (2)—

''(A) subsection (b)(22) shall apply immediately upon failure to file such certification, and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating the absence of a filed certification and the applicability of the exception to the stay under subsection (b)(22).

''(5)(A) Where a judgment for possession of residential property in which the debtor resides as a tenant under a lease or rental agreement has been obtained by the lessor, the debtor shall so indicate on the bankruptcy petition and shall provide the name and address of the lessor that obtained that pre-petition judgment on the petition and on any certification filed under this subsection.

''(B) The form of certification filed with the petition, as specified in this subsection, shall provide for the debtor to certify, and the debtor shall certify—

''(i) whether a judgment for possession of residential rental housing in which the debtor resides has been obtained against the debtor before the date of the filing of the petition; and

''(ii) whether the debtor is claiming under paragraph (1) that under nonbankruptcy law applicable in the jurisdiction, there are circumstances under which the debtor would be permitted to cure the entire monetary default that gave rise to the judgment for possession, after that judgment of possession was entered, and has made the appropriate deposit with the court.

''(C) The standard forms (electronic and otherwise) used in a bankruptcy proceeding shall be amended to reflect the requirements of this subsection.

''(D) The clerk of the court shall arrange for the prompt transmittal of the rent deposited in accordance with paragraph (1)(B) to the lessor.

''(m)(1) Except as otherwise provided in this subsection, subsection (b)(23) shall apply on the date that is 15 days after the date on which the lessor files and serves a certification described in subsection (b)(23).

''(2)(A) If the debtor files with the court an objection to the truth or legal sufficiency of the certification described in subsection (b)(23) and serves such objection upon the lessor, subsection (b)(23) shall not apply, unless ordered to apply by the court under this subsection.

''(B) If the debtor files and serves the objection under subparagraph (A), the court shall hold a hearing within 10 days after the filing and service of such objection to determine if the situation giving rise to the lessor's certification under paragraph (1) existed or has been remedied.

''(C) If the debtor can demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied, the stay provided under subsection (a)(3) shall remain in effect until the termination of the stay under this section.

''(D) If the debtor cannot demonstrate to the satisfaction of the court that the situation giving rise to the lessor's certification under paragraph (1) did not exist or has been remedied—

''(i) relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to proceed with the eviction; and

''(ii) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the court's order upholding the lessor's certification.

''(3) If the debtor fails to file, within 15 days, an objection under paragraph (2)(A)—

''(A) subsection (b)(23) shall apply immediately upon such failure and relief from the stay provided under subsection (a)(3) shall not be required to enable the lessor to complete the process to recover full possession of the property; and

''(B) the clerk of the court shall immediately serve upon the lessor and the debtor a certified copy of the docket indicating such failure.''.

SEC. 312. EXTENSION OF PERIOD BETWEEN BANKRUPTCY DISCHARGES.

Title 11, United States Code, is amended—

(1) in section 727(a)(8), by striking ''six'' and inserting ''8''; and

(2) in section 1328, by inserting after subsection (e) the following:

''(f) Notwithstanding subsections (a) and (b), the court shall not grant a discharge of all debts provided for in the plan or disallowed under section 502, if the debtor has received a discharge—

''(1) in a case filed under chapter 7, 11, or 12 of this title during the 4-year period preceding the date of the order for relief under this chapter, or

''(2) in a case filed under chapter 13 of this title during the 2-year period preceding the date of such order.''.

SEC. 313. DEFINITION OF HOUSEHOLD GOODS AND ANTIQUES.

(a) DEFINITION.—Section 522(f) of title 11, United States Code, is amended by adding at the end the following:

''(4)(A) Subject to subparagraph (B), for purposes of paragraph (1)(B), the term 'household goods' means—

''(i) clothing;

''(ii) furniture;

''(iii) appliances;

''(iv) 1 radio;

''(v) 1 television;

''(vi) 1 VCR;

''(vii) linens;

''(viii) china;

''(ix) crockery;

''(x) kitchenware;

''(xi) educational materials and educational equipment primarily for the use of minor dependent children of the debtor;

(xii) medical equipment and supplies;

''(xiii) furniture exclusively for the use of minor children, or elderly or disabled dependents of the debtor;

''(xiv) personal effects (including the toys and hobby equipment of minor dependent children and wedding rings) of the debtor and the dependents of the debtor; and

''(xv) 1 personal computer and related equipment.

''(B) The term 'household goods' does not include—

''(i) works of art (unless by or of the debtor, or any relative of the debtor);

''(ii) electronic entertainment equipment with a fair market value of more than $500 in the aggregate (except 1 television, 1 radio, and 1 VCR);

''(iii) items acquired as antiques with a fair market value of more than $500 in the aggregate;

''(iv) jewelry with a fair market value of more than $500 in the aggregate (except wedding rings); and

''(v) a computer (except as otherwise provided for in this section), motor vehicle (including a tractor or lawn tractor), boat, or a motorized recreational device, conveyance, vehicle, watercraft, or aircraft.''.

(b) STUDY.—Not later than 2 years after the date of enactment of this Act, the Director of the Executive Office for United States Trustees shall submit a report to the Committee on the Judiciary of the Senate and

the Committee on the Judiciary of the House of Representatives containing its findings regarding utilization of the definition of household goods, as defined in section 522(f)(4) of title 11, United States Code, as added by subsection (a), with respect to the avoidance of nonpossessory, nonpurchase money security interests in household goods under section 522(f)(1)(B) of title 11, United States Code, and the impact such section 522(f)(4) has had on debtors and on the bankruptcy courts. Such report may include recommendations for amendments to such section 522(f)(4) consistent with the Director's findings.

SEC. 314. DEBT INCURRED TO PAY NONDISCHARGEABLE DEBTS.

(a) IN GENERAL.—Section 523(a) of title 11, United States Code, is amended by inserting after paragraph (14) the following:

''(14A) incurred to pay a tax to a governmental unit, other than the United States, that would be nondischargeable under paragraph (1);''.

(b) DISCHARGE UNDER CHAPTER 13.—Section 1328(a) of title 11, United States Code, is amended by striking paragraphs (1) through (3) and inserting the following:

''(1) provided for under section 1322(b)(5);

''(2) of the kind specified in paragraph (2), (3), (4), (5), (8), or (9) of section 523(a);

''(3) for restitution, or a criminal fine, included in a sentence on the debtor's conviction of a crime; or

''(4) for restitution, or damages, awarded in a civil action against the debtor as a result of willful or malicious injury by the debtor that caused personal injury to an individual or the death of an individual.''.

SEC. 315. GIVING CREDITORS FAIR NOTICE IN CHAPTERS 7 AND 13 CASES.

(a) NOTICE.—Section 342 of title 11, United States Code, as amended by section 102, is amended—

(1) in subsection (c)—

(A) by inserting ''(1)'' after ''(c)'';

(B) by striking '', but the failure of such notice to contain such information shall not invalidate the legal effect of such notice''; and

(C) by adding at the end the following:

''(2)(A) If, within the 90 days before the commencement of a voluntary case, a creditor supplies the debtor in at least 2 communications sent to the debtor with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.

''(B) If a creditor would be in violation of applicable nonbankruptcy law by sending any such communication within such 90-day period and if such creditor supplies the debtor in the last 2 communications with the current account number of the debtor and the address at which such creditor requests to receive correspondence, then any notice required by this title to be sent by the debtor to such creditor shall be sent to such address and shall include such account number.''; and

(2) by adding at the end the following:

''(e)(1) In a case under chapter 7 or 13 of this title of a debtor who is an individual, a creditor at any time may both file with the court and serve on the debtor a notice of address to be used to provide notice in such case to such creditor.

''(2) Any notice in such case required to be provided to such creditor by the debtor or the court later than 5 days after the court and the debtor receive such creditor's notice of address, shall be provided to such address.

''(f)(1) An entity may file with any bankruptcy court a notice of address to be used by all the bankruptcy courts or by particular bankruptcy courts, as so specified by such entity at the time such notice is filed, to provide notice to such entity in all cases under chapters 7 and 13 pending in the courts with respect to which such notice is filed, in which such entity is a creditor.

''(2) In any case filed under chapter 7 or 13, any notice required to be provided by a court with respect to which a notice is filed under paragraph (1), to such entity later than 30 days after the filing of such notice under paragraph (1) shall be provided to such address unless with respect to a particular case a different address is specified in a notice filed and served in accordance with subsection (e).

''(3) A notice filed under paragraph (1) may be withdrawn by such entity.

''(g)(1) Notice provided to a creditor by the debtor or the court other than in accordance with this section (excluding this subsection) shall not be effective notice until such notice is brought to the attention of such creditor. If such creditor designates a person or an organizational subdivision of such creditor to be responsible for receiving notices under this title and establishes reasonable procedures so that such notices receivable by such creditor are to be delivered to such person or such subdivision, then a notice provided to such creditor other than in accordance with this section (excluding this subsection) shall not be considered to have been brought to the attention of such creditor until such notice is received by such person or such subdivision.

''(2) A monetary penalty may not be imposed on a creditor for a violation of a stay in effect under section 362(a) (including a monetary penalty imposed under section 362(k)) or for failure to comply with section 542 or 543 unless the conduct that is the basis of such violation or of such failure occurs after such creditor receives notice effective under this section of the order for relief.''.

(b) DEBTOR'S DUTIES.—Section 521 of title 11, United States Code, as amended by sections 106, 225, and 305, is amended—

(1) in subsection (a), as so designated by section 106, by amending paragraph (1) to read as follows:

''(1) file—

''(A) a list of creditors; and

''(B) unless the court orders otherwise—

''(i) a schedule of assets and liabilities;

''(ii) a schedule of current income and current expenditures;

''(iii) a statement of the debtor's financial affairs and, if section 342(b) applies, a certificate—

''(I) of an attorney whose name is indicated on the petition as the attorney for the debtor, or a bankruptcy petition preparer signing the petition under section 110(b)(1), indicating that such attorney or the bankruptcy petition preparer delivered to the debtor the notice required by section 342(b); or

''(II) if no attorney is so indicated, and no bankruptcy petition preparer signed the petition, of the debtor that such notice was received and read by the debtor;

''(iv) copies of all payment advices or other evidence of payment received within 60 days before the date of the filing of the petition, by the debtor from any employer of the debtor;

''(v) a statement of the amount of monthly net income, itemized to show how the amount is calculated; and

''(vi) a statement disclosing any reasonably anticipated increase in income or expenditures over the 12-month period following the date of the filing of the petition;''; and

(2) by adding at the end the following:

''(e)(1) If the debtor in a case under chapter 7 or 13 is an individual and if a creditor files with the court at any time a request to receive a copy of the petition, schedules, and statement of financial affairs filed by the debtor, then the court shall make such petition, such schedules, and such statement available to such creditor.

''(2)(A) The debtor shall provide—

''(i) not later than 7 days before the date first set for the first meeting of creditors, to the trustee a copy of the Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such return) for the most recent tax year ending immediately before the commencement of the case and for which a Federal income tax return was filed; and

''(ii) at the same time the debtor complies with clause (i), a copy of such return (or if elected under clause (i), such transcript) to any creditor that timely requests such copy.

''(B) If the debtor fails to comply with clause (i) or (ii) of subparagraph (A), the court shall dismiss the case unless the debtor demonstrates that the failure to so comply is due to circumstances beyond the control of the debtor.

''(C) If a creditor requests a copy of such tax return or such transcript and if the debtor fails to provide a copy of such tax return or such transcript to such creditor at the time the debtor provides such tax return or such transcript to the trustee, then the court shall dismiss the case unless the debtor demonstrates that the failure to provide a copy of such tax return or such transcript is due to circumstances beyond the control of the debtor.

''(3) If a creditor in a case under chapter 13 files with the court at any time a request to receive a copy of the plan filed by the debtor, then the court shall make available to such creditor a copy of the plan—

''(A) at a reasonable cost; and

''(B) not later than 5 days after such request is filed.

''(f) At the request of the court, the United States trustee, or any party in interest in a case under chapter 7, 11, or 13, a debtor who is an individual shall file with the court—

''(1) at the same time filed with the taxing authority, a copy of each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) with respect to each tax year of the debtor ending while the case is pending under such chapter;

''(2) at the same time filed with the taxing authority, each Federal income tax return required under applicable law (or at the election of the debtor, a transcript of such tax return) that had not been filed with such authority as of the date of the commencement of the case and that was subsequently filed for any tax year of the debtor ending in the 3-year period ending on the date of the commencement of the case;

''(3) a copy of each amendment to any Federal income tax return or transcript filed with the court under paragraph (1) or (2); and

''(4) in a case under chapter 13—

''(A) on the date that is either 90 days after the end of such tax year or 1 year after the date of the commencement of the case, whichever is later, if a plan is not confirmed before such later date; and

''(B) annually after the plan is confirmed and until the case is closed, not later than the date that is 45 days before the anniversary of the confirmation of the plan;

a statement, under penalty of perjury, of the income and expenditures of the debtor during the tax year of the debtor most recently concluded before such statement is filed under this paragraph, and of the monthly income of the debtor, that shows how income, expenditures, and monthly income are calculated.

''(g)(1) A statement referred to in subsection (f)(4) shall disclose—

''(A) the amount and sources of the income of the debtor;

''(B) the identity of any person responsible with the debtor for the support of any dependent of the debtor; and

''(C) the identity of any person who contributed, and the amount contributed, to the household in which the debtor resides.

''(2) The tax returns, amendments, and statement of income and expenditures described in subsections (e)(2)(A) and (f) shall be available to the United States trustee (or the bankruptcy administrator, if any), the trustee, and any party in interest for inspection and copying, subject to the requirements of section 315(c) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

''(h) If requested by the United States trustee or by the trustee, the debtor shall provide—

''(1) a document that establishes the identity of the debtor, including a driver's license, passport, or other document that contains a photograph of the debtor; or

''(2) such other personal identifying information relating to the debtor that establishes the identity of the debtor.''.

(c)(1) Not later than 180 days after the date of the enactment of this Act, the Director of the Administrative Office of the United States Courts shall establish procedures for safeguarding the confidentiality of any tax information required to be provided under this section.

(2) The procedures under paragraph (1) shall include restrictions on creditor access to tax information that is required to be provided under this section.

(3) Not later than 540 days after the date of enactment of this Act, the Director of the Administrative Office of the United States Courts shall prepare and submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report that—

(A) assesses the effectiveness of the procedures established under paragraph (1); and

(B) if appropriate, includes proposed legislation to—

(i) further protect the confidentiality of tax information; and

(ii) provide penalties for the improper use by any person of the tax information required to be provided under this section.

SEC. 316. DISMISSAL FOR FAILURE TO TIMELY FILE SCHEDULES OR PROVIDE REQUIRED INFORMATION.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, and 315, is amended by adding at the end the following:

''(i)(1) Subject to paragraphs (2) and (4) and notwithstanding section 707(a), if an individual debtor in a voluntary case under chapter 7 or 13 fails to file all of the information required under subsection (a)(1) within 45 days after the date of the filing of the petition, the case shall be automatically dismissed effective on the 46th day after the date of the filing of the petition.

''(2) Subject to paragraph (4) and with respect to a case described in paragraph (1), any party in interest may request the court to enter an order dismissing the case. If requested, the court shall enter an order of dismissal not later than 5 days after such request.

''(3) Subject to paragraph (4) and upon request of the debtor made within 45 days after the date of the filing of the petition described in paragraph (1), the court may allow the debtor an additional period of not to exceed 45 days to file the information required under subsection (a)(1) if the court finds justification for extending the period for the filing.

''(4) Notwithstanding any other provision of this subsection, on the motion of the trustee filed before the expiration of the applicable period of time specified in paragraph (1), (2), or (3), and after notice and a hearing, the court may decline to dismiss the case if the court finds that the debtor attempted in good faith to file all the information required by subsection (a)(1)(B)(iv) and that the best interests of creditors would be served by administration of the case.''.

SEC. 317. ADEQUATE TIME TO PREPARE FOR HEARING ON CONFIRMATION OF THE PLAN.

Section 1324 of title 11, United States Code, is amended—

(1) by striking ''After'' and inserting the following:

''(a) Except as provided in subsection (b) and after''; and

(2) by adding at the end the following:

''(b) The hearing on confirmation of the plan may be held not earlier than 20 days and not later than 45 days after the date of the meeting of creditors under section 341(a), unless the court determines that it would be in the best interests of the creditors and the estate to hold such hearing at an earlier date and there is no objection to such earlier date.''.

SEC. 318. CHAPTER 13 PLANS TO HAVE A 5-YEAR DURATION IN CERTAIN CASES.

Title 11, United States Code, is amended—

(1) by amending section 1322(d) to read as follows:

''(d)(1) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 5 years.

''(2) If the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is less than—

''(A) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(B) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(C) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4,

the plan may not provide for payments over a period that is longer than 3 years, unless the court, for cause, approves a longer period, but the court may not approve a period that is longer than 5 years.'';

(2) in section 1325(b)(1)(B), by striking ''three-year period'' and inserting ''applicable commitment period''; and

(3) in section 1325(b), as amended by section 102, by adding at the end the following:

''(4) For purposes of this subsection, the 'applicable commitment period'—

''(A) subject to subparagraph (B), shall be—

''(i) 3 years; or

''(ii) not less than 5 years, if the current monthly income of the debtor and the debtor's spouse combined, when multiplied by 12, is not less than—

''(I) in the case of a debtor in a household of 1 person, the median family income of the applicable State for 1 earner;

''(II) in the case of a debtor in a household of 2, 3, or 4 individuals, the highest median family income of the applicable State for a family of the same number or fewer individuals; or

''(III) in the case of a debtor in a household exceeding 4 individuals, the highest median family income of the applicable State for a family of 4 or fewer individuals, plus $525 per month for each individual in excess of 4; and

''(B) may be less than 3 or 5 years, whichever is applicable under subparagraph (A), but only if the plan provides for payment in full of all allowed unsecured claims over a shorter period.''; and

(4) in section 1329(c), by striking ''three years'' and inserting ''the applicable commitment period under section 1325(b)(1)(B)''.

SEC. 319. SENSE OF CONGRESS REGARDING EXPANSION OF RULE 9011 OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE.

It is the sense of Congress that rule 9011 of the Federal Rules of Bankruptcy Procedure (11 U.S.C. App.) should be modified to include a requirement that all documents (including schedules), signed and unsigned, submitted to the court or to a trustee by debtors who represent themselves and debtors who are represented by attorneys be submitted only after the debtors or the debtors' attorneys have made reasonable inquiry to verify that the information contained in such documents is—

(1) well grounded in fact; and

(2) warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law.

SEC. 320. PROMPT RELIEF FROM STAY IN INDIVIDUAL CASES.

Section 362(e) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(e)''; and

(2) by adding at the end the following:

''(2) Notwithstanding paragraph (1), in a case under chapter 7, 11, or 13 in which the debtor is an individual, the stay under subsection (a) shall terminate on the date that is 60 days after a request is made by a party in interest under subsection (d), unless—

''(A) a final decision is rendered by the court during the 60-day period beginning on the date of the request; or

''(B) such 60-day period is extended—

''(i) by agreement of all parties in interest; or

''(ii) by the court for such specific period of time as the court finds is required for good cause, as described in findings made by the court.''.

SEC. 321. CHAPTER 11 CASES FILED BY INDIVIDUALS.

(a) PROPERTY OF THE ESTATE.—

(1) IN GENERAL.—Subchapter I of chapter 11 of title 11, United States Code, is amended by adding at the end the following:

''§ 1115. Property of the estate

''(a) In a case in which the debtor is an individual, property of the estate includes, in addition to the property specified in section 541—

''(1) all property of the kind specified in section 541 that the debtor acquires after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first; and

''(2) earnings from services performed by the debtor after the commencement of the case but before the case is closed, dismissed, or converted to a case under chapter 7, 12, or 13, whichever occurs first.

''(b) Except as provided in section 1104 or a confirmed plan or order confirming a plan, the debtor shall remain in possession of all property of the estate.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 11 of

title 11, United States Code, is amended by adding at the end the following:

''1115. Property of the estate.''.

(b) CONTENTS OF PLAN.—Section 1123(a) of title 11, United States Code, is amended—

(1) in paragraph (6), by striking ''and'' at the end;

(2) in paragraph (7), by striking the period and inserting ''; and''; and

(3) by adding at the end the following:

''(8) in a case in which the debtor is an individual, provide for the payment to creditors under the plan of all or such portion of earnings from personal services performed by the debtor after the commencement of the case or other future income of the debtor as is necessary for the execution of the plan.''.

(c) CONFIRMATION OF PLAN.—

(1) REQUIREMENTS RELATING TO VALUE OF PROPERTY.—Section 1129(a) of title 11, United States Code, as amended by section 213, is amended by adding at the end the following:

''(15) In a case in which the debtor is an individual and in which the holder of an allowed unsecured claim objects to the confirmation of the plan—

''(A) the value, as of the effective date of the plan, of the property to be distributed under the plan on account of such claim is not less than the amount of such claim; or

''(B) the value of the property to be distributed under the plan is not less than the projected disposable income of the debtor (as defined in section 1325(b)(2)) to be received during the 5-year period beginning on the date that the first payment is due under the plan, or during the period for which the plan provides payments, whichever is longer.''.

(2) REQUIREMENT RELATING TO INTERESTS IN PROPERTY.—Section 1129(b)(2)(B)(ii) of title 11, United States Code, is amended by inserting before the period at the end the following: '', except that in a case in which the debtor is an individual, the debtor may retain property included in the estate under section 1115, subject to the requirements of subsection (a)(14) of this section''.

(d) EFFECT OF CONFIRMATION.—Section 1141(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''The confirmation of a plan does not discharge an individual debtor'' and inserting ''A discharge under this chapter does not discharge a debtor who is an individual''; and

(2) by adding at the end the following:

''(5) In a case in which the debtor is an individual—

''(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan;

''(B) at any time after the confirmation of the plan, and after notice and a hearing, the court may grant a discharge to the debtor who has not completed payments under the plan if—

''(i) the value, as of the effective date of the plan, of property actually distributed under the plan on account of each allowed unsecured claim is not less than the amount that would have been paid on such claim if the estate of the debtor had been liquidated under chapter 7 on such date; and

''(ii) modification of the plan under section 1127 is not practicable; and''.

(e) MODIFICATION OF PLAN.—Section 1127 of title 11, United States Code, is amended by adding at the end the following:

''(e) If the debtor is an individual, the plan may be modified at any time after confirmation of the plan but before the completion of payments under the plan, whether or not the plan has been substantially consummated, upon request of the debtor, the trustee, the United States trustee, or the holder of an allowed unsecured claim, to—

''(1) increase or reduce the amount of payments on claims of a particular class provided for by the plan;

''(2) extend or reduce the time period for such payments; or

''(3) alter the amount of the distribution to a creditor whose claim is provided for by the plan to the extent necessary to take account of any payment of such claim made other than under the plan.

''(f)(1) Sections 1121 through 1128 and the requirements of section 1129 apply to any modification under subsection (a).

''(2) The plan, as modified, shall become the plan only after there has been disclosure under section 1125 as the court may direct, notice and a hearing, and such modification is approved.''.

SEC. 322. LIMITATIONS ON HOMESTEAD EXEMPTION.

(a) EXEMPTIONS.—Section 522 of title 11, United States Code, as amended by sections 224 and 308, is amended by adding at the end the following:

''(p)(1) Except as provided in paragraph (2) of this subsection and sections 544 and 548, as a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of interest that was acquired by the debtor during the 1215-day period preceding the date of the filing of the petition that exceeds in the aggregate $125,000 in value in—

''(A) real or personal property that the debtor or a dependent of the debtor uses as a residence;

''(B) a cooperative that owns property that the debtor or a dependent of the debtor uses as a residence;

''(C) a burial plot for the debtor or a dependent of the debtor; or

''(D) real or personal property that the debtor or dependent of the debtor claims as a homestead.

''(2)(A) The limitation under paragraph (1) shall not apply to an exemption claimed under subsection (b)(3)(A) by a family farmer for the principal residence of such farmer.

''(B) For purposes of paragraph (1), any amount of such interest does not include any interest transferred from a debtor's previous principal residence (which was acquired prior to the beginning of such 1215-day period) into the debtor's current principal residence, if the debtor's previous and current residences are located in the same State.

''(q)(1) As a result of electing under subsection (b)(3)(A) to exempt property under State or local law, a debtor may not exempt any amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) which exceeds in the aggregate $125,000 if—

''(A) the court determines, after notice and a hearing, that the debtor has been convicted of a felony (as defined in section 3156 of title 18), which under the circumstances, demonstrates that the filing of the case was an abuse of the provisions of this title; or

''(B) the debtor owes a debt arising from—

''(i) any violation of the Federal securities laws (as defined in section 3(a)(47) of the Securities Exchange Act of 1934), any State securities laws, or any regulation or order issued under Federal securities laws or State securities laws;

''(ii) fraud, deceit, or manipulation in a fiduciary capacity or in connection with the purchase or sale of any security registered under section 12 or 15(d) of the Securities Exchange Act of 1934 or under section 6 of the Securities Act of 1933;

''(iii) any civil remedy under section 1964 of title 18; or

''(iv) any criminal act, intentional tort, or willful or reckless misconduct that caused serious physical injury or death to another individual in the preceding 5 years.

''(2) Paragraph (1) shall not apply to the extent the amount of an interest in property described in subparagraphs (A), (B), (C), and (D) of subsection (p)(1) is reasonably necessary for the support of the debtor and any dependent of the debtor.''.

(b) ADJUSTMENT OF DOLLAR AMOUNTS.—Paragraphs (1) and (2) of section 104(b) of title 11, United States Code, as amended by section 224, are amended by inserting ''522(p), 522(q),'' after ''522(n),''.

SEC. 323. EXCLUDING EMPLOYEE BENEFIT PLAN PARTICIPANT CONTRIBUTIONS AND OTHER PROPERTY FROM THE ESTATE.

Section 541(b) of title 11, United States Code, as amended by section 225, is amended by adding after paragraph (6), as added by section 225(a)(1)(C), the following:

''(7) any amount—

''(A) withheld by an employer from the wages of employees for payment as contributions—

''(i) to—

''(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

''(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

''(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income as defined in section 1325(b)(2); or

''(ii) to a health insurance plan regulated by State law whether or not subject to such title; or

''(B) received by an employer from employees for payment as contributions—

''(i) to—

''(I) an employee benefit plan that is subject to title I of the Employee Retirement Income Security Act of 1974 or under an employee benefit plan which is a governmental plan under section 414(d) of the Internal Revenue Code of 1986;

''(II) a deferred compensation plan under section 457 of the Internal Revenue Code of 1986; or

''(III) a tax-deferred annuity under section 403(b) of the Internal Revenue Code of 1986;

except that such amount under this subparagraph shall not constitute disposable income, as defined in section 1325(b)(2); or

''(ii) to a health insurance plan regulated by State law whether or not subject to such title;''.

SEC. 324. EXCLUSIVE JURISDICTION IN MATTERS INVOLVING BANKRUPTCY PROFESSIONALS.

(a) IN GENERAL.—Section 1334 of title 28, United States Code, is amended—

(1) in subsection (b), by striking ''Notwithstanding'' and inserting ''Except as provided in subsection (e)(2), and notwithstanding''; and

(2) by striking subsection (e) and inserting the following:

''(e) The district court in which a case under title 11 is commenced or is pending shall have exclusive jurisdiction—

''(1) of all the property, wherever located, of the debtor as of the commencement of such case, and of property of the estate; and

''(2) over all claims or causes of action that involve construction of section 327 of title 11, United States Code, or rules relating to disclosure requirements under section 327.''.

(b) APPLICABILITY.—This section shall only apply to cases filed after the date of enactment of this Act.

SEC. 325. UNITED STATES TRUSTEE PROGRAM FILING FEE INCREASE.

(a) ACTIONS UNDER CHAPTER 7 OR 13 OF TITLE 11, UNITED STATES CODE.—Section 1930(a) of title 28, United States Code, is amended by striking paragraph (1) and inserting the following:

''(1) For a case commenced—

''(A) under chapter 7 of title 11, $160; or

''(B) under chapter 13 of title 11, $150.''.

(b) UNITED STATES TRUSTEE SYSTEM FUND.—Section 589a(b) of title 28, United States Code, is amended—

(1) by striking paragraph (1) and inserting the following:

''(1)(A) 40.63 percent of the fees collected under section 1930(a)(1)(A) of this title in cases commenced under chapter 7 of title 11; and

''(B) 70.00 percent of the fees collected under section 1930(a)(1)(B) of this title in cases commenced under chapter 13 of title 11;'';

(2) in paragraph (2), by striking ''one-half'' and inserting ''three-fourths''; and

(3) in paragraph (4), by striking ''one-half'' and inserting ''100 percent''.

(c) COLLECTION AND DEPOSIT OF MISCELLANEOUS BANKRUPTCY FEES.—Section 406(b) of the Judiciary Appropriations Act, 1990 (28 U.S.C. 1931 note) is amended by striking ''pursuant to 28 U.S.C. section 1930(b)'' and all that follows through ''28 U.S.C. section 1931'' and inserting ''under section 1930(b) of title 28, United States Code, and 31.25 percent of the fees collected under section 1930(a)(1)(A) of that title, 30.00 percent of the fees collected under section 1930(a)(1)(B) of that title, and 25 percent of the fees collected under section 1930(a)(3) of that title shall be deposited as offsetting receipts to the fund established under section 1931 of that title''.

SEC. 326. SHARING OF COMPENSATION.

Section 504 of title 11, United States Code, is amended by adding at the end the following:

''(c) This section shall not apply with respect to sharing, or agreeing to share, compensation with a bona fide public service attorney referral program that operates in accordance with non-Federal law regulating attorney referral services and with rules of professional responsibility applicable to attorney acceptance of referrals.''.

SEC. 327. FAIR VALUATION OF COLLATERAL.

Section 506(a) of title 11, United States Code, is amended by—

(1) inserting ''(1)'' after ''(a)''; and

(2) by adding at the end the following:

''(2) If the debtor is an individual in a case under chapter 7 or 13, such value with respect to personal property securing an allowed claim shall be determined based on the replacement value of such property as of the date of the filing of the petition without deduction for costs of sale or marketing. With respect to property acquired for personal, family, or household purposes, replacement value shall mean the price a retail merchant would charge for property of that kind considering the age and condition of the property at the time value is determined.''.

SEC. 328. DEFAULTS BASED ON NONMONETARY OBLIGATIONS.

(a) EXECUTORY CONTRACTS AND UNEXPIRED LEASES.—Section 365 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1)(A), by striking the semicolon at the end and inserting the following: ''other than a default that is a breach of a provision relating to the satisfaction of any provision (other than a penalty rate or penalty provision) relating to a default arising from any failure to perform nonmonetary obligations under an unexpired lease of real property, if it is impossible for the trustee to cure such default by performing nonmonetary acts at and after the time of assumption, except that if such default arises from a failure to operate in accordance with a nonresidential real property lease, then such default shall be cured by performance at and after the time of assumption in accordance with such lease, and pecuniary losses resulting from such default shall be compensated in accordance with the provisions of this paragraph;''; and

(B) in paragraph (2)(D), by striking ''penalty rate or provision'' and inserting ''penalty rate or penalty provision'';

(2) in subsection (c)—

(A) in paragraph (2), by inserting ''or'' at the end;

(B) in paragraph (3), by striking ''; or'' at the end and inserting a period; and

(C) by striking paragraph (4);

(3) in subsection (d)—

(A) by striking paragraphs (5) through (9); and

(B) by redesignating paragraph (10) as paragraph (5); and

(4) in subsection (f)(1) by striking ''; except that'' and all that follows through the end of the paragraph and inserting a period.

(b) IMPAIRMENT OF CLAIMS OR INTERESTS.—Section 1124(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by inserting ''or of a kind that section 365(b)(2) expressly does not require to be cured'' before the semicolon at the end;

(2) in subparagraph (C), by striking ''and'' at the end;

(3) by redesignating subparagraph (D) as subparagraph (E); and

(4) by inserting after subparagraph (C) the following:

''(D) if such claim or such interest arises from any failure to perform a nonmonetary obligation, other than a default arising from failure to operate a nonresidential real property lease subject to section 365(b)(1)(A), compensates the holder of such claim or such interest (other than the debtor or an insider) for any actual pecuniary loss incurred by such holder as a result of such failure; and''.

SEC. 329. CLARIFICATION OF POSTPETITION WAGES AND BENEFITS.

Section 503(b)(1)(A) of title 11, United States Code, is amended to read as follows:

''(A) the actual, necessary costs and expenses of preserving the estate including—

''(i) wages, salaries, and commissions for services rendered after the commencement of the case; and

''(ii) wages and benefits awarded pursuant to a judicial proceeding or a proceeding of the National Labor Relations Board as back pay attributable to any period of time occurring after commencement of the case under this title, as a result of a violation of Federal or State law by the debtor, without regard to the time of the occurrence of unlawful conduct on which such award is based or to whether any services were rendered, if the court determines that payment of wages and benefits by reason of the operation of this clause will not substantially increase the probability of layoff or termination of current employees, or of nonpayment of domestic support obligations, during the case under this title;''.

SEC. 330. DELAY OF DISCHARGE DURING PENDENCY OF CERTAIN PROCEEDINGS.

(a) CHAPTER 7.—Section 727(a) of title 11, United States Code, as amended by section 106, is amended—

(1) in paragraph (10), by striking ''or'' at the end;

(2) in paragraph (11) by striking the period at the end and inserting ''; or''; and

(3) by inserting after paragraph (11) the following:

''(12) the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is reasonable cause to believe that—

''(A) section 522(q)(1) may be applicable to the debtor; and

''(B) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(b) CHAPTER 11.—Section 1141(d) of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

''(C) unless after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge, the court finds that there is no reasonable cause to believe that—

''(i) section 522(q)(1) may be applicable to the debtor; and

''(ii) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(c) CHAPTER 12.—Section 1228 of title 11, United States Code, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(f) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

(d) CHAPTER 13.—Section 1328 of title 11, United States Code, as amended by section 106, is amended—

(1) in subsection (a) by striking ''As'' and inserting ''Subject to subsection (d), as'',

(2) in subsection (b) by striking ''At'' and inserting ''Subject to subsection (d), at'', and

(3) by adding at the end the following:

''(h) The court may not grant a discharge under this chapter unless the court after notice and a hearing held not more than 10 days before the date of the entry of the order granting the discharge finds that there is no reasonable cause to believe that—

''(1) section 522(q)(1) may be applicable to the debtor; and

''(2) there is pending any proceeding in which the debtor may be found guilty of a felony of the kind described in section 522(q)(1)(A) or liable for a debt of the kind described in section 522(q)(1)(B).''.

TITLE IV—GENERAL AND SMALL BUSINESS BANKRUPTCY PROVISIONS

Subtitle A—General Business Bankruptcy Provisions

SEC. 401. ADEQUATE PROTECTION FOR INVESTORS.

(a) DEFINITION.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (48) the following:

''(48A) 'securities self regulatory organization' means either a securities association registered with the Securities and Exchange Commission under section 15A of the Securities Exchange Act of 1934 or a national securities exchange registered with the Securities and Exchange Commission under section 6 of the Securities Exchange Act of 1934;''.

(b) AUTOMATIC STAY.—Section 362(b) of title 11, United States Code, as amended by

sections 224, 303, and 311, is amended by inserting after paragraph (24) the following:

''(25) under subsection (a), of—

''(A) the commencement or continuation of an investigation or action by a securities self regulatory organization to enforce such organization's regulatory power;

''(B) the enforcement of an order or decision, other than for monetary sanctions, obtained in an action by such securities self regulatory organization to enforce such organization's regulatory power; or

''(C) any act taken by such securities self regulatory organization to delist, delete, or refuse to permit quotation of any stock that does not meet applicable regulatory requirements;''.

SEC. 402. MEETINGS OF CREDITORS AND EQUITY SECURITY HOLDERS.

Section 341 of title 11, United States Code, is amended by adding at the end the following:

''(e) Notwithstanding subsections (a) and (b), the court, on the request of a party in interest and after notice and a hearing, for cause may order that the United States trustee not convene a meeting of creditors or equity security holders if the debtor has filed a plan as to which the debtor solicited acceptances prior to the commencement of the case.''.

SEC. 403. PROTECTION OF REFINANCE OF SECURITY INTEREST.

Subparagraphs (A), (B), and (C) of section 547(e)(2) of title 11, United States Code, are each amended by striking ''10'' each place it appears and inserting ''30''.

SEC. 404. EXECUTORY CONTRACTS AND UNEXPIRED LEASES.

(a) IN GENERAL.—Section 365(d)(4) of title 11, United States Code, is amended to read as follows:

''(4)(A) Subject to subparagraph (B), an unexpired lease of nonresidential real property under which the debtor is the lessee shall be deemed rejected, and the trustee shall immediately surrender that nonresidential real property to the lessor, if the trustee does not assume or reject the unexpired lease by the earlier of—

''(i) the date that is 120 days after the date of the order for relief; or

''(ii) the date of the entry of an order confirming a plan.

''(B)(i) The court may extend the period determined under subparagraph (A), prior to the expiration of the 120-day period, for 90 days on the motion of the trustee or lessor for cause.

''(ii) If the court grants an extension under clause (i), the court may grant a subsequent extension only upon prior written consent of the lessor in each instance.''.

(b) EXCEPTION.—Section 365(f)(1) of title 11, United States Code, is amended by striking ''subsection'' the first place it appears and inserting ''subsections (b) and''.

SEC. 405. CREDITORS AND EQUITY SECURITY HOLDERS COMMITTEES.

(a) APPOINTMENT.—Section 1102(a) of title 11, United States Code, is amended by adding at the end the following:

''(4) On request of a party in interest and after notice and a hearing, the court may order the United States trustee to change the membership of a committee appointed under this subsection, if the court determines that the change is necessary to ensure adequate representation of creditors or equity security holders. The court may order the United States trustee to increase the number of members of a committee to include a creditor that is a small business concern (as described in section 3(a)(1) of the Small Business Act), if the court determines that the creditor holds claims (of the kind represented by the committee) the aggregate amount of which, in comparison to the annual gross revenue of that creditor, is disproportionately large.''.

(b) INFORMATION.—Section 1102(b) of title 11, United States Code, is amended by adding at the end the following:

''(3) A committee appointed under subsection (a) shall—

''(A) provide access to information for creditors who—

''(i) hold claims of the kind represented by that committee; and

''(ii) are not appointed to the committee;

''(B) solicit and receive comments from the creditors described in subparagraph (A); and

''(C) be subject to a court order that compels any additional report or disclosure to be made to the creditors described in subparagraph (A).''.

SEC. 406. AMENDMENT TO SECTION 546 OF TITLE 11, UNITED STATES CODE.

Section 546 of title 11, United States Code, is amended—

(1) by redesignating the second subsection (g) (as added by section 222(a) of Public Law 103–394) as subsection (h);

(2) in subsection (h), as so redesignated, by inserting ''and subject to the prior rights of holders of security interests in such goods or the proceeds of such goods'' after ''consent of a creditor''; and

(3) by adding at the end the following:

''(i)(1) Notwithstanding paragraphs (2) and (3) of section 545, the trustee may not avoid a warehouseman's lien for storage, transportation, or other costs incidental to the storage and handling of goods.

''(2) The prohibition under paragraph (1) shall be applied in a manner consistent with any State statute applicable to such lien that is similar to section 7–209 of the Uniform Commercial Code, as in effect on the date of enactment of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, or any successor to such section 7–209.''.

SEC. 407. AMENDMENTS TO SECTION 330(a) OF TITLE 11, UNITED STATES CODE.

Section 330(a) of title 11, United States Code, is amended—

(1) in paragraph (3)—

(A) by striking ''(A) In'' and inserting ''In''; and

(B) by inserting ''to an examiner, trustee under chapter 11, or professional person'' after ''awarded''; and

(2) by adding at the end the following:

''(7) In determining the amount of reasonable compensation to be awarded to a trustee, the court shall treat such compensation as a commission, based on section 326.''.

SEC. 408. POSTPETITION DISCLOSURE AND SOLICITATION.

Section 1125 of title 11, United States Code, is amended by adding at the end the following:

''(g) Notwithstanding subsection (b), an acceptance or rejection of the plan may be solicited from a holder of a claim or interest if such solicitation complies with applicable nonbankruptcy law and if such holder was solicited before the commencement of the case in a manner complying with applicable nonbankruptcy law.''.

SEC. 409. PREFERENCES.

Section 547(c) of title 11, United States Code, is amended—

(1) by striking paragraph (2) and inserting the following:

''(2) to the extent that such transfer was in payment of a debt incurred by the debtor in the ordinary course of business or financial affairs of the debtor and the transferee, and such transfer was—

''(A) made in the ordinary course of business or financial affairs of the debtor and the transferee; or

''(B) made according to ordinary business terms;'';

(2) in paragraph (8), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(9) if, in a case filed by a debtor whose debts are not primarily consumer debts, the aggregate value of all property that constitutes or is affected by such transfer is less than $5,000.''.

SEC. 410. VENUE OF CERTAIN PROCEEDINGS.

Section 1409(b) of title 28, United States Code, is amended by inserting '', or a debt (excluding a consumer debt) against a noninsider of less than $10,000,'' after ''$5,000''.

SEC. 411. PERIOD FOR FILING PLAN UNDER CHAPTER 11.

Section 1121(d) of title 11, United States Code, is amended—

(1) by striking ''On'' and inserting ''(1) Subject to paragraph (2), on''; and

(2) by adding at the end the following:

''(2)(A) The 120-day period specified in paragraph (1) may not be extended beyond a date that is 18 months after the date of the order for relief under this chapter.

''(B) The 180-day period specified in paragraph (1) may not be extended beyond a date that is 20 months after the date of the order for relief under this chapter.''.

SEC. 412. FEES ARISING FROM CERTAIN OWNERSHIP INTERESTS.

Section 523(a)(16) of title 11, United States Code, is amended—

(1) by striking ''dwelling'' the first place it appears;

(2) by striking ''ownership or'' and inserting ''ownership,'';

(3) by striking ''housing'' the first place it appears; and

(4) by striking ''but only'' and all that follows through ''such period,'' and inserting ''or a lot in a homeowners association, for as long as the debtor or the trustee has a legal, equitable, or possessory ownership interest in such unit, such corporation, or such lot,''.

SEC. 413. CREDITOR REPRESENTATION AT FIRST MEETING OF CREDITORS.

Section 341(c) of title 11, United States Code, is amended by inserting at the end the following: ''Notwithstanding any local court rule, provision of a State constitution, any other Federal or State law that is not a bankruptcy law, or other requirement that representation at the meeting of creditors under subsection (a) be by an attorney, a creditor holding a consumer debt or any representative of the creditor (which may include an entity or an employee of an entity and may be a representative for more than 1 creditor) shall be permitted to appear at and participate in the meeting of creditors in a case under chapter 7 or 13, either alone or in conjunction with an attorney for the creditor. Nothing in this subsection shall be construed to require any creditor to be represented by an attorney at any meeting of creditors.''.

SEC. 414. DEFINITION OF DISINTERESTED PERSON.

Section 101(14) of title 11, United States Code, is amended to read as follows:

''(14) 'disinterested person' means a person that—

''(A) is not a creditor, an equity security holder, or an insider;

''(B) is not and was not, within 2 years before the date of the filing of the petition, a director, officer, or employee of the debtor; and

''(C) does not have an interest materially adverse to the interest of the estate or of any class of creditors or equity security holders, by reason of any direct or indirect relationship to, connection with, or interest in, the debtor, or for any other reason;''.

SEC. 415. FACTORS FOR COMPENSATION OF PROFESSIONAL PERSONS.

Section 330(a)(3) of title 11, United States Code, is amended—

(1) in subparagraph (D), by striking ''and'' at the end;

(2) by redesignating subparagraph (E) as subparagraph (F); and

(3) by inserting after subparagraph (D) the following:

''(E) with respect to a professional person, whether the person is board certified or otherwise has demonstrated skill and experience in the bankruptcy field; and''.

SEC. 416. APPOINTMENT OF ELECTED TRUSTEE.

Section 1104(b) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(b)''; and

(2) by adding at the end the following:

''(2)(A) If an eligible, disinterested trustee is elected at a meeting of creditors under paragraph (1), the United States trustee shall file a report certifying that election.

''(B) Upon the filing of a report under subparagraph (A)—

''(i) the trustee elected under paragraph (1) shall be considered to have been selected and appointed for purposes of this section; and

''(ii) the service of any trustee appointed under subsection (d) shall terminate.

''(C) The court shall resolve any dispute arising out of an election described in subparagraph (A).''.

SEC. 417. UTILITY SERVICE.

Section 366 of title 11, United States Code, is amended—

(1) in subsection (a), by striking ''subsection (b)'' and inserting ''subsections (b) and (c)''; and

(2) by adding at the end the following:

''(c)(1)(A) For purposes of this subsection, the term 'assurance of payment' means—

''(i) a cash deposit;

''(ii) a letter of credit;

''(iii) a certificate of deposit;

''(iv) a surety bond;

''(v) a prepayment of utility consumption; or

''(vi) another form of security that is mutually agreed on between the utility and the debtor or the trustee.

''(B) For purposes of this subsection an administrative expense priority shall not constitute an assurance of payment.

''(2) Subject to paragraphs (3) and (4), with respect to a case filed under chapter 11, a utility referred to in subsection (a) may alter, refuse, or discontinue utility service, if during the 30-day period beginning on the date of the filing of the petition, the utility does not receive from the debtor or the trustee adequate assurance of payment for utility service that is satisfactory to the utility.

''(3)(A) On request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment under paragraph (2).

''(B) In making a determination under this paragraph whether an assurance of payment is adequate, the court may not consider—

''(i) the absence of security before the date of the filing of the petition;

''(ii) the payment by the debtor of charges for utility service in a timely manner before the date of the filing of the petition; or

''(iii) the availability of an administrative expense priority.

''(4) Notwithstanding any other provision of law, with respect to a case subject to this subsection, a utility may recover or set off against a security deposit provided to the utility by the debtor before the date of the filing of the petition without notice or order of the court.''.

SEC. 418. BANKRUPTCY FEES.

Section 1930 of title 28, United States Code, is amended—

(1) in subsection (a), by striking ''Notwithstanding section 1915 of this title, the'' and inserting ''The''; and

(2) by adding at the end the following:

''(f)(1) Under the procedures prescribed by the Judicial Conference of the United States, the district court or the bankruptcy court may waive the filing fee in a case under chapter 7 of title 11 for an individual if the court determines that such individual has income less than 150 percent of the income official poverty line (as defined by the Office of Management and Budget, and revised annually in accordance with section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved and is unable to pay that fee in installments. For purposes of this paragraph, the term 'filing fee' means the filing required by subsection (a), or any other fee prescribed by the Judicial Conference under subsections (b) and (c) that is payable to the clerk upon the commencement of a case under chapter 7.

''(2) The district court or the bankruptcy court may waive for such debtors other fees prescribed under subsections (b) and (c).

''(3) This subsection does not restrict the district court or the bankruptcy court from waiving, in accordance with Judicial Conference policy, fees prescribed under this section for other debtors and creditors.''.

SEC. 419. MORE COMPLETE INFORMATION REGARDING ASSETS OF THE ESTATE.

(a) IN GENERAL.—

(1) DISCLOSURE.—The Judicial Conference of the United States, in accordance with section 2075 of title 28 of the United States Code and after consideration of the views of the Director of the Executive Office for United States Trustees, shall propose amended Federal Rules of Bankruptcy Procedure and in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure shall prescribe official bankruptcy forms directing debtors under chapter 11 of title 11 of United States Code, to disclose the information described in paragraph (2) by filing and serving periodic financial and other reports designed to provide such information.

(2) INFORMATION.—The information referred to in paragraph (1) is the value, operations, and profitability of any closely held corporation, partnership, or of any other entity in which the debtor holds a substantial or controlling interest.

(b) PURPOSE.—The purpose of the rules and reports under subsection (a) shall be to assist parties in interest taking steps to ensure that the debtor's interest in any entity referred to in subsection (a)(2) is used for the payment of allowed claims against debtor.

Subtitle B—Small Business Bankruptcy Provisions

SEC. 431. FLEXIBLE RULES FOR DISCLOSURE STATEMENT AND PLAN.

Section 1125 of title 11, United States Code, is amended—

(1) in subsection (a)(1), by inserting before the semicolon ''and in determining whether a disclosure statement provides adequate information, the court shall consider the complexity of the case, the benefit of additional information to creditors and other parties in interest, and the cost of providing additional information''; and

(2) by striking subsection (f), and inserting the following:

''(f) Notwithstanding subsection (b), in a small business case—

''(1) the court may determine that the plan itself provides adequate information and that a separate disclosure statement is not necessary;

''(2) the court may approve a disclosure statement submitted on standard forms approved by the court or adopted under section 2075 of title 28; and

''(3)(A) the court may conditionally approve a disclosure statement subject to final approval after notice and a hearing;

''(B) acceptances and rejections of a plan may be solicited based on a conditionally approved disclosure statement if the debtor provides adequate information to each holder of a claim or interest that is solicited, but a conditionally approved disclosure statement shall be mailed not later than 25 days before the date of the hearing on confirmation of the plan; and

''(C) the hearing on the disclosure statement may be combined with the hearing on confirmation of a plan.''.

SEC. 432. DEFINITIONS.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraph (51C) and inserting the following:

''(51C) 'small business case' means a case filed under chapter 11 of this title in which the debtor is a small business debtor;

''(51D) 'small business debtor'—

''(A) subject to subparagraph (B), means a person engaged in commercial or business activities (including any affiliate of such person that is also a debtor under this title and excluding a person whose primary activity is the business of owning or operating real property or activities incidental thereto) that has aggregate noncontingent liquidated secured and unsecured debts as of the date of the petition or the date of the order for relief in an amount not more than $2,000,000 (excluding debts owed to 1 or more affiliates or insiders) for a case in which the United States trustee has not appointed under section 1102(a)(1) a committee of unsecured creditors or where the court has determined that the committee of unsecured creditors is not sufficiently active and representative to provide effective oversight of the debtor; and

''(B) does not include any member of a group of affiliated debtors that has aggregate noncontingent liquidated secured and unsecured debts in an amount greater than $2,000,000 (excluding debt owed to 1 or more affiliates or insiders);''.

(b) CONFORMING AMENDMENT.—Section 1102(a)(3) of title 11, United States Code, is amended by inserting ''debtor'' after ''small business''.

(c) ADJUSTMENT OF DOLLAR AMOUNTS.—Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(51D),'' after ''101(3),'' each place it appears.

SEC. 433. STANDARD FORM DISCLOSURE STATEMENT AND PLAN.

Within a reasonable period of time after the date of enactment of this Act, the Judicial Conference of the United States shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official standard form disclosure statements and plans of reorganization for small business debtors (as defined in section 101 of title 11, United States Code, as amended by this Act), designed to achieve a practical balance between—

(1) the reasonable needs of the courts, the United States trustee, creditors, and other parties in interest for reasonably complete information; and

(2) economy and simplicity for debtors.

SEC. 434. UNIFORM NATIONAL REPORTING REQUIREMENTS.

(a) REPORTING REQUIRED.—

(1) IN GENERAL.—Chapter 3 of title 11, United States Code, is amended by inserting after section 307 the following:

''§ 308. Debtor reporting requirements

''(a) For purposes of this section, the term 'profitability' means, with respect to a debtor, the amount of money that the debtor has earned or lost during current and recent fiscal periods.

''(b) A small business debtor shall file periodic financial and other reports containing information including—

''(1) the debtor's profitability;

''(2) reasonable approximations of the debtor's projected cash receipts and cash disbursements over a reasonable period;

''(3) comparisons of actual cash receipts and disbursements with projections in prior reports;

''(4)(A) whether the debtor is—

''(i) in compliance in all material respects with postpetition requirements imposed by this title and the Federal Rules of Bankruptcy Procedure; and

''(ii) timely filing tax returns and other required government filings and paying taxes and other administrative expenses when due;

''(B) if the debtor is not in compliance with the requirements referred to in subparagraph (A)(i) or filing tax returns and other required government filings and making the payments referred to in subparagraph (A)(ii), what the failures are and how, at what cost, and when the debtor intends to remedy such failures; and

''(C) such other matters as are in the best interests of the debtor and creditors, and in the public interest in fair and efficient procedures under chapter 11 of this title.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by inserting after the item relating to section 307 the following:

''308. Debtor reporting requirements.''.

(b) EFFECTIVE DATE.—The amendments made by subsection (a) shall take effect 60 days after the date on which rules are prescribed under section 2075 of title 28, United States Code, to establish forms to be used to comply with section 308 of title 11, United States Code, as added by subsection (a).

SEC. 435. UNIFORM REPORTING RULES AND FORMS FOR SMALL BUSINESS CASES.

(a) PROPOSAL OF RULES AND FORMS.—The Judicial Conference of the United States shall propose in accordance with section 2073 of title 28 of the United States Code amended Federal Rules of Bankruptcy Procedure, and shall prescribe in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure official bankruptcy forms, directing small business debtors to file periodic financial and other reports containing information, including information relating to—

(1) the debtor's profitability;

(2) the debtor's cash receipts and disbursements; and

(3) whether the debtor is timely filing tax returns and paying taxes and other administrative expenses when due.

(b) PURPOSE.—The rules and forms proposed under subsection (a) shall be designed to achieve a practical balance among—

(1) the reasonable needs of the bankruptcy court, the United States trustee, creditors, and other parties in interest for reasonably complete information;

(2) a small business debtor's interest that required reports be easy and inexpensive to complete; and

(3) the interest of all parties that the required reports help such debtor to understand such debtor's financial condition and plan the such debtor's future.

SEC. 436. DUTIES IN SMALL BUSINESS CASES.

(a) DUTIES IN CHAPTER 11 CASES.—Subchapter I of chapter 11 of title 11, United States Code, as amended by section 321, is amended by adding at the end the following:

''§ 1116. Duties of trustee or debtor in possession in small business cases

''In a small business case, a trustee or the debtor in possession, in addition to the duties provided in this title and as otherwise required by law, shall—

''(1) append to the voluntary petition or, in an involuntary case, file not later than 7 days after the date of the order for relief—

''(A) its most recent balance sheet, statement of operations, cash-flow statement, Federal income tax return; or

''(B) a statement made under penalty of perjury that no balance sheet, statement of operations, or cash-flow statement has been prepared and no Federal tax return has been filed;

''(2) attend, through its senior management personnel and counsel, meetings scheduled by the court or the United States trustee, including initial debtor interviews, scheduling conferences, and meetings of creditors convened under section 341 unless the court, after notice and a hearing, waives that requirement upon a finding of extraordinary and compelling circumstances;

''(3) timely file all schedules and statements of financial affairs, unless the court, after notice and a hearing, grants an extension, which shall not extend such time period to a date later than 30 days after the date of the order for relief, absent extraordinary and compelling circumstances;

''(4) file all postpetition financial and other reports required by the Federal Rules of Bankruptcy Procedure or by local rule of the district court;

''(5) subject to section 363(c)(2), maintain insurance customary and appropriate to the industry;

''(6)(A) timely file tax returns and other required government filings; and

''(B) subject to section 363(c)(2), timely pay all taxes entitled to administrative expense priority except those being contested by appropriate proceedings being diligently prosecuted; and

''(7) allow the United States trustee, or a designated representative of the United States trustee, to inspect the debtor's business premises, books, and records at reasonable times, after reasonable prior written notice, unless notice is waived by the debtor.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 11 of title 11, United States Code, as amended by section 321, is amended by inserting after the item relating to section 1115 the following:

''1116. Duties of trustee or debtor in possession in small business cases.''.

SEC. 437. PLAN FILING AND CONFIRMATION DEADLINES.

Section 1121 of title 11, United States Code, is amended by striking subsection (e) and inserting the following:

''(e) In a small business case—

''(1) only the debtor may file a plan until after 180 days after the date of the order for relief, unless that period is—

''(A) extended as provided by this subsection, after notice and a hearing; or

''(B) the court, for cause, orders otherwise;

''(2) the plan and a disclosure statement (if any) shall be filed not later than 300 days after the date of the order for relief; and

''(3) the time periods specified in paragraphs (1) and (2), and the time fixed in section 1129(e) within which the plan shall be confirmed, may be extended only if—

''(A) the debtor, after providing notice to parties in interest (including the United States trustee), demonstrates by a preponderance of the evidence that it is more likely than not that the court will confirm a plan within a reasonable period of time;

''(B) a new deadline is imposed at the time the extension is granted; and

''(C) the order extending time is signed before the existing deadline has expired.''.

SEC. 438. PLAN CONFIRMATION DEADLINE.

Section 1129 of title 11, United States Code, is amended by adding at the end the following:

''(e) In a small business case, the court shall confirm a plan that complies with the applicable provisions of this title and that is filed in accordance with section 1121(e) not later than 45 days after the plan is filed unless the time for confirmation is extended in accordance with section 1121(e)(3).''.

SEC. 439. DUTIES OF THE UNITED STATES TRUSTEE.

Section 586(a) of title 28, United States Code, is amended—

(1) in paragraph (3)—

(A) in subparagraph (G), by striking ''and'' at the end;

(B) by redesignating subparagraph (H) as subparagraph (I); and

(C) by inserting after subparagraph (G) the following:

''(H) in small business cases (as defined in section 101 of title 11), performing the additional duties specified in title 11 pertaining to such cases; and'';

(2) in paragraph (5), by striking ''and'' at the end;

(3) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(4) by adding at the end the following:

''(7) in each of such small business cases—

''(A) conduct an initial debtor interview as soon as practicable after the date of the order for relief but before the first meeting scheduled under section 341(a) of title 11, at which time the United States trustee shall—

''(i) begin to investigate the debtor's viability;

''(ii) inquire about the debtor's business plan;

''(iii) explain the debtor's obligations to file monthly operating reports and other required reports;

''(iv) attempt to develop an agreed scheduling order; and

''(v) inform the debtor of other obligations;

''(B) if determined to be appropriate and advisable, visit the appropriate business premises of the debtor, ascertain the state of the debtor's books and records, and verify that the debtor has filed its tax returns; and

''(C) review and monitor diligently the debtor's activities, to identify as promptly as possible whether the debtor will be unable to confirm a plan; and

''(8) in any case in which the United States trustee finds material grounds for any relief under section 1112 of title 11, the United States trustee shall apply promptly after making that finding to the court for relief.''.

SEC. 440. SCHEDULING CONFERENCES.

Section 105(d) of title 11, United States Code, is amended—

(1) in the matter preceding paragraph (1), by striking '', may''; and

(2) by striking paragraph (1) and inserting the following:

''(1) shall hold such status conferences as are necessary to further the expeditious and economical resolution of the case; and''.

SEC. 441. SERIAL FILER PROVISIONS.

Section 362 of title 11, United States Code, as amended by sections 106, 305, and 311, is amended—

(1) in subsection (k), as so redesignated by section 305—

(A) by striking ''An'' and inserting ''(1) Except as provided in paragraph (2), an''; and

(B) by adding at the end the following:

''(2) If such violation is based on an action taken by an entity in the good faith belief that subsection (h) applies to the debtor, the recovery under paragraph (1) of this subsection against such entity shall be limited to actual damages.''; and

(2) by adding at the end the following:

''(n)(1) Except as provided in paragraph (2), subsection (a) does not apply in a case in which the debtor—

''(A) is a debtor in a small business case pending at the time the petition is filed;

''(B) was a debtor in a small business case that was dismissed for any reason by an

order that became final in the 2-year period ending on the date of the order for relief entered with respect to the petition;

''(C) was a debtor in a small business case in which a plan was confirmed in the 2-year period ending on the date of the order for relief entered with respect to the petition; or

''(D) is an entity that has acquired substantially all of the assets or business of a small business debtor described in subparagraph (A), (B), or (C), unless such entity establishes by a preponderance of the evidence that such entity acquired substantially all of the assets or business of such small business debtor in good faith and not for the purpose of evading this paragraph.

''(2) Paragraph (1) does not apply—

''(A) to an involuntary case involving no collusion by the debtor with creditors; or

''(B) to the filing of a petition if—

''(i) the debtor proves by a preponderance of the evidence that the filing of the petition resulted from circumstances beyond the control of the debtor not foreseeable at the time the case then pending was filed; and

''(ii) it is more likely than not that the court will confirm a feasible plan, but not a liquidating plan, within a reasonable period of time.''.

SEC. 442. EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION AND APPOINTMENT OF TRUSTEE.

(a) EXPANDED GROUNDS FOR DISMISSAL OR CONVERSION.—Section 1112 of title 11, United States Code, is amended by striking subsection (b) and inserting the following:

''(b)(1) Except as provided in paragraph (2) of this subsection, subsection (c) of this section, and section 1104(a)(3), on request of a party in interest, and after notice and a hearing, absent unusual circumstances specifically identified by the court that establish that the requested conversion or dismissal is not in the best interests of creditors and the estate, the court shall convert a case under this chapter to a case under chapter 7 or dismiss a case under this chapter, whichever is in the best interests of creditors and the estate, if the movant establishes cause.

''(2) The relief provided in paragraph (1) shall not be granted absent unusual circumstances specifically identified by the court that establish that such relief is not in the best interests of creditors and the estate, if the debtor or another party in interest objects and establishes that—

''(A) there is a reasonable likelihood that a plan will be confirmed within the timeframes established in sections 1121(e) and 1129(e) of this title, or if such sections do not apply, within a reasonable period of time; and

''(B) the grounds for granting such relief include an act or omission of the debtor other than under paragraph (4)(A)—

''(i) for which there exists a reasonable justification for the act or omission; and

''(ii) that will be cured within a reasonable period of time fixed by the court.

''(3) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.

''(4) For purposes of this subsection, the term 'cause' includes—

''(A) substantial or continuing loss to or diminution of the estate and the absence of a reasonable likelihood of rehabilitation;

''(B) gross mismanagement of the estate;

''(C) failure to maintain appropriate insurance that poses a risk to the estate or to the public;

''(D) unauthorized use of cash collateral substantially harmful to 1 or more creditors;

''(E) failure to comply with an order of the court;

''(F) unexcused failure to satisfy timely any filing or reporting requirement established by this title or by any rule applicable to a case under this chapter;

''(G) failure to attend the meeting of creditors convened under section 341(a) or an examination ordered under rule 2004 of the Federal Rules of Bankruptcy Procedure without good cause shown by the debtor;

''(H) failure timely to provide information or attend meetings reasonably requested by the United States trustee (or the bankruptcy administrator, if any);

''(I) failure timely to pay taxes owed after the date of the order for relief or to file tax returns due after the date of the order for relief;

''(J) failure to file a disclosure statement, or to file or confirm a plan, within the time fixed by this title or by order of the court;

''(K) failure to pay any fees or charges required under chapter 123 of title 28;

''(L) revocation of an order of confirmation under section 1144;

''(M) inability to effectuate substantial consummation of a confirmed plan;

''(N) material default by the debtor with respect to a confirmed plan;

''(O) termination of a confirmed plan by reason of the occurrence of a condition specified in the plan; and

''(P) failure of the debtor to pay any domestic support obligation that first becomes payable after the date of the filing of the petition.

''(5) The court shall commence the hearing on a motion under this subsection not later than 30 days after filing of the motion, and shall decide the motion not later than 15 days after commencement of such hearing, unless the movant expressly consents to a continuance for a specific period of time or compelling circumstances prevent the court from meeting the time limits established by this paragraph.''.

(b) ADDITIONAL GROUNDS FOR APPOINTMENT OF TRUSTEE.—Section 1104(a) of title 11, United States Code, is amended—

(1) in paragraph (1), by striking ''or'' at the end;

(2) in paragraph (2), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(3) if grounds exist to convert or dismiss the case under section 1112, but the court determines that the appointment of a trustee or an examiner is in the best interests of creditors and the estate.''.

SEC. 443. STUDY OF OPERATION OF TITLE 11, UNITED STATES CODE, WITH RESPECT TO SMALL BUSINESSES.

Not later than 2 years after the date of enactment of this Act, the Administrator of the Small Business Administration, in consultation with the Attorney General, the Director of the Executive Office for United States Trustees, and the Director of the Administrative Office of the United States Courts, shall—

(1) conduct a study to determine—

(A) the internal and external factors that cause small businesses, especially sole proprietorships, to become debtors in cases under title 11, United States Code, and that cause certain small businesses to successfully complete cases under chapter 11 of such title; and

(B) how Federal laws relating to bankruptcy may be made more effective and efficient in assisting small businesses to remain viable; and

(2) submit to the President pro tempore of the Senate and the Speaker of the House of Representatives a report summarizing that study.

SEC. 444. PAYMENT OF INTEREST.

Section 362(d)(3) of title 11, United States Code, is amended—

(1) by inserting ''or 30 days after the court determines that the debtor is subject to this paragraph, whichever is later'' after ''90-day period)''; and

(2) by striking subparagraph (B) and inserting the following:

''(B) the debtor has commenced monthly payments that—

''(i) may, in the debtor's sole discretion, notwithstanding section 363(c)(2), be made from rents or other income generated before or after the commencement of the case by or from the property to each creditor whose claim is secured by such real estate (other than a claim secured by a judgment lien or by an unmatured statutory lien); and

''(ii) are in an amount equal to interest at the then applicable nondefault contract rate of interest on the value of the creditor's interest in the real estate; or''.

SEC. 445. PRIORITY FOR ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting a semicolon; and

(3) by adding at the end the following:

''(7) with respect to a nonresidential real property lease previously assumed under section 365, and subsequently rejected, a sum equal to all monetary obligations due, excluding those arising from or relating to a failure to operate or a penalty provision, for the period of 2 years following the later of the rejection date or the date of actual turnover of the premises, without reduction or setoff for any reason whatsoever except for sums actually received or to be received from an entity other than the debtor, and the claim for remaining sums due for the balance of the term of the lease shall be a claim under section 502(b)(6);''.

SEC. 446. DUTIES WITH RESPECT TO A DEBTOR WHO IS A PLAN ADMINISTRATOR OF AN EMPLOYEE BENEFIT PLAN.

(a) IN GENERAL.—Section 521(a) of title 11, United States Code, as amended by sections 106 and 304, is amended—

(1) in paragraph (5), by striking ''and'' at the end;

(2) in paragraph (6), by striking the period at the end and inserting ''; and''; and

(3) by adding after paragraph (6) the following:

''(7) unless a trustee is serving in the case, continue to perform the obligations required of the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan if at the time of the commencement of the case the debtor (or any entity designated by the debtor) served as such administrator.''.

(b) DUTIES OF TRUSTEES.—Section 704(a) of title 11, United States Code, as amended by sections 102 and 219, is amended—

(1) in paragraph (10), by striking ''and'' at the end; and

(2) by adding at the end the following:

''(11) if, at the time of the commencement of the case, the debtor (or any entity designated by the debtor) served as the administrator (as defined in section 3 of the Employee Retirement Income Security Act of 1974) of an employee benefit plan, continue to perform the obligations required of the administrator; and''.

(c) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, is amended to read as follows:

''(1) perform the duties of the trustee, as specified in paragraphs (2), (5), (7), (8), (9), (10), and (11) of section 704;''.

SEC. 447. APPOINTMENT OF COMMITTEE OF RETIRED EMPLOYEES.

Section 1114(d) of title 11, United States Code, is amended—

(1) by striking ''appoint'' and inserting ''order the appointment of'', and

(2) by adding at the end the following: ''The United States trustee shall appoint any such committee.''.

TITLE V—MUNICIPAL BANKRUPTCY PROVISIONS

SEC. 501. PETITION AND PROCEEDINGS RELATED TO PETITION.

(a) TECHNICAL AMENDMENT RELATING TO MUNICIPALITIES.—Section 921(d) of title 11, United States Code, is amended by inserting ''notwithstanding section 301(b)'' before the period at the end.

(b) CONFORMING AMENDMENT.—Section 301 of title 11, United States Code, is amended—

(1) by inserting ''(a)'' before ''A voluntary''; and

(2) by striking the last sentence and inserting the following:

''(b) The commencement of a voluntary case under a chapter of this title constitutes an order for relief under such chapter.''.

SEC. 502. APPLICABILITY OF OTHER SECTIONS TO CHAPTER 9.

Section 901(a) of title 11, United States Code, is amended—

(1) by inserting ''555, 556,'' after ''553,''; and

(2) by inserting ''559, 560, 561, 562,'' after ''557,''.

TITLE VI—BANKRUPTCY DATA

SEC. 601. IMPROVED BANKRUPTCY STATISTICS.

(a) IN GENERAL.—Chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''§ 159. Bankruptcy statistics

''(a) The clerk of the district court, or the clerk of the bankruptcy court if one is certified pursuant to section 156(b) of this title, shall collect statistics regarding debtors who are individuals with primarily consumer debts seeking relief under chapters 7, 11, and 13 of title 11. Those statistics shall be in a standardized format prescribed by the Director of the Administrative Office of the United States Courts (referred to in this section as the 'Director').

''(b) The Director shall—

''(1) compile the statistics referred to in subsection (a);

''(2) make the statistics available to the public; and

''(3) not later than July 1, 2006, and annually thereafter, prepare, and submit to Congress a report concerning the information collected under subsection (a) that contains an analysis of the information.

''(c) The compilation required under subsection (b) shall—

''(1) be itemized, by chapter, with respect to title 11;

''(2) be presented in the aggregate and for each district; and

''(3) include information concerning—

''(A) the total assets and total liabilities of the debtors described in subsection (a), and in each category of assets and liabilities, as reported in the schedules prescribed pursuant to section 2075 of this title and filed by debtors;

''(B) the current monthly income, average income, and average expenses of debtors as reported on the schedules and statements that each such debtor files under sections 521 and 1322 of title 11;

''(C) the aggregate amount of debt discharged in cases filed during the reporting period, determined as the difference between the total amount of debt and obligations of a debtor reported on the schedules and the amount of such debt reported in categories which are predominantly nondischargeable;

''(D) the average period of time between the date of the filing of the petition and the closing of the case for cases closed during the reporting period;

''(E) for cases closed during the reporting period—

''(i) the number of cases in which a reaffirmation agreement was filed; and

''(ii)(I) the total number of reaffirmation agreements filed;

''(II) of those cases in which a reaffirmation agreement was filed, the number of cases in which the debtor was not represented by an attorney; and

''(III) of those cases in which a reaffirmation agreement was filed, the number of cases in which the reaffirmation agreement was approved by the court;

''(F) with respect to cases filed under chapter 13 of title 11, for the reporting period—

''(i)(I) the number of cases in which a final order was entered determining the value of property securing a claim in an amount less than the amount of the claim; and

''(II) the number of final orders entered determining the value of property securing a claim;

''(ii) the number of cases dismissed, the number of cases dismissed for failure to make payments under the plan, the number of cases refiled after dismissal, and the number of cases in which the plan was completed, separately itemized with respect to the number of modifications made before completion of the plan, if any; and

''(iii) the number of cases in which the debtor filed another case during the 6-year period preceding the filing;

''(G) the number of cases in which creditors were fined for misconduct and any amount of punitive damages awarded by the court for creditor misconduct; and

''(H) the number of cases in which sanctions under rule 9011 of the Federal Rules of Bankruptcy Procedure were imposed against debtor's attorney or damages awarded under such Rule.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 6 of title 28, United States Code, is amended by adding at the end the following:

''159. Bankruptcy statistics.''.

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 602. UNIFORM RULES FOR THE COLLECTION OF BANKRUPTCY DATA.

(a) AMENDMENT.—Chapter 39 of title 28, United States Code, is amended by adding at the end the following:

''§ 589b. Bankruptcy data

''(a) RULES.—The Attorney General shall, within a reasonable time after the effective date of this section, issue rules requiring uniform forms for (and from time to time thereafter to appropriately modify and approve)—

''(1) final reports by trustees in cases under chapters 7, 12, and 13 of title 11; and

''(2) periodic reports by debtors in possession or trustees in cases under chapter 11 of title 11.

''(b) REPORTS.—Each report referred to in subsection (a) shall be designed (and the requirements as to place and manner of filing shall be established) so as to facilitate compilation of data and maximum possible access of the public, both by physical inspection at one or more central filing locations, and by electronic access through the Internet or other appropriate media.

''(c) REQUIRED INFORMATION.—The information required to be filed in the reports referred to in subsection (b) shall be that which is in the best interests of debtors and creditors, and in the public interest in reasonable and adequate information to evaluate the efficiency and practicality of the Federal bankruptcy system. In issuing rules proposing the forms referred to in subsection (a), the Attorney General shall strike the best achievable practical balance between—

''(1) the reasonable needs of the public for information about the operational results of the Federal bankruptcy system;

''(2) economy, simplicity, and lack of undue burden on persons with a duty to file reports; and

''(3) appropriate privacy concerns and safeguards.

''(d) FINAL REPORTS.—The uniform forms for final reports required under subsection (a) for use by trustees under chapters 7, 12, and 13 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include with respect to a case under such title—

''(1) information about the length of time the case was pending;

''(2) assets abandoned;

''(3) assets exempted;

''(4) receipts and disbursements of the estate;

''(5) expenses of administration, including for use under section 707(b), actual costs of administering cases under chapter 13 of title 11;

''(6) claims asserted;

''(7) claims allowed; and

''(8) distributions to claimants and claims discharged without payment,

in each case by appropriate category and, in cases under chapters 12 and 13 of title 11, date of confirmation of the plan, each modification thereto, and defaults by the debtor in performance under the plan.

''(e) PERIODIC REPORTS.—The uniform forms for periodic reports required under subsection (a) for use by trustees or debtors in possession under chapter 11 of title 11 shall, in addition to such other matters as are required by law or as the Attorney General in the discretion of the Attorney General shall propose, include—

''(1) information about the industry classification, published by the Department of Commerce, for the businesses conducted by the debtor;

''(2) length of time the case has been pending;

''(3) number of full-time employees as of the date of the order for relief and at the end of each reporting period since the case was filed;

''(4) cash receipts, cash disbursements and profitability of the debtor for the most recent period and cumulatively since the date of the order for relief;

''(5) compliance with title 11, whether or not tax returns and tax payments since the date of the order for relief have been timely filed and made;

''(6) all professional fees approved by the court in the case for the most recent period and cumulatively since the date of the order for relief (separately reported, for the professional fees incurred by or on behalf of the debtor, between those that would have been incurred absent a bankruptcy case and those not); and

''(7) plans of reorganization filed and confirmed and, with respect thereto, by class, the recoveries of the holders, expressed in aggregate dollar values and, in the case of claims, as a percentage of total claims of the class allowed.''.

(b) CLERICAL AMENDMENT.—The table of sections for chapter 39 of title 28, United

States Code, is amended by adding at the end the following:

''589b. Bankruptcy data.''.

SEC. 603. AUDIT PROCEDURES.

(a) IN GENERAL.—

(1) ESTABLISHMENT OF PROCEDURES.—The Attorney General (in judicial districts served by United States trustees) and the Judicial Conference of the United States (in judicial districts served by bankruptcy administrators) shall establish procedures to determine the accuracy, veracity, and completeness of petitions, schedules, and other information that the debtor is required to provide under sections 521 and 1322 of title 11, United States Code, and, if applicable, section 111 of such title, in cases filed under chapter 7 or 13 of such title in which the debtor is an individual. Such audits shall be in accordance with generally accepted auditing standards and performed by independent certified public accountants or independent licensed public accountants, provided that the Attorney General and the Judicial Conference, as appropriate, may develop alternative auditing standards not later than 2 years after the date of enactment of this Act.

(2) PROCEDURES.—Those procedures required by paragraph (1) shall—

(A) establish a method of selecting appropriate qualified persons to contract to perform those audits;

(B) establish a method of randomly selecting cases to be audited, except that not less than 1 out of every 250 cases in each Federal judicial district shall be selected for audit;

(C) require audits of schedules of income and expenses that reflect greater than average variances from the statistical norm of the district in which the schedules were filed if those variances occur by reason of higher income or higher expenses than the statistical norm of the district in which the schedules were filed; and

(D) establish procedures for providing, not less frequently than annually, public information concerning the aggregate results of such audits including the percentage of cases, by district, in which a material misstatement of income or expenditures is reported.

(b) AMENDMENTS.—Section 586 of title 28, United States Code, is amended—

(1) in subsection (a), by striking paragraph (6) and inserting the following:

''(6) make such reports as the Attorney General directs, including the results of audits performed under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003;''; and

(2) by adding at the end the following:

''(f)(1) The United States trustee for each district is authorized to contract with auditors to perform audits in cases designated by the United States trustee, in accordance with the procedures established under section 603(a) of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003.

''(2)(A) The report of each audit referred to in paragraph (1) shall be filed with the court and transmitted to the United States trustee. Each report shall clearly and conspicuously specify any material misstatement of income or expenditures or of assets identified by the person performing the audit. In any case in which a material misstatement of income or expenditures or of assets has been reported, the clerk of the district court (or the clerk of the bankruptcy court if one is certified under section 156(b) of this title) shall give notice of the misstatement to the creditors in the case.

''(B) If a material misstatement of income or expenditures or of assets is reported, the United States trustee shall—

''(i) report the material misstatement, if appropriate, to the United States Attorney pursuant to section 3057 of title 18; and

''(ii) if advisable, take appropriate action, including but not limited to commencing an adversary proceeding to revoke the debtor's discharge pursuant to section 727(d) of title 11.''.

(c) AMENDMENTS TO SECTION 521 OF TITLE 11, U.S.C.—Section 521(a) of title 11, United States Code, as so designated by section 106, is amended in each of paragraphs (3) and (4) by inserting ''or an auditor serving under section 586(f) of title 28'' after ''serving in the case''.

(d) AMENDMENTS TO SECTION 727 OF TITLE 11, U.S.C.—Section 727(d) of title 11, United States Code, is amended—

(1) in paragraph (2), by striking ''or'' at the end;

(2) in paragraph (3), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(4) the debtor has failed to explain satisfactorily—

''(A) a material misstatement in an audit referred to in section 586(f) of title 28; or

''(B) a failure to make available for inspection all necessary accounts, papers, documents, financial records, files, and all other papers, things, or property belonging to the debtor that are requested for an audit referred to in section 586(f) of title 28.''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect 18 months after the date of enactment of this Act.

SEC. 604. SENSE OF CONGRESS REGARDING AVAILABILITY OF BANKRUPTCY DATA.

It is the sense of Congress that—

(1) the national policy of the United States should be that all data held by bankruptcy clerks in electronic form, to the extent such data reflects only public records (as defined in section 107 of title 11, United States Code), should be released in a usable electronic form in bulk to the public, subject to such appropriate privacy concerns and safeguards as Congress and the Judicial Conference of the United States may determine; and

(2) there should be established a bankruptcy data system in which—

(A) a single set of data definitions and forms are used to collect data nationwide; and

(B) data for any particular bankruptcy case are aggregated in the same electronic record.

TITLE VII—BANKRUPTCY TAX PROVISIONS

SEC. 701. TREATMENT OF CERTAIN LIENS.

(a) TREATMENT OF CERTAIN LIENS.—Section 724 of title 11, United States Code, is amended—

(1) in subsection (b), in the matter preceding paragraph (1), by inserting ''(other than to the extent that there is a properly perfected unavoidable tax lien arising in connection with an ad valorem tax on real or personal property of the estate)'' after ''under this title'';

(2) in subsection (b)(2), by inserting ''(except that such expenses, other than claims for wages, salaries, or commissions that arise after the date of the filing of the petition, shall be limited to expenses incurred under chapter 7 of this title and shall not include expenses incurred under chapter 11 of this title)'' after ''507(a)(1)''; and

(3) by adding at the end the following:

''(e) Before subordinating a tax lien on real or personal property of the estate, the trustee shall—

''(1) exhaust the unencumbered assets of the estate; and

''(2) in a manner consistent with section 506(c), recover from property securing an allowed secured claim the reasonable, necessary costs and expenses of preserving or disposing of such property.

''(f) Notwithstanding the exclusion of ad valorem tax liens under this section and subject to the requirements of subsection (e), the following may be paid from property of the estate which secures a tax lien, or the proceeds of such property:

''(1) Claims for wages, salaries, and commissions that are entitled to priority under section 507(a)(4).

''(2) Claims for contributions to an employee benefit plan entitled to priority under section 507(a)(5).''.

(b) DETERMINATION OF TAX LIABILITY.—Section 505(a)(2) of title 11, United States Code, is amended—

(1) in subparagraph (A), by striking ''or'' at the end;

(2) in subparagraph (B), by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the amount or legality of any amount arising in connection with an ad valorem tax on real or personal property of the estate, if the applicable period for contesting or redetermining that amount under any law (other than a bankruptcy law) has expired.''.

SEC. 702. TREATMENT OF FUEL TAX CLAIMS.

Section 501 of title 11, United States Code, is amended by adding at the end the following:

''(e) A claim arising from the liability of a debtor for fuel use tax assessed consistent with the requirements of section 31705 of title 49 may be filed by the base jurisdiction designated pursuant to the International Fuel Tax Agreement (as defined in section 31701 of title 49) and, if so filed, shall be allowed as a single claim.''.

SEC. 703. NOTICE OF REQUEST FOR A DETERMINATION OF TAXES.

Section 505(b) of title 11, United States Code, is amended—

(1) in the first sentence, by inserting ''at the address and in the manner designated in paragraph (1)'' after ''determination of such tax'';

(2) by striking ''(1) upon payment'' and inserting ''(A) upon payment'';

(3) by striking ''(A) such governmental unit'' and inserting ''(i) such governmental unit'';

(4) by striking ''(B) such governmental unit'' and inserting ''(ii) such governmental unit'';

(5) by striking ''(2) upon payment'' and inserting ''(B) upon payment'';

(6) by striking ''(3) upon payment'' and inserting ''(C) upon payment'';

(7) by striking ''(b)'' and inserting ''(2)''; and

(8) by inserting before paragraph (2), as so designated, the following:

''(b)(1)(A) The clerk shall maintain a list under which a Federal, State, or local governmental unit responsible for the collection of taxes within the district may—

''(i) designate an address for service of requests under this subsection; and

''(ii) describe where further information concerning additional requirements for filing such requests may be found.

''(B) If such governmental unit does not designate an address and provide such address to the clerk under subparagraph (A), any request made under this subsection may be served at the address for the filing of a tax return or protest with the appropriate taxing authority of such governmental unit.''.

SEC. 704. RATE OF INTEREST ON TAX CLAIMS.

(a) IN GENERAL.—Subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''§ 511. Rate of interest on tax claims

''(a) If any provision of this title requires the payment of interest on a tax claim or on

an administrative expense tax, or the payment of interest to enable a creditor to receive the present value of the allowed amount of a tax claim, the rate of interest shall be the rate determined under applicable nonbankruptcy law.

''(b) In the case of taxes paid under a confirmed plan under this title, the rate of interest shall be determined as of the calendar month in which the plan is confirmed.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter I of chapter 5 of title 11, United States Code, is amended by adding at the end the following:

''511. Rate of interest on tax claims.''.

SEC. 705. PRIORITY OF TAX CLAIMS.

Section 507(a)(8) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) in the matter preceding clause (i), by inserting ''for a taxable year ending on or before the date of the filing of the petition'' after ''gross receipts'';

(B) in clause (i), by striking ''for a taxable year ending on or before the date of the filing of the petition''; and

(C) by striking clause (ii) and inserting the following:

''(ii) assessed within 240 days before the date of the filing of the petition, exclusive of—

''(I) any time during which an offer in compromise with respect to that tax was pending or in effect during that 240-day period, plus 30 days; and

''(II) any time during which a stay of proceedings against collections was in effect in a prior case under this title during that 240-day period, plus 90 days.''; and

(2) by adding at the end the following:

''An otherwise applicable time period specified in this paragraph shall be suspended for any period during which a governmental unit is prohibited under applicable nonbankruptcy law from collecting a tax as a result of a request by the debtor for a hearing and an appeal of any collection action taken or proposed against the debtor, plus 90 days; plus any time during which the stay of proceedings was in effect in a prior case under this title or during which collection was precluded by the existence of 1 or more confirmed plans under this title, plus 90 days.''.

SEC. 706. PRIORITY PROPERTY TAXES INCURRED.

Section 507(a)(8)(B) of title 11, United States Code, is amended by striking ''assessed'' and inserting ''incurred''.

SEC. 707. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 13.

Section 1328(a)(2) of title 11, United States Code, as amended by section 314, is amended by striking ''paragraph'' and inserting ''section 507(a)(8)(C) or in paragraph (1)(B), (1)(C),''.

SEC. 708. NO DISCHARGE OF FRAUDULENT TAXES IN CHAPTER 11.

Section 1141(d) of title 11, United States Code, as amended by sections 321 and 330, is amended by adding at the end the following:

''(6) Notwithstanding paragraph (1), the confirmation of a plan does not discharge a debtor that is a corporation from any debt—

''(A) of a kind specified in paragraph (2)(A) or (2)(B) of section 523(a) that is owed to a domestic governmental unit, or owed to a person as the result of an action filed under subchapter III of chapter 37 of title 31 or any similar State statute; or

''(B) for a tax or customs duty with respect to which the debtor—

''(i) made a fraudulent return; or

''(ii) willfully attempted in any manner to evade or to defeat such tax or such customs duty.''.

SEC. 709. STAY OF TAX PROCEEDINGS LIMITED TO PREPETITION TAXES.

Section 362(a)(8) of title 11, United States Code, is amended by striking ''the debtor'' and inserting ''a corporate debtor's tax liability for a taxable period the bankruptcy court may determine or concerning the tax liability of a debtor who is an individual for a taxable period ending before the date of the order for relief under this title''.

SEC. 710. PERIODIC PAYMENT OF TAXES IN CHAPTER 11 CASES.

Section 1129(a)(9) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by striking ''deferred cash payments,'' and all that follows through the end of the subparagraph, and inserting ''regular installment payments in cash—

''(i) of a total value, as of the effective date of the plan, equal to the allowed amount of such claim;

''(ii) over a period ending not later than 5 years after the date of the order for relief under section 301, 302, or 303; and

''(iii) in a manner not less favorable than the most favored nonpriority unsecured claim provided for by the plan (other than cash payments made to a class of creditors under section 1122(b)); and''; and

(3) by adding at the end the following:

''(D) with respect to a secured claim which would otherwise meet the description of an unsecured claim of a governmental unit under section 507(a)(8), but for the secured status of that claim, the holder of that claim will receive on account of that claim, cash payments, in the same manner and over the same period, as prescribed in subparagraph (C).''.

SEC. 711. AVOIDANCE OF STATUTORY TAX LIENS PROHIBITED.

Section 545(2) of title 11, United States Code, is amended by inserting before the semicolon at the end the following: '', except in any case in which a purchaser is a purchaser described in section 6323 of the Internal Revenue Code of 1986, or in any other similar provision of State or local law''.

SEC. 712. PAYMENT OF TAXES IN THE CONDUCT OF BUSINESS.

(a) PAYMENT OF TAXES REQUIRED.—Section 960 of title 28, United States Code, is amended—

(1) by inserting ''(a)'' before ''Any''; and

(2) by adding at the end the following:

''(b) A tax under subsection (a) shall be paid on or before the due date of the tax under applicable nonbankruptcy law, unless—

''(1) the tax is a property tax secured by a lien against property that is abandoned under section 554 of title 11, within a reasonable period of time after the lien attaches, by the trustee in a case under title 11; or

''(2) payment of the tax is excused under a specific provision of title 11.

''(c) In a case pending under chapter 7 of title 11, payment of a tax may be deferred until final distribution is made under section 726 of title 11, if—

''(1) the tax was not incurred by a trustee duly appointed under chapter 7 of title 11; or

''(2) before the due date of the tax, an order of the court makes a finding of probable insufficiency of funds of the estate to pay in full the administrative expenses allowed under section 503(b) of title 11 that have the same priority in distribution under section 726(b) of title 11 as the priority of that tax.''.

(b) PAYMENT OF AD VALOREM TAXES REQUIRED.—Section 503(b)(1)(B)(i) of title 11, United States Code, is amended by inserting ''whether secured or unsecured, including property taxes for which liability is in rem, in personam, or both,'' before ''except''.

(c) REQUEST FOR PAYMENT OF ADMINISTRATIVE EXPENSE TAXES ELIMINATED.—Section 503(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (B), by striking ''and'' at the end;

(2) in subparagraph (C), by adding ''and'' at the end; and

(3) by adding at the end the following:

''(D) notwithstanding the requirements of subsection (a), a governmental unit shall not be required to file a request for the payment of an expense described in subparagraph (B) or (C), as a condition of its being an allowed administrative expense;''.

(d) PAYMENT OF TAXES AND FEES AS SECURED CLAIMS.—Section 506 of title 11, United States Code, is amended—

(1) in subsection (b), by inserting ''or State statute'' after ''agreement''; and

(2) in subsection (c), by inserting '', including the payment of all ad valorem property taxes with respect to the property'' before the period at the end.

SEC. 713. TARDILY FILED PRIORITY TAX CLAIMS.

Section 726(a)(1) of title 11, United States Code, is amended by striking ''before the date on which the trustee commences distribution under this section;'' and inserting the following: ''on or before the earlier of—

''(A) the date that is 10 days after the mailing to creditors of the summary of the trustee's final report; or

''(B) the date on which the trustee commences final distribution under this section;''.

SEC. 714. INCOME TAX RETURNS PREPARED BY TAX AUTHORITIES.

Section 523(a) of title 11, United States Code, as amended by sections 215 and 224, is amended—

(1) in paragraph (1)(B)—

(A) in the matter preceding clause (i), by inserting ''or equivalent report or notice,'' after ''a return,'';

(B) in clause (i), by inserting ''or given'' after ''filed''; and

(C) in clause (ii)—

(i) by inserting ''or given'' after ''filed''; and

(ii) by inserting '', report, or notice'' after ''return''; and

(2) by adding at the end the following:

''For purposes of this subsection, the term 'return' means a return that satisfies the requirements of applicable nonbankruptcy law (including applicable filing requirements). Such term includes a return prepared pursuant to section 6020(a) of the Internal Revenue Code of 1986, or similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal, but does not include a return made pursuant to section 6020(b) of the Internal Revenue Code of 1986, or a similar State or local law.''.

SEC. 715. DISCHARGE OF THE ESTATE'S LIABILITY FOR UNPAID TAXES.

Section 505(b)(2) of title 11, United States Code, as amended by section 703, is amended by inserting ''the estate,'' after ''misrepresentation,''.

SEC. 716. REQUIREMENT TO FILE TAX RETURNS TO CONFIRM CHAPTER 13 PLANS.

(a) FILING OF PREPETITION TAX RETURNS REQUIRED FOR PLAN CONFIRMATION.—Section 1325(a) of title 11, United States Code, as amended by sections 102, 213, and 306, is amended by inserting after paragraph (8) the following:

''(9) the debtor has filed all applicable Federal, State, and local tax returns as required by section 1308.''.

(b) ADDITIONAL TIME PERMITTED FOR FILING TAX RETURNS.—

(1) IN GENERAL.—Subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''§ 1308. Filing of prepetition tax returns

''(a) Not later than the day before the date on which the meeting of the creditors is first

scheduled to be held under section 341(a), if the debtor was required to file a tax return under applicable nonbankruptcy law, the debtor shall file with appropriate tax authorities all tax returns for all taxable periods ending during the 4-year period ending on the date of the filing of the petition.

''(b)(1) Subject to paragraph (2), if the tax returns required by subsection (a) have not been filed by the date on which the meeting of creditors is first scheduled to be held under section 341(a), the trustee may hold open that meeting for a reasonable period of time to allow the debtor an additional period of time to file any unfiled returns, but such additional period of time shall not extend beyond—

''(A) for any return that is past due as of the date of the filing of the petition, the date that is 120 days after the date of that meeting; or

''(B) for any return that is not past due as of the date of the filing of the petition, the later of—

''(i) the date that is 120 days after the date of that meeting; or

''(ii) the date on which the return is due under the last automatic extension of time for filing that return to which the debtor is entitled, and for which request is timely made, in accordance with applicable nonbankruptcy law.

''(2) After notice and a hearing, and order entered before the tolling of any applicable filing period determined under this subsection, if the debtor demonstrates by a preponderance of the evidence that the failure to file a return as required under this subsection is attributable to circumstances beyond the control of the debtor, the court may extend the filing period established by the trustee under this subsection for—

''(A) a period of not more than 30 days for returns described in paragraph (1); and

''(B) a period not to extend after the applicable extended due date for a return described in paragraph (2).

''(c) For purposes of this section, the term 'return' includes a return prepared pursuant to subsection (a) or (b) of section 6020 of the Internal Revenue Code of 1986, or a similar State or local law, or a written stipulation to a judgment or a final order entered by a nonbankruptcy tribunal.''.

(2) CONFORMING AMENDMENT.—The table of sections for subchapter I of chapter 13 of title 11, United States Code, is amended by adding at the end the following:

''1308. Filing of prepetition tax returns.''.

(c) DISMISSAL OR CONVERSION ON FAILURE TO COMPLY.—Section 1307 of title 11, United States Code, is amended—

(1) by redesignating subsections (e) and (f) as subsections (f) and (g), respectively; and

(2) by inserting after subsection (d) the following:

''(e) Upon the failure of the debtor to file a tax return under section 1308, on request of a party in interest or the United States trustee and after notice and a hearing, the court shall dismiss a case or convert a case under this chapter to a case under chapter 7 of this title, whichever is in the best interest of the creditors and the estate.''.

(d) TIMELY FILED CLAIMS.—Section 502(b)(9) of title 11, United States Code, is amended by inserting before the period at the end the following: '', and except that in a case under chapter 13, a claim of a governmental unit for a tax with respect to a return filed under section 1308 shall be timely if the claim is filed on or before the date that is 60 days after the date on which such return was filed as required''.

(e) RULES FOR OBJECTIONS TO CLAIMS AND TO CONFIRMATION.—It is the sense of Congress that the Judicial Conference of the United States should, as soon as practicable after the date of enactment of this Act, propose amended Federal Rules of Bankruptcy Procedure that provide—

(1) notwithstanding the provisions of Rule 3015(f), in cases under chapter 13 of title 11, United States Code, that an objection to the confirmation of a plan filed by a governmental unit on or before the date that is 60 days after the date on which the debtor files all tax returns required under sections 1308 and 1325(a)(7) of title 11, United States Code, shall be treated for all purposes as if such objection had been timely filed before such confirmation; and

(2) in addition to the provisions of Rule 3007, in a case under chapter 13 of title 11, United States Code, that no objection to a claim for a tax with respect to which a return is required to be filed under section 1308 of title 11, United States Code, shall be filed until such return has been filed as required.

SEC. 717. STANDARDS FOR TAX DISCLOSURE.

Section 1125(a)(1) of title 11, United States Code, is amended—

(1) by inserting ''including a discussion of the potential material Federal tax consequences of the plan to the debtor, any successor to the debtor, and a hypothetical investor typical of the holders of claims or interests in the case,'' after ''records,''; and

(2) by striking ''a hypothetical reasonable investor typical of holders of claims or interests'' and inserting ''such a hypothetical investor''.

SEC. 718. SETOFF OF TAX REFUNDS.

Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, and 401, is amended by inserting after paragraph (25) the following:

''(26) under subsection (a), of the setoff under applicable nonbankruptcy law of an income tax refund, by a governmental unit, with respect to a taxable period that ended before the date of the order for relief against an income tax liability for a taxable period that also ended before the date of the order for relief, except that in any case in which the setoff of an income tax refund is not permitted under applicable nonbankruptcy law because of a pending action to determine the amount or legality of a tax liability, the governmental unit may hold the refund pending the resolution of the action, unless the court, on the motion of the trustee and after notice and a hearing, grants the taxing authority adequate protection (within the meaning of section 361) for the secured claim of such authority in the setoff under section 506(a);''.

SEC. 719. SPECIAL PROVISIONS RELATED TO THE TREATMENT OF STATE AND LOCAL TAXES.

(a) IN GENERAL.—

(1) SPECIAL PROVISIONS.—Section 346 of title 11, United States Code, is amended to read as follows:

''§ 346. Special provisions related to the treatment of State and local taxes

''(a) Whenever the Internal Revenue Code of 1986 provides that a separate taxable estate or entity is created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of such estate shall be taxed to or claimed by the estate, a separate taxable estate is also created for purposes of any State and local law imposing a tax on or measured by income and such income, gain, loss, deductions, and credits shall be taxed to or claimed by the estate and may not be taxed to or claimed by the debtor. The preceding sentence shall not apply if the case is dismissed. The trustee shall make tax returns of income required under any such State or local law.

''(b) Whenever the Internal Revenue Code of 1986 provides that no separate taxable estate shall be created in a case concerning a debtor under this title, and the income, gain, loss, deductions, and credits of an estate shall be taxed to or claimed by the debtor, such income, gain, loss, deductions, and credits shall be taxed to or claimed by the debtor under a State or local law imposing a tax on or measured by income and may not be taxed to or claimed by the estate. The trustee shall make such tax returns of income of corporations and of partnerships as are required under any State or local law, but with respect to partnerships, shall make such returns only to the extent such returns are also required to be made under such Code. The estate shall be liable for any tax imposed on such corporation or partnership, but not for any tax imposed on partners or members.

''(c) With respect to a partnership or any entity treated as a partnership under a State or local law imposing a tax on or measured by income that is a debtor in a case under this title, any gain or loss resulting from a distribution of property from such partnership, or any distributive share of any income, gain, loss, deduction, or credit of a partner or member that is distributed, or considered distributed, from such partnership, after the commencement of the case, is gain, loss, income, deduction, or credit, as the case may be, of the partner or member, and if such partner or member is a debtor in a case under this title, shall be subject to tax in accordance with subsection (a) or (b).

''(d) For purposes of any State or local law imposing a tax on or measured by income, the taxable period of a debtor in a case under this title shall terminate only if and to the extent that the taxable period of such debtor terminates under the Internal Revenue Code of 1986.

''(e) The estate in any case described in subsection (a) shall use the same accounting method as the debtor used immediately before the commencement of the case, if such method of accounting complies with applicable nonbankruptcy tax law.

''(f) For purposes of any State or local law imposing a tax on or measured by income, a transfer of property from the debtor to the estate or from the estate to the debtor shall not be treated as a disposition for purposes of any provision assigning tax consequences to a disposition, except to the extent that such transfer is treated as a disposition under the Internal Revenue Code of 1986.

''(g) Whenever a tax is imposed pursuant to a State or local law imposing a tax on or measured by income pursuant to subsection (a) or (b), such tax shall be imposed at rates generally applicable to the same types of entities under such State or local law.

''(h) The trustee shall withhold from any payment of claims for wages, salaries, commissions, dividends, interest, or other payments, or collect, any amount required to be withheld or collected under applicable State or local tax law, and shall pay such withheld or collected amount to the appropriate governmental unit at the time and in the manner required by such tax law, and with the same priority as the claim from which such amount was withheld or collected was paid.

''(i)(1) To the extent that any State or local law imposing a tax on or measured by income provides for the carryover of any tax attribute from one taxable period to a subsequent taxable period, the estate shall succeed to such tax attribute in any case in which such estate is subject to tax under subsection (a).

''(2) After such a case is closed or dismissed, the debtor shall succeed to any tax attribute to which the estate succeeded under paragraph (1) to the extent consistent with the Internal Revenue Code of 1986.

''(3) The estate may carry back any loss or tax attribute to a taxable period of the debtor that ended before the date of the order for relief under this title to the extent that—

''(A) applicable State or local tax law provides for a carryback in the case of the debtor; and

''(B) the same or a similar tax attribute may be carried back by the estate to such a taxable period of the debtor under the Internal Revenue Code of 1986.

''(j)(1) For purposes of any State or local law imposing a tax on or measured by income, income is not realized by the estate, the debtor, or a successor to the debtor by reason of discharge of indebtedness in a case under this title, except to the extent, if any, that such income is subject to tax under the Internal Revenue Code of 1986.

''(2) Whenever the Internal Revenue Code of 1986 provides that the amount excluded from gross income in respect of the discharge of indebtedness in a case under this title shall be applied to reduce the tax attributes of the debtor or the estate, a similar reduction shall be made under any State or local law imposing a tax on or measured by income to the extent such State or local law recognizes such attributes. Such State or local law may also provide for the reduction of other attributes to the extent that the full amount of income from the discharge of indebtedness has not been applied.

''(k)(1) Except as provided in this section and section 505, the time and manner of filing tax returns and the items of income, gain, loss, deduction, and credit of any taxpayer shall be determined under applicable nonbankruptcy law.

''(2) For Federal tax purposes, the provisions of this section are subject to the Internal Revenue Code of 1986 and other applicable Federal nonbankruptcy law.''.

(2) CLERICAL AMENDMENT.—The table of sections for chapter 3 of title 11, United States Code, is amended by striking the item relating to section 346 and inserting the following:

''346. Special provisions related to the treatment of State and local taxes.''.

(b) CONFORMING AMENDMENTS.—Title 11 of the United States Code is amended—

(1) by striking section 728;

(2) in the table of sections for chapter 7 by striking the item relating to section 728;

(3) in section 1146—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively; and

(4) in section 1231—

(A) by striking subsections (a) and (b); and

(B) by redesignating subsections (c) and (d) as subsections (a) and (b), respectively.

SEC. 720. DISMISSAL FOR FAILURE TO TIMELY FILE TAX RETURNS.

Section 521 of title 11, United States Code, as amended by sections 106, 225, 305, 315, and 316, is amended by adding at the end the following:

''(j)(1) Notwithstanding any other provision of this title, if the debtor fails to file a tax return that becomes due after the commencement of the case or to properly obtain an extension of the due date for filing such return, the taxing authority may request that the court enter an order converting or dismissing the case.

''(2) If the debtor does not file the required return or obtain the extension referred to in paragraph (1) within 90 days after a request is filed by the taxing authority under that paragraph, the court shall convert or dismiss the case, whichever is in the best interests of creditors and the estate.''.

TITLE VIII—ANCILLARY AND OTHER CROSS-BORDER CASES

SEC. 801. AMENDMENT TO ADD CHAPTER 15 TO TITLE 11, UNITED STATES CODE.

(a) IN GENERAL.—Title 11, United States Code, is amended by inserting after chapter 13 the following:

''CHAPTER 15—ANCILLARY AND OTHER CROSS-BORDER CASES

''§ 1501. Purpose and scope of application

''(a) The purpose of this chapter is to incorporate the Model Law on Cross-Border Insolvency so as to provide effective mechanisms for dealing with cases of cross-border insolvency with the objectives of—

''(1) cooperation between—

''(A) courts of the United States, United States trustees, trustees, examiners, debtors, and debtors in possession; and

''(B) the courts and other competent authorities of foreign countries involved in cross-border insolvency cases;

''(2) greater legal certainty for trade and investment;

''(3) fair and efficient administration of cross-border insolvencies that protects the interests of all creditors, and other interested entities, including the debtor;

''(4) protection and maximization of the value of the debtor's assets; and

''(5) facilitation of the rescue of financially troubled businesses, thereby protecting investment and preserving employment.

''(b) This chapter applies where—

''(1) assistance is sought in the United States by a foreign court or a foreign representative in connection with a foreign proceeding;

''(2) assistance is sought in a foreign country in connection with a case under this title;

''(3) a foreign proceeding and a case under this title with respect to the same debtor are pending concurrently; or

''(4) creditors or other interested persons in a foreign country have an interest in requesting the commencement of, or participating in, a case or proceeding under this title.

''(c) This chapter does not apply to—

''(1) a proceeding concerning an entity, other than a foreign insurance company, identified by exclusion in section 109(b);

''(2) an individual, or to an individual and such individual's spouse, who have debts within the limits specified in section 109(e) and who are citizens of the United States or aliens lawfully admitted for permanent residence in the United States; or

''(3) an entity subject to a proceeding under the Securities Investor Protection Act of 1970, a stockbroker subject to subchapter III of chapter 7 of this title, or a commodity broker subject to subchapter IV of chapter 7 of this title.

''(d) The court may not grant relief under this chapter with respect to any deposit, escrow, trust fund, or other security required or permitted under any applicable State insurance law or regulation for the benefit of claim holders in the United States.

''SUBCHAPTER I—GENERAL PROVISIONS

''§ 1502. Definitions

''For the purposes of this chapter, the term—

''(1) 'debtor' means an entity that is the subject of a foreign proceeding;

''(2) 'establishment' means any place of operations where the debtor carries out a nontransitory economic activity;

''(3) 'foreign court' means a judicial or other authority competent to control or supervise a foreign proceeding;

''(4) 'foreign main proceeding' means a foreign proceeding pending in the country where the debtor has the center of its main interests;

''(5) 'foreign nonmain proceeding' means a foreign proceeding, other than a foreign main proceeding, pending in a country where the debtor has an establishment;

''(6) 'trustee' includes a trustee, a debtor in possession in a case under any chapter of this title, or a debtor under chapter 9 of this title;

''(7) 'recognition' means the entry of an order granting recognition of a foreign main proceeding or foreign nonmain proceeding under this chapter; and

''(8) 'within the territorial jurisdiction of the United States', when used with reference to property of a debtor, refers to tangible

property located within the territory of the United States and intangible property deemed under applicable nonbankruptcy law to be located within that territory, including any property subject to attachment or garnishment that may properly be seized or garnished by an action in a Federal or State court in the United States.

"§ 1503. International obligations of the United States

''To the extent that this chapter conflicts with an obligation of the United States arising out of any treaty or other form of agreement to which it is a party with one or more other countries, the requirements of the treaty or agreement prevail.

"§ 1504. Commencement of ancillary case

''A case under this chapter is commenced by the filing of a petition for recognition of a foreign proceeding under section 1515.

"§ 1505. Authorization to act in a foreign country

''A trustee or another entity (including an examiner) may be authorized by the court to act in a foreign country on behalf of an estate created under section 541. An entity authorized to act under this section may act in any way permitted by the applicable foreign law.

"§ 1506. Public policy exception

''Nothing in this chapter prevents the court from refusing to take an action governed by this chapter if the action would be manifestly contrary to the public policy of the United States.

"§ 1507. Additional assistance

''(a) Subject to the specific limitations stated elsewhere in this chapter the court, if recognition is granted, may provide additional assistance to a foreign representative under this title or under other laws of the United States.

''(b) In determining whether to provide additional assistance under this title or under other laws of the United States, the court shall consider whether such additional assistance, consistent with the principles of comity, will reasonably assure—

''(1) just treatment of all holders of claims against or interests in the debtor's property;

''(2) protection of claim holders in the United States against prejudice and inconvenience in the processing of claims in such foreign proceeding;

''(3) prevention of preferential or fraudulent dispositions of property of the debtor;

''(4) distribution of proceeds of the debtor's property substantially in accordance with the order prescribed by this title; and

''(5) if appropriate, the provision of an opportunity for a fresh start for the individual that such foreign proceeding concerns.

"§ 1508. Interpretation

''In interpreting this chapter, the court shall consider its international origin, and the need to promote an application of this chapter that is consistent with the application of similar statutes adopted by foreign jurisdictions.

''SUBCHAPTER II—ACCESS OF FOREIGN REPRESENTATIVES AND CREDITORS TO THE COURT

"§ 1509. Right of direct access

''(a) A foreign representative may commence a case under section 1504 by filing directly with the court a petition for recognition of a foreign proceeding under section 1515.

''(b) If the court grants recognition under section 1515, and subject to any limitations that the court may impose consistent with the policy of this chapter—

''(1) the foreign representative has the capacity to sue and be sued in a court in the United States;

''(2) the foreign representative may apply directly to a court in the United States for appropriate relief in that court; and

''(3) a court in the United States shall grant comity or cooperation to the foreign representative.

''(c) A request for comity or cooperation by a foreign representative in a court in the United States other than the court which granted recognition shall be accompanied by a certified copy of an order granting recognition under section 1517.

''(d) If the court denies recognition under this chapter, the court may issue any appropriate order necessary to prevent the foreign representative from obtaining comity or cooperation from courts in the United States.

''(e) Whether or not the court grants recognition, and subject to sections 306 and 1510, a foreign representative is subject to applicable nonbankruptcy law.

''(f) Notwithstanding any other provision of this section, the failure of a foreign representative to commence a case or to obtain recognition under this chapter does not affect any right the foreign representative may have to sue in a court in the United States to collect or recover a claim which is the property of the debtor.

"§ 1510. Limited jurisdiction

''The sole fact that a foreign representative files a petition under section 1515 does not subject the foreign representative to the jurisdiction of any court in the United States for any other purpose.

"§ 1511. Commencement of case under section 301 or 303

''(a) Upon recognition, a foreign representative may commence—

''(1) an involuntary case under section 303; or

''(2) a voluntary case under section 301 or 302, if the foreign proceeding is a foreign main proceeding.

''(b) The petition commencing a case under subsection (a) must be accompanied by a certified copy of an order granting recognition. The court where the petition for recognition has been filed must be advised of the foreign representative's intent to commence a case under subsection (a) prior to such commencement.

"§ 1512. Participation of a foreign representative in a case under this title

''Upon recognition of a foreign proceeding, the foreign representative in the recognized proceeding is entitled to participate as a party in interest in a case regarding the debtor under this title.

"§ 1513. Access of foreign creditors to a case under this title

''(a) Foreign creditors have the same rights regarding the commencement of, and participation in, a case under this title as domestic creditors.

''(b)(1) Subsection (a) does not change or codify present law as to the priority of claims under section 507 or 726, except that the claim of a foreign creditor under those sections shall not be given a lower priority than that of general unsecured claims without priority solely because the holder of such claim is a foreign creditor.

''(2)(A) Subsection (a) and paragraph (1) do not change or codify present law as to the allowability of foreign revenue claims or other foreign public law claims in a proceeding under this title.

''(B) Allowance and priority as to a foreign tax claim or other foreign public law claim shall be governed by any applicable tax treaty of the United States, under the conditions and circumstances specified therein.

"§ 1514. Notification to foreign creditors concerning a case under this title

''(a) Whenever in a case under this title notice is to be given to creditors generally or to any class or category of creditors, such notice shall also be given to the known creditors generally, or to creditors in the notified class or category, that do not have addresses in the United States. The court may order that appropriate steps be taken with a view to notifying any creditor whose address is not yet known.

''(b) Such notification to creditors with foreign addresses described in subsection (a) shall be given individually, unless the court considers that, under the circumstances, some other form of notification would be more appropriate. No letter or other formality is required.

''(c) When a notification of commencement of a case is to be given to foreign creditors, such notification shall—

''(1) indicate the time period for filing proofs of claim and specify the place for filing such proofs of claim;

''(2) indicate whether secured creditors need to file proofs of claim; and

''(3) contain any other information required to be included in such notification to creditors under this title and the orders of the court.

''(d) Any rule of procedure or order of the court as to notice or the filing of a proof of claim shall provide such additional time to creditors with foreign addresses as is reasonable under the circumstances.

''SUBCHAPTER III—RECOGNITION OF A FOREIGN PROCEEDING AND RELIEF

"§ 1515. Application for recognition

''(a) A foreign representative applies to the court for recognition of a foreign proceeding in which the foreign representative has been appointed by filing a petition for recognition.

''(b) A petition for recognition shall be accompanied by—

''(1) a certified copy of the decision commencing such foreign proceeding and appointing the foreign representative;

''(2) a certificate from the foreign court affirming the existence of such foreign proceeding and of the appointment of the foreign representative; or

''(3) in the absence of evidence referred to in paragraphs (1) and (2), any other evidence acceptable to the court of the existence of such foreign proceeding and of the appointment of the foreign representative.

''(c) A petition for recognition shall also be accompanied by a statement identifying all foreign proceedings with respect to the debtor that are known to the foreign representative.

''(d) The documents referred to in paragraphs (1) and (2) of subsection (b) shall be translated into English. The court may require a translation into English of additional documents.

"§ 1516. Presumptions concerning recognition

''(a) If the decision or certificate referred to in section 1515(b) indicates that the foreign proceeding is a foreign proceeding and that the person or body is a foreign representative, the court is entitled to so presume.

''(b) The court is entitled to presume that documents submitted in support of the petition for recognition are authentic, whether or not they have been legalized.

''(c) In the absence of evidence to the contrary, the debtor's registered office, or habitual residence in the case of an individual, is presumed to be the center of the debtor's main interests.

"§ 1517. Order granting recognition

''(a) Subject to section 1506, after notice and a hearing, an order recognizing a foreign proceeding shall be entered if—

''(1) such foreign proceeding for which recognition is sought is a foreign main proceeding or foreign nonmain proceeding within the meaning of section 1502;

''(2) the foreign representative applying for recognition is a person or body; and

''(3) the petition meets the requirements of section 1515.

''(b) Such foreign proceeding shall be recognized—

''(1) as a foreign main proceeding if it is pending in the country where the debtor has the center of its main interests; or

''(2) as a foreign nonmain proceeding if the debtor has an establishment within the meaning of section 1502 in the foreign country where the proceeding is pending.

''(c) A petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time. Entry of an order recognizing a foreign proceeding constitutes recognition under this chapter.

''(d) The provisions of this subchapter do not prevent modification or termination of recognition if it is shown that the grounds for granting it were fully or partially lacking or have ceased to exist, but in considering such action the court shall give due weight to possible prejudice to parties that have relied upon the order granting recognition. A case under this chapter may be closed in the manner prescribed under section 350.

''§ 1518. Subsequent information

''From the time of filing the petition for recognition of a foreign proceeding, the foreign representative shall file with the court promptly a notice of change of status concerning—

''(1) any substantial change in the status of such foreign proceeding or the status of the foreign representative's appointment; and

''(2) any other foreign proceeding regarding the debtor that becomes known to the foreign representative.

''§ 1519. Relief that may be granted upon filing petition for recognition

''(a) From the time of filing a petition for recognition until the court rules on the petition, the court may, at the request of the foreign representative, where relief is urgently needed to protect the assets of the debtor or the interests of the creditors, grant relief of a provisional nature, including—

''(1) staying execution against the debtor's assets;

''(2) entrusting the administration or realization of all or part of the debtor's assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy; and

''(3) any relief referred to in paragraph (3), (4), or (7) of section 1521(a).

''(b) Unless extended under section 1521(a)(6), the relief granted under this section terminates when the petition for recognition is granted.

''(c) It is a ground for denial of relief under this section that such relief would interfere with the administration of a foreign main proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

''§ 1520. Effects of recognition of a foreign main proceeding

''(a) Upon recognition of a foreign proceeding that is a foreign main proceeding—

''(1) sections 361 and 362 apply with respect to the debtor and the property of the debtor that is within the territorial jurisdiction of the United States;

''(2) sections 363, 549, and 552 apply to a transfer of an interest of the debtor in property that is within the territorial jurisdiction of the United States to the same extent that the sections would apply to property of an estate;

''(3) unless the court orders otherwise, the foreign representative may operate the debtor's business and may exercise the rights and powers of a trustee under and to the extent provided by sections 363 and 552; and

''(4) section 552 applies to property of the debtor that is within the territorial jurisdiction of the United States.

''(b) Subsection (a) does not affect the right to commence an individual action or proceeding in a foreign country to the extent necessary to preserve a claim against the debtor.

''(c) Subsection (a) does not affect the right of a foreign representative or an entity to file a petition commencing a case under this title or the right of any party to file claims or take other proper actions in such a case.

''§ 1521. Relief that may be granted upon recognition

''(a) Upon recognition of a foreign proceeding, whether main or nonmain, where necessary to effectuate the purpose of this chapter and to protect the assets of the debtor or the interests of the creditors, the court may, at the request of the foreign representative, grant any appropriate relief, including—

''(1) staying the commencement or continuation of an individual action or proceeding concerning the debtor's assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a);

''(2) staying execution against the debtor's assets to the extent it has not been stayed under section 1520(a);

''(3) suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a);

''(4) providing for the examination of witnesses, the taking of evidence or the delivery of information concerning the debtor's assets, affairs, rights, obligations or liabilities;

''(5) entrusting the administration or realization of all or part of the debtor's assets within the territorial jurisdiction of the United States to the foreign representative or another person, including an examiner, authorized by the court;

''(6) extending relief granted under section 1519(a); and

''(7) granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a).

''(b) Upon recognition of a foreign proceeding, whether main or nonmain, the court may, at the request of the foreign representative, entrust the distribution of all or part of the debtor's assets located in the United States to the foreign representative or another person, including an examiner, authorized by the court, provided that the court is satisfied that the interests of creditors in the United States are sufficiently protected.

''(c) In granting relief under this section to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the law of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(d) The court may not enjoin a police or regulatory act of a governmental unit, including a criminal action or proceeding, under this section.

''(e) The standards, procedures, and limitations applicable to an injunction shall apply to relief under paragraphs (1), (2), (3), and (6) of subsection (a).

''(f) The exercise of rights not subject to the stay arising under section 362(a) pursuant to paragraph (6), (7), (17), or (27) of section 362(b) or pursuant to section 362(n) shall not be stayed by any order of a court or administrative agency in any proceeding under this chapter.

''§ 1522. Protection of creditors and other interested persons

''(a) The court may grant relief under section 1519 or 1521, or may modify or terminate relief under subsection (c), only if the interests of the creditors and other interested entities, including the debtor, are sufficiently protected.

''(b) The court may subject relief granted under section 1519 or 1521, or the operation of the debtor's business under section 1520(a)(3), to conditions it considers appropriate, including the giving of security or the filing of a bond.

''(c) The court may, at the request of the foreign representative or an entity affected by relief granted under section 1519 or 1521, or at its own motion, modify or terminate such relief.

''(d) Section 1104(d) shall apply to the appointment of an examiner under this chapter. Any examiner shall comply with the qualification requirements imposed on a trustee by section 322.

''§ 1523. Actions to avoid acts detrimental to creditors

''(a) Upon recognition of a foreign proceeding, the foreign representative has standing in a case concerning the debtor pending under another chapter of this title to initiate actions under sections 522, 544, 545, 547, 548, 550, 553, and 724(a).

''(b) When a foreign proceeding is a foreign nonmain proceeding, the court must be satisfied that an action under subsection (a) relates to assets that, under United States law, should be administered in the foreign nonmain proceeding.

''§ 1524. Intervention by a foreign representative

''Upon recognition of a foreign proceeding, the foreign representative may intervene in any proceedings in a State or Federal court in the United States in which the debtor is a party.

''SUBCHAPTER IV—COOPERATION WITH FOREIGN COURTS AND FOREIGN REPRESENTATIVES

''§ 1525. Cooperation and direct communication between the court and foreign courts or foreign representatives

''(a) Consistent with section 1501, the court shall cooperate to the maximum extent possible with a foreign court or a foreign representative, either directly or through the trustee.

''(b) The court is entitled to communicate directly with, or to request information or assistance directly from, a foreign court or a foreign representative, subject to the rights of a party in interest to notice and participation.

''§ 1526. Cooperation and direct communication between the trustee and foreign courts or foreign representatives

''(a) Consistent with section 1501, the trustee or other person, including an examiner, authorized by the court, shall, subject to the

supervision of the court, cooperate to the maximum extent possible with a foreign court or a foreign representative.

''(b) The trustee or other person, including an examiner, authorized by the court is entitled, subject to the supervision of the court, to communicate directly with a foreign court or a foreign representative.

''§ 1527. Forms of cooperation

''Cooperation referred to in sections 1525 and 1526 may be implemented by any appropriate means, including—

''(1) appointment of a person or body, including an examiner, to act at the direction of the court;

''(2) communication of information by any means considered appropriate by the court;

''(3) coordination of the administration and supervision of the debtor's assets and affairs;

''(4) approval or implementation of agreements concerning the coordination of proceedings; and

''(5) coordination of concurrent proceedings regarding the same debtor.

''SUBCHAPTER V—CONCURRENT PROCEEDINGS

''§ 1528. Commencement of a case under this title after recognition of a foreign main proceeding

''After recognition of a foreign main proceeding, a case under another chapter of this title may be commenced only if the debtor has assets in the United States. The effects of such case shall be restricted to the assets of the debtor that are within the territorial jurisdiction of the United States and, to the extent necessary to implement cooperation and coordination under sections 1525, 1526, and 1527, to other assets of the debtor that are within the jurisdiction of the court under sections 541(a) of this title, and 1334(e) of title 28, to the extent that such other assets are not subject to the jurisdiction and control of a foreign proceeding that has been recognized under this chapter.

''§ 1529. Coordination of a case under this title and a foreign proceeding

''If a foreign proceeding and a case under another chapter of this title are pending concurrently regarding the same debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) If the case in the United States pending at the time the petition for recognition of such foreign proceeding is filed—

''(A) any relief granted under section 1519 or 1521 must be consistent with the relief granted in the case in the United States; and

''(B) section 1520 does not apply even if such foreign proceeding is recognized as a foreign main proceeding.

''(2) If a case in the United States under this title commences after recognition, or after the date of the filing of the petition for recognition, of such foreign proceeding—

''(A) any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the case in the United States; and

''(B) if such foreign proceeding is a foreign main proceeding, the stay and suspension referred to in section 1520(a) shall be modified or terminated if inconsistent with the relief granted in the case in the United States.

''(3) In granting, extending, or modifying relief granted to a representative of a foreign nonmain proceeding, the court must be satisfied that the relief relates to assets that, under the laws of the United States, should be administered in the foreign nonmain proceeding or concerns information required in that proceeding.

''(4) In achieving cooperation and coordination under sections 1528 and 1529, the court may grant any of the relief authorized under section 305.

''§ 1530. Coordination of more than 1 foreign proceeding

''In matters referred to in section 1501, with respect to more than 1 foreign proceeding regarding the debtor, the court shall seek cooperation and coordination under sections 1525, 1526, and 1527, and the following shall apply:

''(1) Any relief granted under section 1519 or 1521 to a representative of a foreign nonmain proceeding after recognition of a foreign main proceeding must be consistent with the foreign main proceeding.

''(2) If a foreign main proceeding is recognized after recognition, or after the filing of a petition for recognition, of a foreign nonmain proceeding, any relief in effect under section 1519 or 1521 shall be reviewed by the court and shall be modified or terminated if inconsistent with the foreign main proceeding.

''(3) If, after recognition of a foreign nonmain proceeding, another foreign nonmain proceeding is recognized, the court shall grant, modify, or terminate relief for the purpose of facilitating coordination of the proceedings.

''§ 1531. Presumption of insolvency based on recognition of a foreign main proceeding

''In the absence of evidence to the contrary, recognition of a foreign main proceeding is, for the purpose of commencing a proceeding under section 303, proof that the debtor is generally not paying its debts as such debts become due.

''§ 1532. Rule of payment in concurrent proceedings

''Without prejudice to secured claims or rights in rem, a creditor who has received payment with respect to its claim in a foreign proceeding pursuant to a law relating to insolvency may not receive a payment for the same claim in a case under any other chapter of this title regarding the debtor, so long as the payment to other creditors of the same class is proportionately less than the payment the creditor has already received.''.

(b) CLERICAL AMENDMENT.—The table of chapters for title 11, United States Code, is amended by inserting after the item relating to chapter 13 the following:

''15. Ancillary and Other Cross-Border Cases ..... 1501''.

SEC. 802. OTHER AMENDMENTS TO TITLES 11 AND 28, UNITED STATES CODE.

(a) APPLICABILITY OF CHAPTERS.—Section 103 of title 11, United States Code, is amended—

(1) in subsection (a), by inserting before the period the following: '', and this chapter, sections 307, 362(n), 555 through 557, and 559 through 562 apply in a case under chapter 15''; and

(2) by adding at the end the following:

''(k) Chapter 15 applies only in a case under such chapter, except that—

''(1) sections 1505, 1513, and 1514 apply in all cases under this title; and

''(2) section 1509 applies whether or not a case under this title is pending.''.

(b) DEFINITIONS.—Section 101 of title 11, United States Code, is amended by striking paragraphs (23) and (24) and inserting the following:

''(23) 'foreign proceeding' means a collective judicial or administrative proceeding in a foreign country, including an interim proceeding, under a law relating to insolvency or adjustment of debt in which proceeding the assets and affairs of the debtor are subject to control or supervision by a foreign court, for the purpose of reorganization or liquidation;

''(24) 'foreign representative' means a person or body, including a person or body appointed on an interim basis, authorized in a foreign proceeding to administer the reorganization or the liquidation of the debtor's assets or affairs or to act as a representative of such foreign proceeding;''.

(c) AMENDMENTS TO TITLE 28, UNITED STATES CODE.—

(1) PROCEDURES.—Section 157(b)(2) of title 28, United States Code, is amended—

(A) in subparagraph (N), by striking ''and'' at the end;

(B) in subparagraph (O), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(P) recognition of foreign proceedings and other matters under chapter 15 of title 11.''.

(2) BANKRUPTCY CASES AND PROCEEDINGS.—Section 1334(c) of title 28, United States Code, is amended by striking ''Nothing in'' and inserting ''Except with respect to a case under chapter 15 of title 11, nothing in''.

(3) DUTIES OF TRUSTEES.—Section 586(a)(3) of title 28, United States Code, is amended by striking ''or 13'' and inserting ''13, or 15''.

(4) VENUE OF CASES ANCILLARY TO FOREIGN PROCEEDINGS.—Section 1410 of title 28, United States Code, is amended to read as follows:

''§ 1410. Venue of cases ancillary to foreign proceedings

''A case under chapter 15 of title 11 may be commenced in the district court of the United States for the district—

''(1) in which the debtor has its principal place of business or principal assets in the United States;

''(2) if the debtor does not have a place of business or assets in the United States, in which there is pending against the debtor an action or proceeding in a Federal or State court; or

''(3) in a case other than those specified in paragraph (1) or (2), in which venue will be consistent with the interests of justice and the convenience of the parties, having regard to the relief sought by the foreign representative.''.

(d) OTHER SECTIONS OF TITLE 11.—Title 11 of the United States Code is amended—

(1) in section 109(b), by striking paragraph (3) and inserting the following:

''(3)(A) a foreign insurance company, engaged in such business in the United States; or

''(B) a foreign bank, savings bank, cooperative bank, savings and loan association, building and loan association, or credit union, that has a branch or agency (as defined in section 1(b) of the International Banking Act of 1978 in the United States.'';

(2) in section 303, by striking subsection (k);

(3) by striking section 304;

(4) in the table of sections for chapter 3 by striking the item relating to section 304;

(5) in section 306 by striking '', 304,'' each place it appears;

(6) in section 305(a) by striking paragraph (2) and inserting the following:

''(2)(A) a petition under section 1515 for recognition of a foreign proceeding has been granted; and

''(B) the purposes of chapter 15 of this title would be best served by such dismissal or suspension.''; and

(7) in section 508—

(A) by striking subsection (a); and

(B) in subsection (b), by striking ''(b)''.

TITLE IX—FINANCIAL CONTRACT PROVISIONS

SEC. 901. TREATMENT OF CERTAIN AGREEMENTS BY CONSERVATORS OR RECEIVERS OF INSURED DEPOSITORY INSTITUTIONS.

(a) DEFINITION OF QUALIFIED FINANCIAL CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Corporation determines by regulation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended—

(A) by striking ''subsection—'' and inserting ''subsection, the following definitions shall apply:''; and

(B) in clause (i), by inserting '', resolution, or order'' after ''any similar agreement that the Board determines by regulation''.

(b) DEFINITION OF SECURITIES CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(ii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(ii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(ii)) is amended to read as follows:

''(ii) SECURITIES CONTRACT.—The term 'securities contract'—

''(I) means a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan, or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or any option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(II) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such agreement within the meaning of such term;

''(III) means any option entered into on a national securities exchange relating to foreign currencies;

''(IV) means the guarantee by or to any securities clearing agency of any settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, certificates of deposit, or mortgage loans or interests therein (including any interest therein or based on the value thereof) or option on any of the foregoing, including any option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(V) means any margin loan;

''(VI) means any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) means any combination of the agreements or transactions referred to in this clause;

''(VIII) means any option to enter into any agreement or transaction referred to in this clause;

''(IX) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this clause, except that the master agreement shall be considered to be a securities contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), (IV), (V), (VI), (VII), or (VIII); and

''(X) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(c) DEFINITION OF COMMODITY CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iii) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iii)) is amended to read as follows:

''(iii) COMMODITY CONTRACT.—The term 'commodity contract' means—

''(I) with respect to a futures commission merchant, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade;

''(II) with respect to a foreign futures commission merchant, a foreign future;

''(III) with respect to a leverage transaction merchant, a leverage transaction;

''(IV) with respect to a clearing organization, a contract for the purchase or sale of a commodity for future delivery on, or subject to the rules of, a contract market or board of trade that is cleared by such clearing organization, or commodity option traded on, or subject to the rules of, a contract market or board of trade that is cleared by suchclearing organization;

''(V) with respect to a commodity options dealer, a commodity option;

''(VI) any other agreement or transaction that is similar to any agreement or transaction referred to in this clause;

''(VII) any combination of the agreements or transactions referred to in this clause;

''(VIII) any option to enter into any agreement or transaction referred to in this clause;

''(IX) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII),

or (VIII), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this clause, except that the master agreement shall be considered to be a commodity contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), (IV), (V), (VI), (VII), or (VIII); or

''(X) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this clause, including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in this clause.''.

(d) DEFINITION OF FORWARD CONTRACT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(iv) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(iv) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(iv)) is amended to read as follows:

''(iv) FORWARD CONTRACT.—The term 'forward contract' means—

''(I) a contract (other than a commodity contract) for the purchase, sale, or transfer of a commodity or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade, or product or byproduct thereof, with a maturity date more than 2 days after the date the contract is entered into, including, a repurchase transaction, reverse repurchase transaction, consignment, lease, swap, hedge transaction, deposit, loan, option, allocated transaction, unallocated transaction, or any other similar agreement;

''(II) any combination of agreements or transactions referred to in subclauses (I) and (III);

''(III) any option to enter into any agreement or transaction referred to in subclause (I) or (II);

''(IV) a master agreement that provides for an agreement or transaction referred to in subclauses (I), (II), or (III), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a forward contract under this clause, except that the master agreement shall be considered to be a forward contract under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), or (III); or

''(V) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (II), (III), or (IV), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.''.

(e) DEFINITION OF REPURCHASE AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(v) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Corporation determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted by the appropriate Federal banking authority).''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D)(v) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)(v)) is amended to read as follows:

''(v) REPURCHASE AGREEMENT.—The term 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(I) means an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage-related securities (as such term is defined in the Securities Exchange Act of 1934), mortgage loans, interests in mortgage-related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests as described above, at a date certain not later than 1 year after such transfers or on demand, against the transfer of funds, or any other similar agreement;

''(II) does not include any repurchase obligation under a participation in a commercial mortgage loan unless the Board determines by regulation, resolution, or order to include any such participation within the meaning of such term;

''(III) means any combination of agreements or transactions referred to in subclauses (I) and (IV);

''(IV) means any option to enter into any agreement or transaction referred to in subclause (I) or (III);

''(V) means a master agreement that provides for an agreement or transaction referred to in subclause (I), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a repurchase agreement under this clause, except that the master agreement shall be considered to be a repurchase agreement under this subclause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (III), or (IV); and

''(VI) means any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in subclause (I), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

For purposes of this clause, the term 'qualified foreign government security' means a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development (as determined by regulation or order adopted

by the appropriate Federal banking authority).''.

(f) DEFINITION OF SWAP AGREEMENT.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vi) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vi)) is amended to read as follows:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by adding at the end the following new clause:

''(vi) SWAP AGREEMENT.—The term 'swap agreement' means—

''(I) any agreement, including the terms and conditions incorporated by reference in any such agreement, which is an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap; a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement; a currency swap, option, future, or forward agreement; an equity index or equity swap, option, future, or forward agreement; a debt index or debt swap, option, future, or forward agreement; a total return, credit spread or credit swap, option, future, or forward agreement; a commodity index or commodity swap, option, future, or forward agreement; or a weather swap, weather derivative, or weather option;

''(II) any agreement or transaction that is similar to any other agreement or transaction referred to in this clause and that is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference in such agreement) and that is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(III) any combination of agreements or transactions referred to in this clause;

''(IV) any option to enter into any agreement or transaction referred to in this clause;

''(V) a master agreement that provides for an agreement or transaction referred to in subclause (I), (II), (III), or (IV), together with all supplements to any such master agreement, without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this clause, except that the master agreement shall be considered to be a swap agreement under this clause only with respect to each agreement or transaction under the master agreement that is referred to in subclause (I), (II), (III), or (IV); and

''(VI) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in subclause (I), (II), (III), (IV), or (V), including any guarantee or reimbursement obligation in connection with any agreement or transaction referred to in any such subclause.

Such term is applicable for purposes of this subsection only and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000.''.

(g) DEFINITION OF TRANSFER.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(viii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(viii)) is amended to read as follows:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) (as amended by subsection (f) of this section) is amended by adding at the end the following new clause:

''(viii) TRANSFER.—The term 'transfer' means every mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with property or with an interest in property, including retention of title as a security interest and foreclosure of the depository institution's equity of redemption.''.

(h) TREATMENT OF QUALIFIED FINANCIAL CONTRACTS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (10)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts described in clause (i);''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (A)—

(i) by striking ''paragraph (12)'' and inserting ''paragraphs (9) and (10)'';

(ii) in clause (i), by striking ''to cause the termination or liquidation'' and inserting ''such person has to cause the termination, liquidation, or acceleration''; and

(iii) by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''; and

(B) in subparagraph (E), by striking clause (ii) and inserting the following new clause:

''(ii) any right under any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts described in clause (i);''.

(i) AVOIDANCE OF TRANSFERS.—

(1) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(C)(i) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Corporation''.

(2) INSURED CREDIT UNIONS.—Section 207(c)(8)(C)(i) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(C)(i)) is amended by inserting ''section 5242 of the Revised Statutes of the United States or any other Federal or

State law relating to the avoidance of preferential or fraudulent transfers,'' before ''the Board''.

SEC. 902. AUTHORITY OF THE FDIC AND NCUAB WITH RESPECT TO FAILED AND FAILING INSTITUTIONS.

(a) FEDERAL DEPOSIT INSURANCE CORPORATION.—

(1) IN GENERAL.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended—

(A) in subparagraph (E), by striking ''other than paragraph (12) of this subsection, subsection (d)(9)'' and inserting ''other than subsections (d)(9) and (e)(10)''; and

(B) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Corporation, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Corporation to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (e)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured depository institution in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 11(e)(12)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

(b) NATIONAL CREDIT UNION ADMINISTRATION BOARD.—

(1) IN GENERAL.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended—

(A) in subparagraph (E) (as amended by section 901(h)), by striking ''other than paragraph (12) of this subsection, subsection (b)(9)'' and inserting ''other than subsections (b)(9) and (c)(10)''; and

(B) by adding at the end the following new subparagraphs:

''(F) CLARIFICATION.—No provision of law shall be construed as limiting the right or power of the Board, or authorizing any court or agency to limit or delay, in any manner, the right or power of the Board to transfer any qualified financial contract in accordance with paragraphs (9) and (10) of this subsection or to disaffirm or repudiate any such contract in accordance with subsection (c)(1) of this section.

''(G) WALKAWAY CLAUSES NOT EFFECTIVE.—

''(i) IN GENERAL.—Notwithstanding the provisions of subparagraphs (A) and (E), and sections 403 and 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, no walkaway clause shall be enforceable in a qualified financial contract of an insured credit union in default.

''(ii) WALKAWAY CLAUSE DEFINED.—For purposes of this subparagraph, the term 'walkaway clause' means a provision in a qualified financial contract that, after calculation of a value of a party's position or an amount due to or from 1 of the parties in accordance with its terms upon termination, liquidation, or acceleration of the qualified financial contract, either does not create a payment obligation of a party or extinguishes a payment obligation of a party in whole or in part solely because of such party's status as a nondefaulting party.''.

(2) TECHNICAL AND CONFORMING AMENDMENT.—Section 207(c)(12)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(12)(A)) is amended by inserting ''or the exercise of rights or powers by'' after ''the appointment of''.

SEC. 903. AMENDMENTS RELATING TO TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 11(e)(9) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a depository institution in default which includes any qualified financial contract, the conservator or receiver for such depository institution shall either—

''(i) transfer to one financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the depository institution in default;

''(II) all claims of such person or any affiliate of such person against such depository institution under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such institution);

''(III) all claims of such depository institution against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or receiver for the depository institution shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to one or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or receiver transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITIONS.—For purposes of this paragraph, the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, or any other institution, as determined by the Corporation by regulation to be a financial institution, and the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 11(e)(10)(A) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or receiver shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver in the case of a receivership, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST RECEIVER AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 11(e)(10) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) RECEIVERSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a receiver for the depository institution (or the insolvency or financial condition of the depository institution for which the receiver has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the receiver; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured depository institution may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the depository institution (or the insolvency or financial condition of the depository institution for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Corporation as receiver or conservator of an insured depository institution shall be deemed to have notified a person who is a party to a qualified financial contract with such depository institution if the Corporation has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered

to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A depository institution organized by the Corporation, for which a conservator is appointed either—

''(I) immediately upon the organization of the institution; or

''(II) at the time of a purchase and assumption transaction between the depository institution and the Corporation as receiver for a depository institution in default.''.

(b) INSURED CREDIT UNIONS.—

(1) TRANSFERS OF QUALIFIED FINANCIAL CONTRACTS TO FINANCIAL INSTITUTIONS.—Section 207(c)(9) of the Federal Credit Union Act (12 U.S.C. 1787(c)(9)) is amended to read as follows:

''(9) TRANSFER OF QUALIFIED FINANCIAL CONTRACTS.—

''(A) IN GENERAL.—In making any transfer of assets or liabilities of a credit union in default which includes any qualified financial contract, the conservator or liquidating agent for such credit union shall either—

''(i) transfer to 1 financial institution, other than a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding—

''(I) all qualified financial contracts between any person or any affiliate of such person and the credit union in default;

''(II) all claims of such person or any affiliate of such person against such credit union under any such contract (other than any claim which, under the terms of any such contract, is subordinated to the claims of general unsecured creditors of such credit union);

''(III) all claims of such credit union against such person or any affiliate of such person under any such contract; and

''(IV) all property securing or any other credit enhancement for any contract described in subclause (I) or any claim described in subclause (II) or (III) under any such contract; or

''(ii) transfer none of the qualified financial contracts, claims, property or other credit enhancement referred to in clause (i) (with respect to such person and any affiliate of such person).

''(B) TRANSFER TO FOREIGN BANK, FOREIGN FINANCIAL INSTITUTION, OR BRANCH OR AGENCY OF A FOREIGN BANK OR FINANCIAL INSTITUTION.—In transferring any qualified financial contracts and related claims and property under subparagraph (A)(i), the conservator or liquidating agent for the credit union shall not make such transfer to a foreign bank, financial institution organized under the laws of a foreign country, or a branch or agency of a foreign bank or financial institution unless, under the law applicable to such bank, financial institution, branch or agency, to the qualified financial contracts, and to any netting contract, any security agreement or arrangement or other credit enhancement related to 1 or more qualified financial contracts, the contractual rights of the parties to such qualified financial contracts, netting contracts, security agreements or arrangements, or other credit enhancements are enforceable substantially to the same extent as permitted under this section.

''(C) TRANSFER OF CONTRACTS SUBJECT TO THE RULES OF A CLEARING ORGANIZATION.—In the event that a conservator or liquidating agent transfers any qualified financial contract and related claims, property, and credit enhancements pursuant to subparagraph (A)(i) and such contract is cleared by or subject to the rules of a clearing organization, the clearing organization shall not be required to accept the transferee as a member by virtue of the transfer.

''(D) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'financial institution' means a broker or dealer, a depository institution, a futures commission merchant, a credit union, or any other institution, as determined by the Board by regulation to be a financial institution; and

''(ii) the term 'clearing organization' has the same meaning as in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991.''.

(2) NOTICE TO QUALIFIED FINANCIAL CONTRACT COUNTERPARTIES.—Section 207(c)(10)(A) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)(A)) is amended in the material immediately following clause (ii) by striking ''the conservator'' and all that follows through the period and inserting the following: ''the conservator or liquidating agent shall notify any person who is a party to any such contract of such transfer by 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent in the case of a liquidation, or the business day following such transfer in the case of a conservatorship.''.

(3) RIGHTS AGAINST LIQUIDATING AGENT AND CONSERVATOR AND TREATMENT OF BRIDGE BANKS.—Section 207(c)(10) of the Federal Credit Union Act (12 U.S.C. 1787(c)(10)) is amended—

(A) by redesignating subparagraph (B) as subparagraph (D); and

(B) by inserting after subparagraph (A) the following new subparagraphs:

''(B) CERTAIN RIGHTS NOT ENFORCEABLE.—

''(i) LIQUIDATION.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(A) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a liquidating agent for the credit union institution (or the insolvency or financial condition of the credit union for which the liquidating agent has been appointed)—

''(I) until 5:00 p.m. (eastern time) on the business day following the date of the appointment of the liquidating agent; or

''(II) after the person has received notice that the contract has been transferred pursuant to paragraph (9)(A).

''(ii) CONSERVATORSHIP.—A person who is a party to a qualified financial contract with an insured credit union may not exercise any right that such person has to terminate, liquidate, or net such contract under paragraph (8)(E) of this subsection or section 403 or 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991, solely by reason of or incidental to the appointment of a conservator for the credit union or the insolvency or financial condition of the credit union for which the conservator has been appointed).

''(iii) NOTICE.—For purposes of this paragraph, the Board as conservator or liquidating agent of an insured credit union shall be deemed to have notified a person who is a party to a qualified financial contract with such credit union if the Board has taken steps reasonably calculated to provide notice to such person by the time specified in subparagraph (A).

''(C) TREATMENT OF BRIDGE BANKS.—The following institutions shall not be considered to be a financial institution for which a conservator, receiver, trustee in bankruptcy, or other legal custodian has been appointed or which is otherwise the subject of a bankruptcy or insolvency proceeding for purposes of paragraph (9):

''(i) A bridge bank.

''(ii) A credit union organized by the Board, for which a conservator is appointed either—

''(I) immediately upon the organization of the credit union; or

''(II) at the time of a purchase and assumption transaction between the credit union and the Board as receiver for a credit union in default.''.

SEC. 904. AMENDMENTS RELATING TO DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)) is amended—

(1) by redesignating paragraphs (11) through (15) as paragraphs (12) through (16), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or receiver with respect to any qualified financial contract to which an insured depository institution is a party, the conservator or receiver for such institution shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the depository institution in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''; and

(3) by adding at the end the following new paragraph:

''(17) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section 3(a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

(b) INSURED CREDIT UNIONS.—Section 207(c) of the Federal Credit Union Act (12 U.S.C. 1787(c)) is amended—

(1) by redesignating paragraphs (11), (12), and (13) as paragraphs (12), (13), and (14), respectively;

(2) by inserting after paragraph (10) the following new paragraph:

''(11) DISAFFIRMANCE OR REPUDIATION OF QUALIFIED FINANCIAL CONTRACTS.—In exercising the rights of disaffirmance or repudiation of a conservator or liquidating agent with respect to any qualified financial contract to which an insured credit union is a party, the conservator or liquidating agent for such credit union shall either—

''(A) disaffirm or repudiate all qualified financial contracts between—

''(i) any person or any affiliate of such person; and

''(ii) the credit union in default; or

''(B) disaffirm or repudiate none of the qualified financial contracts referred to in subparagraph (A) (with respect to such person or any affiliate of such person).''; and

(3) by adding at the end the following new paragraph:

''(15) SAVINGS CLAUSE.—The meanings of terms used in this subsection are applicable for purposes of this subsection only, and

shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any similar terms under any other statute, regulation, or rule, including the Gramm-Leach-Bliley Act, the Legal Certainty for Bank Products Act of 2000, the securities laws (as that term is defined in section (a)(47) of the Securities Exchange Act of 1934), and the Commodity Exchange Act.''.

SEC. 905. CLARIFYING AMENDMENT RELATING TO MASTER AGREEMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8)(D)(vii) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)(D)(vii)) is amended to read as follows:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8)(D) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)(D)) is amended by inserting after clause (vi) (as added by section 901(f)) the following new clause:

''(vii) TREATMENT OF MASTER AGREEMENT AS ONE AGREEMENT.—Any master agreement for any contract or agreement described in any preceding clause of this subparagraph (or any master agreement for such master agreement or agreements), together with all supplements to such master agreement, shall be treated as a single agreement and a single qualified financial contract. If a master agreement contains provisions relating to agreements or transactions that are not themselves qualified financial contracts, the master agreement shall be deemed to be a qualified financial contract only with respect to those transactions that are themselves qualified financial contracts.''.

SEC. 906. FEDERAL DEPOSIT INSURANCE CORPORATION IMPROVEMENT ACT OF 1991.

(a) DEFINITIONS.—Section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4402) is amended—

(1) in paragraph (2)—

(A) in subparagraph (A)(ii), by inserting before the semicolon '', or is exempt from such registration by order of the Securities and Exchange Commission''; and

(B) in subparagraph (B), by inserting before the period '', that has been granted an exemption under section 4(c)(1) of the Commodity Exchange Act, or that is a multilateral clearing organization (as defined in section 408 of this Act)'';

(2) in paragraph (6)—

(A) by redesignating subparagraphs (B) through (D) as subparagraphs (C) through (E), respectively;

(B) by inserting after subparagraph (A) the following new subparagraph:

''(B) an uninsured national bank or an uninsured State bank that is a member of the Federal Reserve System, if the national bank or State member bank is not eligible to make application to become an insured bank under section 5 of the Federal Deposit Insurance Act;''; and

(C) by amending subparagraph (C), so redesignated, to read as follows:

''(C) a branch or agency of a foreign bank, a foreign bank and any branch or agency of the foreign bank, or the foreign bank that established the branch or agency, as those terms are defined in section 1(b) of the International Banking Act of 1978;'';

(3) in paragraph (11), by inserting before the period ''and any other clearing organization with which such clearing organization has a netting contract'';

(4) by amending paragraph (14)(A)(i) to read as follows:

''(i) means a contract or agreement between 2 or more financial institutions, clearing organizations, or members that provides for netting present or future payment obligations or payment entitlements (including liquidation or close out values relating to such obligations or entitlements) among the parties to the agreement; and''; and

(5) by adding at the end the following new paragraph:

''(15) PAYMENT.—The term 'payment' means a payment of United States dollars, another currency, or a composite currency, and a noncash delivery, including a payment or delivery to liquidate an unmatured obligation.''.

(b) ENFORCEABILITY OF BILATERAL NETTING CONTRACTS.—Section 403 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4403) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, or any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements between any 2 financial institutions shall be netted in accordance with, and subject to the conditions of, the terms of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(f) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 financial institutions shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(c) ENFORCEABILITY OF CLEARING ORGANIZATION NETTING CONTRACTS.—Section 404 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4404) is amended—

(1) by striking subsection (a) and inserting the following:

''(a) GENERAL RULE.—Notwithstanding any other provision of State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and any order authorized under section 5(b)(2) of the Securities Investor Protection Act of 1970), the covered contractual payment obligations and the covered contractual payment entitlements of a member of a clearing organization to and from all other members of a clearing organization shall be netted in accordance with and subject to the conditions of any applicable netting contract (except as provided in section 561(b)(2) of title 11, United States Code).''; and

(2) by adding at the end the following new subsection:

''(h) ENFORCEABILITY OF SECURITY AGREEMENTS.—The provisions of any security agreement or arrangement or other credit enhancement related to one or more netting contracts between any 2 members of a clearing organization shall be enforceable in accordance with their terms (except as provided in section 561(b)(2) of title 11, United States Code), and shall not be stayed, avoided, or otherwise limited by any State or Federal law (other than paragraphs (8)(E), (8)(F), and (10)(B) of section 11(e) of the Federal Deposit Insurance Act, paragraphs (8)(E), (8)(F), and (10)(B) of section 207(c) of the Federal Credit Union Act, and section 5(b)(2) of the Securities Investor Protection Act of 1970).''.

(d) ENFORCEABILITY OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.—The Federal Deposit Insurance Corporation Improvement Act of 1991 (12 U.S.C. 4401 et seq.) is amended—

(1) by redesignating section 407 as section 407A; and

(2) by inserting after section 406 the following new section:

''SEC. 407. TREATMENT OF CONTRACTS WITH UNINSURED NATIONAL BANKS, UNINSURED FEDERAL BRANCHES AND AGENCIES, CERTAIN UNINSURED STATE MEMBER BANKS, AND EDGE ACT CORPORATIONS.

''(a) IN GENERAL.—Notwithstanding any other provision of law, paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act shall apply to an uninsured national bank or uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, except that for such purpose—

''(1) any reference to the 'Corporation as receiver' or 'the receiver or the Corporation' shall refer to the receiver appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank;

''(2) any reference to the 'Corporation' (other than in section 11(e)(8)(D) of such Act), the 'Corporation, whether acting as such or as conservator or receiver', a 'receiver', or a 'conservator' shall refer to the receiver or conservator appointed by the Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency, or to the receiver or conservator appointed by the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act or an uninsured State member bank; and

''(3) any reference to an 'insured depository institution' or 'depository institution' shall refer to an uninsured national bank, an uninsured Federal branch or Federal agency, a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act.

''(b) LIABILITY.—The liability of a receiver or conservator of an uninsured national bank, uninsured Federal branch or agency, a corporation chartered under section 25A of

the Federal Reserve Act, or an uninsured State member bank which operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, shall be determined in the same manner and subject to the same limitations that apply to receivers and conservators of insured depository institutions under section 11(e) of the Federal Deposit Insurance Act.

''(c) REGULATORY AUTHORITY.—

''(1) IN GENERAL.—The Comptroller of the Currency in the case of an uninsured national bank or uninsured Federal branch or agency and the Board of Governors of the Federal Reserve System in the case of a corporation chartered under section 25A of the Federal Reserve Act, or an uninsured State member bank that operates, or operates as, a multilateral clearing organization pursuant to section 409 of this Act, in consultation with the Federal Deposit Insurance Corporation, may each promulgate regulations solely to implement this section.

''(2) SPECIFIC REQUIREMENT.—In promulgating regulations, limited solely to implementing paragraphs (8), (9), (10), and (11) of section 11(e) of the Federal Deposit Insurance Act, the Comptroller of the Currency and the Board of Governors of the Federal Reserve System each shall ensure that the regulations generally are consistent with the regulations and policies of the Federal Deposit Insurance Corporation adopted pursuant to the Federal Deposit Insurance Act.

''(d) DEFINITIONS.—For purposes of this section, the terms 'Federal branch', 'Federal agency', and 'foreign bank' have the same meanings as in section 1(b) of the International Banking Act of 1978.''.

SEC. 907. BANKRUPTCY LAW AMENDMENTS.

(a) DEFINITIONS OF FORWARD CONTRACT, REPURCHASE AGREEMENT, SECURITIES CLEARING AGENCY, SWAP AGREEMENT, COMMODITY CONTRACT, AND SECURITIES CONTRACT.—Title 11, United States Code, is amended—

(1) in section 101—

(A) in paragraph (25)—

(i) by striking ''means a contract'' and inserting ''means—

''(A) a contract'';

(ii) by striking '', or any combination thereof or option thereon;'' and inserting '', or any other similar agreement;''; and

(iii) by adding at the end the following:

''(B) any combination of agreements or transactions referred to in subparagraphs (A) and (C);

''(C) any option to enter into an agreement or transaction referred to in subparagraph (A) or (B);

''(D) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), or (C), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a forward contract under this paragraph, except that such master agreement shall be considered to be a forward contract under this paragraph only with respect to each agreement or transaction under such master agreement that is referred to in subparagraph (A), (B), or (C); or

''(E) any security agreement or arrangement, or other credit enhancement related to any agreement or transaction referred to in subparagraph (A), (B), (C), or (D), including any guarantee or reimbursement obligation by or to a forward contract merchant or financial participant in connection with any agreement or transaction referred to in any such subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;'';

(B) in paragraph (46), by striking ''on any day during the period beginning 90 days before the date of'' and inserting ''at any time before'';

(C) by amending paragraph (47) to read as follows:

''(47) 'repurchase agreement' (which definition also applies to a reverse repurchase agreement)—

''(A) means—

''(i) an agreement, including related terms, which provides for the transfer of one or more certificates of deposit, mortgage related securities (as defined in section 3 of the Securities Exchange Act of 1934), mortgage loans, interests in mortgage related securities or mortgage loans, eligible bankers' acceptances, qualified foreign government securities (defined as a security that is a direct obligation of, or that is fully guaranteed by, the central government of a member of the Organization for Economic Cooperation and Development), or securities that are direct obligations of, or that are fully guaranteed by, the United States or any agency of the United States against the transfer of funds by the transferee of such certificates of deposit, eligible bankers' acceptances, securities, mortgage loans, or interests, with a simultaneous agreement by such transferee to transfer to the transferor thereof certificates of deposit, eligible bankers' acceptance, securities, mortgage loans, or interests of the kind described in this clause, at a date certain not later than 1 year after such transfer or on demand, against the transfer of funds;

''(ii) any combination of agreements or transactions referred to in clauses (i) and (iii);

''(iii) an option to enter into an agreement or transaction referred to in clause (i) or (ii);

''(iv) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), or (iii), together with all supplements to any such master agreement, without regard to whether such master agreement provides for an agreement or transaction that is not a repurchase agreement under this paragraph, except that such master agreement shall be considered to be a repurchase agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), or (iii); or

''(v) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in clause (i), (ii), (iii), or (iv), including any guarantee or reimbursement obligation by or to a repo participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562 of this title; and

''(B) does not include a repurchase obligation under a participation in a commercial mortgage loan;'';

(D) in paragraph (48), by inserting '', or exempt from such registration under such section pursuant to an order of the Securities and Exchange Commission,'' after ''1934''; and

(E) by amending paragraph (53B) to read as follows:

''(53B) 'swap agreement'—

''(A) means—

''(i) any agreement, including the terms and conditions incorporated by reference in such agreement, which is—

''(I) an interest rate swap, option, future, or forward agreement, including a rate floor, rate cap, rate collar, cross-currency rate swap, and basis swap;

''(II) a spot, same day-tomorrow, tomorrow-next, forward, or other foreign exchange or precious metals agreement;

''(III) a currency swap, option, future, or forward agreement;

''(IV) an equity index or equity swap, option, future, or forward agreement;

''(V) a debt index or debt swap, option, future, or forward agreement;

''(VI) a total return, credit spread or credit swap, option, future, or forward agreement;

''(VII) a commodity index or a commodity swap, option, future, or forward agreement; or

''(VIII) a weather swap, weather derivative, or weather option;

''(ii) any agreement or transaction that is similar to any other agreement or transaction referred to in this paragraph and that—

''(I) is of a type that has been, is presently, or in the future becomes, the subject of recurrent dealings in the swap markets (including terms and conditions incorporated by reference therein); and

''(II) is a forward, swap, future, or option on one or more rates, currencies, commodities, equity securities, or other equity instruments, debt securities or other debt instruments, quantitative measures associated with an occurrence, extent of an occurrence, or contingency associated with a financial, commercial, or economic consequence, or economic or financial indices or measures of economic or financial risk or value;

''(iii) any combination of agreements or transactions referred to in this subparagraph;

''(iv) any option to enter into an agreement or transaction referred to in this subparagraph;

''(v) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), or (iv), together with all supplements to any such master agreement, and without regard to whether the master agreement contains an agreement or transaction that is not a swap agreement under this paragraph, except that the master agreement shall be considered to be a swap agreement under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in clause (i), (ii), (iii), or (iv); or

''(vi) any security agreement or arrangement or other credit enhancement related to any agreements or transactions referred to in clause (i) through (v), including any guarantee or reimbursement obligation by or to a swap participant or financial participant in connection with any agreement or transaction referred to in any such clause, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) is applicable for purposes of this title only, and shall not be construed or applied so as to challenge or affect the characterization, definition, or treatment of any swap agreement under any other statute, regulation, or rule, including the Securities Act of 1933, the Securities Exchange Act of 1934, the Public Utility Holding Company Act of 1935, the Trust Indenture Act of 1939, the Investment Company Act of 1940, the Investment Advisers Act of 1940, the Securities Investor Protection Act of 1970, the Commodity Exchange Act, the Gramm-Leach-Bliley Act, and the Legal Certainty for Bank Products Act of 2000;'';

(2) in section 741(7), by striking paragraph (7) and inserting the following:

''(7) 'securities contract'—

''(A) means—

''(i) a contract for the purchase, sale, or loan of a security, a certificate of deposit, a mortgage loan or any interest in a mortgage loan, a group or index of securities, certificates of deposit, or mortgage loans or interests therein (including an interest therein or based on the value thereof), or option on any

of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option, and including any repurchase or reverse repurchase transaction on any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(ii) any option entered into on a national securities exchange relating to foreign currencies;

''(iii) the guarantee by or to any securities clearing agency of a settlement of cash, securities, certificates of deposit, mortgage loans or interests therein, group or index of securities, or mortgage loans or interests therein (including any interest therein or based on the value thereof), or option on any of the foregoing, including an option to purchase or sell any such security, certificate of deposit, mortgage loan, interest, group or index, or option;

''(iv) any margin loan;

''(v) any other agreement or transaction that is similar to an agreement or transaction referred to in this subparagraph;

''(vi) any combination of the agreements or transactions referred to in this subparagraph;

''(vii) any option to enter into any agreement or transaction referred to in this subparagraph;

''(viii) a master agreement that provides for an agreement or transaction referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii), together with all supplements to any such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a securities contract under this subparagraph, except that such master agreement shall be considered to be a securities contract under this subparagraph only with respect to each agreement or transaction under such master agreement that is referred to in clause (i), (ii), (iii), (iv), (v), (vi), or (vii); or

''(ix) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this subparagraph, including any guarantee or reimbursement obligation by or to a stockbroker, securities clearing agency, financial institution, or financial participant in connection with any agreement or transaction referred to in this subparagraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562; and

''(B) does not include any purchase, sale, or repurchase obligation under a participation in a commercial mortgage loan;''; and

(3) in section 761(4)—

(A) by striking ''or'' at the end of subparagraph (D); and

(B) by adding at the end the following:

''(F) any other agreement or transaction that is similar to an agreement or transaction referred to in this paragraph;

''(G) any combination of the agreements or transactions referred to in this paragraph;

''(H) any option to enter into an agreement or transaction referred to in this paragraph;

''(I) a master agreement that provides for an agreement or transaction referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H), together with all supplements to such master agreement, without regard to whether the master agreement provides for an agreement or transaction that is not a commodity contract under this paragraph, except that the master agreement shall be considered to be a commodity contract under this paragraph only with respect to each agreement or transaction under the master agreement that is referred to in subparagraph (A), (B), (C), (D), (E), (F), (G), or (H); or

''(J) any security agreement or arrangement or other credit enhancement related to any agreement or transaction referred to in this paragraph, including any guarantee or reimbursement obligation by or to a commodity broker or financial participant in connection with any agreement or transaction referred to in this paragraph, but not to exceed the damages in connection with any such agreement or transaction, measured in accordance with section 562;''.

(b) DEFINITIONS OF FINANCIAL INSTITUTION, FINANCIAL PARTICIPANT, AND FORWARD CONTRACT MERCHANT.—Section 101 of title 11, United States Code, is amended—

(1) by striking paragraph (22) and inserting the following:

''(22) 'financial institution' means—

''(A) a Federal reserve bank, or an entity (domestic or foreign) that is a commercial or savings bank, industrial savings bank, savings and loan association, trust company, federally-insured credit union, or receiver, liquidating agent, or conservator for such entity and, when any such Federal reserve bank, receiver, liquidating agent, conservator or entity is acting as agent or custodian for a customer in connection with a securities contract (as defined in section 741) such customer; or

''(B) in connection with a securities contract (as defined in section 741) an investment company registered under the Investment Company Act of 1940;'';

(2) by inserting after paragraph (22) the following:

''(22A) 'financial participant' means—

''(A) an entity that, at the time it enters into a securities contract, commodity contract, swap agreement, repurchase agreement, or forward contract, or at the time of the date of the filing of the petition, has one or more agreements or transactions described in paragraph (1), (2), (3), (4), (5), or (6) of section 561(a) with the debtor or any other entity (other than an affiliate) of a total gross dollar value of not less than $1,000,000,000 in notional or actual principal amount outstanding on any day during the previous 15-month period, or has gross mark-to-market positions of not less than $100,000,000 (aggregated across counterparties) in one or more such agreements or transactions with the debtor or any other entity (other than an affiliate) on any day during the previous 15-month period; or

''(B) a clearing organization (as defined in section 402 of the Federal Deposit Insurance Corporation Improvement Act of 1991);''; and

(3) by striking paragraph (26) and inserting the following:

''(26) 'forward contract merchant' means a Federal reserve bank, or an entity the business of which consists in whole or in part of entering into forward contracts as or with merchants in a commodity (as defined in section 761) or any similar good, article, service, right, or interest which is presently or in the future becomes the subject of dealing in the forward contract trade;''.

(c) DEFINITION OF MASTER NETTING AGREEMENT AND MASTER NETTING AGREEMENT PARTICIPANT.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (38) the following new paragraphs:

''(38A) 'master netting agreement'—

''(A) means an agreement providing for the exercise of rights, including rights of netting, setoff, liquidation, termination, acceleration, or close out, under or in connection with one or more contracts that are described in any one or more of paragraphs (1) through (5) of section 561(a), or any security agreement or arrangement or other credit enhancement related to one or more of the foregoing, including any guarantee or reimbursement obligation related to 1 or more of the foregoing; and

''(B) if the agreement contains provisions relating to agreements or transactions that are not contracts described in paragraphs (1) through (5) of section 561(a), shall be deemed to be a master netting agreement only with respect to those agreements or transactions that are described in any one or more of paragraphs (1) through (5) of section 561(a);

''(38B) 'master netting agreement participant' means an entity that, at any time before the date of the filing of the petition, is a party to an outstanding master netting agreement with the debtor;''.

(d) SWAP AGREEMENTS, SECURITIES CONTRACTS, COMMODITY CONTRACTS, FORWARD CONTRACTS, REPURCHASE AGREEMENTS, AND MASTER NETTING AGREEMENTS UNDER THE AUTOMATIC-STAY.—

(1) IN GENERAL.—Section 362(b) of title 11, United States Code, as amended by sections 224, 303, 311, 401, and 718, is amended—

(A) in paragraph (6), by inserting '', pledged to, under the control of,'' after ''held by'';

(B) in paragraph (7), by inserting '', pledged to, under the control of,'' after ''held by'';

(C) by striking paragraph (17) and inserting the following:

''(17) under subsection (a), of the setoff by a swap participant or financial participant of a mutual debt and claim under or in connection with one or more swap agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with any swap agreement against any payment due to the debtor from the swap participant or financial participant under or in connection with any swap agreement or against cash, securities, or other property held by, pledged to, under the control of, or due from such swap participant or financial participant to margin, guarantee, secure, or settle any swap agreement;''; and

(D) by inserting after paragraph (26) the following:

''(27) under subsection (a), of the setoff by a master netting agreement participant of a mutual debt and claim under or in connection with one or more master netting agreements or any contract or agreement subject to such agreements that constitutes the setoff of a claim against the debtor for any payment or other transfer of property due from the debtor under or in connection with such agreements or any contract or agreement subject to such agreements against any payment due to the debtor from such master netting agreement participant under or in connection with such agreements or any contract or agreement subject to such agreements or against cash, securities, or other property held by, pledged to, under the control of, or due from such master netting agreement participant to margin, guarantee, secure, or settle such agreements or any contract or agreement subject to such agreements, to the extent that such participant is eligible to exercise such offset rights under paragraph (6), (7), or (17) for each individual contract covered by the master netting agreement in issue; and''.

(2) LIMITATION.—Section 362 of title 11, United States Code, as amended by sections 106, 305, 311, and 441, is amended by adding at the end the following:

''(o) The exercise of rights not subject to the stay arising under subsection (a) pursuant to paragraph (6), (7), (17), or (27) of subsection (b) shall not be stayed by any order of a court or administrative agency in any proceeding under this title.''.

(e) LIMITATION OF AVOIDANCE POWERS UNDER MASTER NETTING AGREEMENT.—Section 546 of title 11, United States Code, is amended—

(1) in subsection (g) (as added by section 103 of Public Law 101–311)—

(A) by striking ''under a swap agreement'';

(B) by striking ''in connection with a swap agreement'' and inserting ''under or in connection with any swap agreement''; and

(C) by inserting ''or financial participant'' after ''swap participant''; and

(2) by adding at the end the following:

''(j) Notwithstanding sections 544, 545, 547, 548(a)(1)(B), and 548(b) the trustee may not avoid a transfer made by or to a master netting agreement participant under or in connection with any master netting agreement or any individual contract covered thereby that is made before the commencement of the case, except under section 548(a)(1)(A) and except to the extent that the trustee could otherwise avoid such a transfer made under an individual contract covered by such master netting agreement.''.

(f) FRAUDULENT TRANSFERS OF MASTER NETTING AGREEMENTS.—Section 548(d)(2) of title 11, United States Code, is amended—

(1) in subparagraph (C), by striking ''and'' at the end;

(2) in subparagraph (D), by striking the period and inserting ''; and''; and

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

''(E) a master netting agreement participant that receives a transfer in connection with a master netting agreement or any individual contract covered thereby takes for value to the extent of such transfer, except that, with respect to a transfer under any individual contract covered thereby, to the extent that such master netting agreement participant otherwise did not take (or is otherwise not deemed to have taken) such transfer for value.''.

(g) TERMINATION OR ACCELERATION OF SECURITIES CONTRACTS.—Section 555 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 555. Contractual right to liquidate, terminate, or accelerate a securities contract'';

and

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''.

(h) TERMINATION OR ACCELERATION OF COMMODITIES OR FORWARD CONTRACTS.—Section 556 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(i) TERMINATION OR ACCELERATION OF REPURCHASE AGREEMENTS.—Section 559 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement'';

(2) in the first sentence, by striking ''liquidation'' and inserting ''liquidation, termination, or acceleration''; and

(3) in the third sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(j) LIQUIDATION, TERMINATION, OR ACCELERATION OF SWAP AGREEMENTS.—Section 560 of title 11, United States Code, is amended—

(1) by amending the section heading to read as follows:

''§ 560. Contractual right to liquidate, terminate, or accelerate a swap agreement'';

(2) in the first sentence, by striking ''termination of a swap agreement'' and inserting ''liquidation, termination, or acceleration of one or more swap agreements'';

(3) by striking ''in connection with any swap agreement'' and inserting ''in connection with the termination, liquidation, or acceleration of one or more swap agreements''; and

(4) in the second sentence, by striking ''As used'' and all that follows through ''right,'' and inserting ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof and a right,''.

(k) LIQUIDATION, TERMINATION, ACCELERATION, OR OFFSET UNDER A MASTER NETTING AGREEMENT AND ACROSS CONTRACTS.—

(1) IN GENERAL.—Title 11, United States Code, is amended by inserting after section 560 the following:

''§ 561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15

''(a) Subject to subsection (b), the exercise of any contractual right, because of a condition of the kind specified in section 365(e)(1), to cause the termination, liquidation, or acceleration of or to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more (or the termination, liquidation, or acceleration of one or more)—

''(1) securities contracts, as defined in section 741(7);

''(2) commodity contracts, as defined in section 761(4);

''(3) forward contracts;

''(4) repurchase agreements;

''(5) swap agreements; or

''(6) master netting agreements,

shall not be stayed, avoided, or otherwise limited by operation of any provision of this title or by any order of a court or administrative agency in any proceeding under this title.

''(b)(1) A party may exercise a contractual right described in subsection (a) to terminate, liquidate, or accelerate only to the extent that such party could exercise such a right under section 555, 556, 559, or 560 for each individual contract covered by the master netting agreement in issue.

''(2) If a debtor is a commodity broker subject to subchapter IV of chapter 7—

''(A) a party may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a) except to the extent that the party has positive net equity in the commodity accounts at the debtor, as calculated under such subchapter; and

''(B) another commodity broker may not net or offset an obligation to the debtor arising under, or in connection with, a commodity contract entered into or held on behalf of a customer of the debtor and traded on or subject to the rules of a contract market designated under the Commodity Exchange Act or a derivatives transaction execution facility registered under the Commodity Exchange Act against any claim arising under, or in connection with, other instruments, contracts, or agreements listed in subsection (a).

''(3) No provision of subparagraph (A) or (B) of paragraph (2) shall prohibit the offset of claims and obligations that arise under—

''(A) a cross-margining agreement or similar arrangement that has been approved by the Commodity Futures Trading Commission or submitted to the Commodity Futures Trading Commission under paragraph (1) or (2) of section 5c(c) of the Commodity Exchange Act and has not been abrogated or rendered ineffective by the Commodity Futures Trading Commission; or

''(B) any other netting agreement between a clearing organization (as defined in section 761) and another entity that has been approved by the Commodity Futures Trading Commission.

''(c) As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act) or in a resolution of the governing board thereof, and a right, whether or not evidenced in writing, arising under common law, under law merchant, or by reason of normal business practice.

''(d) Any provisions of this title relating to securities contracts, commodity contracts, forward contracts, repurchase agreements, swap agreements, or master netting agreements shall apply in a case under chapter 15, so that enforcement of contractual provisions of such contracts and agreements in accordance with their terms will not be stayed or otherwise limited by operation of any provision of this title or by order of a court in any case under this title, and to limit avoidance powers to the same extent as in a proceeding under chapter 7 or 11 of this

title (such enforcement not to be limited based on the presence or absence of assets of the debtor in the United States).''.

(2) CONFORMING AMENDMENT.—The table of sections for chapter 5 of title 11, United States Code, is amended by inserting after the item relating to section 560 the following:

''561. Contractual right to terminate, liquidate, accelerate, or offset under a master netting agreement and across contracts; proceedings under chapter 15.''.

(l) COMMODITY BROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 766 the following:

''§ 767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(m) STOCKBROKER LIQUIDATIONS.—Title 11, United States Code, is amended by inserting after section 752 the following:

''§ 753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants

''Notwithstanding any other provision of this title, the exercise of rights by a forward contract merchant, commodity broker, stockbroker, financial institution, financial participant, securities clearing agency, swap participant, repo participant, or master netting agreement participant under this title shall not affect the priority of any unsecured claim it may have after the exercise of such rights.''.

(n) SETOFF.—Section 553 of title 11, United States Code, is amended—

(1) in subsection (a)(2)(B)(ii), by inserting before the semicolon the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)'';

(2) in subsection (a)(3)(C), by inserting before the period the following: ''(except for a setoff of a kind described in section 362(b)(6), 362(b)(7), 362(b)(17), 362(b)(27), 555, 556, 559, 560, or 561)''; and

(3) in subsection (b)(1), by striking ''362(b)(14),'' and inserting ''362(b)(17), 362(b)(27), 555, 556, 559, 560, 561,''.

(o) SECURITIES CONTRACTS, COMMODITY CONTRACTS, AND FORWARD CONTRACTS.—Title 11, United States Code, is amended—

(1) in section 362(b)(6), by striking ''financial institutions,'' each place such term appears and inserting ''financial institution, financial participant,'';

(2) in sections 362(b)(7) and 546(f), by inserting ''or financial participant'' after ''repo participant'' each place such term appears;

(3) in section 546(e), by inserting ''financial participant,'' after ''financial institution,'';

(4) in section 548(d)(2)(B), by inserting ''financial participant,'' after ''financial institution,'';

(5) in section 548(d)(2)(C), by inserting ''or financial participant'' after ''repo participant'';

(6) in section 548(d)(2)(D), by inserting ''or financial participant'' after ''swap participant'';

(7) in section 555—

(A) by inserting ''financial participant,'' after ''financial institution,''; and

(B) by striking the second sentence and inserting the following: ''As used in this section, the term 'contractual right' includes a right set forth in a rule or bylaw of a derivatives clearing organization (as defined in the Commodity Exchange Act), a multilateral clearing organization (as defined in the Federal Deposit Insurance Corporation Improvement Act of 1991), a national securities exchange, a national securities association, a securities clearing agency, a contract market designated under the Commodity Exchange Act, a derivatives transaction execution facility registered under the Commodity Exchange Act, or a board of trade (as defined in the Commodity Exchange Act), or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.'';

(8) in section 556, by inserting '', financial participant,'' after ''commodity broker'';

(9) in section 559, by inserting ''or financial participant'' after ''repo participant'' each place such term appears; and

(10) in section 560, by inserting ''or financial participant'' after ''swap participant''.

(p) CONFORMING AMENDMENTS.—Title 11, United States Code, is amended—

(1) in the table of sections for chapter 5—

(A) by amending the items relating to sections 555 and 556 to read as follows:

''555. Contractual right to liquidate, terminate, or accelerate a securities contract.

''556. Contractual right to liquidate, terminate, or accelerate a commodities contract or forward contract.'';

and

(B) by amending the items relating to sections 559 and 560 to read as follows:

''559. Contractual right to liquidate, terminate, or accelerate a repurchase agreement.

''560. Contractual right to liquidate, terminate, or accelerate a swap agreement.'';

and

(2) in the table of sections for chapter 7—

(A) by inserting after the item relating to section 766 the following:

''767. Commodity broker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.'';

and

(B) by inserting after the item relating to section 752 the following:

''753. Stockbroker liquidation and forward contract merchants, commodity brokers, stockbrokers, financial institutions, financial participants, securities clearing agencies, swap participants, repo participants, and master netting agreement participants.''.

SEC. 908. RECORDKEEPING REQUIREMENTS.

(a) FDIC-INSURED DEPOSITORY INSTITUTIONS.—Section 11(e)(8) of the Federal Deposit Insurance Act (12 U.S.C. 1821(e)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Corporation, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured depository institution with respect to qualified financial contracts (including market valuations) only if such insured depository institution is in a troubled condition (as such term is defined by the Corporation pursuant to section 32).''.

(b) INSURED CREDIT UNIONS.—Section 207(c)(8) of the Federal Credit Union Act (12 U.S.C. 1787(c)(8)) is amended by adding at the end the following new subparagraph:

''(H) RECORDKEEPING REQUIREMENTS.—The Board, in consultation with the appropriate Federal banking agencies, may prescribe regulations requiring more detailed recordkeeping by any insured credit union with respect to qualified financial contracts (including market valuations) only if such insured credit union is in a troubled condition (as such term is defined by the Board pursuant to section 212).''.

SEC. 909. EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.

Section 13(e)(2) of the Federal Deposit Insurance Act (12 U.S.C. 1823(e)(2)) is amended to read as follows:

''(2) EXEMPTIONS FROM CONTEMPORANEOUS EXECUTION REQUIREMENT.—An agreement to provide for the lawful collateralization of—

''(A) deposits of, or other credit extension by, a Federal, State, or local governmental entity, or of any depositor referred to in section 11(a)(2), including an agreement to provide collateral in lieu of a surety bond;

''(B) bankruptcy estate funds pursuant to section 345(b)(2) of title 11, United States Code;

''(C) extensions of credit, including any overdraft, from a Federal reserve bank or Federal home loan bank; or

''(D) one or more qualified financial contracts, as defined in section 11(e)(8)(D),

shall not be deemed invalid pursuant to paragraph (1)(B) solely because such agreement was not executed contemporaneously with the acquisition of the collateral or because of pledges, delivery, or substitution of the collateral made in accordance with such agreement.''.

SEC. 910. DAMAGE MEASURE.

(a) IN GENERAL.—Title 11, United States Code, is amended—

(1) by inserting after section 561, as added by section 907, the following:

''§ 562. Timing of damage measurement in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, and master netting agreements

''(a) If the trustee rejects a swap agreement, securities contract (as defined in section 741), forward contract, commodity contract (as defined in section 761), repurchase agreement, or master netting agreement pursuant to section 365(a), or if a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant liquidates, terminates, or accelerates such contract or agreement, damages shall be measured as of the earlier of—

''(1) the date of such rejection; or

''(2) the date or dates of such liquidation, termination, or acceleration.

''(b) If there are not any commercially reasonable determinants of value as of any date referred to in paragraph (1) or (2) of subsection (a), damages shall be measured as of the earliest subsequent date or dates on which there are commercially reasonable determinants of value.

''(c) For the purposes of subsection (b), if damages are not measured as of the date or dates of rejection, liquidation, termination, or acceleration, and the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting

agreement participant, or swap participant or the trustee objects to the timing of the measurement of damages—

''(1) the trustee, in the case of an objection by a forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant; or

''(2) the forward contract merchant, stockbroker, financial institution, securities clearing agency, repo participant, financial participant, master netting agreement participant, or swap participant, in the case of an objection by the trustee,

has the burden of proving that there were no commercially reasonable determinants of value as of such date or dates.''; and

(2) in the table of sections for chapter 5, by inserting after the item relating to section 561 (as added by section 907) the following new item:

''562. Timing of damage measure in connection with swap agreements, securities contracts, forward contracts, commodity contracts, repurchase agreements, or master netting agreements.''.

(b) CLAIMS ARISING FROM REJECTION.—Section 502(g) of title 11, United States Code, is amended—

(1) by inserting ''(1)'' after ''(g)''; and

(2) by adding at the end the following:

''(2) A claim for damages calculated in accordance with section 562 shall be allowed under subsection (a), (b), or (c), or disallowed under subsection (d) or (e), as if such claim had arisen before the date of the filing of the petition.''.

SEC. 911. SIPC STAY.

Section 5(b)(2) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78eee(b)(2)) is amended by adding at the end the following new subparagraph:

''(C) EXCEPTION FROM STAY.—

''(i) Notwithstanding section 362 of title 11, United States Code, neither the filing of an application under subsection (a)(3) nor any order or decree obtained by SIPC from the court shall operate as a stay of any contractual rights of a creditor to liquidate, terminate, or accelerate a securities contract, commodity contract, forward contract, repurchase agreement, swap agreement, or master netting agreement, as those terms are defined in sections 101, 741, and 761 of title 11, United States Code, to offset or net termination values, payment amounts, or other transfer obligations arising under or in connection with one or more of such contracts or agreements, or to foreclose on any cash collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements.

''(ii) Notwithstanding clause (i), such application, order, or decree may operate as a stay of the foreclosure on, or disposition of, securities collateral pledged by the debtor, whether or not with respect to one or more of such contracts or agreements, securities sold by the debtor under a repurchase agreement, or securities lent under a securities lending agreement.

''(iii) As used in this subparagraph, the term 'contractual right' includes a right set forth in a rule or bylaw of a national securities exchange, a national securities association, or a securities clearing agency, a right set forth in a bylaw of a clearing organization or contract market or in a resolution of the governing board thereof, and a right, whether or not in writing, arising under common law, under law merchant, or by reason of normal business practice.''.

TITLE X—PROTECTION OF FAMILY FARMERS AND FAMILY FISHERMEN

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), is hereby reenacted, and as here reenacted is amended by this Act.

(2) EFFECTIVE DATE.—Subsection (a) shall take effect on the date of the enactment of this Act.

(b) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

SEC. 1002. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(18),'' after ''101(3),'' each place it appears.

SEC. 1003. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, as amended by section 213, is amended to read as follows:

''(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

''(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

''(B) the holder of a particular claim agrees to a different treatment of that claim;''.

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by section 719, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 1004. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''.

SEC. 1005. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''for the taxable year preceding the taxable year'' and inserting the following:

''for—

''(i) the taxable year preceding; or

''(ii) each of the 2d and 3d taxable years preceding;

the taxable year''.

SEC. 1006. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) in subparagraph (B) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the value of the property to be distributed under the plan in the 3-year period, or such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.''.

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d) A plan may not be modified under this section—

''(1) to increase the amount of any payment due before the plan as modified becomes the plan;

''(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

''(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.''.

SEC. 1007. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' means—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

''(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;''; and

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts

(excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1203, by inserting ''or commercial fishing operation'' after ''farm''; and

(3) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)''.

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(e) APPLICABILITY.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801 et seq.).

TITLE XI—HEALTH CARE AND EMPLOYEE BENEFITS

SEC. 1101. DEFINITIONS.

(a) HEALTH CARE BUSINESS DEFINED.—Section 101 of title 11, United States Code, as amended by section 306, is amended—

(1) by redesignating paragraph (27A) as paragraph (27B); and

(2) by inserting after paragraph (27) the following:

''(27A) 'health care business'—

''(A) means any public or private entity (without regard to whether that entity is organized for profit or not for profit) that is primarily engaged in offering to the general public facilities and services for—

''(i) the diagnosis or treatment of injury, deformity, or disease; and

''(ii) surgical, drug treatment, psychiatric, or obstetric care; and

''(B) includes—

''(i) any—

''(I) general or specialized hospital;

''(II) ancillary ambulatory, emergency, or surgical treatment facility;

''(III) hospice;

''(IV) home health agency; and

''(V) other health care institution that is similar to an entity referred to in subclause (I), (II), (III), or (IV); and

''(ii) any long-term care facility, including any—

''(I) skilled nursing facility;

''(II) intermediate care facility;

''(III) assisted living facility;

''(IV) home for the aged;

''(V) domiciliary care facility; and

''(VI) health care institution that is related to a facility referred to in subclause (I), (II), (III), (IV), or (V), if that institution is primarily engaged in offering room, board, laundry, or personal assistance with activities of daily living and incidentals to activities of daily living;''.

(b) PATIENT AND PATIENT RECORDS DEFINED.—Section 101 of title 11, United States Code, is amended by inserting after paragraph (40) the following:

''(40A) 'patient' means any individual who obtains or receives services from a health care business;

''(40B) 'patient records' means any written document relating to a patient or a record recorded in a magnetic, optical, or other form of electronic medium;''.

(c) RULE OF CONSTRUCTION.—The amendments made by subsection (a) of this section shall not affect the interpretation of section 109(b) of title 11, United States Code.

SEC. 1102. DISPOSAL OF PATIENT RECORDS.

(a) IN GENERAL.—Subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''§ 351. Disposal of patient records

''If a health care business commences a case under chapter 7, 9, or 11, and the trustee does not have a sufficient amount of funds to pay for the storage of patient records in the manner required under applicable Federal or State law, the following requirements shall apply:

''(1) The trustee shall—

''(A) promptly publish notice, in 1 or more appropriate newspapers, that if patient records are not claimed by the patient or an insurance provider (if applicable law permits the insurance provider to make that claim) by the date that is 365 days after the date of that notification, the trustee will destroy the patient records; and

''(B) during the first 180 days of the 365-day period described in subparagraph (A), promptly attempt to notify directly each patient that is the subject of the patient records and appropriate insurance carrier concerning the patient records by mailing to the most recent known address of that patient, or a family member or contact person for that patient, and to the appropriate insurance carrier an appropriate notice regarding the claiming or disposing of patient records.

''(2) If, after providing the notification under paragraph (1), patient records are not claimed during the 365-day period described under that paragraph, the trustee shall mail, by certified mail, at the end of such 365-day period a written request to each appropriate Federal agency to request permission from that agency to deposit the patient records with that agency, except that no Federal agency is required to accept patient records under this paragraph.

''(3) If, following the 365-day period described in paragraph (2) and after providing the notification under paragraph (1), patient records are not claimed by a patient or insurance provider, or request is not granted by a Federal agency to deposit such records with that agency, the trustee shall destroy those records by—

''(A) if the records are written, shredding or burning the records; or

''(B) if the records are magnetic, optical, or other electronic records, by otherwise destroying those records so that those records cannot be retrieved.''.

(b) CLERICAL AMENDMENT.—The table of sections for subchapter III of chapter 3 of title 11, United States Code, is amended by adding at the end the following:

''351. Disposal of patient records.''.

SEC. 1103. ADMINISTRATIVE EXPENSE CLAIM FOR COSTS OF CLOSING A HEALTH CARE BUSINESS AND OTHER ADMINISTRATIVE EXPENSES.

Section 503(b) of title 11, United States Code, as amended by section 445, is amended by adding at the end the following:

''(8) the actual, necessary costs and expenses of closing a health care business incurred by a trustee or by a Federal agency (as defined in section 551(1) of title 5) or a department or agency of a State or political subdivision thereof, including any cost or expense incurred—

''(A) in disposing of patient records in accordance with section 351; or

''(B) in connection with transferring patients from the health care business that is in the process of being closed to another health care business; and''.

SEC. 1104. APPOINTMENT OF OMBUDSMAN TO ACT AS PATIENT ADVOCATE.

(a) OMBUDSMAN TO ACT AS PATIENT ADVOCATE.—

(1) APPOINTMENT OF OMBUDSMAN.—Title 11, United States Code, as amended by section 232, is amended by inserting after section 332 the following:

''§ 333. Appointment of patient care ombudsman

''(a)(1) If the debtor in a case under chapter 7, 9, or 11 is a health care business, the court shall order, not later than 30 days after the commencement of the case, the appointment of an ombudsman to monitor the quality of patient care and to represent the interests of the patients of the health care business unless the court finds that the appointment of such ombudsman is not necessary for the protection of patients under the specific facts of the case.

''(2)(A) If the court orders the appointment of an ombudsman under paragraph (1), the United States trustee shall appoint 1 disinterested person (other than the United States trustee) to serve as such ombudsman.

''(B) If the debtor is a health care business that provides long-term care, then the United States trustee may appoint the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending to serve as the ombudsman required by paragraph (1).

''(C) If the United States trustee does not appoint a State Long-Term Care Ombudsman under subparagraph (B), the court shall notify the State Long-Term Care Ombudsman appointed under the Older Americans Act of 1965 for the State in which the case is pending, of the name and address of the person who is appointed under subparagraph (A).

''(b) An ombudsman appointed under subsection (a) shall—

''(1) monitor the quality of patient care provided to patients of the debtor, to the extent necessary under the circumstances, including interviewing patients and physicians;

''(2) not later than 60 days after the date of appointment, and not less frequently than at 60-day intervals thereafter, report to the court after notice to the parties in interest, at a hearing or in writing, regarding the quality of patient care provided to patients of the debtor; and

''(3) if such ombudsman determines that the quality of patient care provided to patients of the debtor is declining significantly or is otherwise being materially compromised, file with the court a motion or a written report, with notice to the parties in interest immediately upon making such determination.

''(c)(1) An ombudsman appointed under subsection (a) shall maintain any information obtained by such ombudsman under this section that relates to patients (including information relating to patient records) as confidential information. Such ombudsman may not review confidential patient records unless the court approves such review in advance and imposes restrictions on such ombudsman to protect the confidentiality of such records.

''(2) An ombudsman appointed under subsection (a)(2)(B) shall have access to patient records consistent with authority of such ombudsman under the Older Americans Act of 1965 and under non-Federal laws governing the State Long-Term Care Ombudsman program.''.

(2) CLERICAL AMENDMENT.—The table of sections for subchapter II of chapter 3 of title 11, United States Code, as amended by section 232, is amended by adding at the end the following:

''333. Appointment of ombudsman.''.

(b) COMPENSATION OF OMBUDSMAN.—Section 330(a)(1) of title 11, United States Code, is amended—

(1) in the matter preceding subparagraph (A), by inserting ''an ombudsman appointed under section 333, or'' before ''a professional person''; and

(2) in subparagraph (A), by inserting ''ombudsman,'' before ''professional person''.

SEC. 1105. DEBTOR IN POSSESSION; DUTY OF TRUSTEE TO TRANSFER PATIENTS.

(a) IN GENERAL.—Section 704(a) of title 11, United States Code, as amended by sections 102, 219, and 446, is amended by adding at the end the following:

''(12) use all reasonable and best efforts to transfer patients from a health care business that is in the process of being closed to an appropriate health care business that—

''(A) is in the vicinity of the health care business that is closing;

''(B) provides the patient with services that are substantially similar to those provided by the health care business that is in the process of being closed; and

''(C) maintains a reasonable quality of care.''.

(b) CONFORMING AMENDMENT.—Section 1106(a)(1) of title 11, United States Code, as amended by section 446, is amended by striking ''and (11)'' and inserting ''(11), and (12)''.

SEC. 1106. EXCLUSION FROM PROGRAM PARTICIPATION NOT SUBJECT TO AUTOMATIC STAY.

Section 362(b) of title 11, United States Code, is amended by inserting after paragraph (27), as amended by sections 224, 303, 311, 401, 718, and 907, the following:

''(28) under subsection (a), of the exclusion by the Secretary of Health and Human Services of the debtor from participation in the medicare program or any other Federal health care program (as defined in section 1128B(f) of the Social Security Act pursuant to title XI or XVIII of such Act).''.

TITLE XII—TECHNICAL AMENDMENTS

SEC. 1201. DEFINITIONS.

Section 101 of title 11, United States Code, as hereinbefore amended by this Act, is amended—

(1) by striking ''In this title—'' and inserting ''In this title the following definitions shall apply:'';

(2) in each paragraph, by inserting ''The term'' after the paragraph designation;

(3) in paragraph (35)(B), by striking ''paragraphs (21B) and (33)(A)'' and inserting ''paragraphs (23) and (35)'';

(4) in each of paragraphs (35A), (38), and (54A), by striking ''; and'' at the end and inserting a period;

(5) in paragraph (51B)—

(A) by inserting ''who is not a family farmer'' after ''debtor'' the first place it appears; and

(B) by striking ''thereto having aggregate'' and all that follows through the end of the paragraph and inserting a semicolon;

(6) by striking paragraph (54) and inserting the following:

''(54) The term 'transfer' means—

''(A) the creation of a lien;

''(B) the retention of title as a security interest;

''(C) the foreclosure of a debtor's equity of redemption; or

''(D) each mode, direct or indirect, absolute or conditional, voluntary or involuntary, of disposing of or parting with—

''(i) property; or

''(ii) an interest in property;'';

(7) by indenting the left margin of paragraph (54A) 2 ems to the right; and

(8) in each of paragraphs (1) through (35), in each of paragraphs (36), (37), (38A), (38B) and (39A), and in each of paragraphs (40) through (55), by striking the semicolon at the end and inserting a period.

SEC. 1202. ADJUSTMENT OF DOLLAR AMOUNTS.

Section 104 of title 11, United States Code, is amended by inserting ''522(f)(3),'' after ''522(d),'' each place it appears.

SEC. 1203. EXTENSION OF TIME.

Section 108(c)(2) of title 11, United States Code, is amended by striking ''922'' and all that follows through ''or'', and inserting ''922, 1201, or''.

SEC. 1204. TECHNICAL AMENDMENTS.

Title 11, United States Code, is amended—

(1) in section 109(b)(2), by striking ''subsection (c) or (d) of''; and

(2) in section 552(b)(1), by striking ''product'' each place it appears and inserting ''products''.

SEC. 1205. PENALTY FOR PERSONS WHO NEGLIGENTLY OR FRAUDULENTLY PREPARE BANKRUPTCY PETITIONS.

Section 110(j)(4) of title 11, United States Code, as so redesignated by section 221, is amended by striking ''attorney's'' and inserting ''attorneys'''.

SEC. 1206. LIMITATION ON COMPENSATION OF PROFESSIONAL PERSONS.

Section 328(a) of title 11, United States Code, is amended by inserting ''on a fixed or percentage fee basis,'' after ''hourly basis,''.

SEC. 1207. EFFECT OF CONVERSION.

Section 348(f)(2) of title 11, United States Code, is amended by inserting ''of the estate'' after ''property'' the first place it appears.

SEC. 1208. ALLOWANCE OF ADMINISTRATIVE EXPENSES.

Section 503(b)(4) of title 11, United States Code, is amended by inserting ''subparagraph (A), (B), (C), (D), or (E) of'' before ''paragraph (3)''.

SEC. 1209. EXCEPTIONS TO DISCHARGE.

Section 523 of title 11, United States Code, as amended by sections 215 and 314, is amended—

(1) by transferring paragraph (15), as added by section 304(e) of Public Law 103–394 (108 Stat. 4133), so as to insert such paragraph after subsection (a)(14A);

(2) in subsection (a)(9), by striking ''motor vehicle'' and inserting ''motor vehicle, vessel, or aircraft''; and

(3) in subsection (e), by striking ''a insured'' and inserting ''an insured''.

SEC. 1210. EFFECT OF DISCHARGE.

Section 524(a)(3) of title 11, United States Code, is amended by striking ''section 523'' and all that follows through ''or that'' and inserting ''section 523, 1228(a)(1), or 1328(a)(1), or that''.

SEC. 1211. PROTECTION AGAINST DISCRIMINATORY TREATMENT.

Section 525(c) of title 11, United States Code, is amended—

(1) in paragraph (1), by inserting ''student'' before ''grant'' the second place it appears; and

(2) in paragraph (2), by striking ''the program operated under part B, D, or E of'' and inserting ''any program operated under''.

SEC. 1212. PROPERTY OF THE ESTATE.

Section 541(b)(4)(B)(ii) of title 11, United States Code, is amended by inserting ''365 or'' before ''542''.

SEC. 1213. PREFERENCES.

(a) IN GENERAL.—Section 547 of title 11, United States Code, as amended by section 201, is amended—

(1) in subsection (b), by striking ''subsection (c)'' and inserting ''subsections (c) and (i)''; and

(2) by adding at the end the following:

''(i) If the trustee avoids under subsection (b) a transfer made between 90 days and 1 year before the date of the filing of the petition, by the debtor to an entity that is not an insider for the benefit of a creditor that is an insider, such transfer shall be considered to be avoided under this section only with respect to the creditor that is an insider.''.

(b) APPLICABILITY.—The amendments made by this section shall apply to any case that is pending or commenced on or after the date of enactment of this Act.

SEC. 1214. POSTPETITION TRANSACTIONS.

Section 549(c) of title 11, United States Code, is amended—

(1) by inserting ''an interest in'' after ''transfer of'' each place it appears;

(2) by striking ''such property'' and inserting ''such real property''; and

(3) by striking ''the interest'' and inserting ''such interest''.

SEC. 1215. DISPOSITION OF PROPERTY OF THE ESTATE.

Section 726(b) of title 11, United States Code, is amended by striking ''1009,''.

SEC. 1216. GENERAL PROVISIONS.

Section 901(a) of title 11, United States Code, is amended by inserting ''1123(d),'' after ''1123(b),''.

SEC. 1217. ABANDONMENT OF RAILROAD LINE.

Section 1170(e)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1218. CONTENTS OF PLAN.

Section 1172(c)(1) of title 11, United States Code, is amended by striking ''section 11347'' and inserting ''section 11326(a)''.

SEC. 1219. BANKRUPTCY CASES AND PROCEEDINGS.

Section 1334(d) of title 28, United States Code, is amended—

(1) by striking ''made under this subsection'' and inserting ''made under subsection (c)''; and

(2) by striking ''This subsection'' and inserting ''Subsection (c) and this subsection''.

SEC. 1220. KNOWING DISREGARD OF BANKRUPTCY LAW OR RULE.

Section 156(a) of title 18, United States Code, is amended—

(1) in the first undesignated paragraph—

(A) by inserting ''(1) the term'' before '''bankruptcy''; and

(B) by striking the period at the end and inserting ''; and''; and

(2) in the second undesignated paragraph—

(A) by inserting ''(2) the term'' before '''document''; and

(B) by striking ''this title'' and inserting ''title 11''.

SEC. 1221. TRANSFERS MADE BY NONPROFIT CHARITABLE CORPORATIONS.

(a) SALE OF PROPERTY OF ESTATE.—Section 363(d) of title 11, United States Code, is amended by striking ''only'' and all that follows through the end of the subsection and inserting ''only—

''(1) in accordance with applicable nonbankruptcy law that governs the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust; and

''(2) to the extent not inconsistent with any relief granted under subsection (c), (d), (e), or (f) of section 362.''.

(b) CONFIRMATION OF PLAN OF REORGANIZATION.—Section 1129(a) of title 11, United States Code, as amended by sections 213 and

321, is amended by adding at the end the following:

''(16) All transfers of property of the plan shall be made in accordance with any applicable provisions of nonbankruptcy law that govern the transfer of property by a corporation or trust that is not a moneyed, business, or commercial corporation or trust.''.

(c) TRANSFER OF PROPERTY.—Section 541 of title 11, United States Code, as amended by section 225, is amended by adding at the end the following:

''(f) Notwithstanding any other provision of this title, property that is held by a debtor that is a corporation described in section 501(c)(3) of the Internal Revenue Code of 1986 and exempt from tax under section 501(a) of such Code may be transferred to an entity that is not such a corporation, but only under the same conditions as would apply if the debtor had not filed a case under this title.''.

(d) APPLICABILITY.—The amendments made by this section shall apply to a case pending under title 11, United States Code, on the date of enactment of this Act, or filed under that title on or after that date of enactment, except that the court shall not confirm a plan under chapter 11 of title 11, United States Code, without considering whether this section would substantially affect the rights of a party in interest who first acquired rights with respect to the debtor after the date of the filing of the petition. The parties who may appear and be heard in a proceeding under this section include the attorney general of the State in which the debtor is incorporated, was formed, or does business.

(e) RULE OF CONSTRUCTION.—Nothing in this section shall be construed to require the court in which a case under chapter 11 of title 11, United States Code, is pending to remand or refer any proceeding, issue, or controversy to any other court or to require the approval of any other court for the transfer of property.

SEC. 1222. PROTECTION OF VALID PURCHASE MONEY SECURITY INTERESTS.

Section 547(c)(3)(B) of title 11, United States Code, is amended by striking ''20'' and inserting ''30''.

SEC. 1223. BANKRUPTCY JUDGESHIPS.

(a) SHORT TITLE.—This section may be cited as the ''Bankruptcy Judgeship Act of 2003''.

(b) TEMPORARY JUDGESHIPS.—

(1) APPOINTMENTS.—The following bankruptcy judges shall be appointed in the manner prescribed in section 152(a)(1) of title 28, United States Code, for the appointment of bankruptcy judges provided for in section 152(a)(2) of such title:

(A) One additional bankruptcy judge for the eastern district of California.

(B) Three additional bankruptcy judges for the central district of California.

(C) Four additional bankruptcy judges for the district of Delaware.

(D) Two additional bankruptcy judges for the southern district of Florida.

(E) One additional bankruptcy judge for the southern district of Georgia.

(F) Three additional bankruptcy judges for the district of Maryland.

(G) One additional bankruptcy judge for the eastern district of Michigan.

(H) One additional bankruptcy judge for the southern district of Mississippi.

(I) One additional bankruptcy judge for the district of New Jersey.

(J) One additional bankruptcy judge for the eastern district of New York.

(K) One additional bankruptcy judge for the northern district of New York.

(L) One additional bankruptcy judge for the southern district of New York.

(M) One additional bankruptcy judge for the eastern district of North Carolina.

(N) One additional bankruptcy judge for the eastern district of Pennsylvania.

(O) One additional bankruptcy judge for the middle district of Pennsylvania.

(P) One additional bankruptcy judge for the district of Puerto Rico.

(Q) One additional bankruptcy judge for the western district of Tennessee.

(R) One additional bankruptcy judge for the eastern district of Virginia.

(S) One additional bankruptcy judge for the district of South Carolina.

(T) One additional bankruptcy judge for the district of Nevada.

(2) VACANCIES.—

(A) DISTRICTS WITH SINGLE APPOINTMENTS.—Except as provided in subparagraphs (B), (C), (D), and (E), the first vacancy occurring in the office of bankruptcy judge in each of the judicial districts set forth in paragraph (1)—

(i) occurring 5 years or more after the appointment date of the bankruptcy judge appointed under paragraph (1) to such office; and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(B) CENTRAL DISTRICT OF CALIFORNIA.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the central district of California—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(B); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(C) DISTRICT OF DELAWARE.—The 1st, 2d, 3d, and 4th vacancies in the office of bankruptcy judge in the district of Delaware—

(i) occurring 5 years or more after the respective 1st, 2d, 3d, and 4th appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(D) SOUTHERN DISTRICT OF FLORIDA.—The 1st and 2d vacancies in the office of bankruptcy judge in the southern district of Florida—

(i) occurring 5 years or more after the respective 1st and 2d appointment dates of the bankruptcy judges appointed under paragraph (1)(D); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(E) DISTRICT OF MARYLAND.—The 1st, 2d, and 3d vacancies in the office of bankruptcy judge in the district of Maryland—

(i) occurring 5 years or more after the respective 1st, 2d, and 3d appointment dates of the bankruptcy judges appointed under paragraph (1)(F); and

(ii) resulting from the death, retirement, resignation, or removal of a bankruptcy judge;

shall not be filled.

(c) EXTENSIONS.—

(1) IN GENERAL.—The temporary office of bankruptcy judges authorized for the northern district of Alabama, the district of Delaware, the district of Puerto Rico, and the eastern district of Tennessee under paragraphs (1), (3), (7), and (9) of section 3(a) of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) are extended until the first vacancy occurring in the office of a bankruptcy judge in the applicable district resulting from the death, retirement, resignation, or removal of a bankruptcy judge and occurring 5 years after the date of the enactment of this Act.

(2) APPLICABILITY OF OTHER PROVISIONS.—All other provisions of section 3 of the Bankruptcy Judgeship Act of 1992 (28 U.S.C. 152 note) remain applicable to the temporary office of bankruptcy judges referred to in this subsection.

(d) TECHNICAL AMENDMENTS.—Section 152(a) of title 28, United States Code, is amended—

(1) in paragraph (1), by striking the first sentence and inserting the following: ''Each bankruptcy judge to be appointed for a judicial district, as provided in paragraph (2), shall be appointed by the court of appeals of the United States for the circuit in which such district is located.''; and

(2) in paragraph (2)—

(A) in the item relating to the middle district of Georgia, by striking ''2'' and inserting ''3''; and

(B) in the collective item relating to the middle and southern districts of Georgia, by striking ''Middle and Southern . . . . . 1''.

(e) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date of the enactment of this Act.

SEC. 1224. COMPENSATING TRUSTEES.

Section 1326 of title 11, United States Code, is amended—

(1) in subsection (b)—

(A) in paragraph (1), by striking ''and'';

(B) in paragraph (2), by striking the period at the end and inserting ''; and''; and

(C) by adding at the end the following:

''(3) if a chapter 7 trustee has been allowed compensation due to the conversion or dismissal of the debtor's prior case pursuant to section 707(b), and some portion of that compensation remains unpaid in a case converted to this chapter or in the case dismissed under section 707(b) and refiled under this chapter, the amount of any such unpaid compensation, which shall be paid monthly—

''(A) by prorating such amount over the remaining duration of the plan; and

''(B) by monthly payments not to exceed the greater of—

''(i) $25; or

''(ii) the amount payable to unsecured nonpriority creditors, as provided by the plan, multiplied by 5 percent, and the result divided by the number of months in the plan.''; and

(2) by adding at the end the following:

''(d) Notwithstanding any other provision of this title—

''(1) compensation referred to in subsection (b)(3) is payable and may be collected by the trustee under that paragraph, even if such amount has been discharged in a prior case under this title; and

''(2) such compensation is payable in a case under this chapter only to the extent permitted by subsection (b)(3).''.

SEC. 1225. AMENDMENT TO SECTION 362 OF TITLE 11, UNITED STATES CODE.

Section 362(b)(18) of title 11, United States Code, is amended to read as follows:

''(18) under subsection (a) of the creation or perfection of a statutory lien for an ad valorem property tax, or a special tax or special assessment on real property whether or not ad valorem, imposed by a governmental unit, if such tax or assessment comes due after the date of the filing of the petition;''.

SEC. 1226. JUDICIAL EDUCATION.

The Director of the Federal Judicial Center, in consultation with the Director of the Executive Office for United States Trustees, shall develop materials and conduct such training as may be useful to courts in implementing this Act and the amendments made by this Act, including the requirements relating to the means test under section 707(b),

and reaffirmation agreements under section 524, of title 11 of the United States Code, as amended by this Act.

SEC. 1227. RECLAMATION.

(a) RIGHTS AND POWERS OF THE TRUSTEE.—Section 546(c) of title 11, United States Code, is amended to read as follows:

''(c)(1) Except as provided in subsection (d) of this section and in section 507(c), and subject to the prior rights of a holder of a security interest in such goods or the proceeds thereof, the rights and powers of the trustee under sections 544(a), 545, 547, and 549 are subject to the right of a seller of goods that has sold goods to the debtor, in the ordinary course of such seller's business, to reclaim such goods if the debtor has received such goods while insolvent, within 45 days before the date of the commencement of a case under this title, but such seller may not reclaim such goods unless such seller demands in writing reclamation of such goods—

''(A) not later than 45 days after the date of receipt of such goods by the debtor; or

''(B) not later than 20 days after the date of commencement of the case, if the 45-day period expires after the commencement of the case.

''(2) If a seller of goods fails to provide notice in the manner described in paragraph (1), the seller still may assert the rights contained in section 503(b)(9).''.

(b) ADMINISTRATIVE EXPENSES.—Section 503(b) of title 11, United States Code, as amended by sections 445 and 1103, is amended by adding at the end the following:

''(9) the value of any goods received by the debtor within 20 days before the date of commencement of a case under this title in which the goods have been sold to the debtor in the ordinary course of such debtor's business.''.

SEC. 1228. PROVIDING REQUESTED TAX DOCUMENTS TO THE COURT.

(a) CHAPTER 7 CASES.—The court shall not grant a discharge in the case of an individual who is a debtor in a case under chapter 7 of title 11, United States Code, unless requested tax documents have been provided to the court.

(b) CHAPTER 11 AND CHAPTER 13 CASES.—The court shall not confirm a plan of reorganization in the case of an individual under chapter 11 or 13 of title 11, United States Code, unless requested tax documents have been filed with the court.

(c) DOCUMENT RETENTION.—The court shall destroy documents submitted in support of a bankruptcy claim not sooner than 3 years after the date of the conclusion of a case filed by an individual under chapter 7, 11, or 13 of title 11, United States Code. In the event of a pending audit or enforcement action, the court may extend the time for destruction of such requested tax documents.

SEC. 1229. ENCOURAGING CREDITWORTHINESS.

(a) SENSE OF THE CONGRESS.—It is the sense of the Congress that—

(1) certain lenders may sometimes offer credit to consumers indiscriminately, without taking steps to ensure that consumers are capable of repaying the resulting debt, and in a manner which may encourage certain consumers to accumulate additional debt; and

(2) resulting consumer debt may increasingly be a major contributing factor to consumer insolvency.

(b) STUDY REQUIRED.—The Board of Governors of the Federal Reserve System (hereafter in this section referred to as the ''Board'') shall conduct a study of—

(1) consumer credit industry practices of soliciting and extending credit—

(A) indiscriminately;

(B) without taking steps to ensure that consumers are capable of repaying the resulting debt; and

(C) in a manner that encourages consumers to accumulate additional debt; and

(2) the effects of such practices on consumer debt and insolvency.

(c) REPORT AND REGULATIONS.—Not later than 12 months after the date of enactment of this Act, the Board—

(1) shall make public a report on its findings with respect to the indiscriminate solicitation and extension of credit by the credit industry;

(2) may issue regulations that would require additional disclosures to consumers; and

(3) may take any other actions, consistent with its existing statutory authority, that the Board finds necessary to ensure responsible industrywide practices and to prevent resulting consumer debt and insolvency.

SEC. 1230. PROPERTY NO LONGER SUBJECT TO REDEMPTION.

Section 541(b) of title 11, United States Code, as amended by sections 225 and 323, is amended by adding after paragraph (7), as added by section 323, the following:

''(8) subject to subchapter III of chapter 5, any interest of the debtor in property where the debtor pledged or sold tangible personal property (other than securities or written or printed evidences of indebtedness or title) as collateral for a loan or advance of money given by a person licensed under law to make such loans or advances, where—

''(A) the tangible personal property is in the possession of the pledgee or transferee;

''(B) the debtor has no obligation to repay the money, redeem the collateral, or buy back the property at a stipulated price; and

''(C) neither the debtor nor the trustee have exercised any right to redeem provided under the contract or State law, in a timely manner as provided under State law and section 108(b); or''.

SEC. 1231. TRUSTEES.

(a) SUSPENSION AND TERMINATION OF PANEL TRUSTEES AND STANDING TRUSTEES.—Section 586(d) of title 28, United States Code, is amended—

(1) by inserting ''(1)'' after ''(d)''; and

(2) by adding at the end the following:

''(2) A trustee whose appointment under subsection (a)(1) or under subsection (b) is terminated or who ceases to be assigned to cases filed under title 11, United States Code, may obtain judicial review of the final agency decision by commencing an action in the district court of the United States for the district for which the panel to which the trustee is appointed under subsection (a)(1), or in the district court of the United States for the district in which the trustee is appointed under subsection (b) resides, after first exhausting all available administrative remedies, which if the trustee so elects, shall also include an administrative hearing on the record. Unless the trustee elects to have an administrative hearing on the record, the trustee shall be deemed to have exhausted all administrative remedies for purposes of this paragraph if the agency fails to make a final agency decision within 90 days after the trustee requests administrative remedies. The Attorney General shall prescribe procedures to implement this paragraph. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based on the administrative record before the agency.''.

(b) EXPENSES OF STANDING TRUSTEES.—Section 586(e) of title 28, United States Code, is amended by adding at the end the following:

''(3) After first exhausting all available administrative remedies, an individual appointed under subsection (b) may obtain judicial review of final agency action to deny a claim of actual, necessary expenses under this subsection by commencing an action in the district court of the United States for the district where the individual resides. The decision of the agency shall be affirmed by the district court unless it is unreasonable and without cause based upon the administrative record before the agency.

''(4) The Attorney General shall prescribe procedures to implement this subsection.''.

SEC. 1232. BANKRUPTCY FORMS.

Section 2075 of title 28, United States Code, is amended by adding at the end the following:

''The bankruptcy rules promulgated under this section shall prescribe a form for the statement required under section 707(b)(2)(C) of title 11 and may provide general rules on the content of such statement.''.

SEC. 1233. DIRECT APPEALS OF BANKRUPTCY MATTERS TO COURTS OF APPEALS.

(a) APPEALS.—Section 158 of title 28, United States Code, is amended—

(1) in subsection (c)(1), by striking ''Subject to subsection (b),'' and inserting ''Subject to subsections (b) and (d)(2),''; and

(2) in subsection (d)—

(A) by inserting ''(1)'' after ''(d)''; and

(B) by adding at the end the following:

''(2)(A) The appropriate court of appeals shall have jurisdiction of appeals described in the first sentence of subsection (a) if the bankruptcy court, the district court, or the bankruptcy appellate panel involved, acting on its own motion or on the request of a party to the judgment, order, or decree described in such first sentence, or all the appellants and appellees (if any) acting jointly, certify that—

''(i) the judgment, order, or decree involves a question of law as to which there is no controlling decision of the court of appeals for the circuit or of the Supreme Court of the United States, or involves a matter of public importance;

''(ii) the judgment, order, or decree involves a question of law requiring resolution of conflicting decisions; or

''(iii) an immediate appeal from the judgment, order, or decree may materially advance the progress of the case or proceeding in which the appeal is taken;

and if the court of appeals authorizes the direct appeal of the judgment, order, or decree.

''(B) If the bankruptcy court, the district court, or the bankruptcy appellate panel—

''(i) on its own motion or on the request of a party, determines that a circumstance specified in clause (i), (ii), or (iii) of subparagraph (A) exists; or

''(ii) receives a request made by a majority of the appellants and a majority of appellees (if any) to make the certification described in subparagraph (A);

then the bankruptcy court, the district court, or the bankruptcy appellate panel shall make the certification described in subparagraph (A).

''(C) The parties may supplement the certification with a short statement of the basis for the certification.

''(D) An appeal under this paragraph does not stay any proceeding of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken, unless the respective bankruptcy court, district court, or bankruptcy appellate panel, or the court of appeals in which the appeal in pending, issues a stay of such proceeding pending the appeal.

''(E) Any request under subparagraph (B) for certification shall be made not later than 60 days after the entry of the judgment, order, or decree.''.

(b) PROCEDURAL RULES.—

(1) TEMPORARY APPLICATION.—A provision of this subsection shall apply to appeals under section 158(d)(2) of title 28, United States Code, until a rule of practice and procedure relating to such provision and such

appeals is promulgated or amended under chapter 131 of such title.

(2) CERTIFICATION.—A district court, a bankruptcy court, or a bankruptcy appellate panel may make a certification under section 158(d)(2) of title 28, United States Code, only with respect to matters pending in the respective bankruptcy court, district court, or bankruptcy appellate panel.

(3) PROCEDURE.—Subject to any other provision of this subsection, an appeal authorized by the court of appeals under section 158(d)(2)(A) of title 28, United States Code, shall be taken in the manner prescribed in subdivisions (a)(1), (b), (c), and (d) of rule 5 of the Federal Rules of Appellate Procedure. For purposes of subdivision (a)(1) of rule 5—

(A) a reference in such subdivision to a district court shall be deemed to include a reference to a bankruptcy court and a bankruptcy appellate panel, as appropriate; and

(B) a reference in such subdivision to the parties requesting permission to appeal to be served with the petition shall be deemed to include a reference to the parties to the judgment, order, or decree from which the appeal is taken.

(4) FILING OF PETITION WITH ATTACHMENT.—A petition requesting permission to appeal, that is based on a certification made under subparagraph (A) or (B) of section 158(d)(2) shall—

(A) be filed with the circuit clerk not later than 10 days after the certification is entered on the docket of the bankruptcy court, the district court, or the bankruptcy appellate panel from which the appeal is taken; and

(B) have attached a copy of such certification.

(5) REFERENCES IN RULE 5.—For purposes of rule 5 of the Federal Rules of Appellate Procedure—

(A) a reference in such rule to a district court shall be deemed to include a reference to a bankruptcy court and to a bankruptcy appellate panel; and

(B) a reference in such rule to a district clerk shall be deemed to include a reference to a clerk of a bankruptcy court and to a clerk of a bankruptcy appellate panel.

(6) APPLICATION OF RULES.—The Federal Rules of Appellate Procedure shall apply in the courts of appeals with respect to appeals authorized under section 158(d)(2)(A), to the extent relevant and as if such appeals were taken from final judgments, orders, or decrees of the district courts or bankruptcy appellate panels exercising appellate jurisdiction under subsection (a) or (b) of section 158 of title 28, United States Code.

SEC. 1234. INVOLUNTARY CASES.

(a) AMENDMENTS.—Section 303 of title 11, United States Code, is amended—

(1) in subsection (b)(1), by—

(A) inserting ''as to liability or amount'' after ''bona fide dispute''; and

(B) striking ''if such claims'' and inserting ''if such noncontingent, undisputed claims''; and

(2) in subsection (h)(1), by inserting ''as to liability or amount'' before the semicolon at the end.

(b) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall apply with respect to cases commenced under title 11 of the United States Code before, on, and after such date.

SEC. 1235. FEDERAL ELECTION LAW FINES AND PENALTIES AS NONDISCHARGEABLE DEBT.

Section 523(a) of title 11, United States Code, as amended by section 314, is amended by inserting after paragraph (14A) the following:

''(14B) incurred to pay fines or penalties imposed under Federal election law;''.

TITLE XIII—CONSUMER CREDIT DISCLOSURE

SEC. 1301. ENHANCED DISCLOSURES UNDER AN OPEN END CREDIT PLAN.

(a) MINIMUM PAYMENT DISCLOSURES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(11)(A) In the case of an open end credit plan that requires a minimum monthly payment of not more than 4 percent of the balance on which finance charges are accruing, the following statement, located on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 2% minimum monthly payment on a balance of $1,000 at an interest rate of 17% would take 88 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(B) In the case of an open end credit plan that requires a minimum monthly payment of more than 4 percent of the balance on which finance charges are accruing, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. Making a typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call this toll-free number: _____.' (the blank space to be filled in by the creditor).

''(C) Notwithstanding subparagraphs (A) and (B), in the case of a creditor with respect to which compliance with this title is enforced by the Federal Trade Commission, the following statement, in a prominent location on the front of the billing statement, disclosed clearly and conspicuously: 'Minimum Payment Warning: Making only the required minimum payment will increase the interest you pay and the time it takes to repay your balance. For example, making only the typical 5% minimum monthly payment on a balance of $300 at an interest rate of 17% would take 24 months to repay the balance in full. For an estimate of the time it would take to repay your balance, making only minimum monthly payments, call the Federal Trade Commission at this toll-free number: _____.' (the blank space to be filled in by the creditor). A creditor who is subject to this subparagraph shall not be subject to subparagraph (A) or (B).

''(D) Notwithstanding subparagraph (A), (B), or (C), in complying with any such subparagraph, a creditor may substitute an example based on an interest rate that is greater than 17 percent. Any creditor that is subject to subparagraph (B) may elect to provide the disclosure required under subparagraph (A) in lieu of the disclosure required under subparagraph (B).

''(E) The Board shall, by rule, periodically recalculate, as necessary, the interest rate and repayment period under subparagraphs (A), (B), and (C).

''(F)(i) The toll-free telephone number disclosed by a creditor or the Federal Trade Commission under subparagraph (A), (B), or (G), as appropriate, may be a toll-free telephone number established and maintained by the creditor or the Federal Trade Commission, as appropriate, or may be a toll-free telephone number established and maintained by a third party for use by the creditor or multiple creditors or the Federal Trade Commission, as appropriate. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A), (B), or (C), by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A), (B), or (C), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A), (B), or (C) from an obligor through the toll-free telephone number disclosed under subparagraph (A), (B), or (C), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i).

''(ii)(I) The Board shall establish and maintain for a period not to exceed 24 months following the effective date of the Bankruptcy Abuse Prevention and Consumer Protection Act of 2003, a toll-free telephone number, or provide a toll-free telephone number established and maintained by a third party, for use by creditors that are depository institutions (as defined in section 3 of the Federal Deposit Insurance Act), including a Federal credit union or State credit union (as defined in section 101 of the Federal Credit Union Act), with total assets not exceeding $250,000,000. The toll-free telephone number may connect consumers to an automated device through which consumers may obtain information described in subparagraph (A) or (B), as applicable, by inputting information using a touch-tone telephone or similar device, if consumers whose telephones are not equipped to use such automated device are provided the opportunity to be connected to an individual from whom the information described in subparagraph (A) or (B), as applicable, may be obtained. A person that receives a request for information described in subparagraph (A) or (B) from an obligor through the toll-free telephone number disclosed under subparagraph (A) or (B), as applicable, shall disclose in response to such request only the information set forth in the table promulgated by the Board under subparagraph (H)(i). The dollar amount contained in this subclause shall be adjusted according to an indexing mechanism established by the Board.

''(II) Not later than 6 months prior to the expiration of the 24-month period referenced in subclause (I), the Board shall submit to the Committee on Banking, Housing, and Urban Affairs of the Senate and the Committee on Financial Services of the House of Representatives a report on the program described in subclause (I).

''(G) The Federal Trade Commission shall establish and maintain a toll-free number for the purpose of providing to consumers the information required to be disclosed under subparagraph (C).

''(H) The Board shall—

''(i) establish a detailed table illustrating the approximate number of months that it would take to repay an outstanding balance if a consumer pays only the required minimum monthly payments and if no other advances are made, which table shall clearly present standardized information to be used to disclose the information required to be disclosed under subparagraph (A), (B), or (C), as applicable;

''(ii) establish the table required under clause (i) by assuming—

''(I) a significant number of different annual percentage rates;

''(II) a significant number of different account balances;

''(III) a significant number of different minimum payment amounts; and

''(IV) that only minimum monthly payments are made and no additional extensions of credit are obtained; and

''(iii) promulgate regulations that provide instructional guidance regarding the manner in which the information contained in the table established under clause (i) should be used in responding to the request of an obligor for any information required to be disclosed under subparagraph (A), (B), or (C).

''(I) The disclosure requirements of this paragraph do not apply to any charge card account, the primary purpose of which is to require payment of charges in full each month.

''(J) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay the customer's outstanding balance is not subject to the requirements of subparagraph (A) or (B).

''(K) A creditor that maintains a toll-free telephone number for the purpose of providing customers with the actual number of months that it will take to repay an outstanding balance shall include the following statement on each billing statement: 'Making only the minimum payment will increase the interest you pay and the time it takes to repay your balance. For more information, call this toll-free number: _____.' (the blank space to be filled in by the creditor).''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board of Governors of the Federal Reserve System (hereafter in this title referred to as the ''Board'') shall promulgate regulations implementing the requirements of section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section.

(2) EFFECTIVE DATE.—Section 127(b)(11) of the Truth in Lending Act, as added by subsection (a) of this section, and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 18 months after the date of enactment of this Act; or

(B) 12 months after the publication of such final regulations by the Board.

(c) STUDY OF FINANCIAL DISCLOSURES.—

(1) IN GENERAL.—The Board may conduct a study to determine the types of information available to potential borrowers from consumer credit lending institutions regarding factors qualifying potential borrowers for credit, repayment requirements, and the consequences of default.

(2) FACTORS FOR CONSIDERATION.—In conducting a study under paragraph (1), the Board should, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration, and the Federal Trade Commission, consider the extent to which—

(A) consumers, in establishing new credit arrangements, are aware of their existing payment obligations, the need to consider those obligations in deciding to take on new credit, and how taking on excessive credit can result in financial difficulty;

(B) minimum periodic payment features offered in connection with open end credit plans impact consumer default rates;

(C) consumers make only the required minimum payment under open end credit plans;

(D) consumers are aware that making only required minimum payments will increase the cost and repayment period of an open end credit obligation; and

(E) the availability of low minimum payment options is a cause of consumers experiencing financial difficulty.

(3) REPORT TO CONGRESS.—Findings of the Board in connection with any study conducted under this subsection shall be submitted to Congress. Such report shall also include recommendations for legislative initiatives, if any, of the Board, based on its findings.

SEC. 1302. ENHANCED DISCLOSURE FOR CREDIT EXTENSIONS SECURED BY A DWELLING.

(a) OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 127A(a)(13) of the Truth in Lending Act (15 U.S.C. 1637a(a)(13)) is amended—

(A) by striking ''CONSULTATION OF TAX ADVISER.—A statement that the'' and inserting the following: ''TAX DEDUCTIBILITY.—A statement that—

''(A) the''; and

(B) by striking the period at the end and inserting the following: ''; and

''(B) in any case in which the extension of credit exceeds the fair market value (as defined under the Internal Revenue Code of 1986) of the dwelling, the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes.''.

(2) CREDIT ADVERTISEMENTS.—Section 147(b) of the Truth in Lending Act (15 U.S.C. 1665b(b)) is amended—

(A) by striking ''If any'' and inserting the following:

''(1) IN GENERAL.—If any''; and

(B) by adding at the end the following:

''(2) CREDIT IN EXCESS OF FAIR MARKET VALUE.—Each advertisement described in subsection (a) that relates to an extension of credit that may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall include a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(b) NON-OPEN END CREDIT EXTENSIONS.—

(1) CREDIT APPLICATIONS.—Section 128 of the Truth in Lending Act (15 U.S.C. 1638) is amended—

(A) in subsection (a), by adding at the end the following:

''(15) In the case of a consumer credit transaction that is secured by the principal dwelling of the consumer, in which the extension of credit may exceed the fair market value of the dwelling, a clear and conspicuous statement that—

''(A) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(B) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''; and

(B) in subsection (b), by adding at the end the following:

''(3) In the case of a credit transaction described in paragraph (15) of subsection (a), disclosures required by that paragraph shall be made to the consumer at the time of application for such extension of credit.''.

(2) CREDIT ADVERTISEMENTS.—Section 144 of the Truth in Lending Act (15 U.S.C. 1664) is amended by adding at the end the following:

''(e) Each advertisement to which this section applies that relates to a consumer credit transaction that is secured by the principal dwelling of a consumer in which the extension of credit may exceed the fair market value of the dwelling, and which advertisement is disseminated in paper form to the public or through the Internet, as opposed to by radio or television, shall clearly and conspicuously state that—

''(1) the interest on the portion of the credit extension that is greater than the fair market value of the dwelling is not tax deductible for Federal income tax purposes; and

''(2) the consumer should consult a tax adviser for further information regarding the deductibility of interest and charges.''.

(c) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the amendments made by this section.

(2) EFFECTIVE DATE.—Regulations issued under paragraph (1) shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1303. DISCLOSURES RELATED TO "INTRODUCTORY RATES".

(a) INTRODUCTORY RATE DISCLOSURES.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(6) ADDITIONAL NOTICE CONCERNING 'INTRODUCTORY RATES'.—

''(A) IN GENERAL.—Except as provided in subparagraph (B), an application or solicitation to open a credit card account and all promotional materials accompanying such application or solicitation for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest, shall—

''(i) use the term 'introductory' in immediate proximity to each listing of the temporary annual percentage rate applicable to such account, which term shall appear clearly and conspicuously;

''(ii) if the annual percentage rate of interest that will apply after the end of the temporary rate period will be a fixed rate, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing of the temporary annual percentage rate in the tabular format described in section 122(c)), the time period in which the introductory period will end and the annual percentage rate that will apply after the end of the introductory period; and

''(iii) if the annual percentage rate that will apply after the end of the temporary rate period will vary in accordance with an index, state in a clear and conspicuous manner in a prominent location closely proximate to the first listing of the temporary annual percentage rate (other than a listing in the tabular format prescribed by section 122(c)), the time period in which the introductory period will end and the rate that will apply after that, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(B) EXCEPTION.—Clauses (ii) and (iii) of subparagraph (A) do not apply with respect to any listing of a temporary annual percentage rate on an envelope or other enclosure in which an application or solicitation to open a credit card account is mailed.

''(C) CONDITIONS FOR INTRODUCTORY RATES.—An application or solicitation to open a credit card account for which a disclosure is required under paragraph (1), and that offers a temporary annual percentage rate of interest shall, if that rate of interest is revocable under any circumstance or upon

any event, clearly and conspicuously disclose, in a prominent manner on or with such application or solicitation—

''(i) a general description of the circumstances that may result in the revocation of the temporary annual percentage rate; and

''(ii) if the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate—

''(I) will be a fixed rate, the annual percentage rate that will apply upon the revocation of the temporary annual percentage rate; or

''(II) will vary in accordance with an index, the rate that will apply after the temporary rate, based on an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation.

''(D) DEFINITIONS.—In this paragraph—

''(i) the terms 'temporary annual percentage rate of interest' and 'temporary annual percentage rate' mean any rate of interest applicable to a credit card account for an introductory period of less than 1 year, if that rate is less than an annual percentage rate that was in effect within 60 days before the date of mailing the application or solicitation; and

''(ii) the term 'introductory period' means the maximum time period for which the temporary annual percentage rate may be applicable.

''(E) RELATION TO OTHER DISCLOSURE REQUIREMENTS.—Nothing in this paragraph may be construed to supersede subsection (a) of section 122, or any disclosure required by paragraph (1) or any other provision of this subsection.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(6) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—Section 127(c)(6) of the Truth in Lending Act, as added by this section, and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1304. INTERNET-BASED CREDIT CARD SOLICITATIONS.

(a) INTERNET-BASED SOLICITATIONS.—Section 127(c) of the Truth in Lending Act (15 U.S.C. 1637(c)) is amended by adding at the end the following:

''(7) INTERNET-BASED SOLICITATIONS.—

''(A) IN GENERAL.—In any solicitation to open a credit card account for any person under an open end consumer credit plan using the Internet or other interactive computer service, the person making the solicitation shall clearly and conspicuously disclose—

''(i) the information described in subparagraphs (A) and (B) of paragraph (1); and

''(ii) the information described in paragraph (6).

''(B) FORM OF DISCLOSURE.—The disclosures required by subparagraph (A) shall be—

''(i) readily accessible to consumers in close proximity to the solicitation to open a credit card account; and

''(ii) updated regularly to reflect the current policies, terms, and fee amounts applicable to the credit card account.

''(C) DEFINITIONS.—For purposes of this paragraph—

''(i) the term 'Internet' means the international computer network of both Federal and non-Federal interoperable packet switched data networks; and

''(ii) the term 'interactive computer service' means any information service, system, or access software provider that provides or enables computer access by multiple users to a computer server, including specifically a service or system that provides access to the Internet and such systems operated or services offered by libraries or educational institutions.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(c)(7) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and the regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1305. DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.

(a) DISCLOSURES RELATED TO LATE PAYMENT DEADLINES AND PENALTIES.—Section 127(b) of the Truth in Lending Act (15 U.S.C. 1637(b)) is amended by adding at the end the following:

''(12) If a late payment fee is to be imposed due to the failure of the obligor to make payment on or before a required payment due date, the following shall be stated clearly and conspicuously on the billing statement:

''(A) The date on which that payment is due or, if different, the earliest date on which a late payment fee may be charged.

''(B) The amount of the late payment fee to be imposed if payment is made after such date.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(b)(12) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1306. PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.

(a) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—Section 127 of the Truth in Lending Act (15 U.S.C. 1637) is amended by adding at the end the following:

''(h) PROHIBITION ON CERTAIN ACTIONS FOR FAILURE TO INCUR FINANCE CHARGES.—A creditor of an account under an open end consumer credit plan may not terminate an account prior to its expiration date solely because the consumer has not incurred finance charges on the account. Nothing in this subsection shall prohibit a creditor from terminating an account for inactivity in 3 or more consecutive months.''.

(b) REGULATORY IMPLEMENTATION.—

(1) IN GENERAL.—The Board shall promulgate regulations implementing the requirements of section 127(h) of the Truth in Lending Act, as added by this section.

(2) EFFECTIVE DATE.—The amendment made by subsection (a) and regulations issued under paragraph (1) of this subsection shall not take effect until the later of—

(A) 12 months after the date of enactment of this Act; or

(B) 12 months after the date of publication of such final regulations by the Board.

SEC. 1307. DUAL USE DEBIT CARD.

(a) REPORT.—The Board may conduct a study of, and present to Congress a report containing its analysis of, consumer protections under existing law to limit the liability of consumers for unauthorized use of a debit card or similar access device. Such report, if submitted, shall include recommendations for legislative initiatives, if any, of the Board, based on its findings.

(b) CONSIDERATIONS.—In preparing a report under subsection (a), the Board may include—

(1) the extent to which section 909 of the Electronic Fund Transfer Act (15 U.S.C. 1693g), as in effect at the time of the report, and the implementing regulations promulgated by the Board to carry out that section provide adequate unauthorized use liability protection for consumers;

(2) the extent to which any voluntary industry rules have enhanced or may enhance the level of protection afforded consumers in connection with such unauthorized use liability; and

(3) whether amendments to the Electronic Fund Transfer Act (15 U.S.C. 1693 et seq.), or revisions to regulations promulgated by the Board to carry out that Act, are necessary to further address adequate protection for consumers concerning unauthorized use liability.

SEC. 1308. STUDY OF BANKRUPTCY IMPACT OF CREDIT EXTENDED TO DEPENDENT STUDENTS.

(a) STUDY.—

(1) IN GENERAL.—The Board shall conduct a study regarding the impact that the extension of credit described in paragraph (2) has on the rate of cases filed under title 11 of the United States Code.

(2) EXTENSION OF CREDIT.—The extension of credit described in this paragraph is the extension of credit to individuals who are—

(A) claimed as dependents for purposes of the Internal Revenue Code of 1986; and

(B) enrolled within 1 year of successfully completing all required secondary education requirements and on a full-time basis, in postsecondary educational institutions.

(b) REPORT.—Not later than 1 year after the date of enactment of this Act, the Board shall submit to the Senate and the House of Representatives a report summarizing the results of the study conducted under subsection (a).

SEC. 1309. CLARIFICATION OF CLEAR AND CONSPICUOUS.

(a) REGULATIONS.—Not later than 6 months after the date of enactment of this Act, the Board, in consultation with the other Federal banking agencies (as defined in section 3 of the Federal Deposit Insurance Act), the National Credit Union Administration Board, and the Federal Trade Commission, shall promulgate regulations to provide guidance regarding the meaning of the term ''clear and conspicuous'', as used in subparagraphs (A), (B), and (C) of section 127(b)(11) and clauses (ii) and (iii) of section 127(c)(6)(A) of the Truth in Lending Act.

(b) EXAMPLES.—Regulations promulgated under subsection (a) shall include examples of clear and conspicuous model disclosures for the purposes of disclosures required by the provisions of the Truth in Lending Act referred to in subsection (a).

(c) STANDARDS.—In promulgating regulations under this section, the Board shall ensure that the clear and conspicuous standard required for disclosures made under the provisions of the Truth in Lending Act referred to in subsection (a) can be implemented in a manner which results in disclosures which are reasonably understandable and designed to call attention to the nature and significance of the information in the notice.

TITLE XIV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1401. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), the amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS.—The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

TITLE XV—PREVENTING CORPORATE BANKRUPTCY ABUSE

SEC. 1501. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, is amended—

(1) in paragraph (3) by striking ''90'' and inserting ''180'', and

(2) in paragraphs (3) and (4) by striking ''$4,000'' and inserting ''$10,000''.

SEC. 1502. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, is amended—

(1) in subsections (a) and (b) by striking ''one year'' and inserting ''2 years'',

(2) in subsection (a)—

(A) by inserting ''(including any transfer to or for the benefit of an insider under an employment contract)'' after ''transfer'' the 1st place it appears, and

(B) by inserting ''(including any obligation to or for the benefit of an insider under an employment contract)'' after ''obligation'' the 1st place it appears, and

(3) in subsection (a)(1)(B)(ii)—

(A) in subclause (II) by striking ''or'' at the end,

(B) in subclause (III) by striking the period at the end and inserting ''; or'', and

(C) by adding at the end the following:

''(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.''.

SEC. 1503. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m), and

(2) by inserting after subsection (k) the following:

''(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

''(1) modified retiree benefits; and

''(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.''.

SEC. 1504. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this Act and the amendments made by this Act shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this Act shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

(2) AVOIDANCE PERIOD.—The amendment made by section 3(1) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

The CHAIRMAN. No amendments to the amendment in the nature of a substitute are in order except the amendments printed in House Report 108–407. Each amendment may be offered only in the order printed in the report, by a Member designated in the report, shall be considered read, shall be debatable for the time specified in the report, equally divided and controlled by the proponent and an opponent, shall not be subject to amendment, and shall not be subject to a demand for division of the question.

It is now in order to consider Amendment No. 1 printed in House Report 108–407.

AMENDMENT NO. 1 OFFERED BY MR. SENSENBRENNER

Mr. SENSENBRENNER. Mr. Chairman, I offer an amendment.

The CHAIRMAN. The Clerk will designate the amendment.

The text of the amendment is as follows:

Amendment No. 1 offered by Mr. SENSENBRENNER:

Strike ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2003'' each place it appears and insert ''Bankruptcy Abuse Prevention and Consumer Protection Act of 2004''.

In section 204 strike ''2002'' and insert ''2003''.

Strike section 1001 and insert the following:

SEC. 1001. PERMANENT REENACTMENT OF CHAPTER 12.

(a) REENACTMENT.—

(1) IN GENERAL.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and as in effect on December 31, 2003, is hereby reenacted.

(2) EFFECTIVE DATE OF REENACTMENT.—Paragraph (1) shall take effect on January 1, 2004.

(b) AMENDMENTS—Chapter 12 of title 11, United States Code, as reenacted by subsection (a), is amended by this Act.

(c) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

In section 1201—

(1) strike paragraph (2) and insert the following:

(2) in each paragraph (other than paragraph (54A)), by inserting ''The term'' after the paragraph designation;

and

(2) strike paragraph (7) and insert the following:

(7) in paragraph (54A)—

(A) by striking ''the term'' and inserting ''The term''; and

(B) by indenting the left margin of paragraph (54A) 2 ems to the right; and

Strike titles XIV and XV, and insert the following:

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

SEC. 1401. EMPLOYEE WAGE AND BENEFIT PRIORITIES.

Section 507(a) of title 11, United States Code, as amended by section 212, is amended—

(1) in paragraph (4) by striking ''90'' and inserting ''180'', and

(2) in paragraphs (4) and (5) by striking ''$4,000'' and inserting ''$10,000''.

SEC. 1402. FRAUDULENT TRANSFERS AND OBLIGATIONS.

Section 548 of title 11, United States Code, is amended—

(1) in subsections (a) and (b) by striking ''one year'' and inserting ''2 years'',

(2) in subsection (a)—

(A) by inserting ''(including any transfer to or for the benefit of an insider under an employment contract)'' after ''transfer'' the 1st place it appears, and

(B) by inserting ''(including any obligation to or for the benefit of an insider under an employment contract)'' after ''obligation'' the 1st place it appears, and

(3) in subsection (a)(1)(B)(ii)—

(A) in subclause (II) by striking ''or'' at the end,

(B) in subclause (III) by striking the period at the end and inserting ''; or'', and

(C) by adding at the end the following:

''(IV) made such transfer to or for the benefit of an insider, or incurred such obligation to or for the benefit of an insider, under an employment contract and not in the ordinary course of business.''.

SEC. 1403. PAYMENT OF INSURANCE BENEFITS TO RETIRED EMPLOYEES.

Section 1114 of title 11, United States Code, is amended—

(1) by redesignating subsection (l) as subsection (m), and

(2) by inserting after subsection (k) the following:

''(l) If the debtor, during the 180-day period ending on the date of the filing of the petition—

''(1) modified retiree benefits; and

''(2) was insolvent on the date such benefits were modified;

the court, on motion of a party in interest, and after notice and a hearing, shall issue an order reinstating as of the date the modification was made, such benefits as in effect immediately before such date unless the court finds that the balance of the equities clearly favors such modification.''.

SEC. 1404. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as provided in subsection (b), this title and the amendments made by this title shall take effect on the date of the enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this title shall apply only with respect to cases commenced under title 11 of the United States Code on or after the date of the enactment of this Act.

(2) AVOIDANCE PERIOD.—The amendment made by section 1402(1) shall apply only with respect to cases commenced under title 11 of the United States Code more than 1 year after the date of the enactment of this Act.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

SEC. 1501. EFFECTIVE DATE; APPLICATION OF AMENDMENTS.

(a) EFFECTIVE DATE.—Except as otherwise provided in this Act, this Act and the amendments made by this Act shall take effect 180 days after the date of enactment of this Act.

(b) APPLICATION OF AMENDMENTS.—

(1) IN GENERAL.—Except as otherwise provided in this Act and paragraph (2), the

amendments made by this Act shall not apply with respect to cases commenced under title 11, United States Code, before the effective date of this Act.

(2) CERTAIN LIMITATIONS APPLICABLE TO DEBTORS.—The amendments made by sections 308, 322, and 330 shall apply with respect to cases commenced under title 11, United States Code, on or after the date of the enactment of this Act.

SEC. 1502. TECHNICAL CORRECTIONS.

(a) CONFORMING AMENDMENTS TO TITLE 11 OF THE UNITED STATES CODE.—Title 11 of the United States Code, as amended by the preceding provisions of this Act, is amended—

(1) in section 507—

(A) in subsection (a)—

(i) in paragraph (5)(B)(ii) by striking ''paragraph (3)'' and inserting ''paragraph (4)''; and

(ii) in paragraph (8)(D) by striking ''paragraph (3)'' and inserting ''paragraph (4)'';

(B) in subsection (b) by striking ''subsection (a)(1)'' and inserting ''subsection (a)(2)''; and

(C) in subsection (d) by striking ''subsection (a)(3)'' and inserting ''subsection (a)(1)'';

(2) in section 523(a)(1)(A) by striking ''507(a)(2)'' and inserting ''507(a)(3)'';

(3) in section 752(a) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(4) in section 766—

(A) in subsection (h) by striking ''507(a)(1)'' and inserting ''507(a)(2)''; and

(B) in subsection (i) by striking ''507(a)(1)'' each place it appears and inserting ''507(a)(2)'';

(5) in section 901(a) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(6) in section 943(b)(5) by striking ''507(a)(1)'' and inserting ''507(a)(2)'';

(7) in section 1123(a)(1) by striking ''507(a)(1), 507(a)(2)'' and inserting ''507(a)(2), 507(a)(3)'';

(8) in section 1129(a)(9)—

(A) in subparagraph (A) by striking ''507(a)(1) or 507(a)(2)'' and inserting ''507(a)(2) or 507(a)(3)''; and

(B) in subparagraph (B) by striking ''507(a)(3)'' and inserting ''507(a)(1)'';

(9) in section 1226(b)(1) by striking ''507(a)(1)'' and inserting ''507(a)(2)''; and

(10) in section 1326(b)(1) by striking ''507(a)(1)'' and inserting ''507(a)(2)''.

(b) RELATED CONFORMING AMENDMENT.—Section 6(e) of the Securities Investor Protection Act of 1970 (15 U.S.C. 78fff(e)) is amended by striking ''507(a)(1)'' and inserting ''507(a)(2)''.

In the table of contents strike the items relating to titles XIV and XV, and insert the following items:

TITLE XIV—PREVENTING CORPORATE BANKRUPTCY ABUSE

Sec. 1401. Employee wage and benefit priorities.
Sec. 1402. Fraudulent transfers and obligations.
Sec. 1403. Payment of insurance benefits to retired employees.
Sec. 1404. Effective date; application of amendments.

TITLE XV—GENERAL EFFECTIVE DATE; APPLICATION OF AMENDMENTS

Sec. 1501. Effective date; application of amendments.
Sec. 1502. Technical corrections.

The CHAIRMAN. Pursuant to House Resolution 503, the gentleman from Wisconsin (Mr. SENSENBRENNER) and a Member opposed each will control 5 minutes.

The Chair recognizes the gentleman from Wisconsin (Mr. SENSENBRENNER).

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

Mr. Chairman, this amendment is very straightforward. It simply makes several minor corrections to the text of H.R. 975 that was passed by the House, which according to the rule has been substituted as the text of Senate 1920.

The technical revisions consist of the following:

The short title of the bill is revised to reflect the current year. Section 1001 of the bill is amended to clarify that the reenactment of Chapter 12 is made retroactively; this ensures that cases filed by family farmers during the lapsed period can simply be converted to Chapter 12 once it is reenacted. Titles XIV and XV of the bill are renumbered as titles XV and XIV, respectively, to clarify the bill's overall effective date. An erroneous drafting instruction in section 1201 of the bill is corrected. And a new provision is added to correct statutory cross-references in current law.

This is technical and noncontroversial, and I urge my colleagues to support the amendment.

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

Mr. WATT. Mr. Chairman, I claim the time in opposition to the amendment, and I yield myself such time as I may consume.

Mr. Chairman, I rise solely to advise that we have had no indication from our side that there is anybody who opposes these technical amendments and we, therefore, concur in the amendments.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield back the balance of my time.

The CHAIRMAN. The question is on the amendment offered by the gentleman from Wisconsin (Mr. SENSENBRENNER).

The amendment was agreed to.

The CHAIRMAN. It is now in order to consider Amendment No. 2 printed in House Report 108–407.

AMENDMENT IN THE NATURE OF A SUBSTITUTE NO. 2 OFFERED BY MS. BALDWIN

Ms. BALDWIN. Mr. Chairman, I offer an amendment in the nature of a substitute.

The CHAIRMAN. The Clerk will designate the amendment in the nature of a substitute.

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

Amendment in the nature of a substitute No. 2 offered by Ms. BALDWIN:

Strike all after the enacting clause and insert the following:

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Protection of Family Farmers and Family Fishermen Act of 2004''.

SEC. 2. PERMANENT REENACTMENT OF CHAPTER 12.

(a) PERMANENT REENACTMENT.—

(1) REENACTMENT.—Chapter 12 of title 11, United States Code, as reenacted by section 149 of division C of the Omnibus Consolidated and Emergency Supplemental Appropriations Act, 1999 (Public Law 105–277), and as in effect on December 31, 2003, is hereby reenacted.

(2) CONFORMING AMENDMENT.—Section 302 of the Bankruptcy Judges, United States Trustees, and Family Farmer Bankruptcy Act of 1986 (28 U.S.C. 581 note) is amended by striking subsection (f).

(b) EFFECTIVE DATE OF REENACTMENT.—Subsection (a) shall take effect on January 1, 2004.

SEC. 3. DEBT LIMIT INCREASE.

Section 104(b) of title 11, United States Code, as amended by section 226, is amended by inserting ''101(18),'' after ''101(3),'' each place it appears.

SEC. 4. CERTAIN CLAIMS OWED TO GOVERNMENTAL UNITS.

(a) CONTENTS OF PLAN.—Section 1222(a)(2) of title 11, United States Code, is amended to read as follows:

''(2) provide for the full payment, in deferred cash payments, of all claims entitled to priority under section 507, unless—

''(A) the claim is a claim owed to a governmental unit that arises as a result of the sale, transfer, exchange, or other disposition of any farm asset used in the debtor's farming operation, in which case the claim shall be treated as an unsecured claim that is not entitled to priority under section 507, but the debt shall be treated in such manner only if the debtor receives a discharge; or

''(B) the holder of a particular claim agrees to a different treatment of that claim;''.

(b) SPECIAL NOTICE PROVISIONS.—Section 1231(b) of title 11, United States Code, as so designated by section 719, is amended by striking ''a State or local governmental unit'' and inserting ''any governmental unit''.

(c) EFFECTIVE DATE; APPLICATION OF AMENDMENTS.—This section and the amendments made by this section shall take effect on the date of the enactment of this Act and shall not apply with respect to cases commenced under title 11 of the United States Code before such date.

SEC. 5. DEFINITION OF FAMILY FARMER.

Section 101(18) of title 11, United States Code, is amended—

(1) in subparagraph (A)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''; and

(2) in subparagraph (B)(ii)—

(A) by striking ''$1,500,000'' and inserting ''$3,237,000''; and

(B) by striking ''80'' and inserting ''50''.

SEC. 6. ELIMINATION OF REQUIREMENT THAT FAMILY FARMER AND SPOUSE RECEIVE OVER 50 PERCENT OF INCOME FROM FARMING OPERATION IN YEAR PRIOR TO BANKRUPTCY.

Section 101(18)(A) of title 11, United States Code, is amended by striking ''for the taxable year preceding the taxable year'' and inserting the following:

''for—

''(i) the taxable year preceding; or

''(ii) each of the 2d and 3d taxable years preceding;

the taxable year''.

SEC. 7. PROHIBITION OF RETROACTIVE ASSESSMENT OF DISPOSABLE INCOME.

(a) CONFIRMATION OF PLAN.—Section 1225(b)(1) of title 11, United States Code, is amended—

(1) in subparagraph (A) by striking ''or'' at the end;

(2) in subparagraph (B) by striking the period at the end and inserting ''; or''; and

(3) by adding at the end the following:

''(C) the value of the property to be distributed under the plan in the 3-year period, or

such longer period as the court may approve under section 1222(c), beginning on the date that the first distribution is due under the plan is not less than the debtor's projected disposable income for such period.''.

(b) MODIFICATION OF PLAN.—Section 1229 of title 11, United States Code, is amended by adding at the end the following:

''(d) A plan may not be modified under this section—

''(1) to increase the amount of any payment due before the plan as modified becomes the plan;

''(2) by anyone except the debtor, based on an increase in the debtor's disposable income, to increase the amount of payments to unsecured creditors required for a particular month so that the aggregate of such payments exceeds the debtor's disposable income for such month; or

''(3) in the last year of the plan by anyone except the debtor, to require payments that would leave the debtor with insufficient funds to carry on the farming operation after the plan is completed.''.

SEC. 8. FAMILY FISHERMEN.

(a) DEFINITIONS.—Section 101 of title 11, United States Code, is amended—

(1) by inserting after paragraph (7) the following:

''(7A) 'commercial fishing operation' means—

''(A) the catching or harvesting of fish, shrimp, lobsters, urchins, seaweed, shellfish, or other aquatic species or products of such species; or

''(B) for purposes of section 109 and chapter 12, aquaculture activities consisting of raising for market any species or product described in subparagraph (A);

''(7B) 'commercial fishing vessel' means a vessel used by a family fisherman to carry out a commercial fishing operation;''; and

(2) by inserting after paragraph (19) the following:

''(19A) 'family fisherman' means—

''(A) an individual or individual and spouse engaged in a commercial fishing operation—

''(i) whose aggregate debts do not exceed $1,500,000 and not less than 80 percent of whose aggregate noncontingent, liquidated debts (excluding a debt for the principal residence of such individual or such individual and spouse, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such individual or such individual and spouse; and

''(ii) who receive from such commercial fishing operation more than 50 percent of such individual's or such individual's and spouse's gross income for the taxable year preceding the taxable year in which the case concerning such individual or such individual and spouse was filed; or

''(B) a corporation or partnership—

''(i) in which more than 50 percent of the outstanding stock or equity is held by—

''(I) 1 family that conducts the commercial fishing operation; or

''(II) 1 family and the relatives of the members of such family, and such family or such relatives conduct the commercial fishing operation; and

''(ii)(I) more than 80 percent of the value of its assets consists of assets related to the commercial fishing operation;

''(II) its aggregate debts do not exceed $1,500,000 and not less than 80 percent of its aggregate noncontingent, liquidated debts (excluding a debt for 1 dwelling which is owned by such corporation or partnership and which a shareholder or partner maintains as a principal residence, unless such debt arises out of a commercial fishing operation), on the date the case is filed, arise out of a commercial fishing operation owned or operated by such corporation or such partnership; and

''(III) if such corporation issues stock, such stock is not publicly traded;

''(19B) 'family fisherman with regular annual income' means a family fisherman whose annual income is sufficiently stable and regular to enable such family fisherman to make payments under a plan under chapter 12 of this title;''.

(b) WHO MAY BE A DEBTOR.—Section 109(f) of title 11, United States Code, is amended by inserting ''or family fisherman'' after ''family farmer''.

(c) CHAPTER 12.—Chapter 12 of title 11, United States Code, is amended—

(1) in the chapter heading, by inserting ''**OR FISHERMAN**'' after ''**FAMILY FARMER**'';

(2) in section 1203, by inserting ''or commercial fishing operation'' after ''farm''; and

(3) in section 1206, by striking ''if the property is farmland or farm equipment'' and inserting ''if the property is farmland, farm equipment, or property used to carry out a commercial fishing operation (including a commercial fishing vessel)''.

(d) CLERICAL AMENDMENT.—In the table of chapters for title 11, United States Code, the item relating to chapter 12, is amended to read as follows:

''12. Adjustments of Debts of a Family Farmer or Family Fisherman with Regular Annual Income ..... 1201''.

(e) APPLICABILITY.—Nothing in this section shall change, affect, or amend the Fishery Conservation and Management Act of 1976 (16 U.S.C. 1801, et seq.).

The CHAIRMAN. Pursuant to House Resolution 503, the gentlewoman from Wisconsin (Ms. BALDWIN) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 30 minutes.

The gentlewoman from Wisconsin (Ms. BALDWIN) is recognized for 30 minutes.

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

Mr. Chairman, as you know, Chapter 12 family farmers bankruptcy protection is an effective and noncontroversial part of our Nation's Bankruptcy Code. Since its creation in 1986, it has allowed our Nation's family farmers who face economic hardship a greater opportunity to reorganize their debts and continue in farming.

As with many laws that we pass, the benefits of the direct impact, which can be easily measured, are often exceeded by the indirect benefits. Chapter 12 does not just benefit those using its protections. Many farmers who face the possibility of a bankruptcy never get to the point of a court filing. Bankruptcy trustees and bankruptcy attorneys are quick to point out that the very existence of the option of Chapter 12 filing promotes negotiations between farmers and their creditors, thus preventing bankruptcy filings altogether.

Chapter 12 protection is currently unavailable to our Nation's farmers. It expired on December 31, 2003. The House should have taken up the 6-month extension bill, Senate bill 1920, passed without amendment, and sent it to the President immediately. However, by approving the rule earlier today, we have foreclosed that option; therefore, I am offering this substitute amendment.

Mr. Chairman, my amendment provides the House with a clear policy choice by allowing a vote on passing a permanent Chapter 12 authorization instead of continuing to keep it tied to the controversial larger bankruptcy bill. My amendment simply uses the Chapter 12 language that was agreed to by bipartisan, bicameral conferees during the 107th Congress. It is the same as the bipartisan bill, Senate bill 2004, introduced by Members of the other body.

The amendment does the following: It makes Chapter 12 farm bankruptcy protections a permanent part of our Bankruptcy Code; it would increase the debt limits that a family farm can hold to qualify for Chapter 12 from $1.5 million to $3.2 million; and it would index those debt limits to the consumer price index. It would reduce from 80 percent to 50 percent the percentage of family farm liabilities that are due to farming operations; it would look at the previous 3 years, instead of only the previous year when determining whether 50 percent of income is from farming operations; and it would expand this type of bankruptcy protection to family fishermen.

These changes to Chapter 12 are not controversial and enjoy widespread bipartisan support.

Since I was first elected to Congress 5 years ago, we have passed eight, eight temporary extensions to Chapter 12. It is time to end this repetitive cycle of extensions and extensions. Our struggling family farmers should not be used as leverage. They should not have to continue to wait while we play games with Chapter 12 protections. This bill provides a textbook example that what we do here in Washington directly affects the lives of people facing real financial challenges.

In Wisconsin recently, a farmer from Columbus filed for Chapter 12 bankruptcy. He works day and night to make his farm a success. Unfortunately, like many farmers, the weather and the market conspired to disrupt his cash flow. Filing Chapter 12 bankruptcy gave his family time to negotiate with his creditors while he switched production from corn and soybeans to vegetables, which he now sells in local markets. He sells his produce in farmers markets in Madison and in Princeton, Wisconsin, and he is paying his debts.

Under Chapter 12, it was not only the Columbus farmer that benefited, his family and his creditors now are receiving their money. The people in my district can purchase his bounty, and he can continue to support his farm, his family and his obligations.

Every time we come to the floor to extend Chapter 12, we are told that a permanent extension cannot be passed separately from the big bill because taking out this terribly popular item would slow the bill's momentum. We were told that we had to strip the permanent extension of Chapter 12 from last year's farm bill because it would

slow down the progress of the bankruptcy bill. We were told in June when we extended Chapter 12 again that we had to wait. Our farmers have been waiting for more than 5 years, and it is time to get this done.

Let us end the uncertainty these extensions cause by passing a permanent authorization. That is what my amendment would do. I sort of feel like I am in the middle of the movie ''Groundhog Day.'' Every 6 months we go through a process of extending Chapter 12 extensions again. Every session of Congress we go through a drawn-out debate regarding a larger overhaul of our bankruptcy laws. My amendment would break us out of that cycle.

It is time to stop using our farmers as pawns to push for bankruptcy reform and it is time to restore this important protection. We should not be playing politics with the livelihood of our farmers by putting the special interests who want the bankruptcy overhaul ahead of the real needs of struggling family farmers.

I urge my colleagues to pass the Baldwin substitute amendment.

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

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

Mr. Chairman, with all due respect to my colleague from Wisconsin (Ms. BALDWIN), she had an opportunity to advance the bankruptcy bill on November 14, 2002, but voted against the rule to bring up the conference report that contained the compromise language relative to the abortion clinic protestors judgment discharge, and that vote was rejected, 172 to 243. Had that rule passed, obviously the conference report would have passed, the President would have signed the bill at the end of 2002, and we would not be here talking about any of these issues here today.

But I rise in opposition to this amendment because as we begin this debate, I want to make it perfectly clear that by opposing this amendment we are not in any respect jeopardizing the financial well-being of family farmers, or as proponents of this amendment have tried to construe the issue, holding farmers hostage. Nothing could be further from the truth.

The reality is that Senate 1920, as it will be voted on today, already accomplishes everything this amendment does and, indeed, much more. Since its enactment, Chapter 12 has lapsed on six occasions. The shortest lapse periods was 20 days; the longest was approximately 10 months. As with prior measures reenacting Chapter 12, the bill before us is retroactive, which will protect family farmers.

Mr. Chairman, you should know that the amendments simply extract one series of reforms from pending bankruptcy legislation. But what opponents of the amendment fail to include, however, are literally hundreds of other reforms in Senate 1920 that would benefit farmers in many other ways and nearly all Americans as well.

Although my colleague on the other side of the aisle essentially asserts that farmers are being held hostage to bankruptcy reform, the reality is that bankruptcy reform is being held hostage. Just look at the roll calls and who voted which way in the eight or nine votes that the House has had since 1998.

Here are just a small sample of the reforms being held up by opponents of overall reforms: First, reforms giving the Justice Department and the courts the tools they need to deal with fraud and abuse in the current bankruptcy system. Voting for this amendment and against the bill means that the Justice Department and the courts will not have those tools to deal with fraud and abuse.

Second, remedies addressing the so-called ''mansion loophole'' by which corporate criminals and other wrongdoers can shield their million dollar homes from the just claims of their creditors. And that includes employees of major corporations that had their 401(k)s looted as a result of stock prices tanking and they could not diversify what was in the 401(k)s.

So try telling that to an Enron or WorldCom employee that we are going to allow future corporate wrongdoers to be able to stiff their employees as well. The amendment offered by the gentlewoman from Wisconsin (Ms. BALDWIN) would allow that to happen. The base bill does not.

Third, reforms representing deadbeat parents from using bankruptcy as a means of avoiding their child support obligation. This bill increases the priority of child support obligations in bankruptcy. The Baldwin amendment does not do that. The National Child Support Enforcement Association states that these reforms are crucial to the collection of child support during bankruptcy. Do not turn your back on custodial parents who have to file bankruptcy because they cannot collect their support.

□ 1500

Fourth, authorization for the appointment of additional bankruptcy judges in districts where there is a huge backlog of bankruptcy cases. Voting for the Baldwin amendment will mean justice delayed being justice denied. Voting against it and passing the bill will allow more judges to prosecute these cases to a conclusion.

Fifth, protections for victims of crimes of violence from being further victimized by criminals who file for bankruptcy relief.

Sixth, reforms requiring consumers to receive important information about the alternatives to, and consequences of, bankruptcy before they file for relief. Is it not better that people not file for bankruptcy because they can get better information and counseling to prevent them from having a scarlet letter being attached to their name because they had to go through bankruptcy?

There are also provisions waiving the filing of bankruptcy fees for the indigent. If my colleagues vote for the Baldwin amendment and against the bill, those provisions are not there.

There are reforms requiring millions of consumers to receive a monthly credit card billing statement that would include specific disclosures about the increased interest and repayment time associated with making minimum payments. A lot of people end up having to file for bankruptcy because they get themselves further and further in the hole with revolving credit card payments. If there is a warning on that and some information on that on the statements maybe not as many people will end up getting in that hole.

Also, the enactment of long-overdue reforms intended to reduce systemic risk in the banking and financial marketplace by minimizing the risk of disruption when parties to certain financial transactions become bankrupt or insolvent, the so-called netting provision. Federal Reserve Board Chairman Alan Greenspan has said these reforms are extremely important. They are extremely important for economic stability. The authors and supporters of the Baldwin amendment turn their backs on these reforms.

Also, protections against the disclosure of the name of a debtor's minor children in public bankruptcy files. Apparently, the people who want to strip these reforms out want anybody to go into a courthouse and see the names of minor children in a parent's bankruptcy file and let that become a matter of public discussion. There are also provisions preventing debtors from selling their customers' personally identifiable information.

The bill has reforms requiring the appointment of an ombudsman to safeguard the interests of patients in health care facilities that are in bankruptcy. Support the amendment and vote down the bill; there is no ombudsman to help out those patients in the bankrupt health care facility.

In light of the disastrous impact that bankruptcy cases like WorldCom and Enron have had on their employees, reforms that more than double the current monetary cap on wage and employee benefit claims entitled to priority under the bankruptcy code are included in my bill, but not the amendment that is before the House.

Other provisions would protect retirees in cases where chapter 11 debtors unilaterally modify their benefits, such as health insurance. We protect as best as possible retirees of a bankrupt company in forcing the company to try to uphold their health insurance obligation to those retirees.

Vote for the Baldwin amendment; those are not in there. My bill has got them.

These reforms would make it easier to recover excessive pre-petition compensation such as bonuses paid to insiders of a debtor that can be used to pay unpaid employee wage claims. My bill has got that. The amendment does not.

I should also point out that chapter 12 is rarely utilized by family farmers. Last year, less than 700 chapter 12 cases were filed out of the nearly 1.7 million bankruptcy cases filed during the same period. When chapter 12 lapses, as it has in the past, farmers can still seek bankruptcy relief under other chapters of the bankruptcy code; so we do not leave farmers that need to file for bankruptcy out in the cold. Merely what we do is enact chapter 12 on a permanent basis, and because of the provision in retroactivity and the amendment that was just adopted, their cases can be converted to chapter 12 once that chapter is reenacted.

While we obviously care about family farmers, we also care about the indigent, the patient, the single moms with unpaid support claims, retired employees who have lost their health benefits and the financial well-being of millions of consumers. Accordingly, Mr. Chairman, I urge my colleagues to vote against this amendment.

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

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

This House has already debated and voted on H.R. 975. My amendment does nothing to change that. This is truly a matter between the Republican leadership of the two bodies.

The gentleman notes that the chapter 12 provisions have expired six times of varying length, most recently on December 31, 2003.

I would note that June 23, 2003, the same gentleman said on this floor that ''it is crucial that this specialized form of bankruptcy relief for farmers not be allowed to sunset for two fundamental reasons. First, family farmers absent chapter 12 would be forced to file for bankruptcy relief under the bankruptcy code's other alternatives, none of which work as well for them as does chapter 12.''

We started the day with a bill before us that was simply a 6-month extension of chapter 12 bankruptcy. We can end the day with a permanent authorization of that bankruptcy code if my colleagues support my substitute amendment.

Mr. Chairman, I yield 2½ minutes to the gentleman from Pennsylvania (Mr. HOLDEN), who has been extraordinarily active on this issue in fighting for family farmers.

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

Mr. Chairman, I rise in support of the Baldwin amendment, which simply seeks to extend chapter 12 of the bankruptcy code on a permanent basis once and for all. This amendment represents an achievable solution to a problem that has existed for more than 6 years.

In 1997, the National Bankruptcy Review Commission recommended that chapter 12 of the Federal Bankruptcy Code, the chapter that contains bankruptcy protection for family farmers, be made permanent.

Chapter 12 is by no means a controversial issue. It was enacted in 1986 as a measure to allow family farmers to repay their debts according to a plan under court supervision. Chapter 12 prevents a situation from occurring where a few bad crop years result in the loss of the family farm.

In the absence of chapter 12, family farmers are forced to file for bankruptcy relief under the bankruptcy code's other alternatives, none of which work quite as well for farmers as chapter 12 does. Chapter 11, for example, will require a farmer to sell the family farm to pay the claims of creditors. How can a farmer be expected to come up with the money to pay off his debts without his farm? Chapter 11 is an expensive process that does not accommodate the special needs of farmers.

This Congress, just as in previous Congresses, the larger Bankruptcy Reform Act, H.R. 975, includes a provision that permanently extends chapter 12. Also in this Congress, just as in previous Congresses, the larger Bankruptcy Reform Act, while enjoying a majority of support in the House, remains a controversial bill whose consideration by the other body remains a question. Simply substituting the text of H.R. 975 into this bill and sending it back over to the other body will not bring us any closer to extending chapter 12, even on a temporary basis.

For years now, family farmers have been held hostage by the contentious debate surrounding the larger bankruptcy issue. Since at least the 105th Congress, they have been made to sit on pins and needles waiting to see if we will extend these protections for another few months as we try to work out the larger bankruptcy issue.

Mr. Chairman, the family farmers have waited long enough. Family farmers cannot make long-term financial plans based on 6-month extensions. Permanently extending chapter 12 will give farmers the kind of protection they desperately need, the kind of protections we have already voted for time and time again since the 1997 National Bankruptcy Review Commission recommendation.

I urge my colleagues to accept the Baldwin amendment.

Mr. SENSENBRENNER. Mr. Chairman, how much time remains on each side?

The CHAIRMAN. The gentleman from Wisconsin (Mr. SENSENBRENNER) has 20½ minutes remaining. The gentlewoman from Wisconsin (Ms. BALDWIN) has 18½ minutes remaining.

Mr. SENSENBRENNER. Mr. Chairman, I yield 3 minutes to the gentleman from Utah (Mr. CANNON).

Mr. CANNON. Mr. Chairman, I think it is important here to agree where things are agreeable and to be clear about what the disagreements are.

I think it is very clear that we have had a number of extensions to the farm bill. I think it is clear that those extensions have all been retroactive. I think it is clear that every Member of this body wants to make sure that this noncontroversial provision continues in place. I think everyone should agree here that it is important that farmers are able to get credit, and balancing the issues before us are important so that that credit system stays in place and so that we also enhance, by the way, the rest of our economy.

The fact is the bill before us is a bipartisan bill. We have heard special interests uttered numerous times here, and perhaps we ought to have the same kind of response to that that we have in the Bible because it is so misleading. The fact is this is not a special interest bill. This is a bill that passed 315 to 115. This is a bipartisan bill that solves problems that we need to resolve in our economy.

On the other hand, those people who are passionate about prosecuting possible acts of people who are against abortion, that represents I believe a special interest that should not be one that sets aside this bill and allows it to go forward.

Another thing that we apparently disagree on is that this bill can be passed or not. The fact is this is a passable bill. It can be passed very quickly. It can solve the problems of our family farmers. It can reinstate chapter 12, which we all agree is very, very important, and it can move through a conference with the Senate and to the President for signature very quickly. We have done a number of things in this bill to make it helpful for Americans and for American consumers, and I would urge opposition to the amendment and support for the underlying bill.

Ms. BALDWIN. Mr. Chairman, I yield 5 minutes to the gentleman from North Carolina (Mr. WATT).

Mr. WATT. Mr. Chairman, I thank the gentlewoman for yielding me the time; and, Mr. Chairman, I do not think I will take 5 minutes, but I wanted to make a couple of comments because the chairman of the full committee has chided me on one or more occasions about voting against the rule that would have allowed the old bankruptcy bill that had the abortion clinics provisions in it to come to the floor and has made it sound like I did something that was inappropriate.

Now the chairman of the committee is going to have the opportunity to show how committed he is to a permanent extension of the family farms because the gentlewoman from Wisconsin's (Ms. BALDWIN) amendment would make the family farms provisions of the bankruptcy law permanent, and he has gone out of his way to talk about how he would like to see those provisions be permanent. I will be anxious to see how he plans to vote on this

amendment because this is the clear way to make the provisions that protect family farmers permanent in the law, to keep it away from all of this abortion clinic politics, to keep it completely away from bankruptcy reform politics. This is the vote that will show either my colleagues are committed to protecting family farmers in this country or they are not.

I am anxiously awaiting how my colleagues are going to cast their vote on this, since the gentleman from Wisconsin (Mr. SENSENBRENNER) has made such a point of pointing out that I voted against the rule that would have allowed the prior bill to come to the floor last year. So this amendment is on the floor. There will be a recorded vote. I will be anxious to see how my chairman votes on it.

It is clear that farmers in this country are having a difficult time. Whereas there was a 7 percent, almost-8 percent decline in small business or business bankruptcies in 2003 and a 7 percent increase in individual bankruptcy filings in 2003, there was a 116.8 percent increase in bankruptcy filings by farmers in this country.

□ 1515

So it is clear that farmers have been in distress.

This bill started out being a noncontroversial, farmer-friendly bill that would have passed this House on the suspension calendar had the leadership decided that it would put it on the suspension calendar. It had broad bipartisan support. We have extended on several occasions before the family-farm provisions.

It is not tied up in the politics of bankruptcy reform. It is not tied up in the politics of abortion clinics and whether there ought to be abortion provisions in the bankruptcy bill. This is a clear, clear-cut vote on whether we want to permanently extend the family-farm provisions.

So let there be no mistake about it, family farmers ought to hold Members of this body accountable on this vote. It is not trapped with any kind of political agenda. It is what we all have fought for. It is what we say we all believe in. This is our opportunity to vote on it. So I want to encourage my colleagues to support the Baldwin amendment.

Mr. SENSENBRENNER. Mr. Chairman, I yield 2 minutes to the gentleman from Virginia (Mr. GOODLATTE), the chairman of the Committee on Agriculture.

Mr. GOODLATTE. Mr. Chairman, I want to thank the chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER), for yielding me this time, and as chairman of the House Committee on Agriculture, I thank him for his leadership in bringing this legislation to the floor to help not only America's farmers and ranchers, but all small businesses dealing with the problems that exist in our current Bankruptcy Code.

The Baldwin amendment seeks to pick apart the comprehensive reforms by addressing farm and ranch bankruptcy only, which may be a popular proposal at first glance to many of us who represent farm country, but it is one the House should turn down this afternoon. If the House wants to enact full Chapter 12 reforms, including a permanent authorization, then Members should adopt the Sensenbrenner substitute, which contains these reforms.

Unfortunately, the Baldwin amendment is another cynical attempt to pit farmers and ranchers against other small-business owners and consumers. The bottom line is, adopting the Sensenbrenner comprehensive package protects family farmers, single moms, small businesses and millions of consumers. I would ask Members to vote ''no'' on the Baldwin amendment and keep bankruptcy reforms in a single bipartisan package of long overdue reforms to the Bankruptcy Code.

Ms. BALDWIN. Mr. Chairman, I yield myself such time as I may consume; and in closing, I would only reiterate what I said earlier, which is that we started the day, this morning, with a very simple bill before us, a bill to extend by 6 months the Chapter 12 protections for family farmers. We could end the day, if we pass this substitute amendment, with permanent authorization of Chapter 12 bankruptcy protections for our family farmers and family fishermen who are struggling today in the United States.

Instead, we have before us a massive bankruptcy overhaul that we have already debated and voted on in this House. These parliamentary maneuvers are most unfair to the farmers across America who woke up today hoping we would provide them relief. That is what we should do, and I urge Members to support the Baldwin substitute amendment.

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

Mr. SENSENBRENNER. Mr. Chairman, I yield myself the balance of my time.

Mr. Chairman, I do not think that Chapter 12 is controversial. It is also not utilized very much in bankruptcy filings. The statistical report of the Administrative Office of the U.S. Courts, for example, show that in the fiscal year that ended last September 30, there were only 19 Chapter 12 filings for the entire State of Wisconsin. So we are dealing with 19 family farmers, which is important, but there are still thousands of family farmers in my State and elsewhere that end up having to pay this $400 per household hidden tax and higher cost of goods and services and higher interest on the money that they have to borrow because of the abuses of the bankruptcy system that my amendment seeks to plug.

Now, the major reform of all of those that we have talked about in the bankruptcy bill, that this House has voted to approve eight times in various forms and motions, is that someone who is able to repay all or part of their debts through future earning cannot get a Chapter 7 liquidation and have all those debts discharged.

So this so-called ''means test'' means that someone who is really down and out and does not have the prospect of future earnings being able to repay a significant part of their debts, my bill does not impact on what their legal options are. They will still be able to file for Chapter 7, get a discharge, and be able to try to put their lives together and start anew. But somebody who does have the potential of future earnings, and, yes, a lot of these people use the bankruptcy system as a financial planning tool, my bill will allow a court to order a repayment of all or part of those debts.

Remember, every penny that is recovered this way is one less penny that has to be passed on to the 98 percent of the people of this country who pay their bills on time or as agreed to. The abuses of the bankruptcy system amount to about a $40 billion cost shift from people who do not pay their bills to people who do pay their bills.

I ask the Members to vote down the Baldwin amendment to give us another shot at getting a conference report passed and on the President's desk, because that is the vote in the interest of saving as much money as possible for the people who do pay their bills rather than allowing continued abuses of the bankruptcy system.

Vote ''no'' on the Baldwin amendment, pass the underlying bill, the substitute amendment, as authorized by the Committee on Rules.

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

The CHAIRMAN. All time has expired. The question is on the amendment in the nature of a substitute offered by the gentlewoman from Wisconsin (Ms. BALDWIN).

The question was taken; and the Chairman announced that the noes appeared to have it.

RECORDED VOTE

Ms. BALDWIN. Mr. Chairman, I demand a recorded vote.

A recorded vote was ordered.

The vote was taken by electronic device, and there were—ayes 158, noes 204, answered ''present'' 1, not voting 70, as follows:

[Roll No. 8]

AYES—158

Allen	Cardoza	Dicks
Andrews	Carson (IN)	Dingell
Baird	Case	Dooley (CA)
Baldwin	Clay	Doyle
Ballance	Clyburn	Emanuel
Becerra	Conyers	Engel
Berkley	Cooper	Eshoo
Berman	Costello	Etheridge
Berry	Crowley	Evans
Bishop (NY)	Cummings	Farr
Blumenauer	Davis (AL)	Filner
Boswell	Davis (CA)	Ford
Brady (PA)	Davis (IL)	Frank (MA)
Brown (OH)	Davis (TN)	Frost
Capps	DeFazio	Gonzalez
Capuano	DeLauro	Green (TX)
Cardin	Deutsch	Grijalva

Harman
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Hooley (OR)
Hoyer
Inslee
Jackson (IL)
Jefferson
John
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lynch
Majette
Maloney
Markey
Marshall
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Menendez
Michaud
Millender-McDonald
Miller (NC)
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Pomeroy
Price (NC)
Rahall
Rangel
Ross
Rothman
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Sherman
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Watt
Waxman
Weiner
Wexler
Woolsey
Wu
Wynn

NOES—204

Aderholt
Akin
Baca
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burns
Burr
Burton (IN)
Calvert
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Cramer
Crenshaw
Cubin
Culberson
Davis (FL)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Feeney
Ferguson
Flake
Foley
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastert
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Hulshof
Isakson
Issa
Istook
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
LaHood
Latham
LaTourette
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCotter
McCrery
McHugh
McKeon
Meek (FL)
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Pickering
Pitts
Platts
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Rogers (AL)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ryan (WI)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shuster
Simmons
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

ANSWERED ''PRESENT''—1

Ruppersberger

NOT VOTING—70

Abercrombie
Ackerman
Alexander
Bachus
Ballenger
Bell
Bereuter
Bishop (GA)
Bono
Brown, Corrine
Brown-Waite, Ginny
Buyer
Camp
Carson (OK)
Crane
Cunningham
DeGette
Delahunt
Doggett
Everett
Fattah
Forbes
Gallegly
Gephardt
Gerlach
Gutierrez
Hastings (FL)
Hefley
Honda
Houghton
Hunter
Hyde
Israel
Jackson-Lee (TX)
Jenkins
Johnson, E. B.
Jones (NC)
Kolbe
Kucinich
Leach
Lewis (CA)
Lipinski
McInnis
McIntyre
Meeks (NY)
Miller (MI)
Miller, George
Mollohan
Ortiz
Petri
Pombo
Reyes
Reynolds
Rodriguez
Rogers (KY)
Roybal-Allard
Royce
Ryun (KS)
Sandlin
Serrano
Shimkus
Slaughter
Souder
Tanner
Thomas
Turner (TX)
Waters
Watson
Weldon (PA)
Young (AK)

□ 1550

Mr. SAXTON and Mr. MEEK of Florida changed their vote from ''aye'' to ''no.''

Mrs. LOWEY changed her vote from ''no'' to ''aye.''

So the amendment in the nature of a substitute was rejected.

The result of the vote was announced as above recorded.

Stated against:

Mr. BEREUTER. Mr. Chairman, on rollcall No. 8, I was attending the Memorial Service for former Member Barber Conable. Had I been present, I would have voted ''no.''

Mr. REYNOLDS. Mr. Speaker, on rollcall Number 8, I was unable to be in the Chamber to cast a vote on the Baldwin Substitute Amendment to S. 1920 before time elapsed on the vote. My absence was due to my attendance at the Memorial Service for former Representative Barber Conable of New York. Had I been present for the vote, I would have voted ''no,'' on the Baldwin Substitute Amendment.

The CHAIRMAN. The question is on the committee amendment in the nature of a substitute, as amended.

The committee amendment in the nature of a substitute, as amended, was agreed to.

The CHAIRMAN. Under the rule, the Committee rises.

Accordingly, the Committee rose; and the Speaker pro tempore (Mr. SIMPSON) having assumed the chair, Mr. LAHOOD, Chairman of the Committee of the Whole House on the State of the Union, reported that that Committee, having had under consideration the Senate bill (S. 1920) to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted, pursuant to House Resolution 503, he reported the Senate bill back to the House with an amendment adopted by the Committee of the Whole.

The SPEAKER pro tempore. Under the rule, the previous question is ordered.

Is a separate vote demanded on the amendment to the committee amendment in the nature of a substitute adopted by the Committee of the Whole? If not, the question is on the committee amendment in the nature of a substitute.

The committee amendment in the nature of a substitute was agreed to.

The SPEAKER pro tempore. The question is on the third reading of the Senate bill.

The Senate bill was ordered to be read a third time, and was read the third time.

MOTION TO RECOMMIT OFFERED BY MS. SCHAKOWSKY

Ms. SCHAKOWSKY. Mr. Speaker, I offer a motion to recommit.

The SPEAKER pro tempore. Is the gentlewoman opposed to the Senate bill?

Ms. SCHAKOWSKY. I am, Mr. Speaker, in its present form.

The SPEAKER pro tempore. The Clerk will report the motion to recommit.

The Clerk read as follows:

Ms. SCHAKOWSKY moves to recommit the bill (S. 1920) to the Committee on the Judiciary, with instructions to report the bill back to the House forthwith, with the following amendment:

After section 102 insert the following:

SEC. 102A. PROTECTING MEMBERS OF THE MILITARY, VETERANS, AND THEIR FAMILIES.

Section 707(b)(7) of title 11, United States Code, as amended by section 102, is amended—

(1) in subparagraph (B) by striking the close quotation marks and the period at the end; and

(2) by adding at the end the following:

''(C) No judge, United States trustee (or bankruptcy administrator, if any), trustee, or other party in interest may file a motion under paragraph (2) if—

''(i) the debtor or the debtor's spouse is a servicemember (as defined in section 101 of the Servicemembers Civil Relief Act);

''(ii) the debtor or the debtor's spouse is a veteran (as defined in section 101(2) of title 38); or

''(iii) the debtor's spouse dies while in military service (as defined in section 101 of the Servicemembers Civil Relief Act).''.

In the table of contents, after the item relating to section 102, insert the following item:

Sec. 102A. Protecting members of the military, veterans, and their families.

Mr. SENSENBRENNER (during the reading). Mr. Speaker, I ask unanimous consent that the motion to recommit be considered as read and printed in the RECORD.

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

There was no objection.

The SPEAKER pro tempore. Pursuant to the rule, the gentlewoman from Illinois (Ms. SCHAKOWSKY) is recognized for 5 minutes in support of her motion to recommit.

Ms. SCHAKOWSKY. Mr. Speaker, I yield myself 2 minutes.

I rise today with the gentlewoman from California (Ms. LORETTA SANCHEZ) and the gentleman from Ohio (Mr. STRICKLAND) to offer this motion to recommit on behalf of our brave soldiers and their families and veterans across the country. My motion to recommit would provide basic protections to financially distressed military families and veterans from the harsher aspects of the means test found in the newly added text of S. 1920. This motion would provide safe harbor from the bill's means test for military and veterans' families and safe harbor for the widows of our servicewomen and men.

Without changing the bill, military personnel, veterans and their families could be dragged into court by their creditors. They could be harassed because of an arbitrary standard, the means test, that has no true reflection of whether they can pay their debt or not. The men and women who in the past have and do today risk their lives to protect us deserve protection from us in return. We should be offering them relief, not greater hardships.

Since 9/11, 350,000 reservists and guardsmen have been called to active duty and almost 40,000 are serving in Iraq. According to the National Guard, four out of 10 members of the Reserves and National Guard lose money when they leave their civilian jobs for active duty. Additionally, many left for the war thinking they would be deployed for 6 months and have ended up staying for a year or even longer. There is almost no way that they could have financially anticipated and prepared for that extension of their service.

We want to help people like Mrs. Vicky Wessel. When she appeared on ''60 Minutes'' last year, she expressed the concerns that many families of reservists whose husbands or wives have been called to active duty experience. What she talked about was the financial difficulty. She said, ''It is because a staff sergeant's pay is a 60 percent cut in pay from my husband's regular job.''

There are thousands of families like the Wessels. Make no mistake about it, these families will not be protected under the bill as it stands. These are people who, through no fault of their own, may end up in bankruptcy. They are risking their lives for us. And the veterans who have done so in the past, we should protect them. This is what my motion to recommit does.

Mr. Speaker, I yield 1½ minutes to the gentlewoman from California (Ms. LORETTA SANCHEZ).

Ms. LORETTA SANCHEZ of California. Mr. Speaker, I rise today in support of this motion to recommit this bill with instructions to ensure that members of our military, veterans and their families are afforded bankruptcy protection under Chapter 7.

Every American knows that our Nation's greatest debt is to the men and the women who have worn the uniform of our country so that we can live in freedom and prosperity. Unfortunately, this has come at a very high price to many of the service members and to their families.

The war on terror is taking an entirely new toll, and a considerable portion of the burden is falling on our reservists. Never before have we asked so much of our troops. Nearly 250,000, including 120,000 reservists, have been fighting or are scheduled to begin service. Nearly 40 percent of the reservists suffer a major loss in income during this time. For many, the difference can amount to tens of thousands of dollars. As a result, service members are falling behind in their mortgages, depleting their life savings, losing personal businesses and racking up significant credit card debt. My colleagues might be surprised to know that some that are suffering the worst are medical doctors, self-employed doctors who were in private practices, but now have to leave them, have to keep the fixed overhead and pay that and come back. Their patients are gone, their nurses are gone, and they have thousands of dollars in unpaid bills.

Mr. Speaker, this country has a history of undertaking efforts to secure legal protections so that service members can devote their energy to the defense needs of our Nation. This motion would continue those efforts.

I urge all of my colleagues to vote ''yes.''

Ms. SCHAKOWSKY. Mr. Speaker, I yield 1½ minutes to the gentleman from Ohio (Mr. STRICKLAND).

Mr. STRICKLAND. Mr. Speaker, it is because of the unique financial situations that veterans and military personnel often find themselves in as a result of their military service to our country that I support this motion to recommit, which would exempt them from the means test under Chapter 7.

The means test used to determine whether a debtor can file under Chapter 7 is an arbitrary bureaucratic formula. Its mathematical variables really do not reflect the unique circumstances of deployed military personnel that experience sudden loss of income. The test does not look at the debtor's actual expenses or personal situation. Rather, it uses a hypothetical expense of what a debtor's cost of living is mathematically determined to be. The means test uses this figure to calculate excess money, and when someone has too much excess money, they are prohibited from filing under Chapter 7.

□ 1600

The only recourse left to the individual denied this is a court motion for permission to use actual income and expenses, and such a motion takes time and money, something our soldiers and our veterans do not have.

So I would just simply ask my colleagues to consider what we have asked of our veterans and what we are currently asking of our military personnel. They have endured much for us, and I ask that we simply honor their service by voting for this exemption.

Mr. SENSENBRENNER. Mr. Speaker, I rise in opposition to the motion to recommit.

The SPEAKER pro tempore (Mr. SIMPSON). The gentleman from Wisconsin (Mr. SENSENBRENNER) is recognized for 5 minutes.

Mr. SENSENBRENNER. Mr. Speaker, let us be clear. The means-based test only applies to people with incomes above the State median income average. Anybody who is below the State median income does not qualify under the means-based test, and their bankruptcy petition cannot be thrown out.

Secondly, what the motion of the gentlewoman from Illinois proposes to do is to provide an exemption for active-duty servicemembers from the means-based test. That has been taken care of in most part since 1940 under the Soldiers and Sailors Relief Act, which allows for the staying of legal proceedings against anybody who is on active duty.

And I submit to the gentlewoman from Illinois and others that next year join us in voting for a defense authorization bill that gives our servicepeople a pay raise because that is the way to prevent bankruptcies to begin with.

But I would also like to point out that this motion to recommit applies to anybody who is a veteran. There are a lot of veterans that would fall under this exemption that have a lot of income. Take, for example, the junior Senator from Massachusetts, Mr. KERRY. He gets the same salary that we do, and it is reported that his wife has significant assets on her own. Under the gentlewoman's motion to recommit, should Mr. KERRY end up in hard times and have to file for bankruptcy, he would not allow his creditors to be able to ask for a means-based bankruptcy to apply at least some of the Senate salary that he received to apply to his debts. That is wrong. Vote ''no'' on the motion to recommit and vote to pass the bill.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. The Chair would remind Members to refrain from improper references to Senators.

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

The SPEAKER pro tempore. Without objection, the previous question is ordered on the motion to recommit.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to recommit.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

RECORDED VOTE

Ms. SCHAKOWSKY. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for any electronic vote on the question of passage.

The vote was taken by electronic device, and there were—ayes 170, noes 198, answered ''present'' 1, not voting 63, as follows:

[Roll No. 9]

AYES—170

Allen
Andrews
Baca
Baird
Baldwin
Ballance
Becerra
Berkley
Berman
Berry
Bishop (GA)
Bishop (NY)
Blumenauer
Boswell
Boyd
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Cardoza
Carson (IN)
Case
Clay
Clyburn
Conyers
Cooper
Costello
Cramer
Crowley
Cummings
Davis (AL)
Davis (CA)
Davis (FL)
Davis (IL)
Davis (TN)
DeFazio
DeLauro
Deutsch
Dicks
Dingell
Dooley (CA)
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank (MA)
Frost
Gonzalez
Gordon
Green (TX)
Grijalva
Harman
Hill
Hinchey
Hinojosa
Hoeffel
Holden
Holt
Hooley (OR)
Hoyer
Inslee
Jackson (IL)
Jefferson
John
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lowey
Lucas (KY)
Lynch
Majette
Maloney
Markey
Marshall
Matheson
Matsui
McCarthy (MO)
McCarthy (NY)
McCollum
McDermott
McGovern
McNulty
Meehan
Meek (FL)
Menendez
Michaud
Millender-McDonald
Miller (NC)
Moore
Moran (VA)
Murtha
Nadler
Napolitano
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Ross
Rothman
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Simmons
Skelton
Smith (WA)
Snyder
Solis
Spratt
Stark
Stenholm
Strickland
Stupak
Tauscher
Taylor (MS)
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Watt
Waxman
Weiner
Wexler
Woolsey
Wynn

NOES—198

Aderholt
Akin
Bachus
Baker
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blackburn
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burns
Burr
Burton (IN)
Calvert
Cannon
Cantor
Capito
Carter
Castle
Chabot
Chocola
Coble
Cole
Collins
Cox
Crenshaw
Cubin
Culberson
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Diaz-Balart, L.
Diaz-Balart, M.
Doolittle
Dreier
Duncan
Dunn
Ehlers
Emerson
English
Feeney
Ferguson
Flake
Foley
Fossella
Franks (AZ)
Frelinghuysen
Garrett (NJ)
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Hobson
Hoekstra
Hostettler
Houghton
Hulshof
Isakson
Issa
Istook
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Latham
LaTourette
Lewis (KY)
Linder
LoBiondo
Lucas (OK)
Manzullo
McCotter
McCrery
McHugh
McKeon
Mica
Miller (FL)
Miller, Gary
Moran (KS)
Murphy
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Paul
Pearce
Pence
Peterson (PA)
Petri
Pickering
Pitts
Platts
Porter
Portman
Pryce (OH)
Putnam
Quinn
Radanovich
Ramstad
Regula
Rehberg
Renzi
Reynolds
Rogers (AL)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ryan (WI)
Saxton
Schrock
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shuster
Simpson
Smith (MI)
Smith (NJ)
Smith (TX)
Stearns
Sullivan
Sweeney
Tancredo
Tauzin
Taylor (NC)
Terry
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Young (FL)

ANSWERED ''PRESENT''—1

Ruppersberger

NOT VOTING—63

Abercrombie
Ackerman
Alexander
Ballenger
Bell
Bono
Brown, Corrine
Brown-Waite, Ginny
Buyer
Camp
Carson (OK)
Crane
Cunningham
DeGette
Delahunt
Doggett
Everett
Fattah
Forbes
Gallegly
Gephardt
Gerlach
Gutierrez
Hastings (FL)
Hefley
Honda
Hunter
Hyde
Israel
Jackson-Lee (TX)
Jenkins
Johnson, E. B.
Jones (NC)
Kucinich
Leach
Lewis (CA)
Lipinski
McInnis
McIntyre
Meeks (NY)
Miller (MI)
Miller, George
Mollohan
Ortiz
Pombo
Reyes
Rodriguez
Rogers (KY)
Roybal-Allard
Royce
Ryun (KS)
Sandlin
Shimkus
Slaughter
Souder
Tanner
Thomas
Turner (TX)
Waters
Watson
Weldon (PA)
Wu
Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1624

(Mr. CONYERS changed his vote from ''no'' to ''aye.''

So the motion to recommit was rejected.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore. The question is on the passage of the Senate bill.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—yeas 265, nays 99, answered ''present'' 1, not voting 67, as follows:

[Roll No. 10]

YEAS—265

Aderholt
Akin
Andrews
Baca
Bachus
Baird
Barrett (SC)
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Berkley
Berry
Biggert
Bilirakis
Bishop (GA)
Bishop (NY)
Bishop (UT)
Blackburn
Blumenauer
Blunt
Boehlert
Boehner
Bonilla
Bonner
Boozman
Boswell
Boucher
Boyd
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burns
Burr
Burton (IN)
Calvert
Cannon
Cantor
Capito
Cardoza
Carter
Case
Castle
Chabot
Chocola
Clyburn
Coble
Cole
Collins
Cox
Cramer
Crenshaw
Crowley
Cubin
Culberson
Davis (AL)
Davis (FL)
Davis (TN)
Davis, Jo Ann
Davis, Tom
Deal (GA)
DeLay
DeMint
Deutsch
Diaz-Balart, L.
Diaz-Balart, M.
Dicks
Dingell
Dooley (CA)
Doolittle
Doyle
Dreier
Duncan
Dunn
Edwards
Ehlers
Emerson
English
Etheridge
Feeney
Ferguson
Flake
Foley
Ford
Fossella
Franks (AZ)
Frelinghuysen
Frost
Garrett (NJ)
Gibbons
Gilchrest
Gillmor
Gingrey
Goode
Goodlatte
Gordon
Goss
Granger
Graves
Green (WI)
Greenwood
Gutknecht
Hall
Harman
Harris
Hart
Hastings (WA)
Hayes
Hayworth
Hensarling
Herger
Hill
Hinojosa
Hobson
Hoekstra
Hooley (OR)
Hostettler
Houghton
Hoyer
Hulshof
Inslee
Isakson
Issa
Istook
Jefferson
John
Johnson (CT)
Johnson (IL)
Johnson, Sam
Keller
Kelly
Kennedy (MN)
Kind
King (IA)
King (NY)
Kingston
Kirk
Kline
Knollenberg
Kolbe
LaHood
Lampson
Larsen (WA)
Larson (CT)
Latham
LaTourette
Lewis (KY)
Linder
LoBiondo
Lucas (KY)
Lucas (OK)
Manzullo
Matheson
McCarthy (NY)
McCotter
McCrery
McHugh
McKeon
Meek (FL)
Menendez
Mica
Michaud
Miller (FL)
Miller, Gary
Moore
Moran (KS)
Moran (VA)
Murphy
Murtha
Musgrave
Myrick
Nethercutt
Neugebauer
Ney
Northup
Norwood
Nunes
Nussle
Osborne
Ose
Otter
Oxley
Pallone
Pascrell
Pastor
Paul
Pearce
Pence
Peterson (MN)
Peterson (PA)
Petri
Pickering
Pitts
Platts
Pomeroy
Porter
Portman
Price (NC)
Pryce (OH)
Putnam
Quinn
Radanovich
Rahall
Ramstad
Regula
Rehberg
Renzi
Rogers (AL)
Rogers (MI)
Rohrabacher
Ros-Lehtinen
Ross
Rothman
Ryan (WI)
Saxton
Schrock
Scott (GA)
Sensenbrenner
Sessions
Shadegg
Shaw
Shays
Sherwood
Shuster
Simmons
Simpson
Skelton
Smith (NJ)
Smith (TX)
Smith (WA)
Spratt
Stearns
Stenholm
Strickland
Sullivan
Sweeney
Tancredo
Tauscher
Tauzin
Taylor (MS)
Taylor (NC)
Terry
Thompson (CA)
Thompson (MS)
Thornberry
Tiahrt
Tiberi
Toomey
Turner (OH)
Upton
Vitter
Walden (OR)
Walsh
Wamp
Weldon (FL)
Weller
Whitfield
Wicker
Wilson (NM)
Wilson (SC)
Wolf
Wynn
Young (FL)

NAYS—99

Allen
Baldwin
Ballance
Becerra
Berman
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Clay
Conyers
Cooper
Costello

Cummings	Lee	Rangel
Davis (CA)	Levin	Rush
Davis (IL)	Lewis (GA)	Ryan (OH)
DeFazio	Lofgren	Sabo
DeLauro	Lowey	Sánchez, Linda T.
Emanuel	Lynch	Sanchez, Loretta
Engel	Majette	Sanders
Eshoo	Maloney	Schakowsky
Evans	Markey	Schiff
Farr	Marshall	Scott (VA)
Filner	Matsui	Serrano
Frank (MA)	McCarthy (MO)	Sherman
Gonzalez	McCollum	Snyder
Green (TX)	McDermott	Solis
Grijalva	McGovern	Stark
Hinchey	McNulty	Stupak
Hoeffel	Meehan	Tierney
Holden	Millender-McDonald	Towns
Holt	Miller (NC)	Udall (CO)
Jackson (IL)	Nadler	Udall (NM)
Jones (OH)	Napolitano	Van Hollen
Kanjorski	Neal (MA)	Velázquez
Kaptur	Oberstar	Visclosky
Kennedy (RI)	Obey	Watt
Kildee	Olver	Waxman
Kilpatrick	Owens	Weiner
Kleczka	Payne	Woolsey
Langevin	Pelosi	
Lantos		

ANSWERED ''PRESENT'' —1

Ruppersberger

NOT VOTING—67

Abercrombie	Gerlach	Ortiz
Ackerman	Gutierrez	Pombo
Alexander	Hastings (FL)	Reyes
Baker	Hefley	Reynolds
Ballenger	Honda	Rodriguez
Bell	Hunter	Rogers (KY)
Bono	Hyde	Roybal-Allard
Brown, Corrine	Israel	Royce
Brown-Waite, Ginny	Jackson-Lee (TX)	Ryun (KS)
Buyer	Jenkins	Sandlin
Camp	Johnson, E. B.	Shimkus
Carson (OK)	Jones (NC)	Slaughter
Crane	Kucinich	Smith (MI)
Cunningham	Leach	Souder
DeGette	Lewis (CA)	Tanner
Delahunt	Lipinski	Thomas
Doggett	McInnis	Turner (TX)
Everett	McIntyre	Waters
Fattah	Meeks (NY)	Watson
Forbes	Miller (MI)	Weldon (PA)
Gallegly	Miller, George	Wexler
Gephardt	Mollohan	Wu
		Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (during the vote). Members are advised 2 minutes remain in this vote.

□ 1632

So the Senate bill was passed.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

□ 1630

MOTION TO GO TO CONFERENCE

Mr. SENSENBRENNER. Mr. Speaker, pursuant to House Resolution 503, I offer a motion.

The Clerk read as follows:

Mr. SENSENBRENNER moves that the House insist on its amendment to S. 1920 and request a conference with the Senate thereon.

The motion was agreed to.

MOTION TO INSTRUCT CONFEREES

Mr. NADLER. Mr. Speaker, I offer a motion to instruct.

The Clerk read as follows:

Mr. NADLER moves that the managers on the part of the House at the conference on the disagreeing votes of the two Houses on the House amendment to the Senate bill (S. 1920) be instructed to disagree to section 414 of the House amendment.

The SPEAKER pro tempore (Mr. SIMPSON). Pursuant to clause 7 of rule XXII, the gentleman from New York (Mr. NADLER) and the gentleman from Wisconsin (Mr. SENSENBRENNER) each will control 30 minutes.

The Chair recognizes the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I yield myself such time as I may consume. I anticipate that this debate on this motion to instruct will take only a small fraction of the time allotted to it.

Mr. Speaker, this motion would instruct the conferees to strike section 414 of the bill. Section 414 would repeal important protections in the Bankruptcy Code against conflicts of interest on the part of investment bankers involved in the reorganization of a bankrupt company.

Section 414 would relieve investment bankers of the duty of being disinterested persons before they can be retained as professionals by the bankruptcy trustee. This disinterestedness standard has been in the code since 1938. It protects the estate from conflicts of interest by professionals in the case.

Mr. Speaker, many, many people who support this bill, which I do not, are opposed to this provision and support this motion to instruct. Judge Edith Jones of the U.S. Court of Appeals for the Fifth Circuit, a very conservative judge who is a member of the Bankruptcy Reform Commission and supports the bill, has written: ''Such a standard can alone protect integrity in the bankruptcy process. If professionals who have previously been associated with a debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. Strict disinterestedness required by current law eliminates such conflicts or potential conflicts. Section 414, in removing the rigorous standard of disinterestedness, is out of character with the rest of this important legislation, however, and it should be eliminated.''

Mr. Speaker, that letter is as follows:

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT,
Houston, TX, March 11, 2003.

Hon. F. JAMES SENSENBRENNER, Jr.,
Chairman, House Committee on the Judiciary, Rayburn House Office Building, Washington, DC.

DEAR MR. CHAIRMAN: I understand that the House Committee on the Judiciary will consider H.R. 975, bankruptcy reform legislation, on the morning of March 11, 2003. I also understand that the Committee may consider whether or not to retain Section 414 of the bill, which would amend the ''disinterested person'' standard codified at 11 U.S.C. §101(14). As a former member of the National Bankruptcy Review Commission and, in that capacity, a consistent advocate of maintaining strict disinterestedness standards for bankruptcy professionals, I urge the Committee not to change existing law. I support Congressman Bachus's effort to remove Section 414.

The National Bankruptcy Review Commission was asked to recommend a modification of the disinterestedness standard in order to accommodate, as I recall, the geographic growth and increasing sophistication of professional firms of all kinds involved in Chapter 11 bankruptcvy practice. Despite fervent lobbying by prominent bankruptcy professionals and scholars, the Commission resisted making such a recommendation. We voted (by a lopsided majority, I believe) to retain the standard as it has existed since the 1930's.

The Commission report cites two reasons for retaining a strict prophylactic standard for all bankruptcy professionals. These are worth brief restatement. First, such a standard can alone protect integrity in the bankruptcy process. If professionals who have previously been associated with the debtor continue to work for the debtor during a bankruptcy case, they will often be subject to conflicting loyalties that undermine their foremost fiduciary duty to the creditors. Strict disinterestedness, required by current law, eliminates such conflicts or potential conflicts.

Second, enforcing a strict standard of disinterestedness is necessary to maintain public confidence in the integrity of the bankruptcy system. A bankruptcy case should not be subject to the criticism that professional fees are generated to no purpose or for a bad purpose such as delay. The courts' efforts to ensure that fees remain reasonable are enhanced when, because of the complete disinterestedness of participating professionals, no hidden motives may be imputed to the actors in the case.

One need not focus solely on today's high-profile bankruptcy cases to realize that the challenge of maintaining disinterested professional services has permeated modern corporate reorganization law. The Commission, for instance, voted to retain the original standard in the wake of the criminal conviction of a prominent bankruptcy lawyer and several well-known instances in which law firms were required to disgorge part of their fees—all for violating disinterestedness standards. Given the ongoing nature of the problem, I do not see how any professional group can advocate, consistent with the public interest, eliminating the statutory requirement of disinterestedness. Moreover, as it appears likely that many future complex bankruptcy cases will arise in which the role of investment bankers will have to be explored, it seems particularly unwise to grant that group—alone among bankruptcy professionals—a status insulated from the strict disinterestedness requirement.

Since the close of the Commission's work in October 1997, I have been a proponent of the bankruptcy reform legislation that has been repeatedly passed by Congress. I still believe the bankruptcy reform legislation is essential to restoring integrity to personal and business bankruptcies, redressing the imbalances and opportunities for manipulation that plague current law, and encouraging individual responsibility in financial affairs. Section 414, in removing investment bankers from a rigorous standard of disinterestedness, is out of character with the rest of this important legislation, however, and it should be eliminated.

Very truly yours,

EDITH H. JONES.

Mr. Speaker, why are we voting on this technical issue? Because, Mr. Speaker, it has significant real-world consequences for employees, retirees, shareholders, and creditors of a bankrupt company. Current law prevents an investment banker who had been part of the financial affairs, and perhaps of the problems, of a bankrupt company from being responsible during the bankruptcy for advising, organizing, and overseeing the reorganization.

Anyone who has read a newspaper in the last few years cannot fail to understand the importance of this motion. This deals with conflicts of interest. Conflicts of interest among investment bankers, accountants, management, and other insiders have been at the heart of the most outrageous corporate scandals that have ended up in bankruptcy court, which have been in the headlines in our front pages in the last few years.

Perhaps when this provision was first proposed several years ago, some Members may have thought it was a minor technical change. No one any longer can believe for a moment after everything that has happened that this is just a small benign change.

The chairman of the Securities and Exchange Commission, William Donaldson, has written to Senators LEAHY and SARBANES in opposition to this provision. The former chairman of the Securities and Exchange Commission, Arthur Levin, has written to us in opposition to this provision.

Mr. Speaker, that letter is as follows:

U.S. SECURITIES AND
EXCHANGE COMMISSION,
Washington, DC, May 22, 2003.

Hon. PATRICK J. LEAHY,
U.S. Senate, Russell Senate Office Building, Washington, DC.
Hon. PAUL S. SARBANES,
U.S. Senate, Hart Senate Office Building, Washington, DC.

DEAR SENATORS LEAHY AND SARBANES: Thank you for requesting the Commission's views on Section 414 of H.R. 975, which would amend the ''disinterested person'' definition in the conflict of interest standards of the Bankruptcy Code to remove the specific provisions covering investment bankers. On May 7, in response to a question from Senator Sarbanes at a hearing of the Senate Committee on Banking Housing and Urban Affairs on the Impact of the Global Settlement, I expressed my personal views about this amendment. Now I am pleased to convey the view of the Commission, which is that, while it may be possible to draft language that would address some of the concerns of the proponents of the amendment, Congress should proceed very cautiously before loosening any conflicts of interest restriction. While we recognize that this one-size-fits-all statutory exclusion is controversial, we believe that it would be a mistake to eliminate the exclusion in a similar one-size-fits-all manner at a time when investor confidence is fragile.

The current ''disinterested person'' requirement was adopted at least in part in response to a 1938 study by the Securities and Exchange Commission that provided extensive documentation and analysis of abuses in corporate reorganization. The study concluded that a firm that served as underwriter for a company's securities should not advise the company about distributions to those security holders in a reorganization plan. It further found that such a firm should not advise the company about potential claims against those involved with the company prior to the bankruptcy since this often would involve an assessment of transaction in which the firm participated. However, we should note that in the 65 years since the 1938 study was issued, bankruptcy practices and procedures have improved significantly with the addition of a dedicated bankruptcy judicial system, the establishment of the U.S. Trustee's office, and the strengthening of active creditors' committees.

We are aware of the arguments of proponents of the amendment that the current statutory exclusion is too broad because it covers firms that participated in any underwriting of the debtor, even if it was years ago and the firm has had no further involvement with the debtor. However, if the exclusion is eliminated entirely, we are concerned that the general protection in the statute—which relies on the judge, at the outset of the proceedings, to forbid those with materially adverse interests to the estate, its creditors, or its equity security holders from advising a company in bankruptcy—may well be insufficient.

We appreciate the opportunity to comment on this proposed amendment. If you or your staff need any further information, please contact my office.

Sincerely,

WILLIAM H. DONALDSON,
Chairman.

[From Reuters, May 7, 2003]

SEC CHIEF PANS BANKRUPTCY ADVISER CHANGE

WASHINGTON (Reuters).—A measure before Congress that would let an investment bank advise a former corporate client during bankruptcy drew criticism from Securities and Exchange Commission Chairman William Donaldson on Wednesday.

''Personally, at a time like this, where investor confidence is as fragile as it is, I would want to proceed very cautiously before lifting any of the conflict of interest restrictions that we have,'' Donaldson told the Senate Banking Committee.

The provision redefining a ''disinterested person'' is contained in an overhaul of bankruptcy law that cleared the U.S. House of Representatives in March.

Sen. Paul Sarbanes, Maryland Democrat, asked Donaldson about the bankruptcy measure at a hearing on the $1.4 billion settlement reached last week with 10 Wall Street firms over biased research.

Donaldson said he was not speaking for the five-member SEC and could not rule out that some better definition might emerge in time to let former investment bankers bring their expertise into the bankruptcy process.

''But right now, I think it personally would be a mistake to change,'' said Donaldson.

Sarbanes, who said the prohibition on former investment bankers acting as bankruptcy trustees dated back to 1938, thanked Donaldson and said: ''I appreciate the attitude that is reflected in that response.''

No date has been set in the Senate for taking up the bill, which would also make it harder for individuals to walk away from their debts through bankruptcy.

New York State Attorney General Eliot Spitzer, who has been in the forefront of the investigation and prosecution of the Wall Street scandals, has urged us not to make this change.

The people responsible in both parties, Republicans and Democrats, the people responsible for protecting corporate integrity and protecting the shareholders and the stakeholders are opposed to this change.

We should be passing legislation to tighten the rules against conflicts of interest. We should not be loosening the rules. Whatever anyone may think of the rest of this mammoth bill, I hope everyone will agree that this one provision cannot be justified and that when people on this side of the aisle joined with William Donaldson as chairman of the SEC and Judge Edith Jones, with whom I disagree in every other provision in this bill, and Arthur Levin and Eliot Spitzer, stop, look, and listen.

This provision has been in the code since 1938. It is a protective provision. It protects shareholders, it protects workers, it protects the 401(k) accounts. Why do we need to make this change now?

I hope people will vote to instruct the conferees, whatever they do in the rest of this bill, not this change.

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

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

Mr. Speaker, section 414 does allow an investment banker that previously represented a business to continue to represent the business after it files for bankruptcy. Under current law, that investment banker would be prohibited from representing the debtor on a per se basis.

Let me say that this issue was debated in the Committee on the Judiciary. There was an amendment that was offered, and it was rejected by a vote of 12 to 17 when H.R. 975 was marked up in the committee. This issue was not brought up during the conference committee on H.R. 333 in the previous Congress. And to my knowledge, there was no motion to instruct on this issue that was ever made by anyone.

Let me say I am as sensitive to conflicts of interest as anybody else. But if you have this absolute bar, an investment banker that knows something about the business would be disqualified and then the business if it was trying to reorganize under chapter 11 would have to hire a new investment banker, and the new investment banker would end up having to be paid for all the time to get himself or that institution's self up to speed on the issues of the business.

So section 414 was designed to provide the professional advice that investment bankers give in a way that would be able to reduce the cost to the estate of the bankrupt business. And that is why I think that at least section 414 should not be stricken in its entirety and would urge a ''no'' vote on the motion to instruct.

Mr. Speaker, I yield 3 minutes to the gentleman from New York (Mr. WEINER).

Mr. WEINER. Mr. Speaker, I will be brief, perhaps even less than the 3 minutes.

Of the forest of things that is wrong with the bankruptcy bill, and I voted against it, this is actually a provision that represents a tree that actually makes some sense.

So my colleagues understand this provision, it says that when an entity enters into bankruptcy no investment house that has been involved in underwriting on any level at any time in the history of that company could be involved in the reorganization. So the following not-so-hypothetical could happen: Ford Motor Company goes into

a bankruptcy proceeding and Goldman Sachs, who happened to be involved in their IPO 50 years ago and has had no investment and no underwriting since, is precluded from doing it. So who winds up benefiting from this provision? One company that is not an American company that happens not to do any underwriting.

We have been all year on this side of the aisle, more than all year, for the last several years, fighting against efforts by the Republicans to take away discretion from judges. This is a provision that says we are going to let the bankruptcy judge decide whether a party is disinterested, conflicted or not. If we are truly concerned about having conflicts of interest, theoretically we should not let accountants do business with the debtor company or a lawyer that has done business with the debtor company or anyone that has given advice to the debtor company. Yet we are singling out investment banks. Why? It does not make any sense to do that.

What we should do is take the language in this bill and make it the model for other debates on tort reform and everything else in this House. We have judges; we trust them to judge. We trust them to go through the parties, decide who is interested, who is disinterested, who has conflicts and who does not and then to draw conclusions about who is interested in doing what.

By striking 414 and putting this blanket provision that says anyone who has ever done any underwriting work cannot be involved in the proceedings, I would argue does not benefit the debtor or the stockholders or anyone else. We should want judges that say we want the very best, most talented people who are going to look out for the people who are the parties in the case. That should be how we do it. If we think the judges are doing a bad job, well, that is another question. If we think they cannot be trusted, well, that is another question. But we had a problem in this House recently. We say that juries cannot be trusted when it comes to tort reform. We say that judges cannot be trusted when it comes to this type of thing. When did we become such experts?

Apparently, the only thing American people can be trusted to do is vote for us, and then we take away all the discretion for everyone else. I think it is a very bad idea. There are 1,001 reasons why this bankruptcy bill should go into the dust bin. This is one provision that should not be changed. I urge a ''no'' vote.

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

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

I have two basic comments. First, in response to the comments of my distinguished colleague from New York, it is not the case that anyone who worked as an investment banker for the banker company 50 years ago is affected by this provision.

If you actually read the provision in the statute book, a disinterested person is defined as a number of things, but it says the following: ''Was not an investment banker for any outstanding security of the debtor.'' If it is still outstanding, then he has still got a relationship and he still has an interest in that. ''Has not been, within 3 years before the date of the finding of the petition, an investment banker,'' et cetera. So in other words, it is a 3-year bar for outstanding securities. So the situation we were told about a moment ago does not apply.

Let me say that this is not a question of discretion; it is a question of protection. And, again, all the professionals in the field, everyone to whom we ought to be looking for guidance in this comes to the same conclusion. I do not claim to be an expert in investment banking or bankruptcy law, but everyone who is basically says the same thing.

I am going to read three quotes and that will be that. This is from the senior professor at Harvard Law School, an expert on bankruptcy, Elizabeth Warren: ''There is a reason why the professionals who have worked for a business that collapses into bankruptcy are not permitted to stay on.

□ 1645

''The company must go back after bankruptcy and examine its old transactions. Having the same professionals review their own work is not likely to yield the most searching inquiry.''

Arthur Levitt, former Chairman of the Securities and Exchange Commission: ''I haven't read a single argument made by the investment banks that would persuade me that that prohibition should be changed. What we are talking about is a significant potential conflict of interest, and I think it is outrageous that investment banks would even try to go down that road.''

William Donaldson, the current Chairman of the Securities and Exchange Commission: ''We are aware of the arguments of proponents of the amendment that the current statutory exclusion is too broad because it covers firms that participated in any underwriting by the debtor, even if it was years ago, and the firm has had no further involvement with the debtor. However, if the exclusion is eliminated entirely,'' which is what this provision does, ''we are concerned that the general protection in the statute, which relies on the judge at the outset of the proceedings to forbid those with materially adverse interest to the estate, its creditors or its equity and security holders from advising a company in bankruptcy may well be insufficient.''

So there is a unanimity of judgment among the people involved in protecting shareholders and stakeholders and 401(k)s and employees and everybody else with a stake in this matter. We should not do this. And just one further observation. This has been the law since 1938. We have had no problems with it. We have no great hordes of people coming to our offices saying, Get rid of this. It has caused all kind of problems. Leave it alone.

Vote for the motion to recommit.

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

Mr. SPEAKER pro tempore (Mr. SIMPSON). Without objection, the previous question is ordered on the motion to instruct.

There was no objection.

The SPEAKER pro tempore. The question is on the motion to instruct offered by the gentleman from New York (Mr. NADLER).

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

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

The yeas and nays were ordered.

The vote was taken by electronic device, and there were—yeas 146, nays 203, answered ''present'' 1, not voting 82, as follows:

[Roll No. 11]

YEAS—146

Allen
Andrews
Baca
Bachus
Baird
Baldwin
Ballance
Becerra
Berkley
Bishop (GA)
Bishop (NY)
Boyd
Brady (PA)
Brown (OH)
Capps
Capuano
Cardin
Carson (IN)
Case
Clyburn
Conyers
Cooper
Costello
Cummings
Davis (CA)
Davis (FL)
Davis (IL)
Davis, Jo Ann
DeFazio
DeLauro
Deutsch
Dicks
Dingell
Doyle
Edwards
Emanuel
Engel
Eshoo
Etheridge
Evans
Farr
Filner
Ford
Frank (MA)
Frost
Gonzalez
Green (TX)
Grijalva
Harman
Hayworth
Hill
Hinojosa
Hoeffel
Holden
Holt
Hooley (OR)
Hoyer
Inslee
Jackson (IL)
Jefferson
Johnson (CT)
Jones (OH)
Kanjorski
Kaptur
Kennedy (RI)
Kildee
Kilpatrick
Kind
Kleczka
Lampson
Langevin
Lantos
Larsen (WA)
Larson (CT)
Lee
Levin
Lewis (GA)
Lofgren
Lynch
Majette
Maloney
Markey
Matsui
McCarthy (MO)
McCollum
McDermott
McGovern
Meehan
Menendez
Michaud
Millender-McDonald
Miller (NC)
Moore
Moran (VA)
Murtha
Nadler
Neal (MA)
Oberstar
Obey
Olver
Owens
Pallone
Pascrell
Pastor
Payne
Pelosi
Peterson (MN)
Pomeroy
Price (NC)
Rahall
Rangel
Rohrabacher
Ross
Rothman
Rush
Ryan (OH)
Sabo
Sánchez, Linda T.
Sanchez, Loretta
Sanders
Schakowsky
Schiff
Scott (GA)
Scott (VA)
Serrano
Sherman
Skelton
Smith (NJ)
Smith (WA)
Snyder
Solis
Strickland
Stupak
Thompson (CA)
Thompson (MS)
Tierney
Towns
Udall (CO)
Udall (NM)
Van Hollen
Velázquez
Visclosky
Watt
Waxman
Wexler
Woolsey

NAYS—203

Aderholt
Akin
Bartlett (MD)
Barton (TX)
Bass
Beauprez
Bereuter
Biggert
Bilirakis
Bishop (UT)
Blumenauer
Blunt
Boehlert
Bonilla
Bonner
Boozman
Boswell
Boucher
Bradley (NH)
Brady (TX)
Brown (SC)
Burgess
Burns
Burr
Burton (IN)
Calvert
Cannon
Cantor
Capito
Cardoza

Carter	Hulshof	Portman
Castle	Isakson	Pryce (OH)
Chabot	Issa	Putnam
Chocola	Istook	Quinn
Coble	John	Radanovich
Cole	Johnson (IL)	Ramstad
Cox	Johnson, Sam	Regula
Cramer	Keller	Rehberg
Crenshaw	Kelly	Renzi
Crowley	Kennedy (MN)	Reynolds
Cubin	King (IA)	Rogers (AL)
Culberson	Kingston	Rogers (MI)
Davis (AL)	Kirk	Ros-Lehtinen
Davis (TN)	Kline	Ryan (WI)
Davis, Tom	Knollenberg	Saxton
DeLay	Kolbe	Schrock
DeMint	LaHood	Sensenbrenner
Diaz-Balart, L.	Latham	Sessions
Dooley (CA)	LaTourette	Shadegg
Doolittle	Lewis (KY)	Shaw
Dreier	Linder	Shays
Duncan	LoBiondo	Sherwood
Dunn	Lucas (KY)	Shuster
Ehlers	Lucas (OK)	Simmons
Emerson	Manzullo	Simpson
English	Marshall	Smith (MI)
Feeney	Matheson	Smith (TX)
Ferguson	McCarthy (NY)	Spratt
Flake	McCotter	Stearns
Foley	McCrery	Stenholm
Fossella	McHugh	Sullivan
Franks (AZ)	McKeon	Sweeney
Frelinghuysen	Meek (FL)	Tancredo
Garrett (NJ)	Mica	Tauscher
Gibbons	Miller (FL)	Tauzin
Gilchrest	Moran (KS)	Taylor (MS)
Gillmor	Murphy	Taylor (NC)
Gingrey	Musgrave	Terry
Goode	Myrick	Thornberry
Goodlatte	Nethercutt	Tiahrt
Gordon	Neugebauer	Tiberi
Goss	Ney	Toomey
Granger	Northup	Turner (OH)
Graves	Norwood	Upton
Green (WI)	Nunes	Vitter
Greenwood	Nussle	Walden (OR)
Gutknecht	Osborne	Walsh
Hall	Ose	Wamp
Harris	Otter	Weiner
Hart	Oxley	Weldon (FL)
Hastings (WA)	Pearce	Weller
Hayes	Pence	Whitfield
Hensarling	Peterson (PA)	Wicker
Herger	Petri	Wilson (NM)
Hobson	Pickering	Wilson (SC)
Hoekstra	Pitts	Wolf
Hostettler	Platts	Young (FL)
Houghton	Porter	

ANSWERED ''PRESENT''—1

Ruppersberger

NOT VOTING—82

Abercrombie	Fattah	Miller (MI)
Ackerman	Forbes	Miller, Gary
Alexander	Gallegly	Miller, George
Baker	Gephardt	Mollohan
Ballenger	Gerlach	Napolitano
Barrett (SC)	Gutierrez	Ortiz
Bell	Hastings (FL)	Paul
Berman	Hefley	Pombo
Berry	Hinchey	Reyes
Blackburn	Honda	Rodriguez
Boehner	Hunter	Rogers (KY)
Bono	Hyde	Roybal-Allard
Brown, Corrine	Israel	Royce
Brown-Waite, Ginny	Jackson-Lee (TX)	Ryun (KS)
Buyer	Jenkins	Sandlin
Camp	Johnson, E. B.	Shimkus
Carson (OK)	Jones (NC)	Slaughter
Clay	King (NY)	Souder
Collins	Kucinich	Stark
Crane	Leach	Tanner
Cunningham	Lewis (CA)	Thomas
Deal (GA)	Lipinski	Turner (TX)
DeGette	Lowey	Waters
Delahunt	McInnis	Watson
Diaz-Balart, M.	McIntyre	Weldon (PA)
Doggett	McNulty	Wu
Everett	Meeks (NY)	Wynn
		Young (AK)

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore (Mr. SIMPSON) (during the vote). Members are advised that 2 minutes remain in this vote.

□ 1710

Mrs. CUBIN, Messrs. HOUGHTON, GREENWOOD and LINCOLN DIAZ-BALART of Florida changed their vote from ''yea'' to ''nay.''

So the motion to instruct was rejected.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

Stated against:

Mr. BARRETT of South Carolina. Mr. Speaker, due to a telephone call concerning an issue critical to my district with the Deputy Secretary of the Department of Energy, I unfortunately missed one recorded vote on the House floor earlier today.

I ask that the RECORD reflect that had I not been unavoidably detained, I would have voted ''no'' on Rollcall vote No. 11 (Democratic Motion to Instruct Conferees on S. 1920).

PERSONAL EXPLANATION

Ms. EDDIE BERNICE JOHNSON of Texas. Mr. Speaker, on January 28, 2004, due to an illness, I unfortunately missed four recorded votes on S. 1920. I would like the RECORD to reflect that had I been present, I would have voted in the following manner:

Mr. Speaker, on Rollcall No. 8, I would have voted ''aye.''

Mr. Speaker, on Rollcall No. 9, I would have voted ''aye.''

Mr. Speaker, on Rollcall No. 10, I would have voted ''aye.''

Mr. Speaker, on Rollcall No. 11, I would have voted ''aye.''

PERSONAL EXPLANATION

Mr. ABERCROMBIE. Mr. Speaker, on January 27 and January 28, 2004, I was unavoidably unable to vote. Had I been present, I would have voted as follows:

Rollcall 6, H.R. 1385, Postage Stamp to benefit breast cancer research, ''yes.''

Rollcall 7, H.R. 3493, Medical Devices Technical Corrections Act, ''yes.''

Rollcall 8, Baldwin Substitute to S. 1920, federal bankruptcy law, ''yes.''

Rollcall 9, Motion to Recommit S. 1920, federal bankruptcy law, ''yes.''

Rollcall 10, Final Passage S. 1920, federal bankruptcy law, ''no.''

Rollcall 11, Motion to Instruct Conferees, ''yes.''

PERSONAL EXPLANATION

Mr. RUPPERSBERGER. Mr. Speaker, I have interest in a company that does business with a financial institution that one way or another might be impacted by this legislation, so I have decided to vote present on S. 1920, the Bankruptcy Extension Act and the accompanying amendments and motions on January 28, 2004. This includes all rollcall votes starting at No. 8 until the end of the consideration of this measure. It also includes any motion to recommit and final passage.

APPOINTMENT OF CONFEREES

The SPEAKER pro tempore. Without objection, the Chair appoints the following conferees:

From the Committee on the Judiciary, for consideration of the Senate bill and the House amendment, and modifications committed to conference:

Messrs. SENSENBRENNER, HYDE, SMITH of Texas, CHABOT, CANNON, Ms. HART, and Messrs. CONYERS, BOUCHER, NADLER and WATT.

From the Committee on Financial Services, for consideration of sections 901–906, 908–909, 911, and 1301–1309 of the House amendment, and modifications committed to conference:

Messrs. OXLEY, BACHUS and SANDERS.

There was no objection.

RESIGNATION AS MEMBER OF CERTAIN STANDING COMMITTEES OF THE HOUSE

The SPEAKER pro tempore laid before the House the following resignation as a member of certain standing committees of the House:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 28, 2004.

Hon. J. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

DEAR SPEAKER HASTERT: I hereby resign from the following committees: Committee on Government Reform, Committee on Transportation and Infrastructure, and Committee on Science.

Sincerely,

JOHN SULLIVAN,
Member of Congress.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON ENERGY AND COMMERCE

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Energy and Commerce:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
Washington, DC, January 28, 2004.

Hon. J. DENNIS HASTERT,
Speaker of the House,
Washington, DC.

DEAR MR. SPEAKER: Please accept my resignation from the House Energy and Commerce Committee.

It has been my great pleasure to serve on the committee under the fine leadership of Chairman Tauzin.

Thank you for your attention to this request.

Sincere regards,

ROY BLUNT,
Majority Whip.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

RESIGNATION AS MEMBER OF COMMITTEE ON SCIENCE AND COMMITTEE ON GOVERNMENT REFORM

The SPEAKER pro tempore laid before the House the following resignation as a member of the Committee on Science and Committee on Government Reform:

CONGRESS OF THE UNITED STATES,
HOUSE OF REPRESENTATIVES,
January 28, 2004.

Hon. DENNIS HASTERT,
Speaker, House of Representatives,
Washington, DC.

MR. SPEAKER: Effective January 28th, I hereby resign from the Committee on

Science and the Committee on Government Reform due to my pending appointment to the Committee on Financial Services.

Sincerely,

REP. CHRIS BELL.

The SPEAKER pro tempore. Without objection, the resignation is accepted.

There was no objection.

ELECTION OF MEMBERS TO CERTAIN STANDING COMMITTEES OF THE HOUSE

Mr. DELAY. Mr. Speaker, I offer a resolution (H. Res. 505), and I ask unanimous consent for its immediate consideration.

The SPEAKER pro tempore. The Clerk will report the resolution.

The Clerk read the resolution, as follows:

H. RES. 505

Resolved, That the following Members be and are hereby elected to the following standing committees of the House of Representatives:

COMMITTEE ON ENERGY AND COMMERCE: Mr. HALL (to rank after Mr. TAUZIN), and Mr. SULLIVAN.

COMMITTEE ON INTERNATIONAL RELATIONS: Mr. BLUNT to rank after Mr. MCHUGH.

COMMITTEE ON SCIENCE: Mr. HALL to rank after Mr. BOEHLERT.

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

There was no objection.

The resolution was agreed to.

A motion to reconsider was laid on the table.

ELECTION OF MEMBER TO COMMITTEE ON FINANCIAL SERVICES

Mr. MENENDEZ. Mr. Speaker, by direction of the Democratic Caucus, I offer a privileged resolution (H. Res. 504) and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 504

Resolved, That the following named Member be and is hereby elected to the following standing committee of the House of Representatives:

COMMITTEE ON FINANCIAL SERVICES: Mr. Bell.

The resolution was agreed to.

A motion to reconsider was laid on the table.

LEGISLATIVE PROGRAM

(Mr. HOYER asked and was given permission to address the House for 1 minute.)

Mr. HOYER. Mr. Speaker, I yield to the gentleman from Texas (Mr. DELAY), my friend, the distinguished majority leader, for the purpose of informing us of the schedule.

Mr. DELAY. I thank the distinguished minority whip for yielding to me.

Mr. Speaker, the House will convene on Tuesday at 12:30 p.m. for morning hour and 2 p.m. for legislative business. We will consider several measures under suspension of the rules, and a final list of those bills will be sent to the Members' offices by the end of the week. Any votes called on these measures will be rolled until 6:30 p.m.

On Wednesday, the House will convene at 10 a.m. At 11 a.m. a joint meeting of Congress will convene to receive Spanish President Jose Maria Aznar. Following President Aznar's speech, we plan to consider H.R. 3030, the Improving the Community Services Block Grant Act.

Finally, to accommodate scheduling demands next week, similar to those that we have this week, the House will not have votes next Thursday or Friday.

I thank the gentleman for yielding and would be happy to answer any questions he may have.

Mr. HOYER. Mr. Speaker, I thank the gentleman; and I understand that the accommodation we are making this week and next week is so that we can hopefully, both of our respective parties, can determine where we are going to go and, as the President suggested at the White House, perhaps come together and try to take such action as we can agree upon be positive for our country. So I appreciate that accommodation for us as for the gentleman's group as well.

My colleague talked about we are going to do the community service block grant reauthorization next week. Will amendments and/or a substitute be allowed to the community service block grant bill?

Mr. DELAY. Mr. Speaker, if the gentleman would yield, I would reserve answering that question. I believe there is going to be an announcement by the Committee on Rules following this colloquy, and I think the gentleman will be very pleased with that announcement; but I would reserve that the Committee on Rules ought to make that decision and announcement.

Mr. HOYER. Mr. Speaker, I thank the leader, and I will wait with great expectation to be pleased by the announcement of the Committee on Rules, which will not be totally without precedent but not usual. I thank the gentleman for his observation.

DISPENSING WITH CALENDAR WEDNESDAY BUSINESS ON WEDNESDAY NEXT

Mr. DELAY. Mr. Speaker, I ask unanimous consent that the business in order under the Calendar Wednesday rule be dispensed with on Wednesday next.

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

There was no objection.

ADJOURNMENT FROM WEDNESDAY, JANUARY 28, 2004 TO FRIDAY, JANUARY 30, 2004

Mr. DELAY. Mr. Speaker, I ask unanimous consent that when the House adjourns today, it adjourn to meet at noon on Friday, January 30, 2004.

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

There was no objection.

ADJOURNMENT FROM FRIDAY, JANUARY 30, 2004 TO TUESDAY, FEBRUARY 3, 2004

Mr. DELAY. Mr. Speaker, I ask unanimous consent that when the House adjourns on Friday, January 30, 2004, it adjourn to meet at 12:30 p.m. on Tuesday, February 3 for morning hour debate.

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

There was no objection.

□ 1515

ANNOUNCEMENT BY COMMITTEE ON RULES REGARDING AMENDMENTS TO H.R. 3030, IMPROVING THE COMMUNITY SERVICES BLOCK GRANT ACT OF 2003

(Mr. LINCOLN DIAZ-BALART of Florida asked and was given permission to address the House for 1 minute.)

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, the Committee on Rules may meet next week to grant a rule for the consideration of H.R. 3030, Improving the Community Services Block Grant Act of 2003, which may require that amendments be printed in the CONGRESSIONAL RECORD prior to their consideration on the floor.

The Committee on Education and the Workforce ordered the bill reported on October 1, 2003, and filed its report with the House on October 10, 2003. Members should draft their amendments to the bill as reported by the Committee on Education and the Workforce. Members should use the Office of Legislative Counsel to ensure that their amendments are drafted in the most appropriate format. Members are also advised to check with the Office of the Parliamentarian to be certain their amendments comply with the rules of the House.

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

Mr. LINCOLN DIAZ-BALART of Florida. I yield to the gentleman from Maryland.

Mr. HOYER. Mr. Speaker, I thank the gentleman for yielding.

As the gentleman was on the floor when the majority leader and I had our weekly colloquy, and he said I was going to be very pleased, I was pleased to hear the information, of course, as to how one perfects an amendment that needs to be made in order, but I did not hear anything about whether or not the Committee on Rules is going to grant, as I asked the leader, the ability of the minority to offer any substitute and/or offer substantive amendments.

Mr. LINCOLN DIAZ-BALART of Florida. Reclaiming my time, Mr.

Speaker, I would say to the gentleman that the Committee on Rules, as this announcement stated, may meet, I believe may very likely meet on this, and the Committee on Rules will obviously consider any request from any Members with regard to amendments. If the gentleman from Maryland or any other Members have amendments, we will be more than glad to listen to them and will give them all the merited courtesies.

Mr. HOYER. If the gentleman will continue to yield, Mr. Speaker, I appreciate very much that warm assurance that the gentleman from Florida will be glad to listen to me or to others.

I am a big fan of Martina McBride. I do not know if the gentleman is familiar with her. She is one of the great country music singers in America, and she has a song, the title of which is ''I know you can hear me, but are you listening.'' And I know you may hear me, but I want you to be listening as well.

As the gentleman knows, as he is a long-time distinguished member of the Committee on Rules, we are very hopeful we will start this session off on the right foot and that the minority will be given, as your minority asked when you were in the minority, for the opportunity to offer amendments and substitutes so that our perspective can be considered as well as the majority's perspective. We think that serves the American people well. We think it is what you asked for when you were in the minority. We believe we gave it to you most of the time. You are correct, not all the time.

But we would hope, and this bill I think is not one of the very contentious bills that we will take up perhaps during the session, but we would hope that that opportunity would be afforded the minority.

Mr. LINCOLN DIAZ-BALART of Florida. Once again reclaiming my time, Mr. Speaker, I thank the gentleman very much for his comments and concerns, and as I stated before, what we are asking at this point, precisely because we will be looking very much forward to amendments, is that if any Members have ideas for such, is to please be ready with them because there may be a requirement that amendments be printed in the CONGRESSIONAL RECORD prior to consideration on the floor.

GENERAL LEAVE

Mr. NEUGEBAUER. Mr. Speaker, I ask unanimous consent that all Members may have 5 legislative days within which to revise and extend their remarks and include extraneous material on S. 610.

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

There was no objection.

PRESIDENTIAL DETERMINATION EXEMPTING U.S. AIR FORCE'S OPERATING LOCATION NEAR GROOM LAKE, NEVADA FROM DISCLOSURE OF CLASSIFIED INFORMATION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

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

To the Congress of the United States:

Consistent with section 6001(a) of the Resource Conservation and Recovery Act (RCRA) (the ''Act''), as amended, 42 U.S.C. 6961(a), notification is hereby given that on September 16, 2003, I issued Presidential Determination 2003–39 (copy enclosed) and thereby exercised the authority to grant certain exemptions under section 6001(a) of the Act.

Presidential Determination 2003–39 exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local hazardous or solid waste laws that might require the disclosure of classified information concerning that operating location to unauthorized persons. Information concerning activities at the operating location near Groom Lake has been properly determined to be classified, and its disclosure would be harmful to national security. Continued protection of this information is, therefore, in the paramount interest of the United States.

The determination was not intended to imply that, in the absence of a Presidential exemption, RCRA or any other provision of law permits or requires the disclosure of classified information to unauthorized persons. The determination also was not intended to limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake except those provisions, if any, that might require the disclosure of classified information.

GEORGE W. BUSH.

THE WHITE HOUSE, *January 28, 2004.*

CERTIFICATION OF AUSTRALIA GROUP PURSUANT TO CONDITION 7(C)(i) OF THE CONVENTION ON THE PROHIBITION OF THE DEVELOPMENT, PRODUCTION, STOCKPILING, AND ON THEIR DESTRUCTION—MESSAGE FROM THE PRESIDENT OF THE UNITED STATES

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

To the Congress of the United States:

Consistent with the resolution of advice and consent to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, adopted by the Senate of the United States on April 24, 1997, I hereby certify pursuant to Condition 7(C)(i), Effectiveness of the Australia Group, that:

Australia Group members continue to maintain equally effective or more comprehensive controls over the export of: toxic chemicals and their precursors; dual-use processing equipment; human, animal, and plant pathogens and toxins with potential biological weapons applications; and dual-use biological equipment, as that afforded by the Australia Group as of April 25, 1997; and

The Australia Group remains a viable mechanism for limiting the spread of chemical and biological weapons-related materials and technology, and the effectiveness of the Australia Group has not been undermined by changes in membership, lack of compliance with common export controls and nonproliferation measures, in force as of April 25, 1997.

The factors underlying this certification are described in the enclosed statement of justification.

GEORGE W. BUSH.

THE WHITE HOUSE, *January 28, 2004.*

APPOINTMENT AS MEMBERS TO ANTITRUST MODERNIZATION COMMISSION

The SPEAKER pro tempore. Pursuant to section 11054 of the Antitrust Modernization Commission Act of 2002 (15 U.S.C. 1 Note), and the order of the House of December 8, 2003, the Chair announces the Speaker's appointment of the following members on the part of the House to the Antitrust Modernization Commission:

Mr. Donald G. Kempf, Jr., New York, New York, and

Mr. John L. Warden, New York, New York.

HONORING THE MEMORY OF SHELLEY MARSHALL

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

Mrs. CAPITO. Mr. Speaker, I rise today to honor the memory of Shelley Marshall. Mrs. Marshall was a budget analyst for the Defense Intelligence Agency who was killed in the attack on the Pentagon.

I rise to commend the efforts of her husband, Donn Marshall, to honor her memory. Using his wife's retirement savings and money he expects to receive from the 9–11 Victims Compensation Fund, Donn established the Shelley A. Marshall Foundation. The foundation has held tea parties, one of Shelley's favorite pastimes, for senior citizens and high school students. The Marshall Foundation has also provided resources for story hours in libraries

and has held writing and art contests at high schools both in West Virginia and Virginia.

Through the foundation, Shelley Marshall will continue to touch the lives of people in need in West Virginia and around the country. I thank Donn Marshall and the couple's children, Drake and Chandler, for their commitment to helping others and for the worthwhile way they have preserved Shelley's memory.

The Washington Post wrote an article on January 22, 2004, about the Marshall Foundation, which I include for the RECORD.

[From the Washington Post, Jan. 22, 2004]

9/11 MONEY FUNDS A DREAM

MAN PLANS TRIBUTE TO WIFE LOST IN PENTAGON

(By Jacqueline L. Salmon)

SHEPHERDSTOWN, W. VA.—In the tiny townhouse he rents behind an office park, Donn Marshall unfurls an armful of papers on the living room couch. They are plans for a house to be built on land he has purchased nearby.

Modeled on an 18th-century Irish country house, it will have bedrooms for Marshall's two children, Drake and Chandler, and room for as many as six guests—everything that Marshall and his wife, Shelley, ever dreamed of.

But it will go ahead without her. Shelly Marshall, a Defense Intelligence Agency budget analyst, was among the 184 people who died Sept. 11, 2001, when terrorists flew an airplane into the Pentagon.

''I think it should be almost like a monument,'' Marshall said, as he smoothed wrinkles from the house plans. ''In a sense, it's Shelley's money.''

The Marshall family expects to receive about $2 million from the federal fund created to compensate the injured and the families of the 2,976 people killed that day at the Pentagon and the World Trade Center in New York. Although the money will not take away the grief that has diminished only slightly in 2½ years, Marshall said it will free him to work full time on the charitable foundation he established in his wife's name—his way of fighting back.

The fund, established by Congress to protect the airlines from billion-dollar lawsuits, has reached the family of almost every victim. Fund administrator Kenneth R. Feinberg, a Washington lawyer, said that by last month's final deadline, 2,924 families—98 percent—had surrendered their right to sue the airlines in return for an average award of just under $2 million.

But many who took the settlement wrestled with ''survivor's guilt,'' said Larry Shaw, director of Northern Virginia Family Service, whose counselors are working with many families of Pentagon victims. ''They felt that they were benefiting from the loss of someone they loved.''

Shaw said family service counselors tell families that the settlement is part of their recovery process. ''And part of the recovery is being able to fulfill some dreams that you had in your life,'' he said.

Shelley Marshall was a woman of passionate and varied interests. She put together family scrapbooks and hosted Victorian-style tea parties with her mother-in-law, Phyllis Marshall. She loved to spot hawks while out walking. Shortly before her death, she had begun to collect kickknacks decorated with dragonflies.

On Sept. 11, Shelly and Donn had commuted in separate cars to the Pentagon from their then-home in Charles County, with Donn carrying the children. Together, they said goodbye to Drake and Chandler at the Pentagon day-care center. Then Shelley headed to her office in the southwest wing of the Pentagon, and Donn drove to his Crystal City office, where he also worked for the Defense Intelligence Agency.

Moments after the plane buried itself in the Pentagon, Donn drove back to the blazing structure to search frantically for his family. The children were unharmed. He couldn't find Shelley.

Three days later, he got the news that she was dead.

The words of a grief counselor who visited him resonated. ''Give your sorrow meaning,'' he urged Marshall. ''It was like he flipped a switch,'' Marshall recalled.

With his wife's retirement savings, he set up the Shelley A. Marshall Foundation. He has used the proceeds to organize dozens of intergenerational tea parties for elderly nursing home residents and high school students across the Washington area, where Shelley grew up, and in West Virginia, where his parents live.

He has also funded story hours at libraries in both places, set up writing contests at high schools and arranged high school art workshops to reflect the interests of his late wife. In all, the foundation has spent about $60,000 on such events and plans to expand nationwide as well as overseas, where tea enthusiasts in Britain and Moscow are planning offshoots.

''I didn't want [Osama] bind Laden to have the last word on her life,'' Marshall, 39, said. ''She died far too young, and I wanted her to be able to touch people.''

All together, he figures, more than 5,000 people have participated in the foundation's activities.

''We can leave September 11 as a black day in history,'' Donn Marshall told guests at a fundraising tea party at the Pentagon City Ritz-Carlton in November, on what would have been Shelley's 40th birthday, ''Or we can look at it as a day when something incredible started—and that's what we're trying to do.''

The foundation work has drawn in family and friends. Shelley's mother, Nancy Farr, makes hundreds of cucumber sandwiches and shortbread for the nursing home parties. The work, Farr said, ''is a blessing. Shelley will always be with us in our hearts, but other people know her because of the foundation.''

Sometimes the work fends off Marshall's loneliness. Sometimes it doesn't. He believes that Shelley is still near. The signs are everywhere. The way the heat in his home clicks on when he asks her for a signal that she's present. A door that blows shut to remind him to take the children's coats to their school on a cold day. A dragonfly balloon from his son's birthday party that drifts into the bedroom and stops by his bed.

The signs comfort him—a little. ''I know she's okay and that's huge,'' he said. ''Now I just have to deal with not seeing her for a long time.''

Shelley used to make a pot of tea each night for Donn, and he has taught himself to make tea the way she did. She had collected dozens of different kinds from her favorite tea shops—fragrant Oolongs, delicate ''white'' teas and black teas such as light-bodied Darjeeling and full-flavored Assams—and could recite their characteristics.

Last January, Marshall quit his job and moved his family to West Virginia to be closer to his parents in Martinsburg and Shelley's in Herndon. He said the compensation fund should support his family and put the children through college while he works full time on the foundation.

His next step is having their house built on 18 acres of woods and meadow that he bought just outside Shepherdstown, a cozy town of 1,500.

''I'm going to get people to come up for the weekend,'' he said. ''We'll have two to three different people at the dinner table, hopefully, on the weekends—my artist friends, politicians. I want a lot of people coming in and interesting the kids with their ideas—I think they should have an extraordinary life after what happened to them.''

When Marshall came out to see the land for the first time, he heard a scream above him and looked up to see a hawk. It circled over his head.

''I said, 'Okay, this is the place.'''

SPECIAL ORDERS

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, and under a previous order of the House, the following Members will be recognized for 5 minutes each.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Georgia (Mr. NORWOOD) is recognized for 5 minutes.

(Mr. NORWOOD addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Ohio (Mr. BROWN) is recognized for 5 minutes.

(Mr. BROWN of Ohio addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Indiana (Mr. BURTON) is recognized for 5 minutes.

(Mr. BURTON of Indiana addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Oregon (Mr. DEFAZIO) is recognized for 5 minutes.

(Mr. DEFAZIO addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Kentucky (Mr. LEWIS) is recognized for 5 minutes.

(Mr. LEWIS of Kentucky addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

VOTING RIGHTS FOR CITIZENS OF THE DISTRICT OF COLUMBIA

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from the District of Columbia (Ms. NORTON) is recognized for 5 minutes.

Ms. NORTON. Mr. Speaker, the denial of voting rights to people in the District of Columbia who pay their

taxes every day and are fighting in Iraq, Afghanistan, and all around the world is finally sparking national attention, and even more important, it is sparking bills in the Congress. And bills not only from me and my side of the aisle, but I am pleased to note from my Republican friends.

Several Members are considering or have already put in bills to give voting rights for the residents of the District of Columbia, and all of these are Republican bills and worth noting on this floor. On behalf of the people of the District of Columbia, I want to express my appreciation for these Members who have come forward with their own bills.

The first national interest comes, of course, from our ''First in the Nation'' primary. It was nonbinding, but that did not much matter. People came out in double the numbers they came out in the 2000 Presidential primary. And they came out because the primary was in part to cast a personal protest vote against paying taxes without representation here in the House, no representation in the Senate whatsoever, and yet serving as we have in our Armed Forces since our Nation was established, all without representation. Today, we are once again disproportionately represented in our Armed Forces in Iraq and Afghanistan.

The bills, however, are not about protest. They are about a remedy. I am still gathering signatures, and am grateful to Members who have signed on to my No Taxation Without Representation Act, and I will continue to do so. Indeed, this bill got out of committee in the Senate a couple of years ago, and I certainly have not given up on it. But I do want to come to the floor this afternoon to say I welcome bills, especially the bills by my Republican friends, and I am very encouraged and will continue to work with them until we get a bill that everybody can agree upon.

My own bill, of course, would give representation in the House and the Senate for the District of Columbia. The gentleman from Virginia (Mr. TOM DAVIS), Chair of the Committee on Government Reform, which has oversight for the District of Columbia, is considering a bill that would have a House-only seat.

The gentleman from Ohio (Mr. REGULA) has long favored and often in the past put in bills for voting rights. His is a retrocession bill. D.C. would return to the State of Maryland, that is to say, if Maryland agreed, with Congress maintaining control over the Federal enclave.

And now the gentleman from California (Mr. ROHRABACHER) has come forward with a bill that treats the District, for purposes of voting rights only, as Maryland citizens. District residents could vote in Maryland, could run for the Maryland Senate seats. We would remain an independent jurisdiction and there would be no retrocession.

The gentleman from Ohio (Mr. KUCINICH) has represented that he is considering a statehood bill. The problem with that, and I appreciate his interest, is that we had a vote on statehood in 1993, but the District had a grave financial problem and had to give back State costs, so we do not presently qualify to become a State.

We are asking for voting representation because every citizen qualifies for representation in her legislature. As long as the Federal Government takes the money of the people I represent every April 15, as long as we have men and women fighting and dying abroad, and today especially in Iraq and Afghanistan, it is simply intolerable for there to be unequal representation.

For my constituents, this is a pure and simple question of disparate treatment, inequality of treatment and discrimination. At a time when we are insisting on democracy not only in Iraq but everywhere we see, everywhere we go in the world, at some point people are going to point their fingers right at us and say, ''Why do you not give the same democracy to the people who live closest to you, the people of your own Nation's capital?'' To that, our only answer can be,''Duh?''

We do not have any answer. The fact that I have colleagues on the other side of the aisle, three of them, who have come forward with their own bills says to me that there is a gathering consensus that we can, in fact, move forward with a bill.

I am not going to abandon my bill at the moment. Ultimately all of these bills will come together, and I have no doubt that together we can find the solution to the last remaining and most intolerable scar on our democracy.

My thanks, finally and once again, to my colleagues, the gentleman from Virginia (Mr. TOM DAVIS), the gentleman from California (Mr. ROHRABACHER), the gentleman from Ohio (Mr. REGULA), and the gentleman from Ohio (Mr. KUCINICH).

□ 1730

The SPEAKER pro tempore (Mr. NEUGEBAUER). Under a previous order of the House, the gentlewoman from Illinois (Mrs. BIGGERT) is recognized for 5 minutes.

(Mrs. BIGGERT addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from New Jersey (Mr. PALLONE) is recognized for 5 minutes.

(Mr. PALLONE addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

WHERE IS THE OUTRAGE?

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Washington (Mr. MCDERMOTT) is recognized for 5 minutes.

Mr. MCDERMOTT. Mr. Speaker, I rise today in a mood to lament what is going on in this House. The American people, I think, sometimes do not understand what it means to have one-party government. The United States right now is in the hands of one party from the Presidency through the Senate, right on through the House of Representatives. One party makes all of the decisions. That has a very strong effect on what happens around here. Issues that might raise questions if they are in the hands of the majority party are clearly not raised. If they are an issue of the minority party, who cares because the majority is running the place and there is really very little that the majority cannot do, from the way it has handled the Committee on Rules to the way it handles bills all up and down the line.

If it was just the processes of the House that I was depressed or upset about, that would be one thing. But there are huge issues that I think affect the American body politic. When people think about the Congress, there is often a saying, that people like their Congressperson, but they do not like Congress in general because of the things that they see happen here.

The first issue that brought this to my mind was the issue of the outing of a CIA agent by someone in the White House. I am not someone who is enamored of the CIA, but still someone who knows the importance of the CIA; and I believe that the protection of CIA agents is absolutely paramount. We cannot have an intelligence agency that is being exposed on every hand by anybody for any political purpose. The issue comes up, there is no outrage in this body.

We will give them $40 billion more for the budget for that agency, but we will for political purposes out an agent anytime we feel it is politically, or some people will, anytime they think it is politically expedient. It obviously came from the White House, and we are several months down the road, and there is nothing happening. They have moved it now to a special prosecutor in Chicago. Why there, I do not know. Finally, the Attorney General felt he could not handle it; it was too hot to deal with in the Justice Department, so it is gone.

There are other things that happen here. We have intelligence leaks in the other body. There is no outrage anywhere. No one demands an inquiry because the man who did it apparently, we do not know, and it is not clear who did it, but it is clear there should be an investigation of an intelligence leak. It does not happen. Where is the outrage in this place? Is it only Democrats in the minority that feel outrage? Are there no Republicans who care about the intelligence agencies in this country that allow leaks, allow outing of agents?

The other thing that we do in this House is we deal with public policy,

huge public policy, policy that affects 20, 30, 40, 50 million people at a swipe, not little issues. Sure, there is the museum that goes up in somebody's district, and people get all excited about the pork involved in that kind of thing. Those are not the issues people should be outraged about.

The outrage ought to be about issues like, take the pharmaceutical bill. It comes to the floor. Medicare affects 40 million people. The issue sits on this floor frozen in time for almost 2 hours while the leadership of the majority tries to get the votes. We are told that the voting closes down after 15 minutes, but that issue could go for 2 hours. Where is the outrage in this body?

Mr. Speaker, one Member even suggested he was given a little extra encouragement.

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from Missouri (Mr. SKELTON) is recognized for 5 minutes.

(Mr. SKELTON addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentleman from California (Mr. FILNER) is recognized for 5 minutes.

(Mr. FILNER addressed the House. His remarks will appear hereafter in the Extensions of Remarks.)

The SPEAKER pro tempore. Under a previous order of the House, the gentlewoman from Ohio (Ms. KAPTUR) is recognized for 5 minutes.

(Ms. KAPTUR addressed the House. Her remarks will appear hereafter in the Extensions of Remarks.)

THE BUDGET AND FISCAL POLICY

The SPEAKER pro tempore. Under the Speaker's announced policy of January 7, 2003, the gentleman from Colorado (Mr. TANCREDO) is recognized for 60 minutes as the designee of the majority leader.

Mr. TANCREDO. Mr. Speaker, I cannot think of an issue that has commanded more attention on the floor of this House, and rightly so, probably since its inception, than the issue of the budget, and how much we should be spending, and how much we are going to spend. This year is no different in that regard in that there will be a great deal of attention paid to it and a lot of words expended on it.

I am a member of the Committee on the Budget, and we are beginning that process today to write the budget resolution, that document that we then submit to Congress for its approval and will hopefully become sort of an outline for how we will spend the taxpayers' money in this next fiscal year.

As we embark upon that project, we are given a lot of information to start our deliberations. I must say the information that we have been given this year, in just the last few days actually, is really quite startling. It prompts certainly me and I think it will prompt many other people to begin perhaps an early discussion of the issue of the budget and what we are in store for when we start looking at some of the implications of our fiscal policy.

There is a friend of mine who is an ex-governor of the State of Colorado, and he is now teaching at the University of Denver in Colorado. He is teaching a class called Hard Choices, Difficult Choices I believe is the name of it. He presents his students with a variety of difficult questions they will have to answer from a public policy standpoint, what would they do if they were in our shoes.

I cannot think of a more difficult task to put before anyone than to come up with the right decision when it comes to how much money we are going to be spending in the next fiscal year, how much money are we going to be taking away from our constituents not just today, but how much debt are we going to be giving our grandchildren and their grandchildren, and millions and millions and millions of Americans yet unborn. It is frightening, it is overwhelming, and I can understand why many Americans, perhaps even some of our colleagues here on the floor, would tend to just let all of this go over their heads saying this is overwhelming stuff, the numbers are so huge, I am just not going to focus on it that much. But I suggest that it is imperative that every single Member and every single citizen focus on these numbers and on the debt we are incurring and on the enormous amount of money we are spending even though we are not taking in the same amount of money in taxes.

Let me preface my remarks by saying I am absolutely convinced that the problem here and that I am going to address in the next few minutes has nothing to do with the possibility that we are not taking enough money away from taxpayers. I believe that the tax rates, especially for folks in the middle- and upper-income tax rates are quite high, significant, and high enough, certainly.

I think a case could be made that we are not taking enough from everyone in the country, every income earner. Some people have suggested that some sort of tax, there ought to be a minimum tax that anybody who makes any money has to pay because then they have a stake in the system. I think there is merit in that discussion, and I would like to have more of it. I think the people who are paying taxes are certainly paying enough taxes. The problem is not on that side of the ledger, as far as I am concerned. The problem is almost entirely on the other side of the ledger, the spending side of the ledger.

The blame can be shared by every single Member, myself included. I do not stand here as someone who has never voted for a program increase. I certainly have. I have voted almost every time in the 5 years I have been here for the defense appropriations. We recently all had the opportunity to vote for the homeland security appropriations, and I have supported those. I believe, and I still believe, that the primary responsibility of the Federal Government is to protect and defend the people of this country and almost all of the other things that we do are extraneous to that particular purpose.

Surprising as it is to many people, there is, of course, no requirement in the Constitution of the United States that the Federal Government provide funding for the education of children, although it is certainly a laudable goal. There is nothing in the Constitution that requires us to be doing probably 75 percent of what we do. It is not required. We are required to protect and defend, and that is why I have been willing to go along with increases in those budgets. But we have to make some very hard choices, very hard choices for all of us because we are at a point where the case could be made that the budget is out of control.

We are now approaching $500 billion in deficits for the next fiscal year, and we can no longer think about this as something that we can get under control in the near future, that we can grow our way out of it or tax our way out of it. Those two things I do not believe are legitimate short-term goals.

I certainly believe that the economy can be stimulated by a lot of the actions we have taken, including tax cuts; and I believe we are seeing some of that happen. I think there are a lot of indicators to suggest that the economy is recovering. We are noticing a growth in productivity, we are noticing a growth in manufacturing jobs, a general growth in the economy and economic activity for the third quarter of the last year, which I should say was almost historical, over 8 percent. There are certainly some indicators that would suggest that the economy is getting stimulated and that we are beginning to see a growth even in the jobs category which has been the one that has been the most reluctant and most difficult to actually affect positively by our tax actions.

However, I do not believe that growth will ever be enough to overcome the spending spree this Congress and past Congresses have been on, along with the administration.

Something that was just given to Members not too long ago by the comptroller, and it was put out by the U.S. Accounting Office and the comptroller, is information that I know for a lot of people would be pretty darn boring stuff. When discussed, people think it is billions and trillions, what is relevant about it.

□ 1745

Again, I think it is really important for us to understand, Mr. Speaker, that

some significant changes have occurred in spending patterns and habits of this Congress over the last couple of decades. I would actually say over the last, let us say, 40 years. We can condense this into just a very, I think, concise description of the problem.

In 1963, the defense budget of this country was 48 percent. Almost one-half of the total budget of the Nation was spent on the defense of the Nation, 14 percent of the budget was spent on Social Security costs, 7 percent on interest, and 31 percent on all other things. That was in 1963, 40 years ago.

Fast forward to 2003. The total budget for defense was 19 percent. It had fallen from half of what we spend in this Congress to 19 percent for defense. That is our primary responsibility, remember, the thing that we are supposed to do, 19 percent. But the budget for Social Security and Medicare had grown to 41 percent of the budget. Again, interest stayed about the same at 7 percent and all other spending again at 33 percent.

So we see what happened here. We narrowed what we spent significantly, and a lot of people will claim that we are spending too much on the military, a claim that could be made, but just remember it is only 20 percent today as it was almost 50 percent of the total Federal budget 40 years ago.

There is also something that is taking hold here; something that the American people have to understand is that a relatively small part of that budget that we fight about every year is in something we call discretionary programs. Those programs over which we have some control, how much we are going to appropriate every year, is a matter of debate and negotiation, but it has become a very, very small part of the budget.

About a third of the budget actually falls into that category of discretionary spending. Two-thirds is spending on what are called mandatory programs. These are programs where the determination of how much we are going to spend is made by how many people become enrolled, how many people are eligible. That is Social Security, Medicare, and there are several other kinds of programs including certain veterans programs that are in this category of mandatory spending. It is sort of on autopilot.

That has grown enormously over the last couple of decades, now commanding, as I say, two-thirds of the entire budget. And so that when we start talking about how to deal with the problem of the budget and a $500 billion deficit, it is impossible to talk about this in any meaningful way without addressing the issue of mandatory spending.

Will we actually take that on is the question everybody really has on their minds. Will we have enough guts in this Congress and will the administration propose to actually do something about mandatory spending? Because we can talk about freezing the expenditures or reducing the rate of growth to a certain percent for all those things that are not mandatory, and it will have little if any real impact on the overall budget and on that debt that is presently held by the public.

What is the debt, by the way? Debt that is held by the public today is $3.9 trillion. Add to that the debt of our trust funds like Social Security and that is $2.9 trillion for a total debt of $6.8 trillion. How does that figure out? How does that break down per person in this country, every man, woman and child? That is $24,000 apiece. If we add in everything that is not included in these things we call trust fund debt and public debt, but all the other expenditures that we have in the Congress and that really are just simply debt, but they are just not added for government purposes in the figure above, the burden per person rises to a little over $100,000.

It goes on to say here in this GAO report that it amounts to a total unfunded burden of about $30 trillion in current dollars, which is roughly 15 times the current annual Federal budget and three times the current annual GDP.

Okay. Lots of figures, lots of acronyms and pretty darn boring, I guess, to a lot of people, I know certainly to a lot of people. But I hope we can all understand that these hard choices we have to make will affect not just the quality of life of the people that we represent, but the quality of life that we are preparing, if you will, for our grandchildren and their children. It will be a significantly different quality of life unless we do something about this, unless we make some very hard choices this time around.

I had a call just before the House adjourned for the day from a member of the media. It was a call with a question attached to it that I thought might have been a joke actually. I thought somebody was perhaps making a kind of bad attempt at some sort of humor. But I had a call, and there was a question from a reporter at a prestigious newspaper in the Nation. He said that in fact the President's budget, when it comes out here soon, will include, among other things, a significant increase in the National Endowment for the Arts.

I say a joke because, of course, I could not believe that considering everything we have talked about here, considering the state we are in, the economic condition we are in, that we can be talking about significant increases in anything that we do in this Nation, let alone something like the National Endowment for the Arts. The reason why I think that this reporter was calling me is because I have tried year after year to strike funding for the National Endowment for the Arts as a frivolous expenditure and one that could never, I think, be justified based upon what it is that the Federal Government is supposed to be doing here. I have tried to make the case over and over again that art would survive even if we did not fund it, and that it was there and doing well even before the Federal Government began giving it $150 million a year, and that there was really no need for Federal involvement in this issue, and that all of the arguments that could be made and were made on the floor during the debate over funding for the arts, they all went to the quality of life people had, to giving people inspiration, to making them feel different about themselves and about the world in which they lived.

They were all really very commendable arguments. They were things that I think all of us would suggest would be good for us as Americans to be so inspired. But the question remains, what business is that of the Federal Government, and that we could make exactly the same case for a national endowment for religion, then we could form a panel and make them presidential appointments, and that we turn over to them the responsibility of distributing $150 million to various religious activities or religions in the country. Then when somebody asks which ones, we would say, that is up to the board to decide because we believe religion is a good thing and that it provides a quality-of-life experience and that it does inspire people and makes them feel better about the world in which they live.

All those things are certainly true, but, of course, no one would agree, or I think very few people would agree that we actually needed a national endowment for religion. But it is all based on the same premise, that it is an appropriate function of the Federal Government.

Of course, I suggest that it is not and have tried to strike the funding. That is why, as I say, the reporter called me.

But apparently it is not a joke. Apparently that is going to be part of the President's budget. I certainly hope that request is not granted, and I certainly hope that we go far, far beyond that in saying that that is not going to be an indication of just how serious we are about fiscal responsibility, that we are not going to significantly increase the national endowment. We have to do something of major, major proportion in order to actually get a handle on this issue.

Just to give Members an example of how scary things are, we could completely eliminate every single dime of discretionary funding, and we would probably still not be really close to getting to that balanced budget goal we have in the next 5 or so years. We could completely eliminate it, or at least, I should say, we could completely eliminate several major portions of it, including the amount we spend entirely on the military. We could eliminate the entire defense appropriation and not be in balance the next fiscal year. It just goes to show you how difficult the choices are that we are going to have to make. The question is, will we?

Time and time again, I have been involved in discussions, both on and off the floor of the House about this problem, how dramatic it is, how difficult it is going to be to deal with it; and time and time again the forces arrayed against spending are overwhelmed by the forces that are arrayed in favor of spending. Should our folks on the other side of the aisle chastise us for spending too much, which they certainly will, it is important to remember that during the debate on the budget last year that if you added up all of the amendments that were submitted by the minority side for additional spending, it would have approximated $900 billion of increased spending by amendments that were offered by the other side.

So it is not as though we could look to the Democrats for any leadership in this area. They are being true to form and certainly spending restraint is not their strong suit. But it is not ours either, I must say. Certainly not if we look at the recent history of the Congress and of our spending habits, we have not been all that much better. I am sad to say that. But it is time, all right, to really think about how we are going to address this issue.

And what are the hard choices we are willing to make? Are we actually willing to talk about things like Social Security containment, Medicare and Medicaid containment? Are we willing to talk about even significant reductions in other levels of discretionary spending? I am willing to look at everything, I will tell you right now, including a restraint on the spending in the Federal budget that goes to our defense establishment.

I am concerned about a number of things that have happened recently. I am concerned that when we leave out big chunks of the budget, we make them sacrosanct and say we cannot go after those, we can go after everything else but we cannot go after defense, we cannot go after homeland security, that a lot of things get added to both of those budgets that are sometimes, I think, frivolous; and they get added to protect them from the budget scrutiny that would naturally be there if they were not in the category of defense or homeland security.

I think those budgets will grow astronomically if they are left to be untouched by any sort of action of our Congress, of especially the Committee on the Budget.

I am certainly willing to look at all of those things and to apply some sort of tourniquet on this hemorrhage that we are experiencing that is actually defined as spending. Because it is a spending problem. I want to reiterate that. It is a spending problem. It is not a taxation problem. It is spending.

Remember the old sign that used to hang, I think, at a previous President's election headquarters? It said, ''It's the economy, stupid.'' So every single person answering the phone in his campaign headquarters would have to try to direct their answer to the question, no matter what the question was, and somehow they would try to deal with the economy or to make that part of the answer so that people would focus on the economy, which was in a slight recession at the time.

We should perhaps put a great big sign around this House, maybe around the outside of the House and the inside of the House both that says, ''It's the spending, stupid,'' because it is the spending that we have to deal with. It is what we must get under control. As I say, I certainly do not speak from a holier-than-thou perspective. I know I have voted for increases in the past on various budget items. I also am saying that the time has come for us all to look very carefully at how we are going to address this very serious issue. There will be some very hard choices.

Mr. Speaker, to tell you the truth, I do not know that we are up to the challenge. I have seen this happen before. There is a great deal of talk at this point in time about the need to do something, but at the point in time when push comes to shove and the rubber meets the road and all those other little things we throw in there to describe a tough situation, we will back away and the forces of spending will overwhelm the forces of moderation in this regard, including the budget process itself.

□ 1800

Everything in this body is built so as to construct an ever-expanding government with ever-greater costs. And I am not suggesting that it is done nefariously, that people are trying to figure out how to sink the government by spending us into oblivion. It is just simply the way the system works, and it is the nature of this Republic that we will represent the interests of our constituents as they are reflected by ever-increasing demands for certain services that the Federal Government does now and gets involved with.

There are so many places to look for budget cuts; however, I want to encourage us to think about all of them; to leave nothing off the table including defense, including homeland security. I certainly for one, as I say, I am willing to look at all constraints because it is absolutely clear that there is no way to say we are going to simply freeze expenditures or we are going to have only a 1 percent increase in expenditures that are in this category nonmandatory, nondefense related, nonhomeland security related.

Do my colleagues know what that comes down to? Squat. There is nothing there, Mr. Speaker. There is just this tiny little bit of the budget that then is eligible to be held in check, and it will do nothing except give us the rhetorical high ground. It will certainly not give us the moral high ground. We will be able to go out and say we froze the budget. We will not add all these other exceptions. We will be able to say that we only allowed a certain small percentage increase, but will we explain what that increase is in or what that constraint is in? No. We will just talk about it as being part of the budget process because most people frankly do not care.

Most people are confused by these issues and want to turn off the message and certainly the messenger if we are talking about cutting them. But I am hoping that we can all do what needs to be done for the country because the consequences are dire; and as I said earlier, the choices are very hard. But we cannot shirk them. It is our responsibility, and so I hope that we will all undertake that with a most serious attitude because I just do not know how else we will accomplish our goal, Mr. Speaker.

And the public, as I see the polls recently and the concerns being expressed and certainly from the information that we get in our office, the kinds of calls we get, I think that the public is at this point in time ready to say we need to do something even if it affects their favorite program. I guess we will see about that. But we get a lot of information now coming to us from our constituents talking about the budget as being a very serious topic to them and worried about these deficits and worried about our spending, and that is good. I am glad that it is actually getting out there to the point where people are focusing on this because it will take that kind of commitment, it will take a public that is supportive of our efforts to try to cut the budget for us ever to actually get the job done, and it will take talking to the public in terms that we can all understand and explaining to them and to us all, not just the general public but certainly to other Members, the importance of being more fiscally responsible and the dire consequences of huge deficits that go on for year after year after year.

It is not as sexy a topic as many others that we could address, I know; and it is challenging to inspire the Nation to stand behind us as we try to cut spending. That is very difficult. It sounds so much better to stand up and say I want to do X, I want this program. It will solve so many problems. It will cure disease. Let us triple the budget for the NIH, for the National Institutes of Health. And people come into my office all the time with requests to increase funding for the research into particular diseases and searching for solution and a cure, and our heart goes out to them. They bring their children in with them, children afflicted with these horrible diseases; and we want to say yes, absolutely, certainly we will do that. I want to put all the money I can think of into curing this disease so their child will have the possibility of not just a productive life but life itself, and I want to do that. I mean, I certainly am susceptible to the same kinds of siren songs that all the rest of us are.

Again, I am telling the Members I am not immune to the call for spending.

So it is easier to say yes to them. It is easier to say yes to every person that comes into our office asking us for money for a certain project because they can make a great case. As long as I have been here, I can think of few times that I have been confronted by constituency groups or advocacy groups that do not make a good case for whatever it is they are trying to advance. They are, for the most part, I believe, very good people, all motivated by the best of intentions. And so it is so much easier to say to them, okay, I will do my best, yes, I will vote for an increase. And we all do it, and we have all got to reconsider it in light of what is happening in this country and in light of the very stark projections about where we go from here.

And the President needs to do this also. He has to provide the leadership so that we can look to him and the administration for guidance and for the example that he can provide for fiscal constraint. So I am just hoping again that things like that that reporters call to me about the increase in the National Endowment for the Arts are simply trial balloons, as we say around here, and that they put them out just to see if there is any hope and, of course, if they see that there is not, it goes down. I hope that that is the case. I hope he is not serious.

I certainly hope that the President comes to us with a budget more austere than the one I have been hearing about, and I hope those of us on the Committee on the Budget can muster the courage to present a budget resolution to this Congress that is austere, truly austere, that it does not just have the rhetorical flourish of budget freezes or restraints in the rate of growth and that sort of thing, but a true cut in spending because really this is the only way we will actually get to a balanced budget in the foreseeable future, or even if it is not a balanced budget, a more reasonable approach toward solving our fiscal crisis.

So I just want to keep emphasizing I know I am certainly not the purest of the pure on this and cannot come to everybody with a holier-than-thou attitude and say I never voted for an increase in the budget. I do not believe I ever voted for a tax increase. That is certainly true. But I cannot say I have never voted for an increase in the budget. I can tell the Members that there is little that I can think of today that would make me able to cast such a vote now in this budget cycle coming up, and I am going to do everything I can to make sure that the budget resolution that our committee reports is one that we can all be proud of from the standpoint that we can defend it, not just to our constituents but to our own consciences. That is a challenge for all of us.

THE FISCAL STATUS OF OUR NATION

The SPEAKER pro tempore (Mr. NEUGEBAUER). Under the Speaker's announced policy of January 7, 2003, the gentleman from Maryland (Mr. CUMMINGS) is recognized for 60 minutes as the designee of the minority leader.

Mr. CUMMINGS. Mr. Speaker, I rise this evening with my fellow members of the Congressional Black Caucus to address the dire fiscal status of our Nation.

Just this past Monday, the Congressional Budget Office released its annual report on the Federal budget and the economic outlook for the next 10 years. The staggering numbers included in this report should be startling to both Democrats and Republicans alike. More importantly, I want the American people to know that we must address this critical issue.

Mr. Speaker, since the mission and the purpose of the CBO is to be objective in its analysis and in its reporting to Congress, they have no interest in fudging the numbers to look better than they actually are. With that being said, the CBO projected that the government would accumulate $2.4 trillion in additional debt over the next decade. And as of this moment, the outstanding public debt is well over $7 trillion and is growing by the moment.

And with that, Mr. Speaker, I yield to the gentleman from Virginia (Mr. SCOTT), one who has spent a phenomenal amount of time on this issue and has been at the forefront in trying to make sure that our tax dollars are spent effectively and efficiently.

Mr. SCOTT of Virginia. Mr. Speaker, I thank the gentleman from Maryland for taking the leadership on this budget.

We have a difficult situation; and rather than use adjectives and slogans, I like to use charts so we can see what is going on year by year. If we look at the budget deficit, and this is the budget without the Social Security and Medicare, which is supposed to be saved for Social Security and Medicare when we need it, this is the deficit year by year. And we see that we have got the Johnson, Nixon, Ford administrations. It dropped a little bit under Nixon-Ford. Under Carter it stayed about the same. People remember that under Reagan and Bush, the first Bush administration, deficits came about. But not enough credit is being given to what happened under the Clinton administration because without a single Republican vote in the House and without a single Republican vote in the Senate, we passed a deficit reduction plan that resulted in not only an elimination of all of that deficit but an actual surplus, a surplus without counting the Social Security and the Medicare surplus. If we count those, it is even higher than that.

Some of the Republicans want to take credit for some of this. And they say in 1994 the Republicans took over Congress; so in 1995 when they were sworn in with the Republican Congress, they ought to get some credit for this. But let us remember history. When they came in, they passed massive tax cuts, primarily for the wealthy, and President Clinton vetoed those budgets. They passed them again and threatened to close down the government if he did not sign them, and he vetoed them anyway. And they closed down the government, and he vetoed them anyway. Trying to take credit for a budget plan when their plans were vetoed, even with the closure of government, their plans were vetoed; and we were able to maintain this line by vetoing their bills. They cannot get any credit for the green.

□ 1615

However, we do see when President Bush was sworn in, they passed the same kinds of tax cuts, primarily for the wealthy, and what happened? We see what would have happened down here if President Clinton had signed it. We see exactly what would have happened. We have skyrocketing deficits.

Now, this is actually not quite as low as it ought to be. This is a couple of months ago, so it is actually a little worse than this.

The on-budget deficit for this year, the total deficit, the $477 billion the gentleman mentioned, does not count about $175 billion in Social Security and Medicare funds that were spent first before you went in debt another $477 billion. Almost $650 billion in total on-budget deficit, because we are supposed to be leaving Social Security and Medicare money for Social Security and Medicare.

Let me put these numbers in perspective. If you add up all of the money that we receive from the individual income tax, everybody's individual income tax, the total is less than $800 billion this year. We are pushing $700 billion in on-budget deficit. It is just totally out of control. This, I think, shows it.

I do not see how anybody who voted for the red can explain what is going on with the budget without starting off with an apology. And as far as we are concerned, we, the Congressional Black Caucus, voted for the green and against the red. So you cannot blame us for this.

Mr. CUMMINGS. Mr. Speaker, the gentleman just said something that is just so incredible. Let me make sure I heard the gentleman right.

Is the gentleman saying that in the United States, when people go on April 15 and they go through their tax returns and they look at all this money that has been sent to the Federal Government over the last year, taken from their checks every 2 weeks or every month, whatever, the gentleman is saying out of all the people that pay taxes in the United States, it amounts to about $800 billion?

Mr. SCOTT of Virginia. Less than $800 billion.

Mr. CUMMINGS. The gentleman is saying when you include the Social Security money——

Mr. SCOTT of Virginia. They had to spend the Social Security and Medicare

surplus before they got to the $477 billion that the gentleman mentioned as a unified deficit. Less than $800 billion in individual income tax. That includes everybody.

Mr. CUMMINGS. That is incredible.

Mr. SCOTT of Virginia. To show how this deficit also looks, let us look at another way of looking at it, and that is, of the budget, how much of today's budget is paid for with borrowed money?

When President Clinton ran up a surplus, obviously we were not borrowing any money to pay for the operation of government. But when this administration came in, we started borrowing money, and in fact this year almost one-third, and with the new numbers, more than one-third of the on-budget spending is paid for with borrowed money. You borrow it from Medicare and Social Security, and then you borrow the rest, and over one-third is paid for with borrowed money.

You can see, we have not done that since World War II. We are in a peacetime economy, and we are borrowing a higher percentage of the Federal budget. The spending we have in the Federal budget, a higher percentage is paid for with borrowed money than at any time since World War II. This is irresponsible.

Now, how did we get in that mess? Well, we had tax cuts. Who got the tax cuts? I remember one candidate during the campaign, President Bush, said the vast majority of his tax cuts will go to those at the bottom. Let us see what that looks like on a chart.

The bottom 20 percent, the next 20 percent, the middle 20 percent, this is about what they got, the percentage of the tax cut they got. Then the fourth 20 percent. The upper 20 percent got 70 to 80 percent of the tax cut. In fact, the top 1 percent got more than half of the 2001 and 2003 tax cuts. The top 1 percent got more than half.

Now, just in case people want to know what they got out of it, because people say, you got a lot, you got a little, in terms of those who made over $1 million, that is what you got. If you made only $500,000 to $1 million, that is what you got. If you made $200,000 to $500,000, or $100,000 to 200,000, or $75,000 to $100,000.

As you get to what most people actually make on average, all of them, some pay a little more tax, depending on the number of children and deductions and whatnot, but $40,000 to $50,000, you hardly need any ink to draw the bar. Millionaires, off the chart. That is who got the tax cut.

When you run up all this deficit, you have debt; and debt is somewhat esoteric, but interest on the national debt is cash money. You have got to pay it.

Now, this black line is the interest on the national debt which we would have paid if we had not messed up the budget in 2001 with all these tax cuts. Under the Clinton Administration, when they left office, the projections at that time, before we messed up the budget in 2001, we would have paid off the entire national debt held by the public around 2008 to 2009. We were scheduled to pay zero interest on the national debt.

Instead, we offered those people the big tax cuts, ran up the debt, increased the debt and increased the interest on the national debt, so by 2008, 2009, 2010 we are going to be spending $300 billion on interest on the national debt rather than zero, because we ran up the debt, we were fiscally irresponsible.

Now, again remember, less than $800 billion, everybody's individual income tax; the first $300 billion, gone, interest on the national debt that we would not have had to pay.

We were told that we needed to get into that mess, run up the debt, run up the interest on the national debt, to create jobs. Let us see how we did.

This is the number of jobs created every 4 years since Harry Truman was in office. Harry Truman created jobs. Eisenhower created more jobs than we had when he came in; this is about 4 million. Kennedy, Johnson, Johnson, second administration, about 6 million. Nixon and Ford, everybody creating jobs. Clinton, almost 10 million first term, another 10 million the second term.

From 40 yards away, with bad vision, you can tell who is the worst since the Truman administration.

Now, every time something goes wrong, it is always 9/11. Three million jobs lost since the President came in office. 9/11 could not possibly be the cause of this any more than the Korean War stopped Truman from creating jobs. The Vietnam War did not stop Kennedy, Johnson and Nixon from creating jobs. The hostage situation in Iran did not stop Carter from creating jobs. The Cold War was going on all this time, Reagan, Bush. Clinton had Somalia, Grenada. Everybody is still creating jobs until you get here.

One of the problems, however, as you get into this situation, is Social Security. This is the cash flow for the Social Security trust fund. These purple lines represent the surplus we talked about that is bringing more money into Social Security than we are spending today. That will go on until about 2017. Then we start going into deficit.

This line at about 2022, 2025, that is $300 billion. That is about $1,000 for every man, woman and child in America. For a family of four, $4,000. Every man, woman and child, $1,000. When you get around 2032, you are up to $600 billion, or $2,000 for every man, woman and child. By 2037, a $1 trillion a year shortfall.

I admit if you look at this, you may conclude that there is nothing we could have done about that. $800 billion for individual income tax, you would have to spend all of that just to maintain Social Security by 2037. So maybe it was a lost cause. Maybe Social Security was a good idea, but it could never work.

Until you look back. You remember this chart where the top 1 percent got half the tax cut? The 2001, not 2003, just the 2001 tax cut, if you took the money that the top 1 percent got in the 2001 tax cut, and instead of giving a tax cut to the upper 1 percent, put that same amount of money into the Social Security trust fund, you would have run up the surplus to a point where you could have paid Social Security benefits without reducing benefits for 75 years. Or you can give the top 1 percent a tax cut and worry about this $1 trillion deficit when you get to it.

We made the choice. Excuse me, they made the choice, because the gentleman and I opposed the tax cuts and would have preferred making Social Security secure for the future, would have preferred paying off the national debt so we would not have had $300 billion a year to deal with in just a couple of years. We had other priorities: health care, Social Security, veterans benefits that this House voted to cut by $19 billion last year. We had other priorities. But we could have solved this with just what the top 1 percent got in the 2001 tax cut. They could have gotten all they got in the 2003 tax cut, just the 2001.

So when we look at this chart, you cannot create a chart like this by accident. You cannot have every single year under the Clinton administration, without exception, being better than the last, and every year in the Bush administration being worse than the last.

Let me tell you a little bit about this up-tick. Things will continue to get worse. But by 2014, technically, we might be back in balance if we do not do anything. If we do not do anything; that is, if we do not change present law.

The President has suggested that we make the tax cuts permanent, do not let them expire. If we are to go back into balance, we have to reject that initiative. The President has said, let us go to Mars for $1 trillion. If we want to get back into balance, we have to reject that initiative.

Let us privatize Social Security, take some money out, not put more money in the trust fund, for $1 trillion, to privatize Social Security. If we expect to go back into balance, we have to reject that initiative.

In other words, we have to reject all of the President's initiatives just to get back to balance. And if we do, we would have run up the debt so much in the meanwhile that we will be paying over $300 billion in interest on the national debt, rather than zero that we would have paid had we not messed up the budget.

Again, anyone who voted for the red and against the green ought to start off with an explanation of their vote and an apology.

Mr. CUMMINGS. Mr. Speaker, I want to thank the gentleman for his presentation. I think the gentleman said it best when he first started, that when you put it on charts, it really does make it very, very clear what is happening here.

I think one thing that is very sad though, as the gentleman went down one of those charts that shows who was getting the tax cuts, it says there the tax cuts go to the wealthiest Americans. One of the interesting things about that is that when you look at the folks who are not making a lot of money, some of them may have gotten $300, some may have gotten $400. But when you look at the reduction of services, say, for example, in my State of Maryland, tuition has gone up 10 or 20 percent for college kids and Pell grants have leveled off, I think in part because of our money problems.

Well, if a family got $300, say they got $400, the rise in tuition which they must pay if they are going to keep their kids in college, that wiped that out right there. That does not even go on to include all the other things that they will now have to pay for.

Mr. SCOTT of Virginia. And Maryland is suffering from the same budget crunch that Virginia is suffering from, all the States, virtually all the States are suffering from, where we are cutting back on services, cutting back on transportation, cutting back on health care, knocking people off of Medicaid. We are trying to provide more health care, and we are knocking people off. We are not creating jobs. We did not extend the unemployment benefits for those who are in areas of extremely high unemployment.

□ 1830

Tuition has gone up. Your property taxes have gone up. Education funding, we are underfunding No Child Left Behind by $9 billion. And so the money that the States expected to get from No Child Left Behind they are not getting.

The State House of Delegates in Virginia voted 98 to one to reject the No Child Left Behind because they found that the unfunded mandates were not offset by the money that was supposed to come. Now, we knew when we passed that there were complicated mandates, expensive mandates in that bill, but the authorized spending would more than compensate for those mandates. Unfortunately, we did not send the money that we promised. We sent the mandates, did not send the money.

And so when you add up all those, would people rather have had decent public school education, would they rather have had decent health care, better roads, lower tuition? You add all those up, the little tax cut, and when you add it up, and unless we have a profound new direction, we will not be able to pay Social Security. You ask people whether they would rather have Social Security after 2017 or the $300 tax cut today, I think most people would say let us take care of Social Security first. And if I can get a tax cut, I would like one; but let us take care of Social Security first. We did not do that. We took care of tax cuts first.

And we are going to look at that Social Security chart, and who knows what we will be able to do in 2020 and 2025. Now, a lot of people pushed the ideas of personal responsibility. And the suggestion is that if there is no Social Security, your retirement will be your personal responsibility and we will not have Social Security. Like, what is the problem if you lose Social Security? You know, I got mine, I got investments. Is that the attitude?

Or should we adopt the philosophy that we have had since Franklin Roosevelt was President that senior citizens ought to be able to retire with some dignity. And whatever happens to their investments, whatever happens to the stock market, you ought to be able to have at least a minimum amount of money coming in for necessities, rent and food. And if all else goes badly, you ought to be able to have that.

And we are in a situation now where unless there is a profound change in direction, we will not be able to pay Social Security after it stops running a surplus. As a matter of fact, in this budget we have now, it is a 10-year budget, goes to 2014, we have, they say, it goes in the balance, but that includes a $275 billion Social Security surplus. Just in 3 years in 2017, it goes from $275 billion surplus to no surplus. We just had in 3 years a $275 billion hole in the budget. What provisions have been made for that? None. None. We will worry about it. And the challenge, quite frankly, I would say to my good friend, the gentleman from Maryland (Mr. CUMMINGS), the challenge is getting someone to acknowledge that there is a problem.

We had a Committee on the Budget meeting yesterday. We heard that when you look at this chart the economy was good. Good? We heard that the budget deficit was manageable. You cannot get anyone to acknowledge that there is a problem. If we do not have a profound change in direction, we cannot pay Social Security. We cannot get anyone on the other side of the aisle to acknowledge that that constitutes a problem. If one does not acknowledge that there is a problem, one is certainly not going to come up with a painful solution. That is the problem that we have, this problem we have in this Congress today that making the tough choices is painful.

We made the tough choices in 1993 and suffered in the next campaign. Republicans picked up 50 seats with the budget vote, that responsible budget vote, as a primary issue in the campaign. And so we suffered because of that. But it was the right thing to do. I do not think anybody that voted for that budget, even those that lost their seats as a direct result of that vote, I do not think they think it was the wrong thing to do. When the 218th vote was cast, the Republicans started chanting bye-bye Marjorie. She had cast the 218th vote that passed the bill. And they waved bye-bye Marjorie and defeated her in the next election using that vote.

Mr. CUMMINGS. Mr. Speaker, I think, certainly, when we come to this House, we come here for the purpose of lifting up the people that we represent in making their lives better. And when you look at the jobless rate, which is 5.7 at the latest count, I think, it is 10.2 for African Americans, and then not counted in those figures are so many people that I am sure call your office quite often who have been out of work for so long, they basically are looking but they have pretty much given up hope, so their figures are not even in there.

Mr. SCOTT of Virginia. It is hard to put the magnitude of this mess into perspective; $300 billion more interest on the national debt in 2008, 2009 than we should have paid. Should have been zero. $300 billion. Do you know how many people you can hire at $30,000 apiece with $300 billion? 10 million. 10 million. Just deal out $30,000 jobs. 10 million. Do you know how many people are listed as unemployed in America today? Nine million. You can hire every unemployed person in America, offer each and every one a $30,000 job, and have money left over with the additional interest on the national debt that we are going to have to pay because the budget has been messed up, and we are going to be paying $300 billion in interest on the national debt rather than zero if we had stuck to the fiscal responsibility that was exercised when President Clinton vetoed irresponsible bills.

Mr. CUMMINGS. Mr. Speaker, I want to thank the gentleman from Virginia (Mr. SCOTT) very much. We really appreciate it. He did an outstanding job.

Mr. Speaker, I would yield to my colleague, the gentlewoman from Georgia (Ms. MAJETTE), one who has also put our budget concerns at the forefront of our Nation's mind and this Congress's mind and one who also believes in making sure that we spend the taxpayers' dollars effectively and efficiently and that we do those things that are reasonable to uplift all of the citizens of our great country.

Ms. MAJETTE. Mr. Speaker, I thank my colleague, the gentleman from Virginia (Mr. SCOTT) from the Committee on the Budget, for his excellent presentation.

Mr. Speaker, I rise this evening because the President's lack of solutions and lack of vision brings me to the floor.

This President's economic policies have had a devastating effect and devastating impact on this country and on hardworking Americans. His tax cuts have tied our hands and prevent us from solving the major challenges that we face in education, in health care, and in job creation.

The people in the 4th Congressional District of Georgia and across this country are looking for the American Dream. They work hard. They follow the rules. They are trying to get a small piece of the American Dream, but it is getting further and further out of their reach.

Let us start with jobs. Now, I am not talking about the economy and stock

dividends and the stock market. I am talking about jobs, plain and simple. I am talking about replacing the 3 million jobs that have evaporated since this President took office. The American people want us to focus on creating more good-paying jobs, on providing a quality education for our children, on providing affordable and accessible health care for every American. These are the priorities of the hardworking people of Georgia's 4th Congressional District and the people of this Nation. But instead, this President talks about a mythical country where everyone is happy, healthy, well educated, and employed. But, obviously, he did not check in with the men and women who have been laid off from BellSouth in Atlanta and Brown & Williamson in Macon and General Electric in Stone Mountain or Delta or Coca Cola or Lord & Taylor, and the list goes on and on. Nor did he check in with the 1.4 million Americans who have lost their unemployment benefits and still cannot find a job and have been denied unemployment benefits because the Republicans insist they do not exist. But they do exist.

And we owe it to them, our husbands, our wives, our partners, our children, our friends, our neighbors. We owe it to them to make a real effort to create jobs.

We cannot afford to make tax cuts permanent for the very wealthy, and we absolutely cannot use Social Security money to pay for it. The American people deserve a leader who understands the meaning of a level playing field and has the vision and the will to make it happen.

Americans are hungry. They are hungry for a national strategy that focuses on providing good jobs, providing a strong public education system, and providing quality health care. And so we must keep the promises that we have made to the millions of Americans who have played by the rules, who have worked hard to find that piece of the American Dream. And it is just as important to keep the vision and the path clear for those who are still seeking that dream.

Abstinence education? A trip to Mars? Steroid use in professional sports? Those might be the priorities of this President; but, Mr. Speaker, I promise you those are not the priorities of most Americans.

Mr. CUMMINGS. I thank the gentlewoman from Georgia (Ms. MAJETTE) for her statement. I really appreciate the excellent statement addressing this issue to the Congressional Black Caucus.

I stood up again, and continue to stand up, with regard to the issues that affect all Americans. I have often said that a lot of times when people hear the words ''Congressional Black Caucus'' they just assume that the Congressional Black Caucus is only speaking for African American people. The fact is that the caucus, which represents collectively over 26 million people, more than one-third of whom are white, the fact is that we speak for America.

And with that I just want to summarize some of the things that have been already said. But before I do that, I am very pleased to yield to my colleague, the gentlewoman from the District of Columbia (Ms. NORTON), who is, as I said in a speech just yesterday, one of the strongest fighters that I have ever met, constantly on the battlefield addressing the issues that can bring harm to our citizens, but at the same time in doing those things that uplift them.

Ms. NORTON. Mr. Speaker, I thank the gentleman from Maryland (Mr. CUMMINGS) for yielding to me. I particularly thank him for this Special Order and for the emphasis this Special Order has taken as I was watching it. I want to thank my good friend, the gentleman from Virginia (Mr. SCOTT), for focusing on his charts and his very lucid explication on what is happening, particularly to baby boomers who are the retirees, many of whom have begun, those who are 62, already begun to take their benefits.

The reason I value what is happening on the floor is that discussions of deficits quickly go off into the arcane about economics and the rest. And I, of course, applaud those who call attention to what deficits do to slowing economic growth, through raising interest rates, to crowding private investment. But I must say to the average American, until the interest rate goes up on his or her car, there may be little understanding of what that means. I am very concerned with what it means in particular for the baby boomers who seem to me are in dire risk because of the President's budget which is not even out yet. It is already controversial.

CBO's projections, as I understand them, do not even take into account at least two huge items that are almost inevitably going to be before us. One is the alternative minimum tax and another is, of course, the President's very explicit statement when he was right before us last week that he wants to make the tax cuts permanent. We do not even include that in your projections. They were not even looking at the real possibilities here assuming that what the President wishes for tax cuts, in fact, does happen.

We, of course, are looking at the worst deficit in our history. My good friends on the other side tell us, well, it is really because of spending. If they would only stop spending, things would be okay.

□ 1845

I have looked at the figures since 2001 and 9/11. Each year, 90 percent or more of the spending has been for defense and homeland security. In 2001, 95 percent of the funding increases were for defense and homeland security; 93 percent in 2002; 90 percent in 2003; 90 percent in 2004. It is not the spending, as they say, stupid. It is the tax cuts. And we have got to come to grips with that and face that reality if we want to do something about it.

Mr. Speaker, the baby boomers are those people who were born in 1946 or begin with those people born in 1946. They will begin to collect reduced Social Security payments in 2008 at 62 because you can do that. These same baby boomers are going to qualify for Medicare benefits when they get to be 65 in 2011. We already know what is happening to Medicare costs. They are rising so fast they have become an unbelievable figure.

What concerns me most is, what we are going to do now that we have already eaten up the surplus that we were putting into Social Security and Medicare trust funds. What are we going to do? We know that the Medicare bill says what we will do is, the Congress at a certain point in time will have to look at whether or not to cut benefits or to raise taxes.

Assuming we are in the same Congress we are in now, and I pray we are not, then, of course, what this Congress would look to do is to cut benefits. That would be a historic first. Therefore, when one begins to talk about the deficit, I have come to the floor to say that I think the Congressional Black Caucus tonight has put the emphasis where it belongs. Let us put it on some real bodies, the people who will suffer, the baby boomers who are already almost upon us.

For the moment, let us think of what the President already has proposed, the first step towards privatizing Social Security, which really sinks the whole thing and makes it impossible to even talk about where younger workers would be allowed to redirect part of their payroll taxes out of the Social Security trust funds and they themselves deal with private accounts. We have got to put all of this on the table and have an honest discussion about it.

I thank my good friends who have come to the floor tonight for beginning that very honest discussion.

Mr. CUMMINGS. Mr. Speaker, I thank the gentlewoman for her statement. We really appreciate it. The Congressional Black Caucus has looked at this budget situation, and I tell you there are some things that, the legal term is shocking to the conscience. When the gentleman from Virginia (Mr. SCOTT) presented those charts, I just hope America was listening and watching.

Mr. SCOTT of Virginia. Mr. Speaker, I just want to comment on one of things our colleague from Washington, D.C., said about cutting spending as the answer.

We had a hearing over on the Senate side a couple of days ago, and one of the witnesses suggested spending as the answer, but had to acknowledge that to get close to balancing, you would have to eliminate Federal funding for health care, Federal funding for transportation, totally eliminate Federal funding for education, and that

would only get you back to balancing, not enough to pay off any of the national debt.

So if you are not going to do that, you ought to be honest. Also, when you talk about job loss, everybody says, well, you know, it was not our fault, it was not our fault. The fact is, when we were fiscally responsible in the 1990s when President Clinton was vetoing the massive tax cuts, we created jobs. As soon as this budget passed, we started losing jobs. That is what happened. Now you can explain it one way or another.

Finally, let me say that we do not often discuss it, but there are national security implications running up a big deficit. When we had to come up with 87 billion more dollars to continue the war in Iraq, we had to borrow the money. How much more money can you borrow? Suppose something else came up? When President Clinton left office, we had a $250 billion surplus, counting the Social Security surplus; and if we needed $87 billion, we could come up with $87 billion. Now we have to find people to borrow $87 billion from.

The fact is that many national governments are now holding hundreds of billions of dollars of our debt. Some are not our traditional allies. China, suppose we got into a negotiation with China over weapons of mass destruction, over trade policy, and in the middle of the negotiations they said, We are not going to buy a $100 billion of your paper next year unless you agree with us, unless you let us produce weapons of mass destruction, unless you agree with us on the trade deal, what would we do? Because if they stopped buying the paper or, even worse, if they sold it, interest rates would go up to double digits overnight. There would be nobody to buy it. So there are national security implications in running up this kind of debt.

Finally, we just have to acknowledge that balancing the budget is tough. There are no easy solutions. You cannot produce popular tax cuts and popular spending and think you can end up with a balanced budget. You have to make the tough decisions. That is what we did in 1993. They were politically unpopular, but we did the right thing. And that is what we need to get back to today; otherwise, it will get worse before it gets better and we will be spending hundreds of billions of dollars more than we need to in interest on the national debt, and we will have no way to address the Social Security shortfall that is right around the corner.

Mr. CUMMINGS. Mr. Speaker, I want to thank the gentleman from Virginia (Mr. SCOTT), the gentlewoman from the District of Columbia (Ms. NORTON) and the gentlewoman from Georgia (Ms. MAJETTE) for being a part of this hour.

If I could summarize for a moment, Mr. Speaker, over the past several days some of my colleagues, and even the President himself, have come to the House floor and to this Chamber discussing the need to address the national debt. They have said that the accumulation of this monstrous debt is to be blamed on congressional spending, as the gentlewoman from the District of Columbia (Ms. NORTON) and the gentleman from Virginia (Mr. SCOTT) said.

As a result, these same colleagues have promised to slash the spending dragons in Congress. The President in his State of the Union address promised the Nation fiscal restraint in his effort to slash the deficit in half over the next 5 years. I am not quite sure if we were all reading from the same CBO report. But surely if we were, the spending slashers must have missed a part of the report that pointed to the decrease in Federal revenue as a result of the Bush tax cuts as the major culprit in this steadily increasing Federal deficit.

Mr. Speaker, the CBO noted that if we were to allow the tax cuts to expire, then the deficit would gradually decline until the books balance in 2004. But if we act to extend the tax cuts, as the President has urged the Congress to do in his State of the Union address, then we will run large deficits well into the next decade.

Again, Mr. Speaker, without any actions to further help Federal programs and agencies that are already fiscally deprived, the deficit would be nonexistent in the next 10 years. But if Congress follows the lead of the President, then the deficit will continue to spiral out of control, and we will be sticking our children and grandchildren with this enormous bill.

But let there be no mistake, this is not a spending-driven deficit. In less than a week, President Bush will send to Congress his budget for fiscal year 2005. According to a recent article in the Washington Post, that forecast will go out only 5 years, in effect, omitting the cost of extending the tax cuts. Yet, Mr. Speaker, I am sure the President will keep his promise to increase domestic spending to only 1 percent. In order to ensure that our children and generations yet unborn are not forced to bear the brunt of this administration's fiscal mismanagement, sacrifices must be made; and that is what the gentleman from Virginia (Mr. SCOTT) said, hard decisions for hard times. But these sacrifices should not be endured by my children or yours, and they should not be shouldered by those who are already struggling to carry the load that is theirs to bear.

In short, Mr. Speaker, I hope the President will exercise the compassionate side of his conservative agenda to hold the domestic programs sacred that educate our children, that would ensure that the 43 million plus people who are uninsured get some health insurance, that we would provide our first responders the resources they need to protect our borders and ports, and that we would protect the basic freedoms of our society.

Finally, Mr. Speaker, domestic discretionary spending represented only 17 percent of all Federal spending in 2004. When we consider that the President's own No Child Left Behind legislation to ensure a quality education to all of our Nation's schoolchildren was underfunded by over $7 billion in 2004, it begs the question, what is left to be cut?

When we further consider that in the land of wealth and opportunity, 43 million Americans have no health coverage, we must begin beg the question, what is left to be cut?

Mr. Speaker, these are critical issues that should be addressed in the President's budget. The Federal budget resolution is the blueprint for spending this Congress and our government will follow. What we do here will have a tremendous effect on the future of our country. We must get our fiscal house in order and bring our budget back into balance, and we must focus on investing in those things that will strengthen the basic needs of our fellow Americans.

Mr. Speaker, we will evaluate the President's budget closely and seek to determine whether he will make the right choices for America.

Mr. Speaker, it is simply irresponsible to mortgage our children's and our grandchildren's futures. When the President sends his budget to Congress next week, I hope it will reflect our national priorities and reflect an investment in our most important national interests, our children.

Mr. Speaker, I would ask, how much time do we have remaining?

The SPEAKER pro tempore (Mr. NEUGEBAUER). The gentleman from Maryland (Mr. CUMMINGS) has 13 minutes.

Mr. CUMMINGS. Mr. Speaker, I yield the balance of my time to the gentleman from New York (Mr. OWENS).

Mr. OWENS. Mr. Speaker, I thank the gentleman for yielding, the chairman of the Congressional Black Caucus. And I would like to inform him that I was tardy in arriving because I was informed that the Republicans would not be taking the next hour and that I would be taking the next hour instead.

So I want to continue the gentleman's discussion in the next hour, and I invite any Members who would like to come and join me in that endeavor.

I am going to talk about commonsense legislative priorities, and practically every priority I discuss will be related to budget and appropriations matters. And I want to thank those the three Members. I watched the presentations. And starting with the Technicolor presentation of the gentleman from Virginia (Mr. SCOTT), I learned a great deal in terms of how you can graphically discuss what is happening in America. The chart with the Social Security was astounding.

I have a good friend, the gentleman from New York (Mr. NADLER), who would like to make a speech that Social Security is not in jeopardy. It will go on for a long, long time, and in the

foreseeable future it will almost never reach a point where it would be out of money. But the gentleman from New York (Mr. NADLER) made those calculations a couple of years ago and he is still making them. He never anticipated the tax cut. He never anticipated the kind of recklessness that this administration has undertaken with respect to taking revenue out of the pot and driving us to a crises with respect to budget matters.

□ 1900

It is hard for people with common sense or ordinary Americans to understand the excesses and extremes that are embodied in the policies of this administration.

I did not hear any mention, but I am sure someone mentioned the fact that the war in Iraq by the most conservative estimates is spending $1 billion a week. That is a conservative estimate. A little arithmetic will let us know. A billion dollars a week, 52 weeks a year, that would be $52 billion a year in Iraq. We have already appropriated $87 billion and previously more than $70 billion. So about three times that amount, the $52 billion, has already been appropriated for the war. We are three times greater than $1 billion a week.

That defies the imagination, when we look at the fact that in the President's State of the Union speech he talked about not allowing the domestic budget to go beyond a 4 percent increase, which means that many domestic programs would have to be cut, while on the other hand he did not attach a percentage or a figure to additional appropriations that he would be asking the Congress for with respect to the war in Iraq.

We ought to focus in on budget and appropriations matters from one hour of the day to the next and from one day of the week and all the weeks and all the months. That is the issue, how are we going to expend the taxpayers' money to make a better life for the American people. We cannot talk about it too much.

Let us focus on the fact that in the Constitution, the Preamble, they talk about promoting the general welfare. We provide for the common defense, but in that same Preamble, they discuss promoting the general welfare.

How do we spend $1 billion a week in Iraq to promote the general welfare, or, really, three times that amount? It is $3 billion being spent somewhere over there. I do not know whether Halliburton is getting the other $2 billion or not. The estimates keep coming out. It is $1 billion a week; but when we add up the arithmetic, we see we get more. So what is Halliburton getting? How are they skewing that?

Halliburton Company admitted that in one transaction two of their employees have gotten a $6 million bribe. In one transaction, two of their employees have gotten $6 million. So we can see how big the figures are and how big the deals are and how corrupt and crooked the deals can become.

At the same time, over here, if we look at $1 billion, we can build 100 state-of-the-art schools for $10 million a piece with $1 billion. Make the contrast.

I heard my colleague from Virginia say that the interest on the national debt over a period of time is going to be $300 billion, and for $300 billion we can create 10 million jobs. Ten million jobs at $30,000 each, 10 million jobs for what we are going to pay in interest on the national debt because of the fact it is being recklessly racked up going forward.

So what is $30,000 a year, you say? That is not enough to inject a mission crunch, but that is more than most Americans are making when we look at the income for families of four. Last week, I think, in Barbara Walters ''20/20'' show, they had a discussion of myths that need to be demythologized, and they talked about are people happy if they have more money. It is interesting that they said that people making less than $30,000 a year, family of four, they are miserable, and between $30,000 and $50,000 they begin to rise, and at $50,000 a year, a family of four can really be happy. The real happiness is not affected after $50,000 on up, but between $30,000 and $50,000 people are miserable, unhappy and to reach a point where a family can really be happy.

I do not know how much science there is behind that. They do a lot of interviews, et cetera, but $30,000 per year can provide 10 million jobs. The gentleman from Virginia (Mr. SCOTT) said that before, and I think it is something we ought to take into consideration.

We are in a situation where common sense has been thrown out the window. Common sense is not driving policy in our Nation.

Mr. Speaker, I am going to continue this discussion in a few minutes, and I appreciate the gentleman having started this, and he has cause to be congratulated for focusing on what matters most, this budget.

Mr. CUMMINGS. Mr. Speaker, let me just say this. I would hope that the American people will have listened to what has been said tonight. I have often said and stated the quote that our children are the living messages we send to a future we will never see, and the fact is that when I think about our children being saddled with this tremendous debt and at the same time many of their parents are not working now so they can support them and many of them have been unemployed for many, many weeks and not getting any help, and I see our college students at colleges like Morgan State University and Fam U, where I was just a few weeks ago asking for help so they can go to school and do well and do better than their parents did, it does concern me; and I would hope that all of America will pay attention to what is going on in this great House.

To close out, I will yield to the gentlewoman from Ohio (Mrs. JONES) to close out, a distinguished member of the Committee on Ways and Means.

(Mrs. JONES of Ohio asked and was given permission to revise and extend her remarks.)

Mrs. JONES of Ohio. Mr. Speaker, I appreciate this opportunity to be heard. I want to congratulate my colleague on his leadership as the head of the Congressional Black Caucus. He has been doing a fantastic job, and all the people across America and across the world need to know that the gentleman from Maryland (Mr. CUMMINGS) is leading the charge on behalf of the Congressional Black Caucus.

Mr. Speaker, as a member of the Congressional Black Caucus and a member of the Committee on Ways and Means, I rise to discuss our Nation's budget priorities. The Congressional Budget Office's most recent report identified an optimistic increase in economic growth, while the outlook deficit worsened by over $1 trillion in fiscal year 2004. The administration's tax cutting agenda is largely responsible for that turnaround. Yet the administration will continue to push for making the tax cuts permanent. Under the administration's stewardship, the $5.6 trillion surplus estimated by CBO in 2001 has entirely disappeared, replaced by $2.4 trillion in deficits.

Please understand that our Nation's economic growth results from an increase in capital income while income from wages and salaries have decreased. Since this administration's policy taxes wages and income and affords tax breaks and shelters on capital income, much of our Nation's income and economic growth is removed from the tax base.

Under the administration's stewardship, that $5.6 trillion surplus estimated in 2001 has entirely disappeared.

Budget deficits are harmful to longer-run economic growth for the simple reason they decrease national saving by directly reducing the public sector's contribution to saving. Given that the retirement of the baby boomers is now within the 10-year budget window, policy-makers should be focusing on ways to increase, not reduce, national saving. It is not at all clear that the stated deficit reduction goals of this administration are sufficient to prepare for this imminent increase in fiscal pressures.

Despite the economy's current ''recovery,'' we have continued to lose jobs, over three-fourths of 1 million jobs, in fact, since the end of the recession in 2001. Of the 8.4 million unemployed workers, 1.9 million of them have been unemployed for more than 26 weeks. Moreover, the 8.4 million does not include about 4.4 million additional Americans who want a job but are not counted among the unemployed, nor the additional 4.7 million people who are underemployed.

The President unveiled a new job-training program in the State of the

Union, including grants to community colleges, but this is really a mere pittance compared to the job losses.

It is vital that we establish policy that will provide jobs to all of those citizens who have become unemployed in the previous 4 years. America's highways provide an opportunity to create jobs throughout communities nationwide. Every $1 billion that we invest in transportation generates more than $2 billion in economic activity. Our roads, ports, and rails are essential to America's economic success; but they are deteriorating.

Mr. Speaker, I encourage my colleagues to take a look at this budget that this administration has put forth and make statements that it is not sufficient, that it is not doing the things that we need.

I thank the gentleman for the opportunity.

Mr. CUMMINGS. Mr. Speaker, I thank my colleagues very much.

BARBARISM

The SPEAKER pro tempore (Mr. NEUGEBAUER). Under the Speaker's announced policy of January 7, 2003, the gentleman from New York (Mr. OWENS) is recognized for 60 minutes.

Mr. OWENS. Mr. Speaker, I would like to continue the discussion that we have just had in a slightly different vein. I would like to broaden it beyond numbers and figures and talk a little more of philosophy with the understanding that we decision-makers here in the Congress, all of us are very bright people. One does not get to Congress unless they are very bright. So whether it is Republican or Democrat, we have bright and educated people who are. If they make decisions that are wrong, it is not because they are not knowledgeable. So I am not going to question the knowledge of anyone.

I do want to question the fact that we have allowed ourselves to be swayed into a situation where we make some very irresponsible decisions; and beyond irresponsible, we make some barbaric decisions.

I have got barbarism on my mind because I am sort of a captive of a series running on the History Channel right now called ''The Barbarians,'' and they got Attila and the Tartars. They have got all these different obvious barbaric groups that for a certain period of time captured the known civilized world at that time and held it as their own.

I was surprised to see they interjected into these obvious, understood to be barbaric groups that usually assign the concept of barbarism to, they have interjected the story of Hitler. ''Tyrant of Terror'' is the name of that series, and they also put the Japanese war crimes trials in another section.

So what we have is these barbarians who seem to be guys who ate raw meat and they scalped people and they burned cities to the ground. They raped any female in sight.

This series is also saying there are people who have risen to a new level of culture, the people who listen to Beethoven and Bach and go to the opera and who have enjoyed the legacy of great writers, others and Shakespearean translation. Those people allowed themselves to be captured by a barbarian philosophy, to be led by a barbarian, probably the world's greatest war machine.

The German war machine was the world's greatest war machine that probably ever existed. Instead of being a war machine for defense and for the promotion of peace in the world, it was a war machine that was put to the spread of terror; and there are a few decisions, with one or two signatures, the Gestapo could send millions of people to their death.

Conan the Barbarian, Attila the Hun, and all the other barbarians together did not kill as many people as the terror of Hitler did, both in concentration camps, in the case of people they considered undesirable, Jews and weak people and disabled people, and on the battlefield. On the battlefield they slaughtered millions. Russia estimates that the Soviet Union lost about 18 million people in that war.

So here is a very well-advanced group in terms of art, music, literature and, most of all, in terms of science, military science; and they behaved and caused more damage than all the other barbarians put together.

What does this have to do with America? What does it have to do with this discussion? I want to talk about commonsense legislative priorities, and I want to talk about the other extreme away from common sense. There is in the middle irresponsibility, and at the extreme is barbarism. Barbaric decisions can be made in this House in this Capitol, a combination of Congress and the President, barbaric decisions with barbaric consequences.

□ 1915

And we ought to think deeply about that. We ought to think deeply about it because a few hundred years from now historians will be writing and looking back on the history of the world, and I think they would say that the American civilization brought mankind to a level never dreamed of before. Our constitutional civilization brought mankind to a point which is unrivaled anywhere else.

We have the promise to continue to take civilization forward. We have the promise to do what has never been done in the world before. We already have done more for ordinary people. The masses of people live better, with more hope and happiness and necessities being provided than in any other society that has ever existed in the history of the world. We are the United States of America. And I often say nothing else has ever existed like this in terms of wealth and power. The Roman Empire was a village compared to the United States of America.

I think we have great responsibilities as a consequence of that. I think that God has blessed America. God has blessed America in so many ways in terms of just natural resources, land, periods of peace, and on and on it goes, with great leaders who have come forward at the right time to take care of crises and reestablished the Nation on the right route. We have so much that we can appreciate, and I think we are indebted to God as a result.

In fact, I am sure when God looks down on the kinds of things we propose sometimes and the number of children still hungry in America, he must weep; when he looks upon the kind of magnificent medical advances that we have made and still people in need die for lack of good medical treatment, with 40,000 people uninsured in the richest most powerful Nation that ever existed.

So we should stop at this point as we go into the year 2004, which is a Presidential election year, and in addition to considering the numbers and the revenue estimates and the expenditure estimates think very closely about what are we deciding to do with the available resources. Taxpayers should not say I am against big spending; I do not want to spend any more money. The question is what do we spend money for. Are we against big spending if it is going to provide prescription drug benefits for senior citizens or, in the final analysis, for all who need them; if prescription drug benefits are a part of our civilization?

There would be no magic drugs, no wonder drugs if it had not been for the group investment and the investment of government in research and the investment of the government in education. We invented constitutional civilization on the one hand, but we did a lot of great things after that. The Morrill Act, which is little known by most Americans, the Morrill Act established land grant colleges in every State.

Land grant colleges were pretty much patterned after Thomas Jefferson's University of Virginia. They were established to go beyond the study of philosophy and art and literature and study practical things. They were established to study agriculture and mechanics. The legacy of the land grant college is that it established throughout the whole United States centers of learning, which were not just centers of learning in the usual sense, but centers of learning which focused on everything there was to be learned about anything that existed in order to make life easier for all of us.

Out of those centers of learning came the production of agriculture. In the world today it is unparalleled what we do in agriculture. That was one of the priorities of land grant colleges. But also out of the land grant colleges engineering feats and devices and procedures and so forth have evolved. Out of the learned world that we created, not by accident but by legislation, we have a dynamic out there which has produced these marvels of science in every area, including the area of medicine.

So it belongs to all the people. It belongs to the people of the United States who are the recipients of that part of the Constitution which talks about promoting the general welfare. We have lost our way, and we need some common sense to go back and reread the Preamble to the Constitution and understand the real meaning of that. They did not say promote the welfare of just the corporations. They did not say promote the welfare of the 1 percent of the richest Americans. They did not say promote the general welfare of people who have college educations. They said promote the general welfare. We as a Nation can stand together and exist only if we clearly understand what that means.

There is a time when we do not hesitate to call upon our citizens to risk their lives in this process of promoting the general welfare and providing for the defense of the country. The very fact that nations do not hesitate to call upon their citizens and demand that they go forward in times of crises when the Nation is threatened: the draft in World War I, the draft in World War II, Korea. On what basis, what right do we have to draft ordinary people, most of them poor, many of them from working families? On what basis can we do that? What moral principle is at work there? It is an assumption that we are all a part of this country. And when the time comes for the country to be defended, then everybody has an obligation. And if we do not have volunteers, the government has the right to draft.

If we accept that, then the government has an obligation to make certain that our families are taken care of, at least to provide a job and the opportunity to earn a living. The government has an obligation to deal with the elderly who no longer can work. Social Security is not a luxury. Social Security is a manifestation of the American civilization.

We were not the first to get Social Security, so I will not say we invented it. There are nations in the world, particularly in Europe, who might have had it first. But as far as the change in American construct and the dedication of our resources, Social Security was a great step forward. Of course, there was Franklin Roosevelt and the New Deal in a time of crisis, and later on the protege of Franklin Roosevelt, Lyndon Johnson, took it further and we got Medicare and Medicaid. Now we want to trivialize some of these great achievements.

At the beginning of the second year of the 108th Congress, I would like us to take a hard look at some commonsense legislative priorities, and those legislative priorities all involve budgets and appropriations. And before we can get to budgets and appropriations, we have to talk about taxes. We cannot talk about any of this unless we go to the core of our problem at this moment in our history.

The core of the problem of decision-making in America right now is the war in Iraq. The war in Iraq can make us or break us. The war in Iraq will make us behave like barbarians if we are not careful. We will make barbaric decisions if we do not get control of what is happening in Iraq.

I will not talk about the rationale for going to war. I will not talk about recklessly pulling out of Iraq at this point. Yes, we do need to take a look at the billions of dollars that we have appropriated. I did not vote for the $87 billion, but I hope that it is going to help those troops who did not have modern bullet-proof vests and communication equipment that they needed. There all kinds of things that have come to light in terms of the way our military treats some of its soldiers that need to be dealt with in terms of this war in Iraq. We are going to make people stay there longer. There are National Guardsmen and Reservists, people who never dreamed they were going to be in a combat situation for a year at least and being told that even after that year we cannot guarantee that they are going to get out.

There are things happening which have nothing to do with dollars and cents that we have to deal with, and dollars and cents are a part of the problem; spending more money on the right things and not letting Halliburton charge enormous prices for gasoline, not letting Halliburton employees pay or receive bribes in order to pay unscrupulous people in Kuwait and other places to overcharge us for services and equipment.

I see I have been joined by my colleague from New Jersey, Mr. Speaker, so at this point I would be happy to yield to him.

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

Mr. PAYNE. Mr. Speaker, I thank the gentleman for yielding, and I would like to commend the Congressional Black Caucus for taking time out the first hour and now the gentleman from New York's second hour talking about the budget priorities because the budget is so important. The budget will determine how this Nation will survive during the next decades. It is important that we look at the budget priorities because, as I mentioned, it will say where we are going as a Nation.

Mr. Speaker, as I join my colleagues in the Congressional Black Caucus in urging a reordering of the Nation's budget priorities, I think it is very important that we just listen to what the President has said.

State of the Union Speech and the Budget: Rhetoric Versus Reality.

Of course, as we know, the President talked about the fact that jobs would be created. He said 2.9 million jobs, I think, would be created; but we have lost 2.3 million since he has been in.

There are claims that more tax cuts would create jobs, not supported by facts. Claims about job growth, certainly overstated. Questionable commitment to manufacturing initiatives. We will talk about that a little more. Additional tax cuts will cost $1 trillion. Relief from the alternative minimum tax could cost nearly $700 billion. Up to $1 trillion will be needed for Social Security privatization plan. New tax-free accounts will have long-term impact on our deficit. The Mars proposal is likely to cost hundreds of billions of dollars.

The administration's budget has omitted the cost of the war in Iraq and Afghanistan. Job training funds are just a drop in the bucket of what is needed. Proposal for drug testing and abstinence, but no additional funds for basic education. Basing Pell grant awards on course selections and not economic needs. Inefficient plans to help the underserved. Flawed efforts to lower health care costs. Additional health proposals that assist the healthy and the wealthy. No mention of veterans.

So as I go around my congressional district talking with my constituents, I hear a great deal of concern voiced about the direction in which our country is moving. I have not heard anyone tell me that their family has benefited from the tax cut which has taken billions of dollars away from vital areas of the budget. The concern I hear raised is about education, including Head Start, after-school programs, college loans, Pell grants, and the need for affordable housing. They talk about access to quality health care and a healthier environment.

So as I conclude, if the President supports the manufacturing sector of our economy, why did his administration propose earlier to phase out Federal support for the Manufacturing Extension Partnership program? If he supports job creation, why did his administration try to cut adult training and vocational education? If he cares about education, why did his administration propose a change to focus the Pell grant program away from making college affordable to low-income undergraduates?

Mr. Speaker, when the President took office, he inherited an amazing budget surplus of $5.6 trillion over 10 years. That has been squandered totally to the point where we have a $3 trillion deficit projected.

□ 1930

Does it make any sense to talk about missions to the Moon and Mars when the basic needs of our communities are not being met? We do not even have the true cost of the war in Iraq, a war we entered based on the administration's statements that Iraq definitely had weapons of mass destruction, none of which have been found, despite months and months of searching.

We are asked to spend $87 billion for new schools and prisons in Iraq, while schools in some of our communities are falling apart. It is time for us to restore some of the fairness and sanity to our budget process.

I look forward to working with my colleagues and hopefully with the administration to turn these things around.

Mr. OWENS. Mr. Speaker, the gentleman from New Jersey, I am sure, has had the experience that I have had, that they were glad to get the income tax check from the government because their unemployment was running out. That immediate cash was great, but the unemployment insurance would be far greater, an extension of it, would be a far greater benefit for any family than a sole check for $300. That is the kind of education that we have to give.

Mr. PAYNE. The gentleman might remember there was supposed to be a .2 percent drop in the unemployment rate, and the administration said, see, we are doing the right thing. However, it was because tens of thousands of persons seeking employment simply decided to drop out of the market of seeking employment. Some decided to go back to school; others just disappeared. So the actual unemployment rate, even though they said it dropped two-tenths of 1 percent, this month there are more people unemployed than previously unemployed; but if you do not seek a job, you are not counted. It is a flawed kind of statistic that says that unemployment is dropping. It is not dropping.

It is a shame that we are even having this so-called jobless recovery. What does a jobless recovery mean? It simply means in the pockets of the corporations, because of the sending jobs offshore, they claim productivity is up. That is because when you pick up your phone to call a 1–800 number, it is picked up in Bombay or offshore. Doctors, I understand, when they do an EKG, it goes up and someone in an English-speaking developing country who is a trained physician looks at it and sends back what the diagnosis should be; therefore, the cost of a physician in our country is undercut. We saw the offshore development of textiles and toys and things, but now we are seeing high-level jobs also going offshore, and nobody is talking about that.

Mr. OWENS. Mr. Speaker, the word ''outsourcing'' ought to be branded into the minds of every young American. The folks with great hopes that if they stay in school and get an education, become a programmer or technician, that they were guaranteed a job, but outsourcing beyond the movement of manufacturing jobs, which has taken place already and taking jobs away from people who are not educated, entry-level people, the outsourcing is going to take everything. The highest and most complex jobs in science can be outsourced. You can have Russian and Chinese physicists, space experts in Japan, India. They are the people who will be filling those positions while the corporations that we have given the contracts to make big profits because they can get those people by paying them in 1 year what a scientist or a technician would cost for a month here.

That outsourcing is a concept that ought to be branded into the mind of every young American. That is the death knell of our economy because as they do that, they take the last group of jobs that we feel secure about, and take away our consumer spending power. Our economy is driven by consumers, and it seems corporations do not care about that. They are looking at their individual bottom line, how much they can make.

In one of the papers in my area there was a front-page article about the bonuses received by corporate CEOs at Christmas time. One of them got $18 million as a bonus, one got $4 million, $7 million. They want more. In order to get more, they will outsource and lower the cost of doing services. Where do we go from there unless we realize that our jobs as legislators and our job as American citizens is for a way to promote the general welfare in America. That means new laws and new policies and pulling out of trade agreements. Whatever is necessary, we have to promote the general welfare in America first.

Mr. PAYNE. Mr. Speaker, as the gentleman mentioned, we talk about promoting the general welfare and we talk about providing for the common defense. There is no question that we have provided for the common defense even above the defense, but in a military budget that is a different budget than a defense budget. But are we providing for the other things that we said? We are not. Architects and engineers, buildings to be designed are being outsourced. We would like to have a 30-story building with glass and chrome; and you write up something and send it out, and engineers and architects in India are coming up with architectural designs for companies that win the bids.

Mr. OWENS. The gentleman mentioned India. Members ought to know that the Massachusetts Institute of Technology is not now considered the greatest institute of technology in the world, there is one in India that has surpassed the Massachusetts Institute of Technology. And all over the world, they are seeking the graduates of that institution in India. We let that happen, despite the act which created all the land grant colleges, and how did we let ourselves fall behind anybody in the provision of first-rate education?

Mr. PAYNE. And even the fact that the CEOs' ratio of pay to the worker in many countries, it may be 50 to 1, 55 to 1 ratio.

Mr. OWENS. Maybe the gentleman can explain that.

Mr. PAYNE. The ratio is how much more the CEO makes than the regular worker. If a worker is making $30,000 a year, in many countries the CEO would be making maybe 10 times that amount at the highest, $300,000, maybe 15 times in some places.

In the United States, it is almost difficult to quantify what the average salary is and what the CEOs are making. Pharmaceutical CEOs make between 25 and $30 million. That is the salary. That is what they make with bonuses, stock options, and salaries. In all of the industries, we see these salaries that are so far above what the average worker's salary is, it is difficult to quantify. I am afraid to give that number. It recently appeared in a New York paper about a week or so ago. We are driving people down.

The middle class is being squeezed. That little $300 people got as a tax rebate, while others got millions of dollars. I congratulate Senator CORZINE who is a very wealthy person. He said he did not want the tax cut. He did not need it. He thought it was unfair when people who are struggling daily to make a living, just to move ahead.

We have people who cannot afford bus tickets for two or three kids going to high school, and a kid may have to drop out because the family cannot afford it. It is $50 a month in Newark. With three kids, it is $150. That is just one of the costs. We are making it difficult for struggling, working people to make ends meet.

The cost of education and health care have gone through the roof, whereas our wages have not only leveled off; they have dropped. We have not had an increase in minimum wage in years.

Mr. OWENS. It has been 3 years since we have had an increase in minimum wage. It is frozen at $5.15 an hour. On that, you cannot get out of the poverty even if you work 40 hours a week every week of the year.

Mr. PAYNE. Finally, the Department of Labor as they are making new categories for workers who are ineligible for overtime through regulations, even though it has not been finalized, from what I understand on the Department of Labor's Web site, there are instructions for companies that might qualify on how they can move to take people in a new category as being ineligible for overtime pay and in steps one through five, how they can accomplish that. We are driving down the salaries of American workers and outsourcing of jobs going abroad. They said that would create more jobs in America in certain categories of jobs once the PRC, the People's Republic of China, continued to grow economically. We have not seen the impact here.

Mr. Speaker, I appreciate the gentleman allowing me this opportunity to have this discussion.

Mr. OWENS. Mr. Speaker, I thank the gentleman from New Jersey (Mr. PAYNE) for joining me. We are not really covering a wide range of topics. There is a center. We are searching for commonsense legislative priorities, and those priorities will have to relate to budget appropriation and taxes.

Is it perhaps barbaric that the ratio of the salary of the CEO to the worker can be 300 to 400 times as much as the average worker, plus bonuses, investments, et cetera? And to increase that,

you indulge in outsourcing and move jobs overseas to lower markets. Where does it end? Is that greed not approaching barbarism?

There are two kinds of barbaric behavior. One is obviously the kind yielded by the people on the top. Attila the Hun, he and his henchmen yielded a certain kind of power, just as Hitler did. They yielded a certain kind of barbaric power over their people.

On the other hand, the people at the bottom, the masses of the people, might worry also about barbaric behavior that they indulge in.

Certainly in America every individual who is born in this Nation has a right to vote and should worry about the fact that we allow our government and our leadership to get out of control and reach the point where they are doing barbaric things and contemplating barbaric policies. The wiping out of Social Security through the failure to take in appropriate revenue, the raiding of Social Security to balance budgets, and a proposal to privatize Social Security for young people so the amount of money going into the Social Security trust fund would be greatly reduced at a time when the number of people who are qualifying for Social Security would be increased, that is a barbaric proposal in my opinion. We need to meet it that way.

I hate to talk about anger because it seems that anger is not popular these days, but there is a time to get angry. There is a time to get angry. I have quoted on this floor the quote from Shakespeare's ''King Lear'' when King Lear has given away his kingdom to his daughters and had great faith in them that they would take care of him, and they tell him he is in the way and he does not even need bodyguards. It finally dawns on him that they have betrayed him, and they are evil people. He says, ''Fool me not so much to bear it tamely; touch me with noble anger.''

Mr. Speaker, there is a time for noble anger. I think Jesus Christ driving the money lenders out of the temple displayed anger. There is a time for noble anger, and the people on the bottom who are tolerating this unnecessary suffering in the richest Nation that ever existed need to get angry. While they are getting angry, they should get angry with themselves and angry with their neighbors, and anybody that does not vote should be treated as a pariah.

□ 1945

If you do not have a good excuse for not voting, you have degraded yourself. In this constitutional civilization that we have created, the power is really in the hands of the people.

This is a Presidential election year. In the last Presidential election year, less than 51 percent of the people went out to vote. About 51 percent. That means 49 percent did not bother to go to vote for President. You know if they did not vote for President, they did not vote for Senators, a greater percentage did not vote for Members of Congress and, as you go down the line, city council, all this great democracy of ours going to waste. The people on the bottom want to act like barbarians. They want to act helpless and not do anything about it. They want to sit and watch the CEOs make enormous amounts of money while they move the job-producing, life-producing industries out of the country at the same time they demand that your son, your daughter must serve in the defense of the country when the country is threatened.

Those who have the most, the CEOs and the corporations, they have the most to defend. They have the greatest stake. Yet they do not go out to fight like Attila the Hun on the battlefield. They do not go out personally. They do not send their children or their relatives. They call on all Americans to rise to the defense of their country, and they have the right to demand that they do it via a draft. We do not have a draft right now. People say that is a word you should not be using, that it is not relevant. Every 18-year-old male in America has to register for the draft, right now. Every 18-year-old in America. That is the leftover piece, which, if the war in Iraq continues, there is no way to sustain the war in Iraq and to leave it with some degree of accomplishment without increasing the number of troops and probably there has to be a draft if we do not solve that problem.

But back to the greed of the corporations and the greed that has been encouraged by the policies of this administration, this present administration. The Congressional Budget Office has released a new report. It is the kind of thing that some people on the bottom who do not like to read in general, who only want to watch television, you better start reading, barbarians at the bottom, so you know what to get angry about and you know that your days are numbered in this great Nation of ours. Your prosperity may suddenly be over one day if you continue to let these outrageous atrocities, economic atrocities be created.

''The Congressional Budget Office's new report on the Federal budget demonstrates that the return of large budget deficits is more a reflection of diminished revenues than, as some have recently implied, of increased spending.'' We are getting less money via taxes. It is not that big government is spending more. It is that you are getting less money because you have decreased the taxes on the richest people in America.

''CBO estimates that revenues in 2004 will drop to historically low levels, their lowest level as a share of the economy since the Truman administration. Spending, in contrast, will not be at a particularly high level. As a share of the economy, spending will be lower in 2004 than it was in every year from 1975 through 1996.''

They have a little box here at the bottom of the page that says, ''Key Facts That Emerge from the CBO Data. In 2004 as a share of the economy, one, Federal revenues will fall to their lowest level since 1950; two, Federal spending will be lower than in any year from 1975 through 1996, and thus will be lower than throughout the administrations of Presidents Carter and Reagan and the first President Bush. In explaining the shift from a large surplus in 2000 to a large deficit in 2004, the drop in revenues since 2000 accounts for more than three times as much of the fiscal deterioration as the increase in expenditures.''

We are not spending ourselves into a deficit. We are failing to collect taxes from those who have gained the most benefits from our society and can afford to pay larger amounts in taxes. We have a barbaric grab for more and more money. There is a way that we could finance Social Security in the future. There is a way we can end this pressure on individuals and families, even rich families, by changing our Tax Code in a way which focuses more taxes on corporations instead of families and individuals.

Shortly after World War II, corporations were paying nearly 40 percent of the total tax burden. Corporate taxes accounted for about 40 percent of the total tax burden. Individuals and families accounted for about 44 percent of the total tax burden. There were other kinds of taxes which produced the rest. At this moment in history, individuals and families still, despite the tax cuts, are way up there in terms of their percentage of the total tax burden. Corporations are down between 8 and 10 percent. The tax on corporations is down to between 8 and 10 percent. Most of us are not looking in that direction. Neither party has taken a hard look at what it would mean if we were to impose greater taxes on corporations instead of on individuals.

A tax cut is in order for the middle class. I do not agree with people who say we should wipe out all tax cuts. We need to certainly relieve middle-class families with tax cuts. But what you lose when you do that, you can gain from greater taxes on corporations, and they will not feel the pain. It is one way to get back the money they make as a result of outsourcing. They are making greater and greater profits. They produce goods and services at greater profits by going to the cheapest labor markets throughout the world. They come back here, and they sell what they have to offer in goods and services at a level commensurate with our economy. We are paying the same prices.

The difference is in profit, enormous profits that are being reaped by the corporations. The tax problems of America can be resolved if we focus on taxing corporations more and getting the money we need to do a vast amount of retraining and education and the things needed to make our society able to compete in the increasingly high-tech industry competition. We used to

think that no matter what happens, we are going to be the leaders in high-tech industries, no matter what happens. We never dreamed that the Massachusetts Institute of Technology would not forever be the greatest of its kind. But the Indians speak English, too. Pakistanis speak English. Their governments made some conscious decisions about how they wanted to educate a portion of their population and they are now challenging us. They are challenging us and the Chinese are learning more and more English all the time. They have an enormous population. If they only educate one-fifth of it. It is an enormous hoard of people who have education and can compete at very low salary levels for any kind of job you might want.

The Soviet Union, of course, has been counted out, but one thing that Stalin and the whole bunch of dictators did was create a massive education system, and the residue of that is still there. They are very educated people. They are learning English, too; and the competition from Soviet scientists will be there for American scientists. There is nothing that outsourcing will leave untouched.

Mr. Speaker, I submit for the RECORD this first page of the ''Center on Budget and Policy Priorities'' report that I just read from in its entirety.

[From the Center on Budget and Policy Priorities, Jan. 26, 2004]

CBO FIGURES INDICATE LOWER REVENUES, NOT HIGHER SPENDING, ACCOUNT FOR THE LARGE DEFICIT

AS A SHARE OF THE ECONOMY, REVENUES TO HIT LOWEST LEVEL IN 54 YEARS

(By Isaac Shapiro and Joel Friedman)

The Congressional Budget Office's new report on the federal budget demonstrates that the return of large budget deficits is more a reflection of diminished revenues than, as some have recently implied, of increased spending. CBO estimates that revenues in 2004 will drop to historically low levels, their lowest level as a share of the economy since the Truman Administration. Spending, in contrast, will not be at a particularly high level. As a share of the economy, spending will be lower in 2004 than it was in every year from 1975 through 1996.

On the revenue side:

CBO projects that revenues will fall to 15.8 percent of the economy in 2004. This is the lowest level since 1950. (The figures in this analysis focus on revenues and spending as a share of the Gross Domestic Product, labeled here as the ''economy.'' The Gross Domestic Product is the basic measure of the size of the economy. Measuring spending and revenues as a share of the economy is the standard way that economists and budget analysts examine changes in the levels of revenues and spending over time.)

CBO projects that income tax revenues (including both the individual and corporate income tax) will equal 8.0 percent of the economy in 2004. This is the lowest level since 1942.

Without the tax cuts enacted in recent years—which will reduce revenues by $264 billion in 2004, according to Joint Committee on Taxation estimates—revenues as a share of the economy would not be close to a historically low level.

KEY FACTS THAT EMERGE FROM THE CBO DATA

In 2004, as a share of the economy:

Federal revenues will fall to their lowest level since 1950, during the Truman Administration.

Federal spending will be lower than in every year from 1975 through 1996 (and thus will be lower than throughout the administrations of Presidents Carter and Reagan and the first President Bush).

In explaining the shift from a large surplus in 2000 to a large deficit in 2004, the drop in revenues since 2000 accounts for more than three times as much of the fiscal deterioration as the increase in expenditures.

Mr. Speaker, we started the evening with colleagues of mine from the Congressional Black Caucus discussing budget matters. I consider my discussion to be an extension of that discussion. Commonsense legislative priorities deal with budget and appropriations and taxes first. This Congressional Black Caucus budget, a budget to leave no family behind for fiscal year 2004, is still relevant. It is relevant in terms of the kind of priorities we set forth. We united with the Congressional Progressive Caucus and produced a budget which we are quite proud of. I am just going to read some of the principles that were set forth in our Congressional Black Caucus budget because it relates to the kind of priorities that we need to establish:

''Basic Assumptions and Principles for an Alternative Budget of the Congressional Black Caucus and the Congressional Progressive Caucus.''

1. A smaller, streamlined and efficient government should be the goal of all lawmakers; however, there must be enough revenue and resources to carry out the vital functions of our complex American society. It is absolutely necessary that we maintain an adequate investment in human development. Education comes first in terms of keeping our civilization moving forward. We are drastically cutting funding for education at the higher education level and at the elementary and secondary education level. No Child Left Behind has no clout because of the fact that the President refused to fully fund the bill.

2. Federal assistance for education, health care, housing, child care, transportation, worker safety and protection, and business development is as vital as support for homeland security and defense. Somehow we get off on these tangents and we define priorities in terms of some buzz words, homeland security and defense. Education is our greatest defense. An educated population is our greatest bulwark against invasion economically or militarily. The high-tech army that went into Iraq would not be possible if you did not have very educated personnel in that army. The kind of projections being made by the homeland security people of germ warfare being sneaked into the country or anthrax and various other destructive actions by terrorists, you need an educated population to deal with those kinds of crises and threats. Therefore, it is very important that we understand that assistance for education is as important as the specific dollars that we label homeland security and defense.

3. The imperative of the government to provide for the Nation's security can be effectively implemented and sustained only if all of the vital investments in human development are assigned priority on a continuing basis. This second session of the 108th Congress must get back to looking at education. No Child Left Behind cannot be the last discussion and the last word on education. We have a higher education bill to reauthorize, and we are stumbling along on that trying to find ways to do the least amount for our higher education students when it is a time when we ought to be doing the most amount for them.

4. While the taxing of middle income and working families must be reduced and maintained at the lowest possible levels, the Federal Government must nevertheless secure the revenue it needs by upwardly adjusting the tax rates on corporate entities and by creatively seeking larger fees from publicly owned resources such as the spectrum, the Internet, and public lands and waterways. We throw away, we the American people give to private interests and corporations some of our greatest resources. The spectrum, the air above us, has made many people rich. We should look at the ways in which we can make better use of these resources for all of the people in terms of selling bandwidths in the spectrum, leasing it, renting it, taxing the Internet. None of that should be off-limits while billions are made by the people who happened by accident to be in a place where they can take advantage of it. If you want taxes, there are plenty of ways to get them without going into the pockets of middle-class families to get that revenue.

5. There should be an end to the tax system as we know it and a revamping which reduces the portion of the tax burden borne by individuals and families to less than 50 percent of the overall tax burden. Corporate entities utilizing the collective and accumulated knowledge and institutional support of the total society will continue to grow and prosper. Such recipients of publicly sponsored research and development protected by the legal system must pay their fair share in terms of meeting the revenue needs of the Nation.

We have other items here related to health, human services, and safety nets. While the recently released Democratic Caucus prescription drug plan with a $25 premium should be endorsed, other health care inadequacies must be addressed in the current budget. We have gone through a process of passing relief for seniors suffering from the need for more money for prescription drug benefits, and we have given them a bogus bill which needs very much to be revamped.

In the area of housing, there is an acute housing shortage in the inner city communities which can only be met in a timely manner by providing

more public and section 8-type housing. For the upwardly mobile poor, there are homeownership programs being sponsored by foundations and the private sector which could be made more effective with Federal assistance.

Small businesses in urban settings have never received the quantity and quality of support provided over the years for agribusinesses. We give far more to agribusinesses. Our farm subsidies are out of kilter. We are still giving enormous amounts of money to less than 2 percent of the population.

□ 2000

Farm subsidies represent one of the greatest swindles in the American budget. The taxpayers should take a look. They should get angry about the fact that we are funding these farm subsidies and they are not going to poor people. The agribusinesses, the corporations have bought up the quotas. They have accumulated the right to those subsidies, and we are really subsidizing large agribusinesses with the farm subsidy. The revenue generated by these large entities could generate greater funding if we dealt with that problem.

International relations means that we have to again, as I said before, focus on what do we do about the war in Iraq. How do we get out of Iraq. Many proposals are being made by many different candidates. The sensible proposals that must prevail are proposals which allow us to leave with order and honor but, on the other hand, leave immediately and trust the rest of the international community to help us accomplish the purposes that we can accomplish productively in Iraq.

At the core of our decision-making this year is the war in Iraq. The war in Iraq will make us behave like barbarians, or we can behave like the extraordinary creators of a new kind of civilization. The constitutional civilization created by America is one that guides us and will guide us out of these absurd and ridiculous atrocities that are being committed in economics and will be committed militarily if we do not get out of the war in Iraq.

CONGRESSIONAL BLACK CAUCUS/CONGRESSIONAL PROGRESSIVE CAUCUS—BASIC ASSUMPTIONS AND PRINCIPLES FOR AN ALTERNATIVE BUDGET

GENERAL PRIORITIES

1. A smaller, streamlined and efficient government should be the goal of all lawmakers; however, there must be enough revenue and resources to carry out the vital functions of our complex American society. It is absolutely necessary that we maintain an adequate investment in human development.

2. Federal assistance for education, health care, housing, child care, transportation, worker safety and protection, and business development is as vital as support for homeland security and defense.

3. The imperative of the government to provide for the nation's security can be effectively implemented and sustained only if all of the vital investments in human development are assigned priority on a continuing basis.

TAX POLICY

4. While the taxing of middle income and working families must be reduced and maintained at the lowest possible levels, the Federal government must nevertheless secure the revenue it needs by upwardly adjusting the tax rates on corporate entities and by creatively seeking larger fees from publicly owned resources such as the spectrum, the internet, public lands and waterways, etc.

5. There should be an end to the tax system as we know it and a revamping which reduces the portion of the tax burden borne by individuals and families to less than fifty percent of the overall tax burden. Corporate entities utilizing the collective and accumulated knowledge and institutional support of the total society will continue to grow and prosper. Such recipients of publicly sponsored research and development; protected by the legal system and military might of the nation and enriched by the great American consumer market; such entities can and should bear a greater portion of the national tax burden.

6. Tax cuts for the upper income brackets should be repealed immediately. Tax cuts for all families earning less than fifty thousand dollars per year should be implemented immediately commencing with a large reduction for payroll taxes for the poorest workers.

EDUCATION AND JOB TRAINING

7. Since the nation's security as well as its future economic stability and prosperity is directly dependent upon the quality of education of its citizens, the budget should greatly increase Federal assistance for education from HeadStart to Title I, bi-lingual education, Historically Black Colleges and Universities, Hispanic Serving Higher Education Institutions, special education and educational technology. Since school buildings are essential for the implementation of all school improvements, the taboo must be ended and Federal grants for school construction must be provided. The President's budget is proposing construction grants (not loans) only for charter schools.

8. Significant Federal initiatives for education reform such as No Child Left Behind cannot be implemented effectively while Local Education Agencies are under assault from state and local budget cuts; therefore, an emergency targeted revenue sharing for education programs must be legislated. The Federal government must move beyond its present funding posture which contributes less than seven cents of each dollar spent for education while mandating compliance with far reaching reform programs.

9. Job Training programs must be rescued from the downward spiral of budget cuts. It must be made complementary and compatible with our overall education efforts as well as the changing occupational needs generated by new challenges in homeland security and global competition for expertise. The role of the Federal government in job training for youth must be restored and funding levels increased. A more detailed analysis of the staffing needs of the Homeland Security initiative must be coordinated with the Department of Labor.

Technicians to clean up anthrax, other biological warfare germs; to respond to chemical or dirty bomb attacks; to translate terrorists communications; etc. must be trained. Even familiar first responders such as nurses, police and firefighters are in short supply when a requirement that they live within one hour's traveling time to their assigned post is mandated. Big city inner city residents must be trained to be their own first responders. Funding for this purpose must be made available immediately.

HEALTH, HUMAN SERVICES AND SAFETY NETS

10. While the recently released Democratic Caucus Prescription Drug Plan with a twenty-five dollar premium should be endorsed, other health care inadequacies must be addressed in the current budget. Of greatest significance to the CBC are the President's proposals to have the Federal government abandon MedicAid and leave it to the states. This bribing of the states by allowing them to keep whatever they save as a result of reduced health care for the poor must be blocked beginning with the budget process. The swindle that started with welfare reform dollars must not be allowed to expand.

11. Welfare Reform must be revisited and made more humane by providing more in cash payments for children. The survivor benefits rate used by Social Security for payments to children under eighteen should be used as a guide for calculating aid to dependent children. Funds must also be provided to allow any welfare parent who qualifies to attend college for two years with a job specific goal such as nursing or medical technician, etc.

12. A coordination and calibration of the services provided to families under Title Twenty with the goals of assisting low-income youth under No Child Left Behind must be appropriately funded.

HOUSING AND URBAN DEVELOPMENT

13. There is an acute housing crisis in the inner city communities which can only be met in a timely manner by providing more public and section 8 type housing. For the upperwardly mobile poor there are home ownership programs being sponsored by foundations and the private sector which could be made more effective with Federal assistance.

14. Small businesses in urban settings have never received the quantity and quality of support provided over the years for agribusinesses. Small businesses and related economically significant institutions such as hospitals and public service agencies deserve greater loan and grant options. The revenue generated by these entities would offset the increased funding.

TRANSPORTATION

15. Mass transit subsidies are provided primarily to assist working families and the poor. More federal funding is needed in order to avoid increased costs faced by workers already hard pressed to make ends meet. Congress must insist that transit systems receiving Federal aid must provide open disclosure for their accounting and contracting procedures as well as their salary and consultant fee rates.

AGRICULTURE

16. Billions of dollars continue to be appropriated for agribusinesses and farmers. There is no need for an increase in the overall budget; however, specific earmarking of funds for the poorest farmers; for Black farmers, for loans to groups that have been discriminated against by the farm loan programs; these are all items which must be addressed in the budget.

INTERNATIONAL RELATIONS

17. Foreign Aid dollars are still basically dollars distributed with a double standard with Caribbean nations and Africa being greatly short-changed. The CBC will continue to assign high priority to an increase in funding for these neglected areas and people.

GENERAL

18. Funding for Commissions to study issues such as Reparations; Disenfranchisement of Federal Ex-Offenders; Disparities in Sentencing; Disparities in Health Care; etc. are vitally needed.

LEAVE OF ABSENCE

By unanimous consent, leave of absence was granted to:

Ms. SLAUGHTER (at the request of Ms. PELOSI) for today on account of inclement weather.

Mr. MCINTYRE (at the request of Ms. PELOSI) for January 27 and the balance of the week on account of weather-related difficulties.

Mr. EVERETT (at the request of Mr. DELAY) for today on account of having influenza.

Mr. GERLACH (at the request of Mr. DELAY) for today on account of a death in the family.

SPECIAL ORDERS GRANTED

By unanimous consent, permission to address the House, following the legislative program and any special orders heretofore entered, was granted to:

(The following Members (at the request of Mr. HOYER) to revise and extend their remarks and include extraneous material:)

Mr. BROWN of Ohio, for 5 minutes, today.

Mr. DEFAZIO, for 5 minutes, today.

Ms. NORTON, for 5 minutes, today.

Mr. PALLONE, for 5 minutes, today.

Mr. SKELTON, for 5 minutes, today.

Mr. FILNER, for 5 minutes, today.

Ms. KAPTUR, for 5 minutes, today.

Mr. MCDERMOTT, for 5 minutes, today.

SENATE BILL REFERRED

A bill of the Senate of the following title was taken from the Speaker's table and, under the rule, referred as follows:

S. 1741. An act to provide a site for the National Women's History Museum in the District of Columbia; to the Committee on Transportation and Infrastructure.

ADJOURNMENT

Mr. OWENS. Mr. Speaker, I move that the House do now adjourn.

The motion was agreed to; accordingly (at 8 o'clock and 3 minutes p.m.), under its previous order, the House adjourned until Friday, January 30, 2004, at noon.

EXECUTIVE COMMUNICATIONS, ETC.

Under clause 8 of rule XII, executive communications were taken from the Speaker's table and referred as follows:

6427. A letter from the Administrator, Agriculture Marketing Service, Poultry Programs, Department of Agriculture, transmitting the Department's final rule — Increase in Fees and Charges for Egg, Poultry, and Rabbit Grading [Docket No. PY-03-001] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6428. A letter from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Oranges and Grapefuit Grown in Lower Rio Grande Valley in Texas; Increased Assessment Rate [Docket No. FV-906-1 IFR] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6429. A letter from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Programs, Department of Agriculture, transmitting the Department's final rule — Walnuts Grown in California; Decreased Assessment Rate [Docket No. FV04-984-1IFR] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6430. A letter from the Administrator, Agriculture Marketing Service, Transportation and Marketing Programs, Department of Agriculture, transmitting the Department's final rule — National Organic Program; Amendments to the National List of Allowed and Prohibited Substances [Docket Number TM-03-02] (RIN: 0581-AC27) received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6431. A letter from the Administrator, Agriculture Marketing Service, Fruit and Vegetable Division, Department of Agriculture, transmitting the Department's final rule — Revision of Fees for the Fresh Fruit and Vegetable Terminal Market Inspection Services [Docket Number FV-03-301] (RIN: 0581-AB63) received January 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6432. A letter from the Administrator, Agriculture Marketing Service, Livestock and Seed Program, Department of Agriculture, transmitting the Department's final rule — Amendment to the Soybean Promotion and Research Rules and Regulations [Doc. No. LS-02-14] received Janaury 5, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6433. A letter from the Regulatory Contact, Grain Inspection, Packers and Stockyards Administration, Department of Agriculture, transmitting the Department's final rule — Fees for Processed Commodity Analytical Services (RIN: 0580-AA84) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6434. A letter from the Acting Staff Director, Office of Regulatory and Management Services, Department of Agriculture, transmitting the Department's final rule — Sale and Disposal of National Forest System Timber; Extension of Timber Sale Contracts To Facilitate Urgent Timber Removal From Other Lands (RIN: 0596-AB48) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Agriculture.

6435. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Electronic Submission and Processing of Payment Requests [DFARS Case 2002-D001] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

6436. A letter from the Acting Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Payment Withholding [DFARS Case 2002-D017] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

6437. A letter from the Director, Defense Procurement and Acquisition Policy, Department of Defense, transmitting the Department's final rule — Defense Federal Acquisition Regulation Supplement; Unique Item Identification and Valuation [DFARS Case 2003-D081] received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Armed Services.

6438. A letter from the Assistant to the Board, Board of Governors of the Federal Reserve System, transmitting the Board's final rule — Bank Holding Companies and Change in Bank Control [Regulation Y; Docket No. R-1092] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6439. A letter from the Acting General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Suspension of Community Eligibility [Docket No. FEMA-7821] received December 11, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6440. A letter from the Acting General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Changes in Flood Elevation Determinations [Docket No. FEMA-D-7547] received December 11, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6441. A letter from the Acting General Counsel, FEMA, Department of Homeland Security, transmitting the Department's final rule — Final Flood Elevation Determinations — received December 11, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6442. A letter from the Counsel for Legislation and Regulations, Department of Housing and Urban Development, transmitting the Department's final rule — Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants) (RIN: 2501-AC81) received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6443. A letter from the Assistant General Counsel for Regulations, Department of Housing and Urban Development, transmitting the Department's final rule — Modification of the Community Development Block Grant Definition for Metropolitan City and Other Conforming Amendments [Docket No. FR-4872-I-01] (RIN: 2506-AC15) received December 19, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6444. A letter from the Deputy Secretary, Securities & Exchange Commission, transmitting the Commission's final rule — Recordkeeping Requirements for Registered Transfer Agents [Release No. 34-48949; File No. S7-13-03] (RIN: 3235-AI87) received December 22, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6445. A letter from the Deputy Secretary, Securities & Exchange Commission, transmitting the Commission's final rule — Compliance Programs of Investment Companies and Investment Advisers [Release Nos. IA-2204; IC-26299; File No. S7-03-03] (RIN: 3235-AI77) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Financial Services.

6446. A letter from the Director, Office of Workers' Compensation Programs, Department of Labor, transmitting the Department's final rule — Regulations Implementing the Federal Coal Mine Health and Safety Act of 1969, as Amended (RIN: 1215-AB40) received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Education and the Workforce.

6447. A letter from the Assistant General Counsel for Regulatory Law, Department of Energy, transmitting the Department's final rule — Energy Conservation Program for Consumer Products; Test Procedure for Clothes Washers [Docket No. EE-RM/TP-03-100] (RIN: 1904-AB43) received December 10, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6448. A letter from the Regulations Coordinator, Department of Health and Human

Services, transmitting the Department's final rule — National Institutes of Health Center Grants (RIN: 0925-AA24) received December 15, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6449. A letter from the Director, Regulations Policy and Management Staff, FDA, Department of Health and Human Services, transmitting the Department's final rule — Requirements for Submission of Labeling for Human Prescription Drugs and Biologics in Electronic Format [Docket No. 2000N-1652] (RIN: 0910-AB91) received January 4, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6450. A letter from the Regulations Coordinator, Office of Special Programs, Department of Health and Human Services, transmitting the Department's final rule — Smallpox Vaccine Injury Compensation Program: Administrative Implementation (RIN: 0906-AA60) received December 15, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6451. A letter from the Attorney-Advisor, National Highway Traffic Safety Administration, Department of Transportation, transmitting the Department's final rule — Federal Motor Vehicle Safety Standards; Glazing Materials; Low Speed Vehicles [Docket No. 03-15712; Notice 2] (RIN: 2127-AJ52) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6452. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commisison, transmitting the Commission's final rule — Compatibility With IAEA Transportation Safety Standards (TS-R-1) and Other Transportation Safety Amendments (RIN: 3150-AG71) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6453. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — List of Approval Spent Fuel Storage Casks: Standardized NUHOMS -24P, -52B, -61BT, -24PHB, and -32PT Revision (RIN: 3150-AH36) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6454. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — Changes to the Adjudicatory Process (RIN: 3150-AG49) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6455. A letter from the Director, Office of Congressional Affairs, Nuclear Regulatory Commission, transmitting the Commission's final rule — List of Approved Spent Fuel Storage Casks: Standardized NUHOMS -24P, -52B, -61BT, -32PT, and 24PHB Revision (RIN: 3150-AH28) received December 22, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Energy and Commerce.

6456. A letter from the Deputy Director, Fish and Wildlife Service, Department of the Interior, transmitting the Department's final rule — Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for the Dugong (Dugong dugon) in the Republic of Palau (RIN: 1018-AI81) received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6457. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone off Alaska; Recision and Reallocation of Pacific Cod in the Bering Sea and Aleutian Islands Management Area [Docket No. 021212307-3037-02; I.D. 120503A] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6458. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Catcher Vessels Using Hook-and-Line Gear in the Bering Sea and Aleutian Islands [Docket No. 021212307-3037-02; I.D. 120403A] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6459. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Exclusive Economic Zone off Alaska; Pacific Cod by Vessels Using Pot Gear in the Bering Sea and Aleutian Islands [Docket No. 021212307-3037-02; I.D. 120403C] received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6460. A letter from the Acting Director, Office of Sustainable Fisheries, NMFS, National Oceanic and Atmospheric Administration, transmitting the Administration's final rule — Fisheries of the Caribbean, Gulf of Mexico, and South Atlantic; Reef Fish Fishery of the Gulf of Mexico; Closure of the Fall Commercial Red Snapper Component [I.D. 120103F] received December 12, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Resources.

6461. A letter from the Regulations Coordinator, Department of Health and Human Services, transmitting the Department's final rule — Tax Refund Offset — received December 19, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

6462. A letter from the Rules Administrator, Federal Bureau of Prisons, Department of Justice, transmitting the Department's final rule — Religious Beliefs and Practices: Nomenclature Change [BOP-1105-F] (RIN: 1120-AB04) received January 9, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on the Judiciary.

6463. A letter from the Chairman, Surface Transportation Board, transmitting the Board's final rule — Public Participation in Railroad Abandonment Proceedings [STB Ex Parte No. 537 (Sub-No. 1)] received December 18, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Transportation and Infrastructure.

6464. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Definition of Income for Trust Purposes [TD 9102] (RIN: 1545-AX96) received January 8, 2004, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

6465. A letter from the Acting Chief, Publications and Regulations Branch, Internal Revenue Service, transmitting the Service's final rule — Determination of Interest Rates (Rev. Rul. 2003-126) received December 17, 2003, pursuant to 5 U.S.C. 801(a)(1)(A); to the Committee on Ways and Means.

REPORTS OF COMMITTEES ON PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XIII, reports of committees were delivered to the Clerk for printing and reference to the proper calendar, as follows:

Mr. SENSENBRENNER: Committee on the Judiciary. H.R. 2844. A bill to require States to hold special elections to fill vacancies in the House of Representatives not later than 21 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, and for other purposes; with amendments (Rept. 108–404, Pt. 2). Referred to the Committee of the Whole House on the State of the Union.

PUBLIC BILLS AND RESOLUTIONS

Under clause 2 of rule XII, public bills and resolutions were introduced and severally referred, as follows:

By Mr. DEAL of Georgia:

H.R. 3736. A bill to provide that pay for Members of Congress be reduced following any fiscal year in which there is a Federal deficit; to the Committee on House Administration, and in addition to the Committee on Government Reform, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mrs. JO ANN DAVIS of Virginia:

H.R. 3737. A bill to increase the minimum and maximum rates of basic pay payable to administrative law judges, and for other purposes; to the Committee on Government Reform.

By Mr. FILNER:

H.R. 3738. A bill to amend title 10, United States Code, to provide for immediate implementation of full concurrent receipt for retired members of the Armed Forces who have a service-connected disability of both military retired pay paid by reason of their years of military service and disability compensation from the Department of Veterans Affairs paid by reason of their disability; to the Committee on Armed Services, and in addition to the Committee on Veterans' Affairs, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. WALDEN of Oregon (for himself, Mr. BLUMENAUER, Mr. DEFAZIO, Ms. HOOLEY of Oregon, and Mr. WU):

H.R. 3739. A bill to waive time limitations specified by law in order to allow the Medal of Honor to be awarded posthumously to Rex T. Barber, of Terrebonne, Oregon, for acts of valor during World War II in attacking and shooting down the enemy aircraft transporting Japanese Admiral Isoroku Yamamoto; to the Committee on Armed Services.

By Mr. MILLER of North Carolina (for himself, Mr. BALLANCE, Mr. ETHERIDGE, Mr. JONES of North Carolina, Mr. PRICE of North Carolina, Mr. BURR, Mr. COBLE, Mr. MCINTYRE, Mr. HAYES, Mrs. MYRICK, Mr. BALLENGER, Mr. TAYLOR of North Carolina, and Mr. WATT):

H.R. 3740. A bill to designate the facility of the United States Postal Service located at 223 South Main Street in Roxboro, North Carolina, as the ''Oscar Scott Woody Post Office Building''; to the Committee on Government Reform.

By Mr. BROWN of Ohio (for himself and Mr. RYAN of Ohio):

H.R. 3741. A bill to amend the Buy American Act to increase the requirement for American-made content, to tighten the waiver provisions, and for other purposes; to the Committee on Government Reform.

By Mr. ACEVEDO-VILA (for himself, Mr. SERRANO, Mr. GUTIERREZ, and Ms. VELAZQUEZ):

H.R. 3742. A bill to designate the United States courthouse and post office building located at 93 Atocha Street in Ponce, Puerto Rico, as the ''Luis A. Ferre United States Courthouse and Post Office Building''; to the Committee on Transportation and Infrastructure.

By Mr. NEY (for himself, Mr. HOLDEN, Mr. BOEHLERT, and Mr. ISAKSON):

H.R. 3743. A bill to improve the safety of rural roads; to the Committee on Transportation and Infrastructure.

By Mr. ROSS:

H.R. 3744. A bill to authorize the Secretary of Agriculture to sell or exchange all or part of certain administrative sites and other land in the Ozark-St. Francis and Ouachita National Forests and to use funds derived from the sale or exchange to acquire, construct, or improve administrative sites, and for other purposes; to the Committee on Resources, and in addition to the Committee on Agriculture, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned.

By Mr. SHAYS (for himself and Mr. WOLF):

H.R. 3745. A bill to amend the Indian Gaming Regulatory Act to require State legislature approval of new gambling facilities, to provide for minimum requirements for Federal regulation of Indian gaming, to set up a commission to report to Congress on current living and health standards in Indian country, and for other purposes; to the Committee on Resources.

By Mr. TIAHRT (for himself, Mr. RYUN of Kansas, Mr. MORAN of Kansas, and Mr. MOORE):

H.R. 3746. A bill to designate the community center at McConnell Air Force Base, Kansas, as the ''Robert J. Dole Community Center'' in honor of World War II veteran and former United States Representative and Senator Robert J. Dole; to the Committee on Armed Services.

By Mr. WALDEN of Oregon:

H.R. 3747. A bill to authorize the Bureau of Reclamation to participate in the rehabilitation of the Wallowa Lake Dam in Oregon, and for other purposes; to the Committee on Resources.

By Mr. SHADEGG:

H.R. 3748. A bill to amend the Internal Revenue Code of 1986 to allow individuals a refundable and advancable credit against income tax for health insurance costs; to the Committee on Ways and Means.

By Mr. WEINER:

H.R. 3749. A bill to revise and reform the Act commonly called the Jenkins Act, and for other purposes; to the Committee on the Judiciary.

By Ms. SLAUGHTER (for herself, Mr. SKELTON, Mrs. EMERSON, Mr. MCGOVERN, and Mr. SWEENEY):

H.J. Res. 87. A joint resolution honoring the life and legacy of President Franklin Delano Roosevelt and recognizing his contributions on the anniversary of the date of his birth; to the Committee on Government Reform.

By Mr. TAYLOR of Mississippi (for himself, Mr. FROST, Mr. OWENS, Mr. JEFFERSON, Mr. BERRY, Mr. DAVIS of Tennessee, and Mr. BOSWELL):

H.J. Res. 88. A joint resolution proposing an amendment to the Constitution of the United States to provide that certain trust funds are outside the budget of the United States; to the Committee on the Judiciary.

By Mr. CASTLE:

H. Con. Res. 351. Concurrent resolution congratulating the University of Delaware men's football team for winning the National Collegiate Athletic Association I-AA national championship; to the Committee on Education and the Workforce.

By Ms. MILLENDER-MCDONALD:

H. Con. Res. 352. Concurrent resolution recognizing the contributions of people of Indian origin to the United States and the benefits of working together with India towards promoting peace, prosperity, and freedom among all countries of the world; to the Committee on International Relations.

By Mr. WEXLER (for himself, Mr. WHITFIELD, Ms. GRANGER, Mr. ENGLISH, Mr. ADERHOLT, and Mr. GUTKNECHT):

H. Con. Res. 353. Concurrent resolution expressing the sense of the Congress regarding the visit to the United States of Turkish Prime Minister Recep Tayyip Erdogan beginning January 26, 2004; to the Committee on International Relations.

By Mr. MENENDEZ:

H. Res. 504. A resolution electing a Member to a certain standing committee of the House of Representatives; considered and agreed to.

By Mr. DELAY:

H. Res. 505. A resolution electing a Member to a certain standing committee of the House of Representatives; considered and agreed to.

By Mrs. BIGGERT (for herself and Mr. STRICKLAND):

H. Res. 506. A resolution supporting the goals and ideals of National Eating Disorders Awareness Week; to the Committee on Energy and Commerce.

By Mr. BURGESS (for himself, Mr. EHLERS, Mr. DAVIS of Tennessee, Mr. LAMPSON, Ms. ROS-LEHTINEN, Mr. COSTELLO, Mr. FEENEY, Mr. DELAY, Mr. UDALL of Colorado, Mr. NEUGEBAUER, Mr. GORDON, Mr. WEINER, Mr. SMITH of Texas, Mr. HONDA, Mr. ROHRABACHER, Mr. BOEHLERT, Ms. JACKSON-LEE of Texas, Mr. GINGREY, and Mr. CALVERT):

H. Res. 507. A resolution expressing the profound sorrow of the House of Representatives on the anniversary of the accident that cost the crew of the Space Shuttle Columbia their lives, and extending heartfelt sympathy to their families; to the Committee on Science.

By Mr. PAYNE:

H. Res. 508. A resolution recognizing and honoring the 50th anniversary of the United States Supreme Court decision in Brown v. Board of Education; to the Committee on the Judiciary.

ADDITIONAL SPONSORS

Under clause 7 of rule XII, sponsors were added to public bills and resolutions as follows:

H.R. 97: Mr. BACHUS.

H.R. 112: Mrs. MUSGRAVE, Mr. UDALL of Colorado, Mr. BEAUPREZ, Mr. TANCREDO, and Ms. DEGETTE.

H.R. 218: Mr. PUTNAM.

H.R. 348: Mr. BISHOP of Georgia, Mr. HOLDEN, Mr. CLAY, and Mrs. WILSON of New Mexico.

H.R. 391: Mr. OSBORNE.

H.R. 525: Mr. ISRAEL, Mr. POMEROY, and Mr. GREENWOOD.

H.R. 583: Mr. MCCOTTER.

H.R. 584: Mr. WALSH.

H.R. 594: Mr. PETERSON of Pennsylvania and Mr. RUPPERSBERGER.

H.R. 617: Mrs. MUSGRAVE.

H.R. 713: Mr. PEARCE and Mr. HILL.

H.R. 715: Mr. BURR.

H.R. 790: Mr. ANDREWS.

H.R. 852: Ms. BERKLEY.

H.R. 873: Mr. STUPAK.

H.R. 880: Mr. MCNULTY.

H.R. 965: Mr. KAPTUR.

H.R. 970: Mr. PORTER and Mr. LEWIS of Georgia.

H.R. 990: Mr. CULBERSON.

H.R. 1205: Mr. CUMMINGS.

H.R. 1214: Mr. MCCOTTER.

H.R. 1231: Ms. CORRINE BROWN of Florida and Mr. FATTAH.

H.R. 1233: Mr. TIBERI.

H.R. 1251: Mr. FRANK of Massachusetts.

H.R. 1258: Mr. LARSEN of Washington.

H.R. 1310: Mr. CRANE and Mr. STUPAK.

H.R. 1336: Mr. CULBERSON, Mr. JOHN, Ms. MCCOLLUM, Mr. ISRAEL, Mrs. NORTHUP, and Ms. PRYCE of Ohio.

H.R. 1372: Mr. ANDREWS, Mr. FEENEY, and Mr. ROGERS of Michigan.

H.R. 1404: Mr. FOLEY.

H.R. 1406: Mr. SMITH of Washington.

H.R. 1513: Mr. MCINTYRE, Mrs. NORTHUP, Mr. PASCRELL, Mr. BAKER, and Mr. LATOURETTE.

H.R. 1552: Mr. BERKLEY and Mr. LARSEN of Washington.

H.R. 1563: Mr. GORDON, Mr. GREEN of Texas, Mrs. LOWEY, Ms. LORETTA SANCHEZ of California, Mr. CALVERT, Mr. STUPAK, and Mr. DAVIS of Florida.

H.R. 1567: Mr. CULBERSON and Mr. CARTER.

H.R. 1608: Mr. CULBERSON, Mr. TANCREDO, Mr. HALL, Mr. MARSHALL, and Mrs. NAPOLITANO.

H.R. 1639: Ms. JACKSON-LEE of Texas and Mr. BELL.

H.R. 1676: Mr. FRANK of Massachusetts and Mr. SANDERS.

H.R. 1688: Mr. SHERMAN and Mr. WAXMAN.

H.R. 1716: Mr. FOLEY and Mr. FILNER.

H.R. 1736: Mr. VISCLOSKY.

H.R. 1767: Mr. BROWN of South Carolina.

H.R. 1863: Mr. FILNER, Mr. NADLER, and Mrs. NAPOLITANO.

H.R. 1889: Mr. PAYNE.

H.R. 1910: Mr. ROSS.

H.R. 1914. Mr. JENKINS.

H.R. 1916: Mr. ENGLISH.

H.R. 2032: Mr. MENENDEZ, Mr. JACKSON of Illinois, and Mrs. BIGGERT.

H.R. 2045: Mr. MANZULLO, Mr. CARTER, Mr. PEARCE, Mr. PLATTS, and Mr. BAKER.

H.R. 2068: Mr. REYES, Mr. ACEVEDO-VILA, Mr. QUINN, Mr. ACKERMAN, Mrs. TAUSHCER, Mr. MCNULTY, and Mr. WALSH.

H.R. 2069: Mr. ACEVEDO-VILA.

H.R. 2133: Mr. JONES of North Carolina.

H.R. 2201: Mr. RAHALL, Ms. KAPTUR, Mr. MARKEY, Mr. GRIJALVA, Ms. BORDALLO, Mr. ACEVEDO-VILA, Mr. MORAN of Virginia, Mr. BOUCHER, and Mr. FOLEY.

H.R. 2238: Mr. STENHOLM and Mr. KUCINICH.

H.R. 2239: Mr. OLVER, Mr. MEEK of Florida, and Mr. BISHOP of New York.

H.R. 2318: Mr. BACA.

H.R. 2363: Mr. MCDERMOTT.

H.R. 2365: Mr. NEY.

H.R. 2540: Mr. UDALL of Colorado and Ms. HARMAN.

H.R. 2621: Mr. BLUMENAUER.

H.R. 2635: Mr. CULBERSON.

H.R. 2681: Mr. BLUMENAUER, Ms. MILLENDER-MCDONALD, Mr. WALSH, Mr. DEUTSCH, and Mrs. TAUSCHER.

H.R. 2702: Mr. PASCRELL.

H.R. 2735: Mr. TURNER of Texas, Ms. LEE, and Mr. CUMMINGS.

H.R. 2797: Mr. HOUGHTON and Mr. RADANOVICH.

H.R. 2837: Mr. STARK.

H.R. 2899: Mr. LINCOLN DIAZ-BALART of Florida, Mr. MARIO DIAZ-BALART of Florida, and Mr. CANNON.

H.R. 2928: Mr. DEMINT.

H.R. 2948: Mr. OWENS.

H.R. 3039: Mr. ENGLISH and Mr. SOUDER.

H.R. 3069: Mr. WAMP and Mr. LUCAS of Kentucky.

H.R. 3104: Mr. ACKERMAN, Ms. NORTON, Mr. RYAN of Ohio, Mr. BRADY of Pennsylvania, Mr. BISHOP of Georgia, Mr. SANDLIN, Mr. JOHNSON of Illinois, Mr. ISRAEL, Mr. SANDERS, Mr. RUPPERSBERGER, Mr. FRANK of Massachusetts, Mr. GORDON, Ms. PELOSI, Mr. MCNULTY, and Mr. WALSH.

H.R. 3109: Mr. HINOJOSA, Mr. ISRAEL, Mr. ORTIZ, and Mr. ROTHMAN.

H.R. 3111: Mr. HOEKSTRA and Mr. MICHAUD.
H.R. 3133: Mrs. LOWEY.
H.R. 3142: Mr. SIMMONS, Mr. GILLMOR, Mr. BALLANCE, Mr. PRICE of North Carolina, Mr. KOLBE, Mr. FLAKE, Mr. DAVIS of Florida, and Mr. HASTINGS of Florida.
H.R. 3148: Mr. FOLEY.
H.R. 3178: Mr. HOEFFEL, Mr. HAYWORTH, Mr. HOLDEN, Mr. STARK, Mr. CLYBURN, Mr. WALSH, Mr. KING of New York, and Ms. BERKLEY.
H.R. 3190: Mr. SULLIVAN.
H.R. 3139: Mr. MCINNIS, Mr. JONES of North Carolina, and Mrs. MYRICK.
H.R. 3204: Mr. CAPUANO.
H.R. 3213: Mr. WILSON of South Carolina, Mr. TANCREDO, Mrs. MUSGRAVE, Mr. MANZULLO, Mr. AKIN, Mr. KING of Iowa, Mr. ADERHOLT, Mr. BARTLETT of Maryland, Mr. CRANE, Mrs. MYRICK, Mr. ISTOOK, Mr. ROGERS of Alabama, Mr. HERGER, Mr. PENCE, Mr. SAM JOHNSON of Texas, Mr. PITTS, Mr. FLAKE, Mr. SHADEGG, Mr. NEUGEBAUER, Mr. MILLER of Florida, Mr. CHOCOLA, and Mr. BLUNT.
H.R. 3238: Mr. MEEKS of New York, Ms. ROS-LEHTINEN, Mr. LINCOLN DIAZ-BALART of Florida, Mr. DEUTSCH, Mr. HASTINGS of Florida, Ms. LEE, Ms. JACKSON-LEE of Texas, Mr. OWENS, and Mr. BISHOP of Georgia.
H.R. 3259: Ms. GINNY BROWN-WAITE of Florida.
H.R. 3270: Mr. EHLERS.
H.R. 3293: Mr. MEEHAN, Mrs. JONES of Ohio, Mr. ROTHMAN, and Mr. HOLT.
H.R. 3313: Mrs. NORTHUP.
H.R. 3331: Mr. KUCINICH.
H.R. 3390: Mr. BOYD, Mr. FILNER, Mr. GOODE, Mr. WAMP, and Mr. WHITFIELD.
H.R. 3411: Ms. WOOLSEY.
H.R. 3412: Mr. ROSS and Mr. HOLT.
H.R. 3429: Mr. JOHNSON of Illinois.
H.R. 3438: Mrs. CAPPS and Mr. OLVER.
H.R. 3444: Ms. SCHAKOWSKY, Ms. KAPTUR, and Mr. GRIJALVA.
H.R. 3459: Mr. ROSS and Mr. COOPER.
H.R. 3476: Mr. SCHIFF, Ms. KAPTUR, Mr. MENENDEZ, Mr. CARSON of Oklahoma, Mrs. WILSON of New Mexico, and Mr. ISRAEL.
H.R. 3507: Ms. WATERS.
H.R. 3522: Mr. TANCREDO and Mr. PLATTS.
H.R. 3528: Mr. MCNULTY, Ms. CARSON of Indiana, Mr. KIND, Mr. ISRAEL, Mr. OWENS, Mr. SMITH of Washington, Mr. MCDERMOTT, and Ms. DELAURO.
H.R. 3534: Mr. COLLINS.
H.R. 3456: Mr. DINGELL, Ms. SLAUGHTER, Mr. FRANK of Massachusetts, Ms. ESHOO, Ms. LEE, and Mr. BROWN of Ohio.
H.R. 3547: Mr. DINGELL, Ms. SLAUGHTER, Mr. BROWN of Ohio, and Ms. ESHOO.
H.R. 3550: Mr. HASTINGS of Florida, Mr. MCDERMOTT, Mr. KILDEE, Mr. MARKEY, Mrs. MALONEY, Mr. CLAY, Mr. MEEKS of New York, Mr. MEEK of Florida, Mr. CARDIN, Mr. VAN HOLLEN, Mr. TOWNS, and Mr. GONZALEZ.
H.R. 3593: Mr. BOUCHER, Ms. SCHAKOWSKY, Mr. ROTHMAN, Mr. BALLANCE, Mr. ETHERIDGE, Mrs. CHRISTENSEN, Mr. TOWNS, Mr. MCNULTY, Mr. RUSH, Mr. FILNER, and Mr. BISHOP of New York.
H.R. 3595: Mr. SERRANO.
H.R. 3599: Mr. LEVIN.
H.R. 3619: Mr. LARSON of Connecticut, Mr. HILL, Mr. CARDIN, Mr. LAMPSON, Mr. MOORE, Mr. CARSON of Oklahoma, Ms. MAJETTE, Mr. DAVIS of Alabama, and Ms. WATSON.
H.R. 3635: Mr. BISHOP of Georgia.
H.R. 3673: Ms. MCCARTHY of Missouri, Mr. BROWN of Ohio, Mr. BOUCHER, Mr. BERMAN, and Mr. ALLEN.
H.R. 3674: Mr. TANCREDO, Mr. JONES of North Carolina, and Mr. NORWOOD.
H.R. 3676: Ms. MILLENDER-MCDONALD.
H.R. 3678: Mr. CAMP.
H.R. 3687: Mr. DEAL of Georgia, Mr. NUNES, Mr. GREEN of Wisconsin, Mr. DEMINT, Mr. GOODE, Mr. KING of Iowa, Mr. ISAKSON, Mr. HILL, and Mr. TANNER.
H.R. 3708: Mr. TERRY.
H.R. 3712: Ms. HARMAN, Mrs. NAPOLITANO, and Mr. RANGEL.
H.R. 3714: Mrs. NAPOLITANO.
H.R. 3716: Mr. NEY.
H.R. 3717: Mr. BARRETT of South Carolina, Mr. ROSS, Mr. HINCHEY, Mr. BAKER, and Mr. BEREUTER.
H.R. 3721: Mr. CRAMER and Mr. LAHOOD.
H.J. Res. 12: Mr. BISHOP of Georgia.
H.J. Res. 72: Mr. PRICE of North Carolina and Mr. LEACH.
H.J. Res. 84: Mr. RADANOVICH, Mr. FRANKS of Arizona, Mr. KLINE, Mr. BRADLEY of New Hampshire, Mr. BILIRAKIS, Mr. HENSARLING, Mr. SHAW, Mr. LAHOOD, Mr. HOSTETTLER, Mr. LINDER, Mr. KENNEDY of Minnesota, Mr. LOBIONDO, Mr. KIRK, Mr. HASTINGS of Washington, Mr. WALSH, Mr. HUNTER, Mr. MURPHY, Mr. WELLER, Mrs. CAPITO, Mr. SMITH of Texas, Mr. BURGESS, Mr. GILLMOR, Mr. CULBERSON, Mr. BLUNT, Ms. HARRIS, Mr. STEARNS, Mr. GARRETT of New Jersey, Mr. PITTS, Mr. OSE, and Mr. LINCOLN DIAZ-BALART of Florida.
H. Con. Res. 37: Mr. MILLER of North Carolina.
H. Con. Res. 247: Mr. SHERMAN.
H. Con. Res. 310: Mr. WILSON of South Carolina.
H. Con. Res. 332: Mr. MCNULTY.
H. Con. Res. 338: Mr. OWENS and Mr. RANGEL.
H. Con. Res. 348: Mr. ROTHMAN and Mrs. NAPOLITANO.
H. Res. 32: Mr. BELL.
H. Res. 402: Mr. TERRY.
H. Res. 420: Mr. FARR, Ms. SCHAKOWSKY, Mr. VAN HOLLEN, Mr. FILNER, Ms. WOOLSEY, Mr. WAXMAN, Ms. KAPTUR, Mr. RANGEL, and Mr. STARK.
H. Res. 466: Mr. ABERCROMBIE, Mr. DOGGETT, Mr. FILNER, Ms. JACKSON-LEE of Texas, Mr. WAXMAN, Ms. WOOLSEY, Ms. ESHOO, Mrs. MALONEY, Mr. GONZALEZ, Ms. NORTON, Ms. KAPTUR, Mr. BROWN of Ohio, Mr. GEORGE MILLER of California, Ms. LEE, Mr. HINCHEY, Mr. SERRANO, Ms. LOFGREN, Mr. SANDERS, Ms. MCCARTHY of Missouri, Mr. CUNNINGHAM, Mr. HOBSON, and Mr. WEXLER.
H. Res. 477: Ms. WOOLSEY.
H. Res. 485: Mr. CASE, Mr. MOORE, Mr. OWENS, Mr. FROST, and Mr. PASTOR.
H. Res. 497: Mr. WATT and Mr. OLVER.
H. Res. 499: Mr. TIERNEY, Mr. MEEHAN, Mr. RYAN of Ohio, Mr. KLECZKA, Mr. BERMAN, Ms. MCCARTHY of Missouri, Mr. OLVER, Ms. BERKLEY, Mr. GEORGE MILLER of California, Mr. HOEFFEL, Mr. FARR, Mr. UDALL of New Mexico, Mr. UDALL of Colorado, Ms. WOOLSEY Mr. VAN HOLLEN, Mr. SANDERS, and Mr. SCHIFF.
H. Res. 500: Mr. SHIMKUS.

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PROCEEDINGS AND DEBATES OF THE 108th CONGRESS, SECOND SESSION

Vol. 150 WASHINGTON, WEDNESDAY, JANUARY 28, 2004 *No. 7*

Senate

The Senate met at 11 a.m. and was called to order by the President pro tempore (Mr. STEVENS).

PRAYER

The Chaplain, Dr. Barry C. Black, offered the following prayer:

Let us pray:

Eternal Spirit, who has set our noisy years in the heart of Your eternity, under the shadow of Your wings, we find gladness and peace. Thank You for Your watchful care over body and soul alike.

Lord, You have kept our eyes from tears and brought us solace in seasons of grief. Thank You for keeping our feet from falling, or if we fell, you refused to forsake us. You have forgiven our sins and healed our diseases.

Today, give all who labor for liberty Your wisdom. Help us to embrace the right priorities. Remind us that a person's success and greatness cannot keep him or her from death. Teach us, therefore, to sacrifice for those things that will live beyond our years. Use us to tell others about Your greatness. And, Lord, bless our military people who are in harm's way.

We pray this in Your righteous Name. Amen.

PLEDGE OF ALLEGIANCE

The PRESIDENT pro tempore led the Pledge of Allegiance, as follows:

I pledge allegiance to the Flag of the United States of America, and to the Republic for which it stands, one nation under God, indivisible, with liberty and justice for all.

RECOGNITION OF THE ACTING MAJORITY LEADER

The PRESIDENT pro tempore. The acting majority leader is recognized.

SCHEDULE

Mr. MCCONNELL. Mr. President, today the Senate will again resume debate on H.R. 3108, the pension rate bill. Under the agreement reached yesterday, there will be 40 minutes of debate prior to disposing of the Kyl amendment No. 2236 regarding the general funding waiver. That amendment may not require a rollcall vote; therefore, we may be able to proceed to a vote on passage of the legislation prior to noon today.

In addition to completing the pension rate bill, the majority leader will be discussing with the Democratic leadership the possibility of a vote on a district judge nomination that has been available on the Executive Calendar. Therefore, additional votes may occur today and we will alert Members when that vote is confirmed.

For the remainder of the week, both sides of the aisle will be conducting retreats. Because of these important policy conferences, the Senate will be in pro forma session tomorrow, and we will be out of session on Friday. The leader will have more to say on next week's schedule at the close of business today.

I yield the floor.

RECOGNITION OF THE MINORITY LEADER

The PRESIDENT pro tempore. The Democratic leader is recognized.

Mr. DASCHLE. Mr. President, I hope we can complete our work on the pension bill today. We have been on it now for, I think, 6 days. We have been getting good cooperation on both sides of the aisle. I don't see any reason why before we conclude our work this afternoon we cannot finish this bill. I appreciate very much the report of the assistant majority leader this morning.

HONORING OUR ARMED FORCES

NATIONAL GUARDSMAN KENNETH HENDRICKSON

Mr. DASCHLE. Mr. President, over the weekend, east of Fallujah, Iraq, a roadside bomb exploded, taking the life of SSG Kenneth Hendrickson, a member of the National Guard 957th Multi-Role Bridge Company.

SSG Hendrickson is from Bismarck, ND, where he lived with his wife and son and near his mother Adeline. His father, Lyle Hendrickson, is now a Pendleton County commissioner in South Dakota.

Staff Sergeant Hendrickson was only 4 weeks away from returning home. Shortly before the attack that would take his life, his parents were told not to send anymore letters or care packages because he would be heading home before any other mail could reach him in Iraq.

Staff Sergeant Hendrickson served his country with courage. Every American owes him and the entire Hendrickson family a debt of thanks for his service, as well as his sacrifice. His death reminds us that nearly 150,000 of our sons and daughters still face danger in Iraq and Afghanistan, and that fathers, mothers, husbands, wives, and children still wait anxiously for their loved ones' safe return.

It reminds us, too, that more than 500 American soldiers have been lost since the Iraqi war began and about 3,000 have been wounded.

The families of South Dakota have borne a particularly heavy toll during this war. South Dakota has a higher proportion of its citizens serving the Guard in Iraq than any other State in the country right now.

There is nothing we can do to fully repay the men and women for their service. But in thanks for their commitment to our protection, we must commit ourselves to their protection as well. Our first responsibility is to give them every tool and technological advantage available to help them do their jobs and return home safely.

Regrettably, we have received numerous reports that the Defense Department is not doing all it can with regard to protecting our troops. From the very first deployments, we were

told members of the South Dakota Guard and Army Reserve were not equipped with the most effective body armor that should be standard issue. Soldiers from other States have suffered similar supply shortcomings.

We attempted to address this issue in the supplemental appropriations and the regular 2004 Defense appropriations bill with an extra $420 million specifically to ensure that every soldier facing fire had the best body armor money can buy.

The DOD promised us the problem would be solved by the beginning of December. As it became clear they would miss this deadline, we were then told it would be solved this January. However, today, 10 months after the start of the conflict in Iraq, we continue to hear reports that Guard and Reserve personnel, as well as others, lack top-of-the-line body armor and other vital equipment.

In a few days, another 800 South Dakota Guard soldiers will be sent to Iraq to begin a year-long deployment. They have volunteered to face danger on our behalf. We owe them and the families they leave behind every effort to protect them from harm. Our obligation to stand by Guard members and Reservists cannot and should not end once they return home.

Increasingly, Guard members are facing the same bullets as full-time soldiers. We owe them the same commitment to their health and well-being. That means giving them access to the same health care that full-time soldiers currently enjoy.

Recent studies indicate now one-fifth of National Guard and Reserve members lack health care when they come home. Last year, thanks in part to a bipartisan coalition of Senators, we established a 1-year program to provide a significant number of our Reservists and their families access to TRICARE, the military health care system, when they are not on duty. Today, that same bipartisan coalition will introduce legislation to make that coverage permanent.

Our bill would improve the readiness of our force and enhance the ability of the military to recruit and retain a new generation of soldiers. This legislation is important because these troops are performing a greater share of the fighting than at any other time in decades.

By May, 40 percent of the more than 100,000 U.S. troops in Iraq will be Guard members or Reservists. Yet as we depend more heavily on their service, we are receiving troubling signs of discontent and instability.

A recent internal survey showed the rate of those Reservists who decide not to reenlist could double in just a few years. Just last week, LTG James R. Helmly, head of the Army Reserves, said:

> This is the first extended-duration war our Nation has fought with an all-volunteer force. We must be sensitive to that, and we must apply proactive, preventive measures to prevent a recruiting-retention crisis.

Unless this recruiting/retention crisis is addressed, those losses could severely undermine unit readiness and erode America's national security.

Over the weekend, America lost another hero in Iraq with the death of SGT Kenneth Hendrickson. His death serves to remind us of the service and sacrifice of our men and women in uniform and what they do for their country. Their commitment to us is beyond question. It is time we demonstrated real commitment to them and their families as well.

Our Guard and Reserve members have not failed us. We must not fail them. We must support our troops, not really with words but with action.

Mr. REID. Mr. President, will the Senator yield for a question?

Mr. DASCHLE. I will be happy to yield for a question.

JUDICIAL NOMINATIONS

Mr. REID. I see on the announcement of the schedule for this afternoon that there is an agreement that we will vote on another Federal judge. It is my understanding this will be the 170th judge we have approved in the Senate, and with President Bush having given an interim appointment for 1 year to Judge Pickering, the numbers are now 170 approved by the Senate during the term of President Bush and only 4 who have not gotten approval.

Does the Senator agree that those are the numbers?

Mr. DASCHLE. Mr. President, the Senator from Nevada, the distinguish assistant Democratic leader, is right. That record exceeds the record of any predecessor in this period of time. Obviously, the Bush administration has 1 year left before the end of its term. So there is little doubt that they will probably continue to set records with regard to the confirmation of judges.

I might add, this is a time when the Democrats were, at least for a period of time, actually in the majority. They have had good cooperation. The four who have not been confirmed have not been confirmed for good reason. Again, we will address the issue of greater numbers and more cooperation this afternoon, as the Senator suggests, with the confirmation of yet another judge.

Mr. REID. If the Senator will yield for one final question, for those out there who are saying we are turning down President Bush's judicial nominations, the facts are that we have approved 170 who are now or shortly will be sitting as judges in the Federal system—they have been approved by the Senate—and we have turned down 4. The number then is 170 approved, 4 turned down. Those are pretty good numbers; does the Senator agree?

Mr. DASCHLE. The Senator is correct. That would be a pretty remarkable record if this were the sports world, the business world, or the academic world. I was just reminded that 100 of the 170 who were confirmed were confirmed under a Democratic-controlled Senate. So I think we can look back with great satisfaction.

I know there are some who argue we have not been tough enough, we have not been aggressive enough. But I think, as we have said on many occasions, where we agree with the President, we will support him. Where we disagree, we have no recourse but to continue to raise these reservations and objections, especially with regard to lifetime appointments to the Federal bench. I thank the Senator from Nevada for raising the issue.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. GRAHAM of South Carolina). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. COLEMAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

RESERVATION OF LEADER TIME

The PRESIDING OFFICER. Under the previous order, leadership time is reserved.

PENSION FUNDING EQUITY ACT OF 2003

The PRESIDING OFFICER. Under the previous order, the Senate will resume consideration of H.R. 3108, which the clerk will report.

The assistant legislative clerk read as follows:

> A bill (H.R. 3108) to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.
>
> Pending:
>
> Grassley amendment No. 2233, of a perfecting nature.
>
> Kyl amendment No. 2236 (to amendment No. 2233), to restrict an employer that elected an alternative deficit reduction contribution from applying for a funding waiver.

The PRESIDING OFFICER. Under the previous order, prior to a vote in relationship to amendment No. 2236, there will be 30 minutes equally divided between the chairman and ranking member or their designees, with the initial 10 minutes under the control of the Senator from Arizona, Mr. KYL.

The Senator from Minnesota.

Mr. COLEMAN. Mr. President, I yield myself 5 minutes of the manager's time on this bill.

The PRESIDING OFFICER. The Senator is recognized for 5 minutes.

Mr. COLEMAN. I thank the Chair.

Mr. President, Minnesota is home to Northwest Airlines as well as Ispat Inland Steel Mining Company. I rise today in support of the pension legislation before us and to urge my fellow colleagues to vote for this bill today.

Let me be clear. This legislation is about protecting American workers

and their pension benefits. We are discussing this today because of the long arm of September 11 that continues to swipe through the economic landscape and affect the hard-working people of this country.

On January 1, 2000, airline workers' pension plans were over 100 percent funded and business was good for their companies. This, of course, changed dramatically in the days following September 11, and the economy is now beginning to show signs of life again.

The airline industry, because of its cyclical nature, always reacts strongly to the economy. This, coupled with the rise in costs because of new security measures, a dropoff in passengers, and Eisenhower administration interest rates, has made it difficult, if not impossible, for airlines to keep their pensions fully funded.

With regard to steel, Ispat Inland Mining Company is a key component of one of the largest operating integrated steel manufacturers in the Nation and a highly productive mine in my State. Ispat Inland Mining Company and its parent company employ close to 7,000 people who have had the benefit of a defined pension plan since 1936. While funding of this plan has often exceeded 100 percent of the total obligations, funding levels have never fallen below 90 percent of the obligation until 2003. I think all my colleagues are aware of the impact that the economy and foreign imports have had on the steel industry in the last couple of years.

The problem for these companies is the deficit reduction contribution, DRC, which requires companies to close the underfunded gap on an accelerated basis. This results in materially higher pension contributions during periods of economic decline. So what sounds like tough medicine turns out to be poison—poison—for the airline and steel workers. A major risk is that the accelerated deficit reduction contributions could force the airlines and steel companies to seek chapter 11 protection, force them into bankruptcy. Companies, such as Northwest, that are coming back could be forced into bankruptcy by this required accelerated payment.

Unfortunately, I think many understand that in chapter 11 bankruptcy the most likely outcome is the termination of pension plans and the transfer of unfunded liabilities to the PBGC. In effect, we would be destroying the very pension plans that Congress is seeking to preserve.

We must take immediate action to ensure that pension plan termination is a phrase that never enters the corporate boardroom. People who have invested their lives in a company should not have to live in fear that they will be left out in the cold when they retire.

This legislation represents a commonsense approach to help solve the problem. We are providing temporary 2-year relief from some of the cashflow requirements of the DRC, and during this period it is important to understand that companies are still going to make their normal required pension contributions. Pension benefits being accrued by active workers will continue to be funded during this temporary period and lessen any potential risk to the PBGC. I reiterate that the relief is for a portion of the deficit reduction contribution payment, not the regular pension payment. Pension payments are going to be made.

I am also extremely pleased that my amendment to include iron ore in the definition of steel was included in the managers' amendment. Minnesota is the largest producer of iron ore and taconite in the United States. These products are essential for integrated steel companies. Advances in technology have found a use for a lower grade iron ore called taconite. Taconite is crushed, processed into hard, marble-size pellets, and shipped to steel mills. The taconite pellets are melted in blast furnaces and then blown with oxygen to make steel. As a result, a healthy steel industry means a more viable taconite industry and more jobs for this economy.

The AFL–CIO, the Airline Pilots Association, and the International Association of Machine and Aerospace Workers support this legislation.

With this bill, we are not letting businesses off the hook but we are taking the appropriate steps to provide retirement security for constituents across this Nation.

Again, I urge my colleagues to support this bipartisan legislation that will help restore long-term health to American businesses and protect the retirement money for millions of American workers.

Mr. President, I yield the floor.

The PRESIDING OFFICER. Who yields time?

The Senator from Pennsylvania.

Mr. SPECTER. Mr. President, I yield myself 10 minutes.

The PRESIDING OFFICER. Without objection, the Senator from Pennsylvania is recognized.

Mr. SPECTER. Mr. President, I have sought recognition to comment about an amendment which I have offered on behalf of U.S. Airways. It is an amendment which provides that the pension plan would be reinstated. It had been required to fund it within a 5-year period. The amendment would allow up to 30 years. It would actually save the Pension Benefit Guaranty Corporation money.

The complexity had arisen as to whether this amendment was relevant. As the CONGRESSIONAL RECORD will show, I spoke about the amendment on Monday explaining what the amendment sought to do and detailing the history as to what had happened with a bill offered by Senator SANTORUM and myself last January 9, and in the hearing of the subcommittee which I chair on January 14.

I had a series of conversations with the Parliamentarian as to whether the amendment was relevant. I sought unanimous consent on Monday to set aside the pending second-degree amendment and an objection was raised. Then a little after 4 yesterday afternoon, I consulted with the Parliamentarian, who had not yet reached a decision, and suggested that my staffer confer with the Deputy Parliamentarian, which was done yesterday afternoon.

I was surprised to find a unanimous consent agreement entered into which precluded the amendment. I have a call in to the chairman of the Finance Committee, Senator GRASSLEY. If possible, I ask if he would come to the floor so we can discuss this matter. The issue was also presented to Senator KENNEDY. If possible, I ask that he come to the floor. We are operating under a very tight time constraint with the agreement now calling for a vote on the pending amendment by about 11:40, and then votes sequencing to final passage.

As a matter of basic fairness, I think we are entitled to have a vote. I am not unaware of the fact that there will be a later pension bill, but this matter is of great importance to my constituents. The U.S. Airways pilots, under the revised plan, sought to have their pensions reduced to about 25 percent when it was not possible to reinstate the earlier plan with an extension of up to 30 years. I think they are entitled to a vote, and we will be back on this matter if we are not able to get a vote today.

When the Parliamentarian is under active consideration and the Senator from Pennsylvania, myself, is pursuing the matter, it seems to me as a matter of basic fairness we ought not to be foreclosed. So I intend to go to the Finance Committee now to talk to Senator GRASSLEY to see if we can get a resolution by the Finance Committee, but that is the essence of the situation.

To repeat, I think we are entitled to a vote. For the record, I know Senator REID is prepared to object, but I ask unanimous consent that I be permitted to offer this amendment with a 10-minute time agreement which will not delay the final passage of the bill.

The PRESIDING OFFICER. Is there objection? The Senator from Nevada.

Mr. REID. Reserving the right to object, we have objections from the majority and minority now on the Finance Committee and also from the majority on the HELP Committee. So based upon that, I object.

The PRESIDING OFFICER. The objection is heard.

Mr. SPECTER. I understand the reasons of the Senator from Nevada. As I said, I am going to be on my way to the Finance Committee to see if I can get a change of decision by the Finance Committee so we can offer this amendment.

The PRESIDING OFFICER. Who yields time?

Mr. SPECTER. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. SPECTER. I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMENDMENT NO. 2263

Mr. SPECTER. Mr. President, there have been a series of discussions, and we have worked out an accommodation to permit me to introduce the amendment on behalf of US Airways pilots. We will handle the vote on a division vote so that there is at least a semblance of what has occurred.

At this point, I ask unanimous consent I be permitted to call up amendment No. 2263 and that there be a division vote and I be permitted to speak under this unanimous consent request for up to 8 minutes.

The PRESIDING OFFICER. Without objection, it is so ordered.

The clerk will report.

The assistant legislative clerk read as follows:

The Senator from Pennsylvania [Mr. SPECTER] proposes an amendment numbered 2263.

Mr. SPECTER. Mr. President, I ask unanimous consent that the reading of the amendment be dispensed with.

The PRESIDING OFFICER. Without objection, it is so ordered.

The amendment is as follows:

(Purpose: To provide for the restoration of certain plans terminating in 2003)

At the appropriate place, insert:

SEC. ___. RESTORATION OF CERTAIN PLANS TERMINATING IN 2003.

(a) IN GENERAL.—The provisions of subsection (b) shall apply to any defined benefit plan that was—

(1) maintained by a commercial passenger air carrier,

(2) maintained for the benefit of such carrier's employees pursuant to a collective bargaining agreement, and

(3) terminated during the calendar year 2003.

(b) RESTORATION OF PLAN.—The Pension Benefit Guaranty Corporation shall restore any plan described in subsection (a), pursuant to the terms described in subsection (g), and the control of the plan's assets and liabilities shall be transferred to the employer. The date of restoration shall be not later than 60 days after the date the terms of the plan are determined pursuant to subsection (g).

(c) EXCLUSION OF EXPECTED INCREASE IN CURRENT LIABILITY.—In applying section 412(l)(1)(A)(i) of the Internal Revenue Code of 1986 and section 302(d)(1)(A)(i) of the Employee Retirement Income Security Act of 1974 with respect to a plan restored under subsection (b), any expected increase in current liability due to benefits accruing during each plan year as described in section 412(l)(2)(C) of such Code and section 302(d)(2)(C) of such Act shall be excluded.

(d) AMORTIZATION OF UNFUNDED AMOUNTS UNDER RESTORATION PAYMENT SCHEDULE.—

(1) POST-RESTORATION INITIAL UNFUNDED ACCRUED LIABILITY.—In the case of a plan restored under subsection (b)—

(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the initial restoration amortization base for a plan described in subsection (a) shall be an amount equal to the excess of—

(i) the accrued benefit liabilities returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the initial restoration amortization base shall be amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date, and the funding standard account of the plan under section 412 of such Code and section 302 of such Act shall be charged with such installments.

(2) UNFUNDED SECTION 412(l) RESTORATION LIABILITY.—For purposes of section 412 of such Code and section 302 of such Act, in the case of a plan restored under subsection (b)—

(A) the initial post-restoration valuation date for a plan described in subsection (a) shall be January 1 of the calendar year following the date of restoration,

(B) the unfunded section 412(l) restoration liability shall be an amount equal to the excess of—

(i) the current liability returned by the Corporation, over

(ii) the market value of plan assets returned by the Corporation, and

(C) the unfunded section 412(l) restoration liability amount shall be equal to the unfunded section 412(l) restoration liability amortized in level annual installments over a period determined pursuant to subsection (g) but not to exceed 30 years after the initial post-restoration valuation date.

(3) RULES OF SPECIAL APPLICATION.—In applying the 30-year amortization described in paragraph (1)(C) or (2)(C)—

(A) the assumed interest rate for purposes of paragraph (1)(C) shall be the valuation interest rate used to determine the accrued liability under section 412(c) of such Code and section 302(c) of such Act,

(B) the assumed interest rate for purposes of paragraph (2)(C) shall be the interest rate used to determine current liability as of the initial post-restoration valuation date under section 412(l) of such Code and section 302(d) of such Act,

(C) the actuarial value of assets as of the initial post-restoration valuation date shall be reset to the market value of assets with a 5-year phase-in of unexpected investment gains or losses on a prospective basis, and

(D) for plans using the frozen initial liability (FIL) funding method in accordance with section 412(c) of such Code and section 302(c) of such Act, the initial unfunded liability used to determine normal cost shall be reset to the initial restoration amortization base.

(e) QUARTERLY CONTRIBUTIONS.—The requirements of section 412(m) of such Code and section 302(e) of such Act shall not apply to a plan restored under subsection (b) until the plan year beginning on the initial post-restoration valuation date. The required annual payment for that year shall be the lesser of—

(1) the amount determined under section 412(m)(4)(B)(i) of such Code and section 302(e)(4)(B)(i) of such Act, or

(2) 100 percent of the amount required to be contributed under the plan for the plan year beginning January 1, 2003, and ending on the date of plan termination.

(f) RESETTING OF FUNDING STANDARD ACCOUNT BALANCES.—In the case of a plan restored under subsection (b), any accumulated funding deficiency or credit balance in the funding standard account under section 412 of such Code or section 302 of such Act shall be set equal to zero as of the initial post-restoration valuation date.

(g) TERMS OF RESTORED PLAN.—

(1) IN GENERAL.—The terms of a plan which is restored pursuant to subsection (b) shall be determined by mutual agreement of the employer and the collective bargaining representative of employees covered by the plan. If such parties are unable to reach mutual agreement on such terms, then the terms of the restored plan will be determined by a neutral arbitrator. The neutral arbitrator will be selected by the parties within 7 days after the earlier of the date the parties reach an impasse or 60 days after the date of the enactment of this Act. The neutral arbitrator will be selected by the parties from a panel of neutrals provided by the National Mediation Board. The neutral arbitrator will render his or her determination not later than 120 days after the date of the enactment of this Act. Such determination shall be final and binding on the parties.

(2) SPECIFIC TERMS.—The terms of the restored plan are subject to the following:

(A) Benefits under the restored plan for any participant or group of participants may not be greater than, but may be less than, those under the plan prior to its termination, and forms of distribution under the restored plan for any participant or group of participants may exclude forms available under the plan prior to its termination, and any such reductions in benefits or forms of distribution shall be deemed to comply with section 411(d)(6) of such Code and section 204(g) of such Act.

(B) For any participant, benefits under the restored plan shall be offset by the value of contributions made on behalf of such participant to any defined contribution pension plan established by the parties in conjunction with the termination of the restored plan.

(C) The amortization periods for the initial restoration amortization base and the unfunded section 412(l) restoration liability shall not exceed 30 years.

(D) The minimum required cost of the restored plan shall not be less than the greater of—

(i) the projected cost of any defined contribution pension plan established in conjunction with the termination of the restored plan, or

(ii) the amount allowed as costs under the employer's original plan of reorganization for all of the employer's retirement plans minus the minimum required cost determined as of the plan restoration date of all of the employer's retirement plans excluding the restored plan.

(h) PBGC LIABILITY LIMITED.—In the case of any plan which is described in subsection (a), which is restored pursuant to subsection (b), and which subsequently terminates with a date of plan termination before the end of the fifth calendar year after the date of restoration, section 4022 of the Employee Retirement Income Security Act of 1974 shall be applied as if the plan had been amended to provide that participants would receive no credit for benefit accrual purposes under the plan for service on and after the first day of the plan year beginning after the date of the enactment of this Act.

(i) EFFECTIVE DATE.—This section shall apply to plan years beginning after December 31, 2002.

Mr. SPECTER. Mr. President, this amendment would do justice to the US Airways pilots who have been very unfairly treated by what has happened to the pension with US Airways.

The airline has had great problems, as have all the airlines, following 9/11. They have been in bankruptcy and have been restructuring their operation. There have been tremendous concessions made by employees of US Airways and the pilots pension was abrogated.

On January 9, 2003, Senator SANTORUM and I introduced S. 119, which would have allowed the US Airways pension plan to have up to 30 years to meet its obligations instead of the 5-year period. The requirement of the 5-year period made it impossible for the pension plan to be continued. My Subcommittee on Labor, Health and Human Services and Education held a hearing on January 14, 2003, and explored the options.

The PBGC declined to honor the request of the US Airways pilots. We have now offered an amendment, which is now pending, which would grant up to 30 years for the pension plan to be funded. We call for a reinstatement of the earlier plan. In the interim, US Airways has offered an additional benefit and we would agree to an offset of that against the amendment which we are now offering.

How much time do I have remaining?

The PRESIDING OFFICER. Five minutes.

Mr. SPECTER. I reserve the remainder of my time until I hear the arguments in opposition to the amendment.

The PRESIDING OFFICER. Who seeks recognition?

Mr. REID. Is the Senate in a quorum call?

The PRESIDING OFFICER. No.

Mr. REID. I suggest to my friend from Pennsylvania it appears as if there will be no one speaking in opposition of the argument. It has been argued several times before. We should move on. We have people who are calling both cloakrooms because of the prearranged vote 20 minutes ago. They have schedules—some downtown, some up here—and I wonder if the Senator could move forward on his final remarks.

Mr. SPECTER. Mr. President, I offer one additional argument; that is, if the amendment of the Senator from Iowa, Mr. GRASSLEY, had been adopted in a timely way, US Airways would have been able to meet its pension obligations. We intend to revisit this on the pension bill which will be coming up at a later time. I have no illusions about the likelihood of success today.

However, US Airways pilots have been unfairly treated. When the plan was changed, they got about 25 percent on the dollar. When US Airways would have an obligation to fund the plan, but for a 30-year period, it would save money for the Pension Benefit Guaranty Corporation and they would not have to make payments. So it would be a win-win situation at all times.

That concludes my argument. I am ready for the vote.

The PRESIDING OFFICER. The question is on agreeing to the amendment. The Senator has requested a division vote. All those Senators in favor of the amendment will rise and stand until counted.

All those opposed will rise and stand until counted.

On a division, the amendment was rejected.

Mr. REID. I move to reconsider the vote.

Mr. DORGAN. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

AMENDMENT NO. 2236

Mr. REID. Mr. President, any time we have is yielded back.

The PRESIDING OFFICER. All time is yielded back. The question is on agreeing to the amendment.

Mr. REID. Mr. President, if the Presiding Officer would yield, we have a unanimous consent request.

UNANIMOUS CONSENT AGREEMENT—EXECUTIVE CALENDAR

The PRESIDING OFFICER. The Senator from Iowa.

Mr. GRASSLEY. Mr. President, as in executive session, I ask unanimous consent that following the vote on passage of the pension rate bill today, the Senate proceed to executive session to consider the following nomination on today's Executive Calendar: calendar No. 425, the nomination of Gary L. Sharpe to be a U.S. District Judge for the Northern District of New York.

I further ask unanimous consent that the Senate proceed to a vote on the confirmation of the nomination; further, that following the vote, the President be immediately notified of the Senate's action, and the Senate then return to legislative session. I further ask consent that there be 4 minutes equally divided between the chairman and ranking member before the vote.

The PRESIDING OFFICER. Is there objection?

Without objection, it is so ordered.

AMENDMENT NO. 2236

The PRESIDING OFFICER. The question is now on agreeing to the amendment of the Senator from Arizona.

The amendment (No. 2236) was rejected.

Mr. DURBIN. Mr. President, I rise in support of the Grassley-Baucus-Gregg-Kennedy amendment. I commend the Finance and HELP Committees for working together in a bipartisan effort to secure the pensions of almost 45 million workers.

This legislation is vital to preserving defined benefit pension plans, which provide retirees with a monthly benefit that is secured by the Pension Benefit Guaranty Corporation. Nearly 35 million workers and retirees are covered by single employer plans, and an additional 9.7 million are covered by multiemployer plans. In all, one in five workers participates in a defined benefit plan.

Unfortunately, these defined benefit pension plans are facing several challenges due to the following ''perfect storm'' of economic conditions: the downturn in the stock market was the longest since the Great Depression; the 30-year Treasury bond interest rates have been at historically low levels; and the weak economy has made it even more difficult for companies to make payments and pay the excise taxes as currently required by law.

As a result of these circumstances, many pension plans are under-funded, and this legislation would help companies weather this storm. There are three main components of this legislation. The first is a 2-year replacement of the 30-year Treasury bond rate used to calculate employers' contributions to pension plans with a corporate bond rate. The second is partial, temporary relief from deficit reduction contributions. The third is relief for multiemployer plans, which often aid low-wage workers, as well as workers in short-term or seasonal employment.

I support all three of these provisions and would like to speak in particular about the need for deficit reduction contribution relief. This relief would aid companies that had well-funded pension plans as recently as 2000, but, due to the current economic storm, need assistance now. The assistance we are providing is temporary—only for 2 years—and partial. It would allow troubled industries, such as airlines and steel, to regain their financial footing by providing relief of up to 80 percent in 2004 and up to 60 percent in 2005.

I understand that there are concerns regarding liability to the PBGC. If a company we are providing relief to now is forced to terminate its pension later, PBGC would takeover the pension, and the liability would be increased by the amount of DRC relief that the company had received. However, this does not take into consideration that if we do not provide companies with DRC relief now, they may be unable to pay their DRC surcharges and therefore will be more likely to have their pensions involuntarily terminated in the first place.

Furthermore, the DRC provision in the Pension Funding Equity Act would ensure that no plan will lose ground. Companies that receive DRC relief would be required to contribute at least the amount necessary to fund the expected increase in current liability that results from benefits that have accrued during the year.

Finally, I know that several Cabinet Secretaries have expressed their opposition to DRC relief. However, the White House, in its Statement of Administration Policy, also has acknowledged that ''The DRC is part of a flawed system of funding rules that should be reviewed and reformed.'' Although the White House would prefer to address DRC changes in the context of broader pension reform, we must provide aid to these companies and their workers now. For example, United Airlines, based in my home State of Illinois, would benefit from the DRC relief in this legislation, and as a result, the pensions of the almost 130,000 participants in United's pension plans, including over 22,000 participants in Illinois, would be more secure.

Overall, the Grassley-Baucus-Gregg-Kennedy amendment will provide necessary relief for the 45 million workers

who participate in our single and multi-employer pension plans. I urge my colleagues to join me in preserving the future of these defined benefit pension plans and supporting this important legislation.

AMENDMENT NO. 2233

The PRESIDING OFFICER. The question is on agreeing to the amendment of the Senator from Iowa.

The amendment (No. 2233), as amended, was agreed to.

MULTIEMPLOYER RELIEF

Mr. BAUCUS. This amendment provides short-term relief for multiemployer pension plans that are struggling to cope with unprecedented losses on their equity investments in the first few years of this decade. The temporary funding relief would help plans deal with the investment losses they suffered through 2002, by letting them postpone amortization of the portion of those losses that would otherwise be recognized for funding purposes in any two of the plan years beginning after June 30, 2002 and before July 1, 2006.

Mr. GREGG. That is correct. The proposed relief would permit a short-term postponement of the losses that count toward the required funding in any two of the plan years beginning after June 30, 2002 and before July 1, 2006. The relief may be taken for no more than 2 years.

Mr. KENNEDY. Yes. For funding purposes, most multiemployer plans recognize investment losses gradually over a period of years. So, part of a plan's investment losses incurred in 2000, for example, would first be recognized under the funding rules in the 2001 plan year. The portion of those losses that show up in the funding requirements during the relief period would be eligible for the relief.

Mr. GRASSLEY. As this discussion demonstrates, the focus of the relief is on the portion of the loss that would be recognized for any of the plan years for which the relief is available. That is what the language means when it refers to losses ''for the plan year.''

AMENDMENT NO. 2233

Mr. BAUCUS. This amendment specifically addresses the problems faced by the steel and airline industry. However, I also have concerns about other types of companies. Some of these companies should be allowed to access the DRC relief that is in this bill. I believe my colleagues share my concerns, and that is why we have included an application process in this amendment.

Mr. GREGG. That is correct. We have included the application process in this amendment so that other types of companies will also be allowed to access the DRC relief in this bill. This application process should allow other employers to receive relief, just like the steel and airline companies.

Mr. KENNEDY. This application process is a fundamental piece of the amendment. It would not be fair to exclude all other employers from the DRC relief. There are many companies in other industries that really need this relief, and we have provided access though the application process.

Mr. GRASSLEY. We have all agreed on the importance of this piece of the amendment, and we all understand that it is not intended to be window dressing. We expect that Treasury will adhere to the legislative intent in crafting this proposal, and implement the application process in a way that allows other employers to receive real relief, much like the steel and industry industries will receive.

Ms. SNOWE. I share my colleagues' concern, particularly with respect to how this application process would apply to small businesses. It is very important that other companies have access to this relief. The application process must provide a means of bringing relief to small companies.

Mr. JEFFORDS. Mr. President, today, I am pleased to see that the Senate is taking action on the Pension Equity Act of 2003.

As many of my colleagues are aware, the pension discount rate relief initiative, enacted in 2001, expired last month. Passage of H.R. 3108 will provide a resolution to this very serious issue. This bill replaces the outdated 30-year Treasury bill rate with a rate based on a composite of investment grade long-term corporate bonds. Failure to act on this bill will cause the statutory rate that pension plans must use to calculate their assets and liabilities to return to the old 30-year rate. Companies with pension plans will shortly have to begin making large contributions to their plans in the year to come.

An amendment to H.R. 3108 will provide relief from the deficit reduction contribution, DRC, requirements that certain plans are now facing. Under the current pension funding rules, companies that offer defined benefit pension plans are required to make additional contributions to those plans when they are less than 90 percent funded. A pension plan's funding level is determined by comparing the plan's current assets to its promised benefits and then calculated as to whether the two will match up by the time the promised benefits are due.

The recent drop in the stock market, low interest rates, and generous pension benefits agreed to in better times have caused many defined benefit pension plans to fall well beneath the 90 percent threshold. As a result, many companies are being required to make substantial contributions at the time they can least afford them. The Finance Committee reported bill, which I support, included fair DRC relief.

While I support these provisions related to pensions, I am disappointed that this body has not worked to enact further reforms. Two months ago, I, along with Senators SNOWE and HATCH, introduced S. 1912, the Retirement Account Portability Act of 2003. In brief, this bill will make a number of improvements in the retirement savings system to help families preserve retirement assets. It will, for example, enhance the portability of retirement savings by expanding rollover options in traditional IRAs, Roth IRAs, and SIMPLE Plans. The bill also clarifies that when employees are permitted to make after-tax contributions to retirement plans, those after-tax amounts may be rolled over into other retirement plans eligible to receive such rollovers. This clarification will make it easier for workers to move all elements of their 401(k) or 403(b) savings when they change jobs and move between the private sector and the tax-exempt sector.

In addition, the bill builds on defined contribution plan reforms enacted in 2001 by requiring a shortened vesting schedule for employer nonelective contributions, such as profit-sharing contributions, to defined contribution plans. As a result, employer contributions will become employee property more quickly, helping workers to build more meaningful retirement benefits. This new vesting schedule corresponds to rules for 401(k) matching contributions enacted in 2001.

The bill also helps preserve retirement savings by allowing plans to designate default IRAs or annuity contracts to which employee rollovers may be directed. Employers should be more willing to establish default IRA and annuity rollover options as a result, making it easier for employees to keep savings in the retirement system when they change jobs.

For workers who leave a job without claiming their retirement benefits, the bill improves on the automatic rollover provisions enacted in 2001, by allowing certain small distributions from retirement plans to be sent to the Pension Benefit Guaranty Corporation, PBGC, ensuring that participants are ultimately reunited with their earned benefits. The bill also expands the scope of the PBGC's successful Missing Participants Program that matches workers with lost pension benefits.

The Retirement Account Portability Act of 2003 will benefit employees of State and local governments, including teachers, through a number of this bill's technical corrections that will facilitate the purchase of service credits in public pension programs, allowing State and local employees to more easily attain a full pension in the jurisdiction where they conclude their career. The bill also contains provisions that will clarify eligibility rights of certain State and local employees who participate in a section 457 deferred compensation plan.

As this body moves to pass H.R. 3108 today, I thank Senators GRASSLEY and BAUCUS for their hard work on this legislation. I also thank Senators GREGG and KENNEDY for their contributions to this initiative. I look forward to working with my distinguished chairmen and ranking members of the HELP and Finance Committees in moving S. 1912 and other measures that will

proactively improve the mechanisms we use for pension and retirement plans.

Mrs. BOXER. Mr. President, we need to ensure that the retirement benefits Americans have been promised are secure. The bipartisan Pension Funding Equity Act of 2003 is a first step toward improving retirement security for Americans, and I support it.

As you know, the legislation will help stabilize the traditional pension plans known as defined benefit plans that cover almost 45 million Americans. These plans are in trouble because historically low interest rates and the last few years of decline in the stock market have combined to leave them underfunded.

To help stabilize these plans, the Pension Funding Equity Act provides temporary contribution relief for both single-employer plans and multi-employer plans. Of the 45 million working Americans participating in defined benefit pension plans, 35 million of them are covered by single-employer plans and 9.7 million are covered by multi-employer plans. Defined benefit plans promise workers a monthly retirement benefit that these 45 million workers are counting on. It would be tragic if these funds went bankrupt—or if employers gave them up.

Of the millions of workers participating in defined benefit pension plans, 40 percent are in construction, 30 percent are in retail and service industries, and 10 percent are in trucking services. These workers are the backbone of our labor force, and the first step toward ensuring their retirement security depends on passage of this legislation.

I urge my colleagues to support the Pension Funding Equity Act of 2003.

The PRESIDING OFFICER. The question is on the engrossment of the amendment and third reading of the bill.

The amendment was ordered to be engrossed, and the bill to be read a third time.

The bill was read a third time.

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

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The bill having been read the third time, the question is, Shall the bill, as amended, pass?

The clerk will call the roll.

The assistant legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY) would vote ''yea.''

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

The result was announced—yeas 86, nays 9, as follows:

[Rollcall Vote No. 5 Leg.]

YEAS—86

Akaka	DeWine	Lott
Alexander	Dodd	Lugar
Allard	Dole	McConnell
Allen	Domenici	Mikulski
Bayh	Dorgan	Miller
Bennett	Durbin	Murkowski
Biden	Enzi	Murray
Bingaman	Feingold	Nelson (FL)
Bond	Feinstein	Nelson (NE)
Boxer	Frist	Pryor
Breaux	Graham (FL)	Reed
Brownback	Graham (SC)	Reid
Bunning	Grassley	Roberts
Burns	Gregg	Rockefeller
Byrd	Hagel	Santorum
Campbell	Harkin	Sarbanes
Cantwell	Hatch	Schumer
Carper	Hollings	Shelby
Clinton	Hutchison	Smith
Cochran	Inouye	Snowe
Coleman	Jeffords	Specter
Collins	Johnson	Stabenow
Conrad	Kennedy	Stevens
Cornyn	Kohl	Sununu
Corzine	Landrieu	Talent
Craig	Lautenberg	Voinovich
Crapo	Leahy	Warner
Daschle	Levin	Wyden
Dayton	Lincoln	

NAYS—9

Chafee	Inhofe	Nickles
Ensign	Kyl	Sessions
Fitzgerald	McCain	Thomas

NOT VOTING—5

Baucus	Edwards	Lieberman
Chambliss	Kerry	

The bill (H.R. 3108), as amended, was passed, as follows:

H.R. 3108

Resolved, That the bill from the House of Representatives (H.R. 3108) entitled ''An Act to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, and for other purposes.'', do pass with the following amendment:

Page 2, line 3, strike out all after ''**SECTION**'' and insert:

1. SHORT TITLE.

This Act may be cited as the ''Pension Stability Act''.

SEC. 2. TEMPORARY REPLACEMENT OF INTEREST RATE ON 30-YEAR TREASURY SECURITIES WITH INTEREST RATE ON CONSERVATIVELY INVESTED LONG-TERM CORPORATE BONDS.

(a) INTERNAL REVENUE CODE OF 1986.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

(A) IN GENERAL.—Section 412(b)(5)(B)(ii) of the Internal Revenue Code of 1986 is amended—

(i) in subclause (I), by inserting ''or (III)'' after ''subclause (II)'';

(ii) by redesignating subclause (II) as subclause (III);

(iii) by inserting after subclause (I) the following new subclause:

''(II) SPECIAL RULE FOR 2004 AND 2005.—In the case of plan years beginning in 2004 or 2005, the term 'permissible range' means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the conservative long-term corporate bond rates during the 4-year period ending on the last day before the beginning of the plan year. The Secretary shall, by regulation, prescribe a method for periodically determining conservative long-term bond rates for purposes of this paragraph. Such rates shall reflect the rates of interest on amounts invested conservatively in long-term corporate bonds and shall be based on the use of 2 or more indices that are in the top 2 quality levels available reflecting average maturities of 20 years or more.''; and

(iv) in subclause (III), as so redesignated—

(I) by inserting ''or (II)'' after ''subclause (I)'' the first place it appears; and

(II) by striking ''subclause (I)'' the second place it appears and inserting ''such subclause''.

(2) DETERMINATION OF CURRENT LIABILITY.—Section 412(l)(7)(C)(i) of such Code is amended by adding at the end the following new subclause:

''(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).''.

(3) CONFORMING AMENDMENT.—Section 412(m)(7) of such Code is amended to read as follows:

''(7) SPECIAL RULE FOR 2002.—In any case in which the interest rate used to determine current liability is determined under subsection (l)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability of the plan for the preceding plan year shall be redetermined using 120 percent as the specified percentage determined under subsection (l)(7)(C)(i)(II).''.

(4) LIMITATION ON CERTAIN ASSUMPTIONS.—Section 415(b)(2)(E)(ii) of such Code is amended by inserting '', except that in the case of plan years beginning in 2004 or 2005, '5.5 percent' shall be substituted for '5 percent' in clause (i)'' before the period at the end.

(5) ELECTION TO DISREGARD MODIFICATION FOR DEDUCTION PURPOSES.—Section 404(a)(1) of such Code is amended by adding at the end the following new subparagraph:

''(F) ELECTION TO DISREGARD MODIFIED INTEREST RATE.—An employer may elect to disregard subsections (b)(5)(B)(ii)(II) and (l)(7)(C)(i) of section 412 solely for purposes of determining the interest rate used in calculating the maximum amount of the deduction allowable under this section for contributions to a plan to which such subsections apply.''

(b) EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) DETERMINATION OF PERMISSIBLE RANGE.—

(A) IN GENERAL.—Section 302(b)(5)(B)(ii) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(b)(5)(B)(ii)) is amended—

(i) in subclause (I), by inserting ''or (III)'' after ''subclause (II)'';

(ii) by redesignating subclause (II) as subclause (III);

(iii) by inserting after subclause (I) the following new subclause:

''(II) SPECIAL RULE FOR YEARS 2004 AND 2005.—In the case of plan years beginning in 2004 or 2005, the term 'permissible range' means a rate of interest which is not above, and not more than 10 percent below, the weighted average of the conservative long-term corporate bond rates (as determined under section 412(b)(5)(B)(ii)(II) of the Internal Revenue Code of 1986) during the 4-year period ending on the last day before the beginning of the plan year.''; and

(iv) in subclause (III), as so redesignated—

(I) by inserting ''or (II)'' after ''subclause (I)'' the first place it appears; and

(II) by striking ''subclause (I)'' the second place it appears and inserting ''such subclause''.

(2) DETERMINATION OF CURRENT LIABILITY.—Section 302(d)(7)(C)(i) of such Act (29 U.S.C. 1082(d)(7)(C)(i)) is amended by adding at the end the following new subclause:

''(IV) SPECIAL RULE FOR 2004 AND 2005.—For plan years beginning in 2004 or 2005, notwithstanding subclause (I), the rate of interest used

to determine current liability under this subsection shall be the rate of interest under subsection (b)(5).''.

(3) CONFORMING AMENDMENT.—Section 302(e)(7) of such Act (29 U.S.C. 1082(e)(7)) is amended to read as follows:

''(7) SPECIAL RULE FOR 2002.—In any case in which the interest rate used to determine current liability is determined under subsection (d)(7)(C)(i)(III), for purposes of applying paragraphs (1) and (4)(B)(ii) for plan years beginning in 2002, the current liability of the plan for the preceding plan year shall be redetermined using 120 as the specified percentage determined under subsection (d)(7)(C)(i)(II).''.

(4) PBGC.—Section 4006(a)(3)(E)(iii) of such Act (29 U.S.C. 1306(a)(3)(E)(iii)) is amended by adding at the end the following new subclause:

''(V) In the case of plan years beginning in 2004 or 2005, the annual yield taken into account under subclause (II) shall be the annual yield computed by using the conservative long-term corporate bond rate (as determined under section 412(b)(5)(B)(ii)(II) of the Internal Revenue Code of 1986) for the month preceding the month in which the plan year begins.''

(c) EFFECTIVE DATES.—

(1) IN GENERAL.—Except as provided in paragraph (2), the amendments made by this section shall apply to plan years beginning after December 31, 2003.

(2) LOOKBACK RULES.—For purposes of applying subsections (l)(9)(B)(ii) and (m)(1) of section 412 of the Internal Revenue Code of 1986, and subsections (d)(9)(B)(ii) and (e)(1) of section 302 of the Employee Retirement Income Security Act of 1974 to plan years beginning after December 31, 2003, the amendments made by this section may be applied as if such amendments had been in effect for all years beginning before such date.

(3) TRANSITION RULE FOR SECTION 415 LIMITATION.—In the case of any participant or beneficiary receiving a distribution after December 31, 2003 and before January 1, 2005, the amount payable under any form of benefit subject to section 417(b)(3) of the Internal Revenue Code of 1986 and subject to adjustment under section 415(b)(2)(B) of such Code shall not, solely by reason of the amendment made by subsection (a)(4), be less than the amount that would have been so payable had the amount payable been determined using the applicable interest rate in effect as of the last day of the last plan year beginning before January 1, 2004.

SEC. 3. ELECTION OF ALTERNATIVE DEFICIT REDUCTION CONTRIBUTION.

(a) AMENDMENT OF 1986 CODE.—Section 412(l) of the Internal Revenue Code of 1986 (relating to applicability of subsection) is amended by adding at the end the following new paragraph:

''(12) ALTERNATIVE INCREASE FOR CERTAIN PLANS MEETING REQUIREMENTS IN 2000.—

''(A) IN GENERAL.—In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

''(i) 20 percent (40 percent in the case of an applicable plan year beginning after December 27, 2004) of the increased amount under paragraph (1) determined without regard to this paragraph, or

''(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

''(B) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable shall be adopted during any applicable plan year, unless—

''(i) the funded current liability percentage (as defined in paragraph (8)(B)) as of the end of such plan year is projected (taking into account the effect of the amendment) to be at least 75 percent,

''(ii) the amendment provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment,

''(iii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph, or

''(iv) the amendment is otherwise described in subparagraph (A) or (C) of subsection (f)(2).

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

''(C) APPLICABLE EMPLOYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable employer' means an employer which is—

''(I) a commercial passenger airline,

''(II) primarily engaged in the production or manufacture of a steel mill product, or the mining or processing of iron ore or beneficiated iron ore products, or

''(III) an organization described in section 501(c)(5) and which established the plan to which this paragraph applies on June 30, 1955.

''(ii) OTHER EMPLOYERS MAY APPLY FOR RELIEF.—

''(I) IN GENERAL.—Except as provided in subclause (II), an employer other than an employer described in clause (i) shall be treated as an applicable employer if the employer files an application (at such time and in such manner as the Secretary may prescribe) to be treated as an applicable employer for purposes of this paragraph.

''(II) EXCEPTION.—Subclause (I) shall not apply to an employer if, within 90 days of the filing of the application, the Secretary determines (taking into account the application of this paragraph) that there is a reasonable likelihood that the employer will be unable to make future required contributions to the plan in a timely manner.

''(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable plan year' means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

''(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED.—An election may not be made under this paragraph with respect to more than 2 plan years.

''(E) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary may prescribe.''

(b) AMENDMENT OF ERISA.—Section 302(d) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1082(d)) is amended by adding at the end the following new paragraph:

''(12) ALTERNATIVE INCREASE FOR CERTAIN PLANS MEETING REQUIREMENTS IN 2000.—

''(A) IN GENERAL.—In the case of a defined benefit plan established and maintained by an applicable employer, if this subsection did not apply to the plan for the plan year beginning in 2000 (determined without regard to paragraph (6)), then, at the election of the employer, the increased amount under paragraph (1) for any applicable plan year shall be the greater of—

''(i) 20 percent (40 percent in the case of an applicable plan year beginning after December 27, 2004) of the increased amount under paragraph (1) determined without regard to this paragraph, or

''(ii) the increased amount which would be determined under paragraph (1) if the deficit reduction contribution under paragraph (2) for the applicable plan year were determined without regard to subparagraphs (A), (B), and (D) of paragraph (2).

''(B) RESTRICTIONS ON BENEFIT INCREASES.—No amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall be adopted during any applicable plan year, unless—

''(i) the funded current liability percentage (as defined in paragraph (8)(B)) as of the end of such plan year is projected (taking into account the effect of the amendment) to be at least 75 percent,

''(ii) the amendment provides for an increase in benefits under a formula which is not based on a participant's compensation, but only if the rate of such increase is not in excess of the contemporaneous rate of increase in average wages of participants covered by the amendment,

''(iii) the amendment is required by a collective bargaining agreement which is in effect on the date of enactment of this subparagraph, or

''(iv) the amendment is otherwise described in subparagraph (A) or (C) of section 304(b)(2).

If a plan is amended during any applicable plan year in violation of the preceding sentence, any election under this paragraph shall not apply to any applicable plan year ending on or after the date on which such amendment is adopted.

''(C) APPLICABLE EMPLOYER.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable employer' means an employer which is—

''(I) a commercial passenger airline,

''(II) primarily engaged in the production or manufacture of a steel mill product, or the mining or processing of iron ore or beneficiated iron ore products, or

''(III) an organization described in section 501(c)(5) of the Internal Revenue Code of 1986 and which established the plan to which this paragraph applies on June 30, 1955.

''(ii) OTHER EMPLOYERS MAY APPLY FOR RELIEF.—

''(I) IN GENERAL.—Except as provided in subclause (II), an employer other than an employer described in clause (i) shall be treated as an applicable employer if the employer files an application (at such time and in such manner as the Secretary of the Treasury may prescribe) to be treated as an applicable employer for purposes of this paragraph.

''(II) EXCEPTION.—Subclause (I) shall not apply to an employer if, within 90 days of the filing of the application, the Secretary of the Treasury determines (taking into account the application of this paragraph) that there is a reasonable likelihood that the employer will be unable to make future required contributions to the plan in a timely manner.

''(D) APPLICABLE PLAN YEAR.—For purposes of this paragraph—

''(i) IN GENERAL.—The term 'applicable plan year' means any plan year beginning after December 27, 2003, and before December 28, 2005, for which the employer elects the application of this paragraph.

''(ii) LIMITATION ON NUMBER OF YEARS WHICH MAY BE ELECTED.—An election may not be made under this paragraph with respect to more than 2 plan years.

''(E) NOTICE REQUIREMENTS FOR PLANS ELECTING ALTERNATIVE DEFICIT REDUCTION CONTRIBUTIONS.—

''(i) IN GENERAL.—If an employer elects an alternative deficit reduction contribution under this paragraph and section 412(l)(12) of the Internal Revenue Code of 1986 for any year, the employer shall provide, within 30 days (120 days in the case of an employer described in subparagraph (C)(ii)) of filing the election for such year, written notice of the election to participants and beneficiaries and to the Pension Benefit Guaranty Corporation.

''(ii) NOTICE TO PARTICIPANTS AND BENEFICIARIES.—The notice under clause (i) to participants and beneficiaries shall include with respect to any election—

''(I) the due date of the alternative deficit reduction contribution and the amount by which such contribution was reduced from the amount which would have been owed if the election were not made, and

''(II) a description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation and an explanation of the limitations on the guarantee and the circumstances under which such limitations apply, including the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

''(iii) NOTICE TO PBGC.—The notice under clause (i) to the Pension Benefit Guaranty Corporation shall include—

''(I) the information described in clause (ii)(I),

''(II) the number of years it will take to restore the plan to full funding if the employer only makes the required contributions, and

''(III) information as to how the amount by which the plan is underfunded compares with the capitalization of the employer making the election.

''(F) ELECTION.—An election under this paragraph shall be made at such time and in such manner as the Secretary of the Treasury may prescribe.''

(c) EFFECT OF ELECTION.—An election under section 412(l)(12) of the Internal Revenue Code of 1986 or section 302(d)(12) of the Employee Retirement Income Security Act of 1974 (as added by this section) with respect to a plan shall not invalidate any obligation (pursuant to a collective bargaining agreement in effect on the date of the election) to provide benefits, to change the accrual of benefits, or to change the rate at which benefits become nonforfeitable under the plan .

(d) PENALTY FOR FAILING TO PROVIDE NOTICE.—Section 502(c)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(3)) is amended by inserting ''or who fails to meet the requirements of section 302(d)(12)(E) with respect to any participant or beneficiary'' after ''101(e)(2)''.

SEC. 4. MULTIEMPLOYER PLAN FUNDING NOTICES.

(a) IN GENERAL.—Section 104 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 104) is amended by redesignating subsection (d) as subsection (e) and by inserting after subsection (c) the following new subsection:

''(d) MULTIEMPLOYER DEFINED BENEFIT PLAN FUNDING NOTICES.—

''(1) IN GENERAL.—The administrator of a defined benefit plan which is a multiemployer plan shall for each plan year provide a plan funding notice to each plan participant and beneficiary, to each labor organization representing such participants or beneficiaries, and to each employer that has an obligation to contribute under the plan.

''(2) INFORMATION CONTAINED IN NOTICES.—

''(A) IDENTIFYING INFORMATION.—Each notice required under paragraph (1) shall contain identifying information, including the name of the plan, the address and phone number of the plan administrator and the plan's principal administrative officer, each plan sponsor's employer identification number, and the plan number of the plan.

''(B) SPECIFIC INFORMATION.—A plan funding notice under paragraph (1) shall include—

''(i) a statement as to whether the plan's funded current liability percentage (as defined in section 302(d)(8)(B)) for the plan year to which the notice relates is at least 100 percent (and, if not, the actual percentage);

''(ii) a statement of the value of the plan's assets, the amount of benefit payments, and the ratio of the assets to the payments for the plan year to which the report relates;

''(iii) a summary of the rules governing insolvent multiemployer plans, including the limitations on benefit payments and any potential benefit reductions and suspensions (and the potential effects of such limitations, reductions, and suspensions on the plan); and

''(iv) a general description of the benefits under the plan which are eligible to be guaranteed by the Pension Benefit Guaranty Corporation, along with an explanation of the limitations on the guarantee and the circumstances under which such limitations apply.

''(C) OTHER INFORMATION.—Each notice under paragraph (1) shall include any additional information which the plan administrator elects to include to the extent not inconsistent with regulations prescribed by the Secretary.

''(3) TIME FOR PROVIDING NOTICE.—Any notice under paragraph (1) shall be provided no later than two months after the deadline (including extensions) for filing the annual report for the plan year to which the notice relates.

''(4) FORM AND MANNER.—Any notice under paragraph (1)—

''(A) shall be provided in a form and manner prescribed in regulations of the Secretary,

''(B) shall be written in a manner so as to be understood by the average plan participant, and

''(C) may be provided in written, electronic, or other appropriate form to the extent such form is reasonably accessible to persons to whom the notice is required to be provided.''

(b) PENALTIES.—Section 502(c)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1132(c)(1)) is amended by striking ''or section 101(e)(1)'' and inserting '', section 101(e)(1), or section 104(d)''.

(c) REGULATIONS AND MODEL NOTICE.—The Secretary of Labor shall, not later than 1 year after the date of the enactment of this Act, issue regulations (including a model notice) necessary to implement the amendments made by this section.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2004.

SEC. 5. AMORTIZATION HIATUS FOR NET EXPERIENCE LOSSES IN MULTIEMPLOYER PLANS.

(a) AMENDMENTS TO THE EMPLOYEE RETIREMENT INCOME SECURITY ACT OF 1974.—

(1) IN GENERAL.—Section 302(b)(7) of the Employee Retirement Income Security Act of 1974 (29 U.S.C.1082(b)(7)) is amended by adding at the end the following new subparagraph:

''(F)(i) If a multiemployer plan has a net experience loss for any plan year beginning after June 30, 2002, and before July 1, 2006—

''(I) the plan may elect to have the 15-year amortization period under paragraph (2)(B)(iv) with respect to the loss begin in any plan year selected by the plan from among the 3 immediately succeeding plan years, and

''(II) if the plan makes an election under subclause (I) for any plan year, the net experience loss for the year shall, for purposes of determining any charge to the funding standard account, or interest, with respect to the loss, be treated in the same manner as if it were a net experience loss occurring in the year selected by the plan under subclause (I) (without regard to any net experience loss or gain otherwise determined for such year).

Notwithstanding the preceding sentence, a plan may elect to have this subparagraph apply to net experience losses for only 2 plan years beginning after June 30, 2002, and before July 1, 2006.

''(ii) An amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall not take effect for any plan year in the hiatus period, unless—

''(I) the funded current liability percentage (as defined in subsection (d)(8)(B)) as of the end of the plan year is projected (taking into account the effect of the amendment) to be at least 75 percent,

''(II) the plan's actuary certifies that, due to an increase in contribution rates, the normal cost attributable to the benefit increase or other change is expected to be fully funded in the year following the year the increase or other change takes effect, and any increase in the plan's accrued liabilities attributable to the benefit increase or other change is expected to be fully funded by the end of the third plan year following the end of the last hiatus period of the plan, or

''(III) the plan amendment is otherwise described in subparagraph (A) or (C) of section 304(b)(2).

''(iii) Clause (ii) shall not apply to an increase in benefits for a group of participants resulting solely from a collectively bargained increase in the contributions made on their behalf.

''(iv) For purposes of this subparagraph, the term 'hiatus period' means any period during which the amortization of a net experience loss is suspended by reason of this subparagraph.

''(v) Interest accrued on any net experience loss during a hiatus period shall be charged to a reconciliation account and not to the funding standard account.

''(vi) If a plan elects an amortization hiatus under this subparagraph and section 412(b)(7)(F) of the Internal Revenue Code of 1986 for any plan year, the plan administrator shall provide, within 30 days of filing the election for such year, written notice of the election to participants and beneficiaries, to each labor organization representing such participants or beneficiaries, and to each employer that has an obligation to contribute under the plan. Such notice shall include with respect to any election the amount of the net experience loss to be deferred and the period of the deferral. Such notice shall also include the maximum guaranteed monthly benefits which the Pension Benefit Guaranty Corporation would pay if the plan terminated while underfunded.

''(vii) An election under this subparagraph shall be made at such time and in such manner as the Secretary, after consultation with the Secretary of the Treasury, may prescribe.''

(2) PENALTY.—Section 502(c)(4) of such Act (29 U.S.C. 1132(c)(4)) is amended to read as follows:

''(4) The Secretary may assess a civil penalty of not more than $1,000 a day for each violation by any person of section 302(b)(7)(F)(vi).''

(b) AMENDMENTS TO THE INTERNAL REVENUE CODE OF 1986.—

(1) IN GENERAL.—Section 412(b)(7) of the Internal Revenue Code of 1986 (relating to special rules for multiemployer plans) is amended by adding at the end the following new subparagraph:

''(F) AMORTIZATION HIATUS.—

''(i) IN GENERAL.—If a multiemployer plan has a net experience loss for any plan year beginning after June 30, 2002, and before July 1, 2006—

''(I) the plan may elect to have the 15-year amortization period under paragraph (2)(B)(iv) with respect to the loss begin in any plan year selected by the plan from among the 3 immediately succeeding plan years, and

''(II) if the plan makes an election under subclause (I) for any plan year, the net experience loss for the year shall, for purposes of determining any charge to the funding standard account, or interest, with respect to the loss, be treated in the same manner as if it were a net experience loss occurring in the year selected by the plan under subclause (I) (without regard to any net experience loss or gain otherwise determined for such year).

Notwithstanding the preceding sentence, a plan may elect to have this subparagraph apply to net experience losses for only 2 plan years beginning after June 30, 2002, and before July 1, 2006.

''(ii) RESTRICTIONS ON BENEFIT INCREASES.—An amendment which increases the liabilities of the plan by reason of any increase in benefits, any change in the accrual of benefits, or any change in the rate at which benefits become nonforfeitable under the plan shall not take effect for any plan year in the hiatus period, unless—

''(I) the funded current liability percentage (as defined in subsection (l)(8)(B)) as of the end of the plan year is projected (taking into account the effect of the amendment) to be at least 75 percent,

''(II) the plan's actuary certifies that, due to an increase in contribution rates, the normal cost attributable to the benefit increase or other change is expected to be fully funded in the year following the year in which the increase or other change takes effect, and any increase in the plan's accrued liabilities attributable to the benefit increase or other change is expected to be fully funded by the end of the third plan year following the end of the last hiatus period of the plan, or

''(III) the plan amendment is otherwise described in subparagraph (A) or (C) of subsection (f)(2).

''(iii) COLLECTIVELY BARGAINED INCREASES IN CONTRIBUTIONS.—Clause (ii) shall not apply to an increase in benefits for a group of participants resulting solely from a collectively bargained increase in the contributions made on their behalf.

''(iv) HIATUS PERIOD DEFINED.—For purposes of this subparagraph, the term 'hiatus period' means any period during which the amortization of a net experience loss is suspended by reason of this subparagraph.

''(v) INTEREST ACCRUED DURING HIATUS.—Interest accrued on any net experience loss during a hiatus period shall be charged to a reconciliation account and not to the funding standard account.

''(vi) ELECTION.—An election under this subparagraph shall be made at such time and in such manner as the Secretary of Labor, after consultation with the Secretary, may prescribe.''

(2) QUALIFICATION REQUIREMENT.—Section 401(a) of such Code is amended by inserting after paragraph (34) the following new paragraph:

''(35) BENEFIT INCREASES IN CERTAIN MULTIEMPLOYER PLANS.—A trust which is part of a plan shall not constitute a qualified trust under this section if the plan adopts an amendment during a hiatus period (within the meaning of section 412(b)(7)(F)(iv)) which the plan is prohibited from adopting by reason of section 412(b)(7)(F)(ii).''.

SEC. 6. 2-YEAR EXTENSION OF TRANSITION RULE TO PENSION FUNDING REQUIREMENTS.

(a) IN GENERAL.—Section 769(c) of the Retirement Protection Act of 1994, as added by section 1508 of the Taxpayer Relief Act of 1997, is amended—

(1) by inserting ''except as provided in paragraph (3),'' before ''the transition rules'', and

(2) by adding at the end the following:

''(3) SPECIAL RULES.—In the case of plan years beginning in 2004 and 2005, the following transition rules shall apply in lieu of the transition rules described in paragraph (2):

''(A) For purposes of section 412(l)(9)(A) of the Internal Revenue Code of 1986 and section 302(d)(9)(A) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 90 percent.

''(B) For purposes of section 412(m) of the Internal Revenue Code of 1986 and section 302(e) of the Employee Retirement Income Security Act of 1974, the funded current liability percentage for any plan year shall be treated as not less than 100 percent.

''(C) For purposes of determining unfunded vested benefits under section 4006(a)(3)(E)(iii) of the Employee Retirement Income Security Act of 1974, the mortality table shall be the mortality table used by the plan.''

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to plan years beginning after December 31, 2003.

SEC. 7. PROCEDURES APPLICABLE TO DISPUTES INVOLVING PENSION PLAN WITHDRAWAL LIABILITY.

(a) IN GENERAL.—Section 4221 of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1401) is amended by adding at the end the following new subsection:

''(f) PROCEDURES APPLICABLE TO CERTAIN DISPUTES.—

''(1) IN GENERAL.—If—

''(A) a plan sponsor of a plan determines that—

''(i) a complete or partial withdrawal of an employer has occurred, or

''(ii) an employer is liable for withdrawal liability payments with respect to the complete or partial withdrawal of an employer from the plan,

''(B) such determination is based in whole or in part on a finding by the plan sponsor under section 4212(c) that a principal purpose of a transaction that occurred before January 1, 1999, was to evade or avoid withdrawal liability under this subtitle, and

''(C) such transaction occurred at least 5 years before the date of the complete or partial withdrawal,

then the special rules under paragraph (2) shall be used in applying subsections (a) and (d) of this section and section 4219(c) to the employer.

''(2) SPECIAL RULES.—

''(A) DETERMINATION.—Notwithstanding subsection (a)(3)—

''(i) a determination by the plan sponsor under paragraph (1)(B) shall not be presumed to be correct, and

''(ii) the plan sponsor shall have the burden to establish, by a preponderance of the evidence, the elements of the claim under section 4212(c) that a principal purpose of the transaction was to evade or avoid withdrawal liability under this subtitle.

Nothing in this subparagraph shall affect the burden of establishing any other element of a claim for withdrawal liability under this subtitle.

''(B) PROCEDURE.—Notwithstanding subsection (d) and section 4219(c), if an employer contests the plan sponsor's determination under paragraph (1) through an arbitration proceeding pursuant to subsection (a), or through a claim brought in a court of competent jurisdiction, the employer shall not be obligated to make any withdrawal liability payments until a final decision in the arbitration proceeding, or in court, upholds the plan sponsor's determination.''.

(b) EFFECTIVE DATE.—The amendments made by this section shall apply to any employer that receives a notification under section 4219(b)(1) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1399(b)(1)) after October 31, 2003.

SEC. 8. SENSE OF THE SENATE ON STATUS OF PRIVATE PENSION PLANS.

(a) FINDINGS.—Congress makes the following findings:–

(1) The private pension system is integral to the retirement security of Americans, along with individual savings and Social Security.

(2) The Pension Benefit Guaranty Corporation (PBGC) is responsible for insuring the nation's private pension system, and currently insures the pensions of 34,500,000 participants in 29,500 single-employer plans, and 9,700,000 participants in more than 1,600 multiemployer plans.

(3) The PBGC announced on January 15, 2004, that it suffered a net loss in fiscal year 2003 of $7,600,000,000 for single-employer pension plans, bringing the PBGC's deficit to $11,200,000,000. This deficit is the PBGC's worst on record, three times larger than the $3,600,000,000 deficit experienced in fiscal year 2002.

(4) The PBGC also announced that the separate insurance program for multiemployer pension plans sustained a net loss of $419,000,000 in fiscal year 2003, resulting in a fiscal year-end deficit of $261,000,000. The 2003 multiemployer plan deficit is the first deficit in more than 20 years and is the largest deficit on record.

(5) The PBGC estimates that the total underfunding in multiemployer pension plans is roughly $100,000,000,000 and in single-employer plans is approximately $400,000,000,000. This underfunding is due in part to the recent decline in the stock market and low interest rates, but is also due to demographic changes. For example, in 1980, there were four active workers for every one retiree in a multiemployer plan, but in 2002, there was only one active worker for every one retiree.

(6) This pension plan underfunding is concentrated in mature and often-declining industries, where plan liabilities will come due sooner.

(7) Neither the Senate Committee on Finance nor the Senate Committee on Health, Education, Labor and Pensions (HELP), the committees of jurisdiction over pension matters, has held hearings this Congress nor reported legislation addressing the funding of multiemployer pension plans;

(8) The Senate is concerned about the current funding status of the private pension system, both single and multi-employer plans;

(9) The Senate is concerned about the potential liabilities facing the PBGC and, as a result, the potential burdens facing healthy pension plans and taxpayers;

(b) SENSE OF THE SENATE.—It is the sense of the Senate that the Committee on Finance and the Committee on Health, Education, Labor and Pensions should conduct hearings on the status of the multiemployer pension plans, and should work in consultation with the Departments of Labor and Treasury on permanent measures to strengthen the integrity of the private pension system in order to protect the benefits of current and future pension plan beneficiaries.

SEC. 9. EXTENSION OF TRANSFERS OF EXCESS PENSION ASSETS TO RETIREE HEALTH ACCOUNTS.

(a) AMENDMENT OF INTERNAL REVENUE CODE OF 1986.—Paragraph (5) of section 420(b) of the Internal Revenue Code of 1986 (relating to expiration) is amended by striking ''December 31, 2005'' and inserting ''December 31, 2013''.

(b) AMENDMENTS OF ERISA.—

(1) Section 101(e)(3) of the Employee Retirement Income Security Act of 1974 (29 U.S.C. 1021(e)(3)) is amended by striking ''Tax Relief Extension Act of 1999'' and inserting ''Pension Stability Act''.

(2) Section 403(c)(1) of such Act (29 U.S.C. 1103(c)(1)) is amended by striking ''Tax Relief Extension Act of 1999'' and inserting ''Pension Stability Act''.

(3) Paragraph (13) of section 408(b) of such Act (29 U.S.C. 1108(b)(3)) is amended—

(A) by striking ''January 1, 2006'' and inserting ''January 1, 2014'', and

(B) by striking ''Tax Relief Extension Act of 1999'' and inserting ''Pension Stability Act''.

SEC. 10. CLARIFICATION OF EXEMPTION FROM TAX FOR SMALL PROPERTY AND CASUALTY INSURANCE COMPANIES.

(a) IN GENERAL.—Section 501(c)(15)(A) of the Internal Revenue Code of 1986 is amended to read as follows:

''(A) Insurance companies (as defined in section 816(a)) other than life (including interinsurers and reciprocal underwriters) if—

''(i) the gross receipts for the taxable year do not exceed $600,000, and

''(ii) more than 50 percent of such gross receipts consist of premiums.''.

(b) CONTROLLED GROUP RULE.—Section 501(c)(15)(C) of the Internal Revenue Code of 1986 is amended by inserting '', except that in applying section 1563 for purposes of section

831(b)(2)(B)(ii), subparagraphs (B) and (C) of section 1563(b)(2) shall be disregarded'' before the period at the end.

(c) CONFORMING AMENDMENT.—Clause (i) of section 831(b)(2)(A) of the Internal Revenue Code of 1986 is amended by striking ''exceed $350,000 but''.

(d) EFFECTIVE DATE.—The amendments made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 11. DEFINITION OF INSURANCE COMPANY FOR SECTION 831.

(a) IN GENERAL.—Section 831 of the Internal Revenue Code of 1986 is amended by redesignating subsection (c) as subsection (d) and by inserting after subsection (b) the following new subsection:

''(c) INSURANCE COMPANY DEFINED.—For purposes of this section, the term 'insurance company' has the meaning given to such term by section 816(a)).''.

(b) EFFECTIVE DATE.—The amendment made by this section shall apply to taxable years beginning after December 31, 2003.

SEC. 12. FUNDS FOR REBUILDING FISH STOCKS.

Section 105 of the Miscellaneous Appropriations and Offsets Act, 2004 (division H of the Consolidated appropriations Act, 2004) is repealed.

Mr. LEVIN. I move to reconsider the vote.

Mr. NELSON of Florida. I move to lay that motion on the table.

The motion to lay on the table was agreed to.

The PRESIDING OFFICER. The majority leader.

Mr. FRIST. Madam President, before we proceed to the next vote, I do want to make a couple quick comments regarding the schedule.

First, I am very pleased with the bipartisan vote on the passage of the pension bill. I congratulate the managers.

At this point, the regular order would be for the Senate to request a conference with the House to reconcile the differences in the Senate bill and the House bill. I understand from the Democratic leadership that they have an objection to appointing conferees at this time. I hope we can work this out. This is an important piece of legislation that we need to address and clearly need to conference this matter with the House.

Having said that, I will continue to talk with the Democratic leader in an effort to proceed with the regular order on appointing conferees.

For the schedule, the next vote, which will occur shortly, will be the last vote of the week. On Monday, we will proceed to consideration of the highway bill. We will have a vote on Monday, and I expect that vote to be in relation to a judicial nomination. We will be announcing later in the day the timing of that vote.

Mr. KENNEDY. Mr. President, as we conclude our debate on this bill, I thank all of my colleagues for the fruitful debate we have had on these issues, which are vitally important to America's workers and their families.

I thank Senator FRIST and Senator DASCHLE for their leadership in ensuring that this bill was passed quickly. I also thank my colleagues, Senator GRASSLEY, Senator BAUCUS, and Senator GREGG for working with me to develop this moderate, bipartisan measure to protect our Nation's pension plans. And I thank the following staff members for all of the work they have done on this bill: Rohit Kumar, counsel and policy adviser to Majority Leader FRIST; Chuck Marr, economic policy adviser to Minority Leader DASCHLE; David Thompson, labor and pensions policy director for Senator GREGG; Diann Howland, pension policy adviser to Senator GRASSLEY; and Judy Miller, professional staff member for Senator BAUCUS. I particularly thank my own staff—Holly Fechner, chief labor counsel; Portia Wu, labor and pensions counsel; and Kathleen Wildman, labor policy office staff assistant—for all of their hard work on this issue.

Defined benefit pension plans provide certainty and security for workers and retirees. I believe that we can—and we must—do more to protect the security of America's workers and retirees. Americans who have worked hard and played by the rules deserve to enjoy their old age, to retire without having to worry whether they have enough money to pay for their prescription drugs, to pay for electricity, or even to pay for food.

There are many challenges facing our pension system. Our Nation's pension participation rate is the lowest it has been in over a decade. Part-time and low-wage workers continue to lag behind other workers in pension coverage.

We must improve our pension system so that all workers can have a pension. We must increase pension portability for workers—who may have many jobs over a lifetime—without sacrificing security. We must ensure that companies adequately fund their pension plans. We must encourage companies to put more money into their pension plans when times are good, instead of only penalizing them when times are bad.

By passing this bipartisan legislation, we are taking a much-needed first step to stabilize our pension plans.

This legislation has three critical components to help defined benefit pension plans. First, it temporarily replaces the 30-year Treasury bond rate used to calculate employers' required contributions to pension plans with a corporate bond rate. This will stabilize our Nation's defined benefit pension plans and enable them to continue to provide the benefits they have promised.

Second, it provides for additional deficit reduction contribution relief to companies that had well-funded pension plans in the past and need extra assistance now. This relief will help protect the pensions and jobs of workers in these industries.

Finally, the bill includes important relief for multiemployer plans, which fill major needs in our pension system. Multiemployer plans provide pensions to many low-wage workers, as well as short-term and seasonal workers who might not otherwise be able to earn a pension.

I thank all of my colleagues for the support they have given to this bill. This is an important first step, but it is only a first step. I hope my colleagues will join with me in the future to improve and expand our defined benefit system, so that we can ensure that all Americans receive the secure retirement they deserve.

Mr. ROCKEFELLER. Mr. President, I am very pleased that the Senate has just passed the Pension Stability Act by an overwhelming margin. I spoke yesterday on behalf of the legislation, because I understand how important these changes are to the employers who offer defined benefit pension plans and to the employees who are counting on those pension benefits. I would like to just add a few words today to encourage the House of Representatives to quickly approve the bill, as amended by the Senate, and get this legislation to President Bush at the earliest possible date.

The pension reforms provided in this bill are urgently needed. Many large companies have contacted me to stress how important it is that Congress act to update the interest rate used in calculating pension liabilities. Continuing to require employers to use the outdated 30-year Treasury rate would jeopardize pension plans for millions of workers. I have also met with several executives from our Nation's airlines. The temporary relief from deficit reduction contributions provided by this bill is critically important to our struggling airline industry.

As a result of both September 11 and the slow economy during the last few years, our Nation's airlines have dealt with extremely difficult business conditions. The industry has already laid off more than 200,000 people, and many airlines are struggling either to emerge from bankruptcy or to avoid having to file for bankruptcy. By providing airlines some breathing room when it comes to pension payments, we can protect workers' benefits that might otherwise be cancelled and protect workers' jobs that might otherwise be cut. Ultimately, this bill is an effort to do what we can to take care of workers who have already seen involuntary furloughs, seen their wages reduced, and seen their pensions cut. In my judgment, preserving the benefits and rights of workers who make our industries strong is crucial to strengthening our economy.

This bill will help employers to honor their commitments to their employees, many of whom have already sacrificed so much for their companies. I am very pleased that by a vote of 86 to 9, my Senate colleagues approved this bill. I hope that the House will listen to the clear message that we sent today. For the sake of employers and their employees, Congress and the President must enact these pension reforms now.

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

● Mr. KERRY. Mr. President, today the Senate passed critical pension funding

reform legislation that will protect millions of American workers from losing their defined benefit pension plans. Although only a temporary solution, the Pension Funding Equity Act is essential to prevent companies from having to freeze or terminate their defined benefit pension plans because of outdated rules that determine how their pension plan liabilities are calculated.

Defined benefit pension plans are an essential component of retirement security for over half of America's working men and women. Unfortunately, trends show a decline in the use of defined benefit pension plans, with only one quarter as many companies providing defined benefit plans today as did 20 years ago. Since 2003, 3.3 million Americans having lost their pension coverage. The volatility in the stock market in the last few years—in which Americans lost billions in retirement assets—leaves little doubt that we must do more to reverse the decline in the use of defined benefit pension plans and expand the retirement security of defined benefit pension plans to more Americans. The Pension Funding Equity Act is an important step towards addressing this challenge.

In the last 3 years, companies that provide defined benefit pension plans to their employees have come under extreme financial stress due to the sluggish economy and changes in the interest rate that determines their pension plan liability. The Pension Funding Equity Act of 2003 provides much needed relief to help these companies maintain retirement benefits for their employees as the country works towards economic recovery. This legislation provides a temporary 2-year period of funding relief by updating the interest rate that companies must use when calculating the liabilities of their pension plans. A more accurate mix of long-term corporate bond rates will replace the now defunct 30-year Treasury rate in the calculation of pension plan liabilities.

In addition to protecting the defined benefit plans of American workers, the Pension Funding Equity Act is expected to provide $16 billion in additional savings to companies, which will facilitate job creation by freeing up funds for additional wages and hiring.

I applaud the passage of the Pension Funding Equity Act and look forward to working with my colleagues in crafting a long-term solution to improve and expand our pension system.●

EXECUTIVE SESSION

NOMINATION OF GARY L. SHARPE TO BE UNITED STATES DISTRICT JUDGE

The PRESIDING OFFICER. Under the previous order, the Senate will go into executive session to consider the nomination of Gary L. Sharpe to be United States District Judge. The clerk will state the nomination.

The legislative clerk read the nomination of Gary L. Sharpe, of New York, to be United States District Judge for the Northern District of New York.

The PRESIDING OFFICER. Who yields time?

The Senator from Utah.

Mr. HATCH. Madam President, I rise today in support of our nominee to the U.S. District Court of the Northern District of New York, Gary L. Sharpe.

Judge Sharpe graduated magna cum laude from Buffalo University in 1971 where he was a member of Phi Beta Kappa. Three years later, he graduated from Cornell Law School.

Judge Sharpe had a distinguished legal career prior to his appointment as a Federal magistrate judge for the Northern District of New York in 1997. He had been an Assistant Broome County District Attorney in Binghamton, a special assistant New York Attorney General in Syracuse, a supervisory Assistant U.S. Attorney, and the interim U.S. Attorney for the Northern District of New York.

Judge Sharpe is also a Vietnam veteran, having served our country in both the U.S. Army and Navy.

Judge Sharpe has a wealth of experience that will serve him well on the Federal bench. I am very confident that he will make an excellent Federal judge. I commend President Bush for nominating him, and I urge my colleagues to join me in supporting his nomination.

Thank you, Mr. President. I yield the floor.

The PRESIDING OFFICER. The Senator from Vermont.

Mr. LEAHY. Madam President, last week I shared with the Senate several disappointing developments regarding judicial nominations: the Pickering recess appointment, the renomination of Claude Allen, and the pilfering of Democratic offices' computer files by Republican staff. In spite of all those affronts, Senate Democrats today cooperate in the confirmation of another nominee. We do so without the kinds of delays and obstruction that Republicans employed when President Clinton's judicial nominees were being obstructed and Republican Senators complained about his recess appointments as an affront to the Constitution and the Senate.

The first nominations issue I would like to discuss is the recess appointment of Judge Pickering. Just a few days ago on January 16, President Bush made his most cynical and divisive appointment to date when he bypassed the Senate and unilaterally installed Charles Pickering to the U.S. Court of Appeals for the Fifth Circuit. That appointment is without the consent of the Senate and is a particular affront to the many individuals and membership organizations representing African Americans in the Fifth Circuit who have strongly opposed this nomination.

With respect to his extreme judicial nominations, President George W. Bush is the most divisive President in American history. Through these nominees, President Bush is dividing the American people and undermining the fairness and independence of the Federal judiciary on which all Americans depend.

After fair hearings and open debate, the Senate Judiciary Committee rejected the Pickering nomination in 2002. Originally nominated in 2001 by President Bush, this nominee's record underwent a thorough examination by the Senate Judiciary Committee and was found lacking. Judge Pickering's nomination was rejected for this promotion by the Committee in 2002 because of his poor record as a judge and the ethical problems raised by his handling of his duties in specific instances. Nonetheless, the President sent back his nomination to the Senate last year, the first in our history to reject the judgment of the Judiciary Committee on a judicial nominee. This is the only President who has renominated someone rejected on a vote by the Judiciary Committee for a judicial appointment.

The renomination of Charles Pickering lay dormant for most of last year while Republicans reportedly planned further hearings. Judge Pickering himself said that several hearings on his nomination were scheduled and cancelled over the last year by Republicans. Then, without any additional information or hearings, Republicans decided to forego any pretense at proceeding in regular order. Instead, they placed the name of Judge Pickering on the committee's markup agenda and pushed his nomination through with their one-vote majority. The committee had been told since last January that a new hearing would be held before a vote on this nomination, but that turned out to be an empty promise.

Why was the Pickering nomination moved ahead of other well-qualified candidates late last fall? Why was the Senate required to expend valuable time rehashing arguments about a controversial nomination that has already been rejected? The timing was arranged by Republicans to coincide with the gubernatorial election in Mississippi. Like so much about this President's actions with respect to the federal courts, partisan Republican politics seemed to be the governing consideration. Indeed, as the President's own former Secretary of the Treasury points out from personal experience, politics governs more than just Federal judicial nominations in the Bush administration.

Charles Pickering was a nominee rejected by the Judiciary Committee on the merits—a nominee who has a record that does not qualify him for this promotion, who injects his personal views into judicial opinions, and who has made highly questionable ethical judgments. The nominee's supporters, including some Republican Senators, have chosen to imply that Democrats opposed the nominee because of his religion or region. That is untrue and offensive. These smears have been as ugly as they are wrong.

Yet the political calculation has been made to ignore the facts, to seek to pin unflattering characterizations on Democrats for partisan purposes and to count on cynicism and misinformation to rule the day. With elections coming up this fall, partisan Republicans are apparently returning to that page of their partisan political playbook.

Never before had a judicial nomination rejected by the Judiciary Committee after a vote been resubmitted to the Senate, but this President took that unprecedented step last year. Never before has a judicial nomination debated at such length by the Senate, and to which the Senate has withheld its consent, been the subject of a presidential appointment to the federal bench.

In an editorial following the recess appointment, The Washington Post had it right when it summarized Judge Pickering's record as a Federal trial judge as ''undistinguished and downright disturbing.'' As the paper noted: ''The right path is to build consensus that nonpartisanship and excellence are the appropriate criteria for judicial selection.'' Instead we see another dangerous step down the Republican's chosen path to erode judicial independence for the sake of partisanship and their ideological court-packing efforts. The New York Times also editorialized on this subject and it, too, was correct when it pointed out that this end-run around the advice and consent authority of the Senate is ''absolutely the wrong choice for one of the nation's most sensitive courts.''

Civil rights supporters who so strenuously opposed this nominee were understandably offended that the President chose this action the day after his controversial visit to the grave of Dr. Martin Luther King Jr. As the Nation was entering the weekend set aside to honor Dr. King and all for which he strived, this President made one of the most insensitive and divisive appointments of his Administration.

So many civil rights groups and individuals committed to supporting civil rights in this country have spoken out in opposition to the elevation of Judge Pickering that their views should have been respected by the President. Contrary to the false assertion made by The Wall Street Journal editorial page, the NAACP of Mississippi did not support Judge Pickering's nomination. Instead, every single branch of the Mississippi State Chapter of the NAACP voted to oppose this nomination—not just once, but three times. When Mr. PICKERING was nominated to the District Court in 1990, the NAACP of Mississippi opposed him, and when he was nominated to the Fifth Circuit in 2001 and, again, in 2003, the NAACP of Mississippi opposed him. They have written letter after letter expressing their opposition. That opposition was shared by the NAACP, the Southern Christian Leadership Conference, the Magnolia Bar Association, the Mississippi Legislative Black Caucus, the Mississippi Black Caucus of Local Elected Officials, Representative Bennie G. Thompson and many others. Perhaps The Wall Street Journal confused the Mississippi NAACP with the Mississippi Association of Trial Lawyers, which is an organization that did support the Pickering nomination.

This is an administration that promised to unite the American people but that has chosen time and again to act with respect to judicial nominations in a way that divides us. This is an administration that squandered the goodwill and good faith that Democrats showed in the aftermath of September 11, 2001. This is an administration that refused to acknowledge the strides we made in filling 100 judicial vacancies under Democratic Senate leadership in 2001 and 2002 while overcoming anthrax attacks and in spite of Republican mistreatment of scores of qualified, moderate judicial nominees of President Clinton.

The second disappointing development is the renomination of Claude Allen as a nominee to the Fourth Circuit. Last week, the President sent the nomination of Claude Allen back to the Senate. From the time this nomination was originally made to the time it was returned to the President last year, the Maryland Senators have made their position crystal clear. This Fourth Circuit vacancy is a Maryland seat and ought to be filled by an experienced, qualified Marylander. Over the Senate recess, the White House had ample time to find such a nominee, someone of the caliber of sitting U.S. District Court Judges Andre Davis or Roger Titus, two Maryland lawyers whose involvement in the State's legal system and devotion to their local community is clear. This refusal to compromise is just another example of the White House engaging in partisan politics to the detriment of an independent judiciary.

The additional disappointment we face is the ongoing fallout from the cyber theft of confidential memoranda from Democratic Senate staff. This invasion was perpetrated by Republican employees both on and off the committee. As revealed by the chairman, computer security was compromised and, simply put, members of the Republican staff took things that did not belong to them and passed them around and on to people outside the Senate. This is no small mistake. It is a serious breach of trust, morals, the standards that govern Senate conduct, and possible criminal laws. We do not yet know the full extent of these violations. But we need to repair the loss of trust brought on by this breach of confidentiality and privacy if we are ever to recover and be able to resume our work in a spirit of cooperation and mutual respect that is so necessary to make progress.

Democratic cooperation with the President's slate of judicial nominees has been remarkable in these circumstances. One way to measure that cooperation and the progress we have made possible is to examine the Chief Justice's annual report on the Federal judiciary. Over the last couple of years, Justice Rehnquist has been ''pleased to report'' our progress on filling judicial vacancies. This is in sharp contrast to the criticism he justifiably made of the shadowy and unprincipled Republican obstruction of consideration of President Clinton's nominees. In 1996, the final year of President Clinton's first term, the Republican-led Senate confirmed only 17 judicial nominees all year and not a single nominee to the circuit courts. At the end of 1996, the Republican Senate majority returned to the President almost twice as many nominations as were confirmed.

By contrast, with the overall cooperation of Senate Democrats, which partisan Republicans are loath to concede, this President has achieved record numbers of judicial confirmations. Despite the attacks of September 11 and their aftermath, the Senate has already confirmed 169 of President Bush's nominees to the Federal bench. This is more judges than were confirmed during President Reagan's entire first 4-year term. Thus, President Bush's 3-year totals rival those achieved by other Presidents in 4 years. That is also true with respect to the nearly four years it took for President Clinton to achieve these results following the Republicans' taking majority control of the Senate in 1995.

The 69 judges confirmed last year exceeds the number of judges confirmed during any of the 6 years from 1995 to 2000 that Republicans controlled the Senate during the Clinton Presidency years in which there were far more vacant Federal judgeships than exist today. Among those 69 judges confirmed in 2003 were 13 circuit court judges. That exceeds the number of circuit court judges confirmed during all of 1995, 1996, 1997, 1999, and 2000, when a Democrat was President.

The Senate has already confirmed 30 circuit court judges nominated by President Bush. This is a greater number than were confirmed at this point in the presidencies of his father, President Clinton, or the first term of President Reagan. Vacancies on the federal judiciary have been reduced to the lowest point in two decades and are lower than Republicans allowed at any time during the Clinton presidency. In addition, there are more Federal judges serving on the bench today than at any time in American history.

I congratulate the Democratic Senators on the committee for showing a spirit of cooperation and restraint in the face of a White House that so often has refused to consult, compromise or conciliate. I regret that our efforts have not been fairly acknowledged by partisan Republicans and that this Administration continues down the path of confrontation. While there have been difficult and controversial nominees whom we have opposed as we exercise our constitutional duty of advice and

consent to lifetime appointments on the Federal bench, we have done so openly and on the merits.

For the last 3 years, I have urged the President to work with us. It is with deep sadness that I see that this administration still refuses to accept the Senate's shared responsibility under the Constitution and refuses to appreciate our level of cooperation and achievement.

Today, the chairman held another hearing on another circuit court nominee. That hearing is another demonstration of how untrue the rhetoric is that is so often bandied about by Republican partisans that Democrats are obstructing the confirmations of this President's judicial nominees. The reality is that we have cooperated to an extraordinary extent, especially when contrasted with Republican treatment of President Clinton's judicial nominees.

Today's hearing was the second in the last 2 weeks for circuit court nominees. Traditionally, the number of nominees who have received hearings and who are considered in a presidential election year has been lower than in other years. In 1996, only four circuit court nominees by President Clinton received a hearing from the Republican Senate majority. In 2000, only five circuit court nominees by President Clinton received a hearing from the Republican Senate majority. Of course, two of those outstanding and well-qualified nominees in 2000 were never allowed to be considered by the committee or the Senate. By contrast, here we are, before the end of the first month of 2004, and we have already held hearings for two circuit court nominees. By the standard Republicans set in 1996 and 2000, we would be half done for the entire year.

Moreover, that we are proceeding to confirm Judge Sharpe today is another example of Democratic cooperation in the wake of the President's recess appointment of Charles Pickering. This temporary appointment can be distinguished from President Clinton's recess appointment of Judge Roger Gregory to the Fourth Circuit in December 2000 in many ways, including from the manner in which Republican Senators reacted to President Clinton's recess appointments by shutting down the confirmation process.

Roger Gregory had been denied a Judiciary Committee hearing even though he had the bipartisan support of both of his home State Senators—Democratic Senator Chuck Robb and Republican Senator John Warner. By contrast, Judge Pickering participated in hearings and an extensive record was developed on which his nomination was opposed in the Judiciary Committee and in the Senate on the merits on the basis of his record as a district court judge. Roger Gregory's nomination was never allowed to be considered by the Judiciary Committee. By contrast, Judge Pickering's nomination was fully and fairly debated in 2002 and rejected by the Judiciary Committee. Indeed, Judge Pickering's renomination was the first time a President had resent a judicial nomination to the Senate after the Judiciary Committee had voted on and rejected that judicial nomination. Likewise, Judge Pickering's temporary appointment is the first after rejection by the Judiciary Committee and after the Senate has debated a judicial nomination and withheld its consent.

Moreover, Roger Gregory's recess appointment fit squarely in the tradition of Presidents exercising such authority in order to expand civil rights and to bring diversity to the courts. Four of the five first African American appellate judges were recess-appointed to their first article III position, including Judge William Hastie in 1949, Judge Thurgood Marshall in 1961, Judge Spottswood Robinson in 1961, and Judge Leon Higginbottom in 1964. Unlike these nominees and the public purposes served, Judge Pickering was opposed by civil rights groups, including all chapters of the Mississippi NAACP, the Southern Christian Leadership Conference, and by the Magnolia Bar Association. Rather than bring people together and move the country forward, this President's recess appointment is another source of division.

The Senate reaction to the recess appointments of President Clinton and President Bush has also differed dramatically. When President Clinton used his recess appointment power to appoint James Hormel Ambassador to Luxembourg, Senator INHOFE responded by saying that President Clinton had ''shown contempt for Congress and the Constitution'' and declared that he would place ''holds on every single Presidential nomination,'' which Republicans did in obstruction of President Clinton's nominees. Republicans continued to block nominations until President Clinton agreed to make recess appointments only after Congress was notified in advance. On November 10, 1999, 17 Republican Senators sent a letter to President Clinton telling him that if he violated the agreement, they would ''put holds for the remaining of the term of your Presidency on all of the judicial nominees.''

In November 1999, President Clinton sent a list of 13 positions to the Senate that he planned to fill through recess appointments. In response, Senator INHOFE spoke out on the Senate floor denouncing five of the 13 civilian nominees with a threat that if they went forward, he would personally place a hold on every one of President Clinton's judicial nominees for the remainder of the administration. That led to more delays and to the need for a vote on a motion to proceed to override the Republican objections.

When President Clinton appointed Judge Gregory, Senator INHOFE called it ''outrageously inappropriate for any president to fill a federal judgeship through a recess appointment in a deliberate way to bypass the Senate.'' Judge Gregory was eventually confirmed after his renomination in 2001 with near unanimity. There was only one negative vote. Senator LOTT cast that vote and his spokesman said his opposition was done to underscore his stance that ''any appointment of federal judges during a recess should be opposed.'' Ironically, Senator LOTT is now one of Judge Pickering's strongest supporters.

As far as I know, no Senate Democrats were consulted by this President before he made his divisive appointment of Judge Pickering. It was only after President Bush appointed Charles Pickering to the bench that I learned about the appointment. Despite that, Senate Democrats are today participating in making sure the process of judicial appointments moves forward. Democrats have not obstructed the confirmation process for judicial and executive branch nominations as Republicans did when President Clinton made recess appointments. In fact, already this week, less than 2 weeks after President Bush appointed Judge Pickering and a number of other executive branch officials, we have joined in confirming 18 Presidential nominees by unanimous consent. Today we proceed to confirm a judicial nominee in spite of the President's recent actions and those of Senate Republicans.

The nomination of Judge Gary Sharpe has the support of both his home State Senators, both of whom are Democratic Senators. The Democratic Senators who serve on the Judiciary Committee all supported this nomination when it was reported favorably to the Senate in October last year. Had the Republican leadership wanted to proceed on it, this nomination could easily have been confirmed in October, November or December last year before the Senate adjourned. Instead, partisans chose to devote 40 hours to a talkathon on the President's most controversial and divisive nominees rather than proceed to vote on those judicial nominees with the support of the Senate. The delay in considering this nomination is the responsibility of the Republican leadership.

I congratulate Judge Sharpe and his family on his confirmation. He is the 170th judge confirmed by the Senate and will be the 171st appointed by President Bush.

I yield to the senior Senator from New York and his colleague so they can have the remainder of my time.

The PRESIDING OFFICER. The Senator from New York.

Mr. SCHUMER. Madam President, I will speak for 1 minute and then I will yield 1 minute to my colleague, Senator CLINTON.

Mr. SCHUMER. Madam President, I am pleased to rise today in support of Gary Sharpe's nomination to be a judge in the Northern District of New York.

Before I discuss Judge Sharpe's impressive qualifications, I wish to make one point to my colleagues.

If my math is right, when Judge Sharpe is confirmed today—and I expect he will be confirmed unanimously because, as my colleagues will see, he is an example of the nominees we get when the process works right—he will be the 170th judicial nominee of President Bush's we will have confirmed.

I note that at the outset because to hear the hue and cry from some on the other side, one would think that we were roadblocking every nominee who comes before us. With this confirmation, the numbers stand at 170 to 5.

That's a record for which the Buffalo Bills and Buffalo Sabres would kill. When you win over 97 percent of the time, you are doing pretty darn well.

I won't belabor the point, but it's important to note that this process can work and that it frequently does. The process works when we work together to choose nominees who are excellent, moderate, and diverse—the three criteria I use when evaluating judicial nominees. And Judge Sharpe easily clears that bar.

For the past 6 years, Judge Sharpe has served with distinction as a United States Magistrate Judge for the Northern District of New York. Before taking the bench, he spent his professional career working as one of the best prosecutors Northern New York has ever seen. He spent nearly a decade in state court as a prosecutor from Broome County.

He then went over to Federal court where he was an assistant United States attorney before becoming the U.S. attorney for the Northern District.

Judge Sharpe is a graduate of two fine New York schools, the University of Buffalo which he graduated magna cum laude and Phi Beta Kappa—and Cornell Law. After graduating college, but before heading to law school, Judge Sharpe served in the U.S. Armed Forces as a member of the Naval Reserve. He is also a Vietnam veteran, having served there in the Army from 1966 to 1968.

We have talked to lawyers in the Northern District and they simply rave about Judge Sharpe. One judge upstate said, ''He's the best lawyer I've ever known.'' That's pretty high praise.

I congratulate Judge Sharpe and his wife, Lorraine, on this tremendous honor and achievement. I know Chief Judge Scullin is anxious to have him and that Judge Sharpe is going to be a great addition to the Northern District bench.

Again, Madam President, overall, we are at 170 nominees to 5. We have blocked 5. That is not too many, and those are the most egregious ones.

Second, in New York, we have worked this out. When the administration wants to play ball with Senators, they can fill the bench. In New York, we will have no more vacancies because we have agreed. They have chosen nominees who are conservative but not out of the mainstream, and we have gone along.

Third, Judge Sharpe clearly is an excellent nominee. He is not just average; he is not just above average; he is at the very top. We talked with lawyers in the Northern District. They say: He is the best lawyer I have ever known.

He is moderate. He deserves to be on the bench. I fully support his nomination and urge my colleagues to do as well.

The PRESIDING OFFICER. The junior Senator from New York.

Mrs. CLINTON. Madam President, I rise in very strong support of the nomination of Magistrate Judge Gary Lawrence Sharpe who has been nominated to the United States District Court for the Northern District of New York.

Judge Sharpe has more than 20 years of experience as a prosecutor. From 1974 to 1981, he served as an assistant district attorney and senior assistant district attorney for Broome County. After serving for a year as a special assistant New York attorney general, in 1982 he became an assistant U.S. attorney for the Northern District of New York. He served in that office until 1997, when he was appointed a U.S. magistrate judge for the Northern District of New York.

Even with all of his prior prosecutorial responsibilities, Judge Sharpe made time to serve as a member of the Broome County Prisoner Rehabilitation Board, PROBE, the Onondaga County Substance Abuse Commission, and the Onondaga County Youth Court. More recently, he worked with the Department of Probation to develop the High Impact Incarceration Program, HIIP, a program for defendants who have substance abuse problems and who might be candidates for release.

Judge Sharpe's years of service as a magistrate judge have provided him with even more experience, which will serve him well as a U.S. district court judge. Without question, Judge Sharpe has the intellect, judicial demeanor, and commitment to justice to serve the Northern District of New York as a district court judge with distinction.

I ask all of my colleagues to support this nomination.

I commend my colleague, Senator SCHUMER, for the important role he has played on the Judiciary Committee. I second his comment that in New York we have worked together with the administration to nominate and confirm judges who will be a real credit, not only to the bench but to this administration and to our country. Magistrate Judge Gary Lawrence Sharpe is at the top of that list.

In addition to all of his qualifications, he has also found time as a prosecutor to serve in capacities to assist with prisoner rehabilitation, to work with youth, and to work with people who are in the grips of substance abuse to try to bring down the impact of incarceration.

I think he will not only serve with distinction in New York but demonstrate clearly that this is the kind of conservative Republican nominee whom we could be unanimously confirming. I commend him to the Senate.

I thank the Chair.

The PRESIDING OFFICER. All time has expired. The question is, Will the Senate advise and consent to the nomination of Gary L. Sharpe, of New York, to be United States District Judge for the Northern District of New York?

Mr. HATCH. I ask for the yeas and nays.

The PRESIDING OFFICER. Is there a sufficient second?

There appears to be a sufficient second.

The clerk will call the roll.

The legislative clerk called the roll.

Mr. MCCONNELL. I announce that the Senator from Georgia (Mr. CHAMBLISS) is necessarily absent.

Mr. REID. I announce that the Senator from Montana (Mr. BAUCUS), the Senator from North Carolina (Mr. EDWARDS), the Senator from Massachusetts (Mr. KERRY), and the Senator from Connecticut (Mr. LIEBERMAN) are necessarily absent.

I further announce that, if present and voting, the Senator from Massachusetts (Mr. KERRY), would vote ''yea.''

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

The result was announced—yeas 95, nays 0, as follows:

[Rollcall Vote No. 6 Ex.]

YEAS—95

Akaka	Dole	Lugar
Alexander	Domenici	McCain
Allard	Dorgan	McConnell
Allen	Durbin	Mikulski
Bayh	Ensign	Miller
Bennett	Enzi	Murkowski
Biden	Feingold	Murray
Bingaman	Feinstein	Nelson (FL)
Bond	Fitzgerald	Nelson (NE)
Boxer	Frist	Nickles
Breaux	Graham (FL)	Pryor
Brownback	Graham (SC)	Reed
Bunning	Grassley	Reid
Burns	Gregg	Roberts
Byrd	Hagel	Rockefeller
Campbell	Harkin	Santorum
Cantwell	Hatch	Sarbanes
Carper	Hollings	Schumer
Chafee	Hutchison	Sessions
Clinton	Inhofe	Shelby
Cochran	Inouye	Smith
Coleman	Jeffords	Snowe
Collins	Johnson	Specter
Conrad	Kennedy	Stabenow
Cornyn	Kohl	Stevens
Corzine	Kyl	Sununu
Craig	Landrieu	Talent
Crapo	Lautenberg	Thomas
Daschle	Leahy	Voinovich
Dayton	Levin	Warner
DeWine	Lincoln	Wyden
Dodd	Lott	

NOT VOTING—5

Baucus	Edwards	Lieberman
Chambliss	Kerry	

The nomination was confirmed.

The PRESIDING OFFICER. The President will be immediately notified of the confirmation of the nomination.

LEGISLATIVE SESSION

The PRESIDING OFFICER (Mr. HAGEL). Under the previous order, the Senate will return to legislative session.

MORNING BUSINESS

Mr. COLEMAN. Mr. President, I ask unanimous consent there now be a period of morning business, with Senators permitted to speak for up to 10 minutes each.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. COLEMAN. I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FEINGOLD. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

UNANIMOUS CONSENT REQUEST—S. 1691

Mr. FEINGOLD. Mr. President, I want to speak today about S. 1691, the Wartime Treatment Study Act. During World War II, the United States fought a courageous battle against the spread of Nazism and fascism. Nazi Germany was engaged in the horrific persecution and genocide of Jews. By the end of the war, 6 million Jews had perished at the hands of Nazi Germany.

The Allied victory in the Second World War was an American triumph, a triumph for freedom, justice, and human rights. The courage displayed by so many Americans, of all ethnic origins, should be a source of great pride for all Americans. But we should not let that justifiable pride in our Nation's triumph blind us to the treatment of some Americans by their own government.

Sadly, as so many brave Americans fought against enemies in Europe and the Pacific, the U.S. Government was in some cases curtailing the freedom of some of its own people here, at home. While, it is, of course, the right of every Nation to protect itself during wartime, the U.S. Government can and should respect the basic freedoms that so many Americans have given their lives to defend. Of course, war tests our principles and our values. And as our Nation's recent experience has shown, it is during times of war and conflict, when our fears are high and our principles are tested most, that we must be even more vigilant to guard against violations of the Constitution.

Many Americans are aware of the fact that, during World War II, under the authority of Executive Order 9066, our Government forced more than 100,000 ethnic Japanese from their homes into internment camps. Japanese Americans were forced to leave their homes, their livelihoods, and their communities. They were held behind barbed wire and military guard by their own government.

Through the work of the Commission on Wartime Relocation and Internment of Civilians created by Congress in 1980, this unfortunate episode in our history finally received the official acknowledgement and condemnation it deserved. Under the Civil Liberties Act of 1988, people of Japanese ancestry who were subjected to relocation or internment later received an apology and reparations on behalf of the people of the United States.

While I commend Congress and our Nation for finally recognizing and apologizing for the mistreatment of Japanese Americans during World War II, our work in this area is not done. We should also acknowledge the mistreatment experienced by many German Americans, Italian Americans, and European Latin Americans, as well as Jewish refugees.

Most Americans are probably unaware that during World War II, the U.S. Government designated more than 600,000 Italian-born and 300,000 German-born U.S. resident aliens and their families as ''enemy aliens.''

Approximately 11,000 ethnic Germans, 3,200 ethnic Italians, and scores of Bulgarians, Hungarians, Romanians or other European Americans living in America were taken from their homes and placed in internment camps. Some even remained interned for up to 3 years after the war ended. Unknown numbers of German Americans, Italian Americans, and other Europeans Americans had their property confiscated or their travel restricted, or lived under curfews.

S. 1691 would not grant reparations to victims. It would simply create a commission to review the facts and circumstances of the U.S. Government's treatment of German Americans, Italian Americans and other European Americans during World War II.

A second commission created by this bill would review the treatment by the U.S. Government of Jewish refugees who were fleeing Nazi persecution and genocide. German and Austrian Jews applied for visas, but the United States severely limited their entry due to strict immigration policies, policies that many believe were motivated by fear that our enemies would send spies under the guise of refugees and by the unfortunate anti-foreigner and anti-Semitic attitudes that were, sadly, all too common at that time.

It is time for the country to review the facts and determine how our restrictive immigration policies failed to provide adequate safe harbor to Jewish refugees fleeing the persecution of Nazi Germany. The United States turned away thousands of refugees, delivering many to their deaths at the hands of the Nazi regime.

As I mentioned earlier, there has been a measure of justice for Japanese Americans who were denied their liberty and property. It is now time for the U.S. Government to complete an accounting of this period in our Nation's history.

Let me repeat that the bill I have introduced, along with Senator GRASSLEY, does not call for reparations. All it does is ensure that the public has a full accounting of what happened. I believe that is the right and, yes, the patriotic thing to do. It is patriotic to ensure that the Government owns up to its mistakes. We should be very proud of our victory over Nazism, as I certainly am. But we should not let that pride cause us to overlook what happened to some Americans and refugees during World War II. I urge my colleagues to join me in supporting the Wartime Treatment Study Act.

The Judiciary Committee has reported this bill favorably. It has been cleared by my Democratic colleagues. Unfortunately, someone on the other side of the aisle has placed a hold on the bill. This anonymous person or persons are unwilling to identify themselves or to explain the reasons for the hold. I think some Republican colleagues have been trying to figure out for me what the problems is. Frankly, I find it hard to imagine why someone would object to a fairly straight-forward, non-controversial bill such as this. So, Mr. President, I will try again.

Mr. President, I ask unanimous consent that the Senate proceed to the immediate consideration of Calendar No. 309, S. 1691, a bill to establish commission, to review the facts and circumstances surrounding injustices suffered by European Americans, European Latin Americans, and Jewish Refugees during World War II, that the bill be read the third time, passed, and the motion to reconsider be laid upon the table; that the title amendment be agreed, with the above occurring without intervening action or debate.

The PRESIDING OFFICER. Is there objection?

Mr. GRAHAM of South Carolina. Mr. President, reserving the right to object, I have been informed that our leadership is working on a method for this proposal to move forward. I admire what the Senator is doing on a personal basis. With that understanding, I object.

The PRESIDING OFFICER. Objection is heard.

Mr. FEINGOLD. Mr. President, I know the Senator from South Carolina was a supporter of this legislation in committee, and he is doing what he must do in representing that side of the aisle.

I am disappointed that there is an objection to moving this bill. The Judiciary Committee has now reported this bill favorably to the floor on two occasions—last Congress and again this Congress. I would like to know what their concerns are. So far, we have never heard a substantive objection. There is a secret hold being used here. That is unfortunate. This bill is long overdue. It is not controversial. In fact, I specifically was promised by the chairman of the Judiciary Committee late in the 106th Congress, when I was hoping the issue of German Americans would be linked to a bill going through Congress on Italian Americans. I was assured this was not controversial and

this would be taken care of. Nonetheless, this has occurred. There is no reason the Senate should not take up and consider this bill without further delay.

Again, had the representative of the majority stayed, I would have asked whether there was a time when they would expect to be ready for action. I will find other ways to ask the other side to work with me to pass the bill. I took the comments of the Senator from South Carolina in good faith that he has spoken to the leadership and that they are willing to work with us. I hope we can sit down and work this out as soon as possible to ensure that the U.S. Government accounts for what happened so many years ago.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mrs. DOLE. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

The Senator from North Carolina.

THE CAROLINA PANTHERS

Mrs. DOLE. Mr. President, when Jerry Richardson founded the Carolina Panthers 9 years ago, he said his goal was to be in a Super Bowl within 10 years. After upsetting the Philadelphia Eagles recently, this dream has become a reality. But the dream is not over, of course. There is one more hurdle the Panthers must clear.

Today I salute Jerry, Coach John Fox, and the Panthers players for giving North Carolinians a season with a fairy tale ending. When Coach Fox arrived in 2002, the Carolina Panthers were 1 and 15. This turnaround has been nothing short of miraculous, and it is not just the fact that the Panthers have made it to the Super Bowl but how they got to Houston.

The Panthers are called the ''Cardiac Cats'' because 10 of their victories have been achieved by 6 points or less, and they have won 4 of their 5 overtime games this season.

All over the State, ''Go Panthers'' signs adorn buses, mailboxes, and cars, and those black and blue jerseys have become the fashion craze of the day. Even Coach Fox had to comment on the groundswell of fan support after about 10,000 of them—10,000, Mr. President—showed up on a blustery day as the team left for Houston. ''It makes you proud,'' he said.

Charlotte Observer columnist Danny Romine Powell wrote recently:

A team has transformed a city into Mount Olympus. We're eating ambrosia with the gods.

How true, indeed. I want the Panthers to know that this Senator is coming to Houston, and I can't wait to watch the ''Cardiac Cats'' shock the world with a victory. In fact, I have challenged my friend and colleague, Senator TED KENNEDY, to a friendly wager. I am putting up our famous North Carolina barbecue against his New England clam chowder.

I love something that Coach Fox tells his team each week. He says:

We will define ourselves. No one else is going to do that for us.

It is a motto that stands true for all of North Carolina. Earlier this week, late night host David Letterman cracked:

Who knew Carolina had a team.

I daresay that after Sunday the world will know.

I suggest the absence of a quorum.

The PRESIDING OFFICER (Mr. SUNUNU). The clerk will call the roll.

The assistant legislative clerk proceeded to call the roll.

Mr. DORGAN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

AMERICA'S INTELLIGENCE-GATHERING APPARATUS

Mr. DORGAN. Mr. President, this morning and part of this afternoon Mr. David Kay who was the top U.S. weapons inspector in Iraq until he resigned last week testified before the Armed Services Committee.

Mr. Kay has been interviewed extensively on media programs, including the ''Today'' show, and interviewed by Reuters, and others, so I have read a substantial amount of what he has said. And I listened today to his testimony, at least in part, before the Senate Armed Services Committee.

The debate that has gone on, and I suspect the debate that will ensue from his testimony today, will perhaps be a debate about whether the right decision was made when this country decided to embark on this mission in Iraq with United States troops, which has resulted in the elimination and removal of Saddam Hussein as President of that country. In many ways, I think that is not the most relevant debate to have at this moment. I think the debate to have at this moment is on what the implications of what Mr. Kay has said to us are for the safety and the security of this country, and what its implications are for the ability of this country to understand where dangers exist around the rest of the world, and where our national security is at stake.

Let me see if I can paraphrase some of what Mr. Kay has said. He told the Armed Services Committee that the failure to turn up weapons of mass destruction in Iraq has exposed weaknesses in America's intelligence-gathering apparatus.

Is there a time in which our intelligence-gathering apparatus has been more important to this country than this particular time?

In the shadow of 9/11/2001, with the prospect of terrorists wanting again to commit an act of terror in this country, we are required to accept the judgment of our intelligence community: the best intelligence we have available to us that this is a threat or that is a threat. Now Mr. Kay says that what we believed about Iraq's weapons was almost all wrong. And I certainly include myself here. And he says the intelligence community has failed, quote, unquote, the President.

Well, look, if the intelligence community has failed—and it seems clearly to have failed in a significant way—then it has failed not only the President of the United States, it has failed this Senate, and it has failed the people of the United States.

I, and all of my colleagues, have sat in the Intelligence Committee room here in the Senate. That very special room, which is designed for top secret briefings, is a room in which all of us have had top secret briefing after top secret briefing from CIA, from Condoleezza Rice, the National Security Adviser, and from others. In that room, eyeball to eyeball with our intelligence community, we have been told certain things that they believe to be true with respect to a threat—the threat from Iraq, the threat of weapons of mass destruction, and others.

If, in fact, there is a failure—and it appears to me that there is a failure; the top weapons inspector says there is a failure—if that failure exists—and it does—then it is a failure not just for the President of the United States, it is a failure for this country and for this Senate.

All of us, then, had been told, face to face by our intelligence community, what they expected to be the case in Iraq, and it turns out not to be the case.

Now, do people have a right to be wrong? Yes, they do. But we spend billions and billions and billions of dollars on intelligence, and if this country—in the aftermath of the terrorist attacks of 9/11, and confronting the prospect of future terrorist attacks—does not have an intelligence community that gives us great confidence, then we are in trouble.

I would think the President, and certainly this Congress, should demand to know what happened. We ought to seek answers. There has to be accountability. Where does the buck stop?

If, in fact, we have had a failure of our intelligence community—again, not my words, the words of Mr. David Kay, the top weapons inspector; words he uttered today before the Armed Services Committee, words he uttered in interview after interview—if there is, in fact, a failure, then we ought to demand immediately to understand: What was the failure? How did it occur? Whose responsibility was it? And, most importantly, how do we fix it on an urgent basis?

Let me read some of the quotes. I will not read the quotes from today's hearing because I do not have them all, although I was able to listen to much of the hearing.

But this is from Mr. Kay's appearance on the ''Today'' show, which I

watched with great interest. He was asked on the ''Today'' show about the presentation before the United Nations of Secretary of State Colin Powell. As you know, we received top secret briefings, and then we received briefings in other venues from the Vice President, from Condoleezza Rice, and others in the administration. Following those briefings, the Secretary of State made a lengthy presentation to the United Nations, and he set out chapter and verse, including pictures and charts, of the threat that existed.

I want to read to you the question that was asked:

Almost a year ago Secretary of State Colin Powell addressed the United Nations. Here's what he had to say.

Then they showed a tape of Secretary Powell at the U.N. saying, ''[Our] conservative estimate [is] that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agents.'' The interviewer then asked Mr. Kay: ''Is that conservative or is it just plain wrong?''

Mr. Kay responds: No, I think that was the estimate based on information and intelligence before the war. It turns out to be wrong, just wrong.

Next question: So what was the problem with the intelligence? Why were we so wrong?

Mr. Kay said: Well, don't forget, Iraq is not the only place we have been wrong recently. We have been wrong about Iran. We have been wrong about Libya's program. We clearly need a renovation of our ability to collect intelligence.

The question was asked: Here is what you said to Tom Brokaw: ''Clearly the intelligence we went to war on was inaccurate, wrong. We need to understand why that was. If anyone was abused by the intelligence, it was the President of the United States rather than the other way around.''

My point is simple: If anyone was abused in this country by bad intelligence, by inaccurate intelligence, it is not just the President, it is Members of the Senate who sat eyeball to eyeball with our intelligence officers and with those who run our intelligence community who told us what they believed to be the case, which turns out now not to be accurate. The American people were failed. The Senate was failed. To use another word Mr. Kay used, the President was failed.

So why is it the case that we don't see someone standing on the tallest stump saying: There is something wrong here. We need to get to the bottom of it, and now. This country's security depends on it.

Today somewhere someone is assessing intelligence picked up over telephone lines or computer transmittals or any number of ways to evaluate what is happening with terrorist cells. Where might they be planning to attack us. What might the attack be when they attempt to enter this country once again and kill Americans. Well, that same intelligence community that has been so wrong, according to Mr. Kay—and I think now according to most Members of the Senate who would assess that—are they the ones still analyzing this?

My question is where is the accountability? I think the President and the Congress ought to join together in a common bond and common interest to demand how this happened. There isn't any question that we ought to have a completely independent commission evaluating and studying and investigating this right now. There ought to be an independent investigation right now. I hope finally the Congress will do that.

Second, I believe next week, Mr. Tenet, Condoleezza Rice ought to be invited to the intelligence room and all 100 Senators ought to hear their response to this proposition that the intelligence community has failed us. This isn't a politician speaking. This is a top weapons inspector who just came from Iraq. This is Mr. Kay.

I remember when Mr. Kay was appointed with great fanfare. This is a straight shooter, a tough guy, no nonsense. He went to Iraq. He came back, and he finally quit. He said there weren't weapons of mass destruction. The intelligence was bad. The intelligence community failed this President. He forgot to say, failed this Congress and failed the American people.

I am telling you, whether it is tomorrow or next week or next month, this country's security and safety rest on good intelligence. If we have questions about an intelligence community that Mr. Kay says has failed us and if we don't, with great urgency, rush to find out what happened with an independent evaluation, shame on us.

This isn't about politics. It is about the safety of America. It is about being effective in the fight against terrorism. It is about having an intelligence community that works, that gets it right, and that doesn't fail this President or this Congress or this country.

I hope Senator FRIST and Democratic leader DASCHLE will ask Mr. Tenet to come to room 407 and address all 100 Senators and answer all of the questions of the Senators that stem from this testimony of the top weapons inspector who has said our intelligence community failed us. We ought to do that, and we ought to do it now. Days, weeks, or months should not go by without us having answers to this question. It is easy to be critical. It is much more difficult to be constructive. It is not being critical for Mr. Kay, the top weapons inspector appointed by President George W. Bush, to come to this Congress and tell the truth. When he tells the truth, we have a responsibility to follow that truth wherever it leads.

There are some here who don't want to do that. They are worried about politics. It doesn't matter who is President. We have an intelligence community on which we spend a great deal of money. In fact, the amount is classified information. The American people should trust me when I say we spend a substantial amount of money on intelligence. The security and safety of this country and the American people rests on our ability to make sure that money is spent wisely in an intelligence community that gets it right and provides good information to this country. We cannot any longer decide this is business as usual, one more hearing, one more set of questions that remains unanswered.

Saddam Hussein is gone, and the world is better for it. Saddam Hussein was a bad guy. We opened up football-field-sized graves in Iraq with tens of thousands of skeletons of people murdered by this regime. That is a fact. Saddam Hussein crawled into a rat hole. That says a lot about him. He is now in jail, soon to be on trial, perhaps soon to meet with the ultimate penalty. This is not about Saddam Hussein. This discussion is about whether this country is able to protect itself from a terrorist attack a month from now or a year from now. Do we have an intelligence community that gets it right? Mr. Kay seems to say no. That community has failed us. He says they have not just failed in Iraq, they have gotten it wrong in Libya and Iran. We need a renovation of our ability to collect intelligence.

Incidentally, Mr. Kay, former top weapons inspector of this President, said this morning he favors an independent commission to take a look at and investigate the failure of the intelligence community. I hope we will move with great haste to embrace that recommendation. It is not just his recommendation. Senator DASCHLE and others have made that same recommendation in the Senate.

We need to move with great urgency. This is about the safety and security of our country.

My colleague from Florida is on the floor and wishes to speak to an issue. Time is short. We have an urgent requirement to pursue this issue. I call on Senator FRIST next week to give all of us here in the Senate the opportunity to hear and question Mr. Tenet, head of the CIA, as well as Condoleezza Rice, National Security Adviser. We should have that opportunity because they, in top secret briefings, gave us information. They represented the intelligence, the community of intelligence and the assessment of the intelligence community prior to going to war in Iraq.

That assessment is what Mr. Kay refers to when he says there was a failure. The assessment that apparently was accepted—perhaps embraced, certainly embraced—by the Secretary of State when he went to New York and made his presentation to the United Nations was a failure of intelligence. I think the Secretary of State would want these answers. The President certainly needs these answers. He should demand it this afternoon. The Senate deserves these answers next week at the very latest.

I call on Senator FRIST to convene a meeting next week of the 100 Senators in our Intelligence Committee room so we can question and hear from the head of the CIA and the head of the National Security Council, Mr. Tenet and Ms. Rice. Mr. Tenet and Ms. Rice ought to present themselves, and we should begin this process of finding out what happened. Why did it happen. Who is accountable, and where does the buck stop.

I yield the floor.

The PRESIDING OFFICER (Mr. CHAFEE). The Senator from Florida is recognized.

NEW INFORMATION ON IRAQ'S POSSESSION OF WEAPONS OF MASS DESTRUCTION

Mr. NELSON of Florida. Mr. President, I express my appreciation to the Senator from North Dakota for the case that he has made, which has been very disturbing to us as two Senators, because the information we have received over the last several days causes us not only to scratch our heads but to shake our heads—that the intelligence we received in the secure rooms of this Capitol complex was either so faulty that we are in a considerable degree of vulnerability, that we are not getting accurate information upon which to defend this country, or that the information that was presented to us was faulty not because of the sources of that information and the analysis but there was some suggestion of coloring that information to reach a certain conclusion.

I think this is far beyond Republicans and Democrats. This is about defense of the homeland. This is about America. Just because this has come up in January of an election year, with Dr. Kay coming forth and telling us today in the Armed Services Committee that he concluded this last November, then it is sure time for us to get some answers for the protection of this country and its people.

I want to take this occasion to inform the Senate of specific information that I was given, which turns out not to be true. I was one of 77 Senators who voted for the resolution in October of 2002 to authorize the expenditure of funds for the President to engage in an attack on Iraq. I voted for it. I want to tell you some specific information that I received that had a great deal of bearing on my conclusion to vote for that resolution. There were other factors, but this information was very convincing to me that there was an imminent peril to the interests of the United States.

I, along with nearly every Senator in this Chamber, in that secure room of this Capitol complex, was not only told there were weapons of mass destruction—specifically chemical and biological—but I was looked at straight in the face and told that Saddam Hussein had the means of delivering those biological and chemical weapons of mass destruction by unmanned drones, called UAVs, unmanned aerial vehicles. Further, I was looked at straight in the face and told that UAVs could be launched from ships off the Atlantic coast to attack eastern seaboard cities of the United States.

Is it any wonder that I concluded there was an imminent peril to the United States? The first public disclosure of that information occurred perhaps a couple of weeks later, when the information was told to us. It was prior to the vote on the resolution and it was in a highly classified setting in a secure room. But the first public disclosure of that information was when the President addressed the Nation on TV. He said that Saddam Hussein possessed UAVs.

Later, the Secretary of State, Colin Powell, in his presentation to the United Nations, in a very dramatic and effective presentation, expanded that and suggested the possibility that UAVs could be launched against the homeland, having been transported out of Iraq. The information was made public, but it was made public after we had already voted on the resolution, and at the time there was nothing to contradict that.

We now know, after the fact and on the basis of Dr. Kay's testimony today in the Senate Armed Services Committee, that the information was false; and not only that there were not weapons of mass destruction—chemical and biological—but there was no fleet of UAVs, unmanned aerial vehicles, nor was there any capability of putting UAVs on ships and transporting them to the Atlantic coast and launching them at U.S. cities on the eastern seaboard.

I am upset that the degree of specificity I was given a year and a half ago, prior to my vote, was not only inaccurate; it was patently false. I want some further explanations.

Now, what I have found after the fact—and I presented this to Dr. Kay this morning in the Senate Armed Services Committee—is there was a vigorous dispute within the intelligence community as to what the CIA had concluded was accurate about those UAVs and about their ability to be used elsewhere outside of Iraq. Not only was it in vigorous dispute, there was an outright denial that the information was accurate. That was all within the intelligence community.

But I didn't find that out before my vote. I wasn't told that. I wasn't told that there was a vigorous debate going on as to whether or not that was accurate information. I was given that information as if it were fact, and any reasonable person then would logically conclude that the interests of the United States and its people were in immediate jeopardy and peril. That has turned out not to be true.

We need some answers, and I saw the ranking member of the Armed Services Committee ask the chairman for a further investigation into this matter. I heard the chairman say: I will take it under consideration.

I hope that is a positive sign and not a negative sign. We need to get to the bottom of this for the protection of our country. It is too bad this is coming up in the year 2004, which happens to coincide with the Presidential election, because people are going to immediately say this is partisan politics.

The fact is, this is the politics of the protection of our country, and we need some answers. I don't want to be voting on war resolutions in the future based on information that is patently false when everybody is telling me, looking me eyeball to eyeball, that it is true.

I am hoping, as the Senator from North Dakota has suggested, that we have a convening of the appropriate intelligence officials in the secure room and that members of the intelligence community, as well as members of the administration, will come and explain, in addition to what Dr. Kay has explained on the public record—which is revealing enough in itself—what, in fact, happened and how we are going to correct the process and the analysis of information so that we never have this kind of miscalculation and misinformation again.

Either the intelligence community's self-examination, its analysis was hugely faulty, or there were the hints at taking information and coloring it, called stacking the news and coming out with a conclusion that was wanted. I think we have to find out what happened.

It is not a question of whether or not Saddam Hussein ought to be gone. Thank goodness he is gone. That probably had a very salutary effect on the United States in that part of the world, that the United States will back up its intentions with force. But when the United States makes decisions about a preemptive war, a war now that has claimed the lives of over 500 American men and women, then we have to have a much higher standard of accuracy of the information upon which we make the judgments to send America's finest on to the battlefield.

I can tell you about all the soldiers from Florida who are now laid to rest. There are plenty of reasons I am raising these questions, but if for no other reason than to raise the questions for the mamas and the daddies and the spouses and the children of those soldiers. That is plenty justification enough. But the justification is much greater, and that is the justification of making sure we can protect ourselves in the future.

In a war against terrorists, our defense is only going to be as good as the information we receive to stop the terrorists. We had a colossal failure of intelligence on September 11, 2 years ago. We can't afford that kind of failure again. Yet we have just found out that when we were given the reasons for going to war, that was faulty intelligence. America can't afford too many more of these, for the protection of ourselves and our loved ones.

This is something of considerable concern to me personally. I know it is of considerable concern to the rest of the Senate. I hope the majority leader of this Senate, Senator FRIST, is going to listen to those of us in this Chamber who say that this request has nothing to do with politics. Let's get to the bottom of what is the truth and how we make sure that information in the future is true.

Mr. President, I yield the floor and suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The assistant journal clerk proceeded to call the roll.

Mr. CORNYN. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER. Without objection, it is so ordered.

IMMIGRATION POLICY

Mr. CORNYN. Mr. President, I rise to say a few words about our Nation's immigration policy.

Early this month, I applauded President Bush by talking about his principles which he believes ought to be embodied in comprehensive immigration reform. The President spoke courageously and forthrightly, and I urge Congress to heed the President's call.

We must acknowledge the truth. We need to be honest. The fact is, we have done far too little to repair a system that calls out—indeed, a system that cries out—for reform. Our homeland security demands an accounting of the identities of an estimated 8 to 10 million individuals currently living illegally in the United States, including their reason for being here and allowing an informed judgment on whether they pose a danger to us. For those who are deportable criminals, that judgment must be swift and sure.

The truth is the vast majority of undocumented immigrants in this country are not here as drug dealers, violent criminals, or terrorists. Rather, they are here doing the best they can to work hard so they can provide for their families. We can no longer deny the sheer number of undocumented individuals or the extent of our economy's dependence on the labor that they provide, nor can we ignore the horrible costs that many of these individuals pay when it comes to human smuggling.

In the wake of 9/11, much of the increased enforcement effort that we have made in terms of our border security has succeeded in blocking off the easiest transit points along our border, but that only means they resort to more remote and dangerous areas to cross, and sometimes with deadly results.

These individuals are also relying more on human smugglers, known as coyotes. Hundreds of undocumented individuals have died in the past 2 years. An immigration policy that ignores the reality of human suffering and death cannot be tolerated in a humane society.

For too long, the political extremists have dominated the debate about immigration. There are those who say they want to build a wall around our country, and others, on the other end of the spectrum, who cry for unconditional, complete amnesty. But both of these extremist proposals are unrealistic, and they leave many problems unanswered. What America needs instead is a comprehensive and fundamentally strong immigration system that bridges the gap between our economic and security needs. I believe a comprehensive, commonsense guest worker program is a critical first step toward fixing our immigration policies and adapting to modern realities. That is why last summer I introduced the Border Security and Immigration Reform Act of 2003. I urge my colleagues to educate themselves about the contents of this bill and to recognize that we must act to bring our broken immigration system into the 21st century.

Here are the key elements of my proposal. We need immigration reform. I believe we need an immigration system that will put homeland security first. Any reform of our immigration laws must be able to distinguish between the benign and the dangerous. Our law enforcement resources, limited as they are, must be able to be focused and dedicated to hunting down the real threats to our Nation, whether they are the smugglers, the drug dealers, or the terrorists, not simply those who are merely looking for a better life for themselves and their loved ones.

Currently, the whereabouts of 80,000 criminal alien absconders, aliens who have been convicted of a felony and ordered deported, is simply unknown to our Government. They vanished and we don't know where they are. They are running free within our borders.

In addition, we don't know the whereabouts of hundreds of thousands of other undocumented aliens who are under final orders of deportation. They simply have no other appeal, they are under final orders to leave, and they simply, again, melted into America.

This must change. Our immigration authorities must be given not only adequate funding and resources but adequate priorities as well. They must be allowed to spend more time on those who are a threat to us and not just those who come here to perform work that Americans by and large will not perform. Ignoring the problem—something we have done for some time now—won't solve any of our border security or immigration problems, and it will not make our Nation any more secure. Identifying, detaining, and deporting real threats to our Nation and our families will.

Second, my bill will help bring millions of current undocumented immigrants out of the shadows and under the rule of law and onto the tax rolls. Under my proposal, guest workers will no longer fear the authorities but, rather, will come to see the law as an ally and not as an enemy. This, in turn, will help protect immigrants from exploitation and violence and help end the death dealing of human smugglers. We must bring these workers out into the open, out of the shadows, out of the cash economy, and onto the tax rolls, which I believe will ultimately help restore respect for the rule of law.

Third, our immigration system must give a real incentive for undocumented workers who come to this country to work on a temporary basis. It must give them a real incentive to ultimately return to their home country. I believe my proposal is unique in this respect—something we call ''work and return.'' My proposal gives undocumented immigrants a real reason to come out of the shadows, to work within the law, to be accounted for, and then to return to their homes and their families in their home country, with the pay and the skills they acquire as guest workers in the United States.

In my recent visit with government leaders in Mexico City, I was repeatedly told that Mexico wants, indeed Mexico needs for its young, energetic risk takers and hard workers ultimately to come back home, and particularly to come back home with the capital and savings and the skills that they acquire when they work in the United States. They need these people to come back to their home country and to buy a house, to start a business, so that these small business owners, these potential entrepreneurs, can help strengthen the middle class in countries like Mexico. But our current immigration policy fails to give undocumented immigrants any real incentive to make a return to their home country.

Of course, I have mentioned Mexico, but this would hold true for many other countries that would also be covered by this program.

The fact is, there will be no end to illegal immigration across our southern border without economic recovery south of the border. Those of us in America cannot afford for our southern border to remain a one-way street.

Guest workers should, yes, be allowed to come out of the shadows and register for a program that will allow them to transit back and forth across the border in a way that they do not have to turn their lives and their fortunes over to coyotes and human smugglers. But ultimately real reform would make sure that these guest workers, after working here temporarily in the United States, must return to their country of origin.

President Bush called us to this task in his State of the Union speech just a couple of weeks ago now. I believe we in Congress have a duty to confront this challenge. We should hide our head in the sand no longer. We cannot, in my view, simply ignore the fact that there are literally hundreds of thousands of people under final orders of deportation. There are 80,000 criminal

alien absconders currently loose in this country, and our law enforcement authorities simply don't know where they are. But as for those who are not a threat, those who want nothing more than the opportunity to work temporarily and return to their homes with the savings and the skills they need in order to have a better life in their home country, I believe we must move these temporary workers out of the shadows. We must at the same time ensure the security of our borders. We must restore respect for our law, and we must bring our broken immigration system into the 21st century.

I suggest the absence of a quorum.

The PRESIDING OFFICER. The clerk will call the roll.

The legislative clerk proceeded to call the roll.

Mr. FRIST. Mr. President, I ask unanimous consent that the order for the quorum call be rescinded.

The PRESIDING OFFICER (Mr. ALEXANDER). Without objection, it is so ordered.

LOCAL LAW ENFORCEMENT ACT OF 2003

Mr. SMITH. Mr. President, I rise today to speak about the need for hate crimes legislation. On May 1, 2003, Senator KENNEDY and I introduced the Local Law Enforcement Enhancement Act, a bill that would add new categories to current hate crimes law, sending a signal that violence of any kind is unacceptable in our society.

In 1999, a 37-year-old man was the target of a brutal anti-gay attack on a cruise ship off the California coast. The victim was assaulted in a hallway of the ship by two other passengers who called him a ''faggot'' several times. He sustained injuries including a broken nose, three skull fractures around his eyes, chipped teeth and multiple contusions.

I believe that Government's first duty is to defend its citizens, to defend them against the harms that come out of hate. The Local Law Enforcement Enhancement Act is a symbol that can become substance. I believe that by passing this legislation and changing current law, we can change hearts and minds as well.

ENFORCING U.S. IMMIGRATION LAWS

Mr. LEAHY. Mr. President, we all agree that among the things we learned from the September 11 attacks was that we need to do a much better job of enforcing our immigration laws. While no system is foolproof, we should at least make it as difficult as possible to evade our border controls and enter this country illegally.

In doing so we must also be sure that we protect the rights and dignity of innocent travelers, to ensure that those who have every right to come to this country are able to do so with a minimum of delay and difficulty. We must also ensure that we do not betray our historic commitment to asylum, a dedication to provide refuge to those who flee oppression.

Since September 11, we have thwarted some illegal immigrants, although we do not know how many of them, if any, sought to come here to commit acts of terrorism. But we have also read about instances where innocent people were swept up by our border patrol agencies, and subjected to unnecessary and humiliating treatment.

These abuses not only damage the individual, but they damage our image around the world. As a result, people who would otherwise travel to the United States, as tourists, students, or for business, are deciding against coming out of fear that because of their race, or ethnicity, or nationality, or just because of the chance of a mistake, they might be mistreated or imprisoned.

Today I want to call attention to two cases. The first case involves Ms. Antje Croton, a German citizen married to an American school teacher from Brooklyn, whose ordeal was described in the January 21, 2004 edition of the New York Times.

Ms. Croton encountered a nightmarish immigration fiasco as she and her infant daughter tried to re-enter the United States after spending the holidays in Germany. The New York Times called Ms. Croton's ordeal ''Kafkaesque.'' There is no better word for it.

Concerned that her travel permit had expired in July, Ms. Croton visited a Department of Homeland Security, DHS, office in New York City before leaving the country for Germany on December 9, 2003. After talking to officials there, she was assured that her permit was valid through April 2004. Believing her documents were in order, Ms. Croton left for Germany.

Upon her return, Ms. Croton was told by an immigration official at the airport in New York that her travel permit had expired, and that she could not enter the country. With her infant daughter, Ms. Croton was interrogated until 2 a.m. and told she was to be put on the next plane back to Germany, all without informing her husband, who was waiting in the terminal.

At one point, Ms. Croton and her daughter were taken to a room where a dozen individuals, including some who were suspected of transporting drugs and illegal firearms, were being held. After several more hours of back and forth, immigration officials finally gave Ms. Croton the option of leaving the airport if she bought a return ticket that left for Germany within 30 days.

Ms. Croton and her husband spent the next 30 days negotiating layers of byzantine immigration rules and regulations in an effort to resolve her case before she was forced to depart. Even with the help of elected officials and immigration lawyers, the couple was getting nowhere. It was only after an inquiry from a New York Times reporter that the DHS began to pay attention.

The second case involves Sonam, a 30-year-old Buddhist nun whose plight was recounted in the January 27, 2004 edition of the Washington Post. Sonam, who goes by only one name, was detained at Dulles International Airport last August after arriving from Nepal.

After her father was arrested and tortured, Sonam fled from her native Tibet, controlled by China, to Nepal 3 years ago. She reached Nepal by walking for 8 days across mountainous territory. She then fled Nepal last summer, after the government there began returning Tibetan refugees to China, where they face prison and torture.

Sonam was granted asylum by a United States immigration judge last November, but the DHS immediately appealed the ruling and refused to release Sonam from custody during the pendency of the appeal. As a result, she may spend years in a local jail outside Richmond where she has been detained. In this jail, she is housed among common criminals and is unable to communicate with anyone because she does not know English.

The DHS defends its punitive policies toward asylum seekers on the grounds that it is concerned that terrorists may manipulate the asylum process. It strains belief to imagine that the DHS believes that a nun from Tibet with no knowledge of English or history of violence, whom a U.S. Government official has found deserving of asylum, is a potential terrorist.

Even Asa Hutchinson, the DHS Undersecretary for Border and Transportation Security, told the Post that ''[e]ven a well-balanced policy can get out of kilter on an individual case because someone has exercised poor judgment.'' It is clearly the case here that someone at DHS is exercising poor judgment, and Secretary Ridge or Undersecretary Hutchinson should do something to rectify this injustice.

There is no question that securing our borders from international terrorists, criminals, and illegal immigrants is one of the most important responsibilities of the Federal Government. We are more aware of this today than ever before.

But this does not give DHS a license to act in a bureaucratic and heavy-handed manner, which is precisely how it appears they behaved in these cases.

Border security involves striking a balance. Instead of wasting time and resources scaring and harassing a German woman and her baby or a Tibetan nun, who pose no threat to the security of the United States, DHS should be focused on stopping real terrorists and criminals. Moreover, in the Croton case, an immigration official told Ms. Croton that her paperwork was in order before she left the United States.

Thanks to the New York Times and others, the Croton case may be headed for a happy ending. But this is an instance where the victim spoke English,

is married to an American, and is a citizen of a nation that is a close ally of the United States.

What if this had involved someone who spoke little or no English? What if the person in question were not married to an American citizen? What if the media and elected officials had not been aware of it, and had not gotten involved? I suspect the individual would have been deported, even though their only offense was listening to the advice of an immigration official.

Meanwhile, the outcome of the Sonam case remains unclear, and unless the DHS acts, she can expect to spend most if not all of 2004 behind bars.

There are probably dozens, if not hundreds of other cases, of would-be immigrants and asylum seekers that do not have happy endings that we do not know about. Even one case like this is too many. Immigrants are responsible for the diversity of cultures, ideas, and practices that make up our society. We have an important responsibility to help those attempting to come to this Nation legally.

Equally important, we have an interest in treating immigrants fairly and with respect. Poor treatment of legal immigrants squanders goodwill that the United States spends billions of dollars each year—through foreign aid, international exchanges, and public diplomacy programs—to cultivate.

To be sure, we want our DHS officials to do their jobs effectively. We have to make sure that people entering this Nation are doing so legally, and are not a threat to the United States. But, we also have to make sure that DHS officials act in a fair and professional manner.

I hope that the DHS is reviewing what went wrong in these cases, and taking whatever steps are necessary to prevent it from happening again. I ask unanimous consent that the New York Times and Washington Post articles be printed in the RECORD.

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

[From the New York Times, Jan. 21, 2004]

TRIP HOME FROM EUROPE BECOMES KAFKAESQUE ORDEAL

(By Nina Bernstein)

A German woman married to a Brooklyn schoolteacher had been told that she had all her papers in order when she took a quick trip to show off her infant daughter to her parents in Germany.

But her return home in late December turned surreal and terrifying when Homeland Security officials at Kennedy Airport rejected her travel documents, confiscated her passport, then detained her and the 3-month-old overnight in a room with shackled drug suspects. They let her go only after ordering her to leave the country no later than tomorrow.

After a month of desperate efforts by her American husband, their lawyers and legislators, late yesterday a spokeswoman for the Homeland Security Department said that the woman, Antje Croton, 36, would be granted a last-minute reprieve. But Mrs. Croton said she had received no written notification.

''I'm in a nightmare,'' she said as she packed yesterday afternoon, having abandoned hope of straightening out the problem. ''I feel like I'm in the wrong movie.''

Her husband, Christopher Croton, said the couple was not convinced their ordeal was over. ''The experience has been like trying to open a door to a room that does not exist,'' Mr. Croton said. ''That's the irony here. My German-born wife has to come here to experience this wall of, just The State.''

He pointed out that other foreigners with fewer resources have been caught in the same kind of bureaucratic confusion ever since the Immigration and Naturalization Service was absorbed by the Department of Homeland Security last year.

Mrs. Croton has lived in Park Slope for five years, and her application for a green card has been pending for nearly two. When her sister urged her to visit Germany, she wanted to take no chances. So in October, she said, she asked immigration officials at 26 Federal Plaza about getting a new travel permit.

According to her account, an immigration official, C.E. Herndandez, insisted that her old permit was still valid, though it had a July expiration date, because it bore a stamp saying ''April 2004.'' Reassured, Mrs. Croton departed on Dec. 9. ''I did everything by the rules,'' Mrs. Croton said.

But on Dec. 22, when she returned to Kennedy Airport at 9 p.m., exhausted after a 10-hour trip alone with her baby daughter, Clara, front-line border security officers barred her way. They said the immigration official had been wrong: the July 2003 expiration, not the April 2004 stamp, applied, and she could not enter the United States.

They interrogated her until 2 a.m., she said, as she wept, tried to nurse her baby and pleaded with officials to call her husband, who was waiting without word in the terminal.

Mrs. Croton, who has worked for an ad agency in Hamburg and as a journalist in New York, and who recently started her own Internet business as a handbag designer, said she was astonished that the official questioning her had to struggle to enter her replies in an archaic computer, hunting and pecking and calling for help to save the document file.

''Then this man says, 'We are going to put you on the next plane going back home.' ''

''I said, 'This is my home,' '' recalled Mrs. Croton, who has lived in the same apartment with her husband since before they were married in 2001.

She was then taken from the airport's terminal 1 to terminal 4, she said, to a fluorescent-lit room where a dozen detainees included a man who had been carrying an illegal gun and several suspected drug couriers in shackles.

''I couldn't even spell my name anymore,'' Mrs. Croton said. ''Nobody who hasn't had a little infant and traveled on a long-distance flight can understand. I said, 'I need to lie down. I'm shivering, I'm exhausted, I'm nursing.' '' But she said an officer retorted: ''Stop crying. There were other people here with kids, and it's not going to get you anywhere.''

The most humane response, Mrs. Croton added, came from the low-level worker who had driven her from one terminal to the other. Learning that the mother had no diapers left for her baby, the driver returned with three toddler-sized disposable diapers, the only ones she could find.

In the morning, a supervisor told Mrs. Croton that she had to board a plane to Germany, but she refused, fearing for her health and the baby's. She was then offered another option: to buy a ticket for a flight to Germany leaving within 30 days, with no guarantee she could ever return.

The couple hoped to straighten out the mess before her forced departure, but the red tape seemed impervious. Two weeks ago, the couple went back to see Ms. Hernandez at Federal Plaza, and she again told Mrs. Croton that her travel document was still valid until April.

When told what had happened at the airport, other officials said that without Mrs. Croton's confiscated passport and file, their hands were tied. They were at an impasse until an inquiry by a reporter for The New York Times to Janet Rapaport, a spokeswoman for the Border Security section of Homeland Security.

That resulted in a flurry of activity. Ms. Rapaport said yesterday that a decision had been reached by Susan T. Mitchell, director of New York field operations for Customs Enforcement and Border Security, based on a review of Mrs. Croton's file. Mrs. Croton would be allowed to stay and pursue her green card application. ''I guess for humanitarian reasons,'' Ms. Rapaport said.

''I want to believe it,'' Mrs. Croton said. ''But they tell me I can stay, and then I stay, and then what if they tell me I'm a real lawbreaker?''

[From Washingtonpost.com, Jan. 27, 2004]

GRANTED ASYLUM, NUN HELD IN VA. JAIL

TIBETAN ENTANGLED IN POST-9/11 CAUTION

(By David Cho)

HOPEWELL, VA.—Sonam always feared her devotion to Buddhism would land her behind bars in her native China. As it turns out, she is serving a long term in jail—not in East Asia but in central Virginia.

The 30-year-old Buddhist nun, who grew up in a Tibetan village near the foot of Mount Everest, fled to the United States in August after family members had been tortured and friends jailed for their faith, she said. But when she arrived at Dulles International Airport and requested asylum, federal immigration officials detained her and placed her in the local jail in this small city outside Richmond.

Sonam, who is known by that one name, has been here ever since except for a brief visit in November to a court room in Arlington where a federal immigration judge granted her asylum. But even as she was hugging her attorney in celebration, the lawyer from the Department of Homeland Security announced that she was appealing the case.

Sonam was then shackled and returned to her cell, where she waits for their next court date, which is likely to be in the fall at the earliest, her attorney said.

Sonam is among thousands of asylum seekers who have fled persecution in their homelands only to be jailed in the United States, a new report by the New York-based Lawyers Committee for Human Rights shows.

By law, the Department of Homeland Security detains all asylum seekers who arrive without proper documents. But since the Sept. 11, 2001, terrorist attacks, federal immigration officials have also been denying parole to those immigrants and appealing rulings in their favor, a practice that can keep them locked up for years, according to the report, which monitored the department's activities for a year and details scores of cases, including Sonam's.

Homeland Security officials deny they are trying to keep asylum seekers behind bars, although they acknowledge that long incarcerations occur. They say they are reviewing their practices in responses to the report and are tallying statistics on how many asylum seekers have been detained, refused parole or seen their cases appealed.

''Even a well-balanced policy can get out of kilter on an individual case because someone

has exercised poor judgment,'' said Asa Hutchinson, the Homeland Security Department's undersecretary for border and transportation security.

At the same time, he and others say their is concern that a terrorist could slip into the country under the guise of an asylum request.

''People who come here may have no legitimate [reason]. They are here for economic reasons or for criminal reasons and have been trained to assert asylum,'' Hutchinson said.

''That requires us to be careful and . . . sometimes it makes people more skeptical of asylum cases than they should be.''

Last week, during an interview at the Riverside Regional Jail, Sonam spoke of her journey to the United States that began with a desperate, eight-day walk to Nepal across snow-capped mountains and ended with her first ride on an airplane, which frightened her so much she couldn't look out the window.

Sonam Singeri, a Tibetan working for Radio Free Asia who has befriended Sonam, was at the interview to translate. As soon as Sonam walked into the visitors' room and saw Singeri, she collapsed into her arms and sobbed uncontrollably.

''It's so lonely. It's so hard. Why is this happening?'' she cried out, Singeri said.

Sonam told a story of flight and fear. She said her father has been jailed in Tibet and tortured with electric shock. She described hiding from police patrols as she made her way across the Himalaya Mountains to Nepal, where she lived for three years.

But even there, she said, she worried about her safety. In May, the Nepalese government began to round up Tibetan refugees and send them back to China, where they were sure to face prison and torture, she said.

Even after asylum seekers such as Sonam have convinced immigration judges that they are bona fide and pose no threat, Homeland Security lawyers continue to press appeals in many cases, the Lawyers Committee for Human Rights report says.

''They are indefinitely detaining asylum seekers who have already been granted relief, who present no risk, who have often been tortured in their home countries,'' said Archi Pyati, who works in the lawyers committee's asylum program.

''We are sending a message that in the United States . . . we don't hope that asylum seekers find their way here because if they do they will find themselves in a very difficult situation and in prolonged detention.''

Immigrants seeking asylum in this country must prove not only their identities but also that they are in danger in their native countries.

Sonam's case was appealed because she did not have enough documentation to back up her story, according to a brief filed by Homeland Security attorney Deborah Todd. The fact that Sonam lived in Nepal for three years indicated that she could have safely stayed there and did not need to come to the United States, Todd argued in her appeal.

Asked to comment, a spokesman for Homeland Security said the department does not talk about ongoing cases.

Sonam said she had no way to get identity documents in Nepal because the government does not recognize refugees from China. She feared that she would be deported to China along with other Tibetans who were being sent back at the time. So she sought a way to get to the United States.

Using the money she had made as a seamstress before she joined her monastery in Nepal, Sonam booked a flight through Calcutta to Dulles.

After she was jailed in Virginia, her attorney, who has taken the case pro bono, twice asked the Department of Homeland Security to release her from detention, arguing that Sonam poses no danger. But immigration officials denied both requests without much explanation, according to Sonam's attorney.

The hardest part of Sonam's life these days is that she cannot speak or understand the language of the inmates or guards. (She is also illiterate in her native Tibetan tongue.) She has not been able to have a conversation with anyone since her hearing in November and wept as she recounted her seemingly endless days of silence and isolation in jail.

''I live in a prison but always in my mind, I hold onto a picture of His Holiness [the Dalai Lama] in my heart,'' she said. ''This prison has become my monastery.''

An hour into the interview, a guard tapped the window of the visitors' room. It was time to go.

Sonam shed a few more tears. It might be months before her next conversation. She hugged Singeri again and then followed the guard back to her part of the jail where she does not speak, cannot understand anyone and where she waits in her prison within a prison.

DAVID KAY INTERVIEW

Mr. VOINOVICH. Mr. President, during the past several days, there has been a great deal of discussion regarding comments made by David Kay, who until just recently led our search for weapons of mass destruction in Iraq.

There are some who have said that statements made by Mr. Kay indicate that there was no reason to take military action to address the threat posed by Saddam Hussein. I believe this is, at best, a misunderstanding of his statements. Mr. Kay clearly believes that removing Saddam Hussein from power was the right thing to do.

It is in this context that I would like to take this opportunity to share with my colleagues an interview that Mr. Kay gave yesterday morning, in which he outlines his thoughts on the dangers presented by Saddam Hussein.

When asked whether it was prudent to go to war, Mr. Kay responded:

I think it was absolutely prudent. In fact, I think at the end of the inspection process we'll paint a picture of Iraq that was far more dangerous than even we thought it was before the war. It was of a system collapsing. It was a country that had the capability in weapons of mass destruction areas and in which terrorists, like ants to honey, were going after it.

I believe it is helpful to review his comments in their entirety, and as such, I ask unanimous consent that the following interview be printed in the RECORD.

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

[From the NBC Today Show, Jan. 27, 2004]

Anchor: Matt Lauer

David Kay, former head of Iraq survey group, discusses searching for weapons of mass destruction in Iraq.

MATT LAUER, co-host. The Bush administration now says it needs more to determine if Iraq had weapons of mass destruction; this after retired U.S. weapons inspector David Kay concluded that Saddam Hussein had no such weapons.

David Kay, good morning. Good to have you here.

Mr. DAVID KAY (Former Head Of Iraq Survey Group). Good morning, Matt.

LAUER. There are some people who say you spent eight months scouring the country of Iraq for stockpiles of weapons of mass destruction, chemical, biological, nuclear, and because you didn't find them, they make a blanket statement. And that is there US administration misled the American people building a case for war. Is that a fair statement?

Mr. KAY. I think it's not fair, and it also trivializes what we did find and the problem we face. The problem we face is that before the war not only the US administration and US intelligence, but the French, British, Germans, the UN, all thought Saddam had weapons of mass destruction. Not discovering them tells us we've got a more fundamental problem.

LAUER. But if you didn't find stockpiles of chemical, biological or nucear weapons, does that mean they never existed, or does it mean they may have been moved out of Iraq prior to the war?

Mr. KAY. Well, we've certainly dealt with the possibility of moving, and we did that by trying to look to see if there was any signs of their actual production in the period after '98. And we really haven't found that. I think they were—there's a little evidence that large weapon stockpiles were moved. A lot of other stuff may well have been moved.

LAUER. So when you heard reports leading up to the war, and it's a—unclear where the—where the source of these reports came from, but that Iraqi troops had been given chemical and biological weapons. And they were prepared to use them against advancing US forces. And they could deploy them within 45 minutes, untrue in your opinion?

Mr. KAY. There's no evidence that they are true at this point in time.

LAUER. Let me play you a clip from the president's State of the Union address a year ago.

President George W. Bush (from file footage): ''Year after year, Saddam Hussein has gone to elaborate lengths, spent enormous sums, taken great risks to build and keep weapons of mass destruction.''

LAUER. In technical terms, was that an inaccurate statement?

Mr. KAY. Inaccurate in terms of the reality we found on the ground now. I think it was an accurate statement, given the intelligence the president and others were begin given then.

LAUER. But also accurate in your opinion because in truth Saddam Hussein did spend enormous amounts of money to develop chemical and biological weapons, but according to your report he just didn't get what he paid for.

Mr. KAY. Well, that was in part the—true. There are a tremendous amount of con—corruption there and lying that went on there. Saddam spent huge efforts at these weapons programs, no doubt about that.

LAUER. So when you say lying, his scientists, or people were coming to him saying, ''I can develop chemical and biological weapons for you for the right amount of money.'' They were taking the money, in your opinion, and not delivering?

Mr. KAY. And not delivering, and reporting back successes that they were not having. That was quite common down there.

LAUER. So when you spoke to Iraqi scientists, what did they tell you about the active weapons program in the year leading up to the war?

Mr. KAY. They describe from 1998 on a Iraq that was descending into the utter inability to do anything organized. Corruption was there. They couldn't get the equipment. Money was wasted. People weren't really concerned about working, they were concerned about money.

LAUER. But the intent was there?

Mr. KAY. Absolutely. And the intent at the top, of Saddam to acquire those weapons and to continue to attempt to acquire those was absolutely there.

LAUER. Almost a year ago Secretary of State Colin Powell addressed the United Nations. Here's what he had to say.

Secretary of State Colin Powell (from file footage): ''Conservative estimate is that Iraq today has a stockpile of between 100 and 500 tons of chemical weapons agent.''

LAUER. Conservative, or just plain wrong?

Mr. KAY. No, I think that was the estimate based on information and intelligence before the war. It turns out to be wrong.

LAUER. So what—what was the problem with the intelligence? Why were we so wrong?

Mr. KAY. Well, Matt, I think that is the challenge now. And I think the tendency to say, ''Well, it must have been pressure from the White House is absolutely wrong.'' In some ways I wish it had been pressure. It would be easier to solve the problem. We now have to look—and people forget, Iraq is not the only place we've been wrong recently. We've been wrong about Iran, and we've been wrong about Libya's program there. We clearly need a renovation of our ability to collect intelligence.

LAUER. Here's what you said to Tom Brokaw. ''Clearly the intelligence that we went to war on was inaccurate, wrong. We need to understand why that was.'' But you went on to say, ''I think if anyone was abused by the intelligence, it was the president of the United States, rather than the other way around.''

Mr. KAY. That's abso—absolutely my belief. I think, in fact, the president and all of us were reacting on the basis of an intelligence product that painted a picture of Iraq that turned out not to be accurate once we got on the ground.

LAUER. You find—you found that in—in 2000 and 2001 Saddam Hussein did actively try to develop and start a nuclear program?

Mr. KAY. He was putting more money into his nuclear program. He was pushing ahead his long-range missile program as hard as he could. Look, the man had the intent to acquire these weapons. He invested huge amounts of money in them. The fact is, he wasn't successful.

LAUER. In terms of the missile program alone, you feel that it's obvious and—and undisputable that he violated UN resolutions by developing weapons, missiles, that had a range outside of those UN resolutions?

Mr. KAY. Absolutely, Matt. We—we have collected dozens of examples of where he lied to the UN, violated Resolution 1441, and was in material breach.

LAUER. So based on the information that you have, David, not what we had prior to the war, but you have, in your opinion, was it prudent to go to war? Was there an imminent threat?

Mr. KAY. I think it was absolutely prudent. In fact, I think at the end of the inspection process we'll paint a picture of Iraq that was far more dangerous than even we thought it was before the war. It was of a system collapsing. It was a country that had the capability in weapons of mass destruction areas and in which terrorists, like ants to honey, were going after it.

LAUER. Do—do you feel that—you know, you've come out and started saying these things in the last couple of days, do you feel your words are being misused and misinterpreted in the political atmosphere that exists today?

Mr. KAY. I think there is a tendency, at this time to say, ''Got you!'' and try to do politics. It think this is national security, and far more important than momentary political gain. I hope that's now what's happening.

LAUER. If you spend eight months looking and didn't find anything, Dick Cheney says, ''In time we could probably find it.'' You still think we should continue to search?

Mr. KAY. Absolutely. I think the inspection should continue because among things we don't know enough about are the foreign countries that helped the Iraqis throughout this period to acquire the missiles, to develop the nukes, to develop the chemical and biological. We need that for no other reason. And sure, we should keep looking.

LAUER. And as we move forward and we look at countries like Iran, which you brought up, and North Korea, how well suited do you think we are by our intelligence in those areas at this date?

Mr. KAY. I think based on the evidence we have now, we are not as suited as well as we need to be. And I think that is the challenge, not the political 'Gotcha!' contest.

LAUER. David Kay.

David, good to have you here.

Mr. KAY. Good to be here.

SUSAN BOARDMAN RUSS

Mr. LEAHY. Mr. President, I often come to this floor to thank various staff for their long, tireless and often anonymous work on behalf of the U.S. Senate and the 100 Senators who serve here. But it is not often that I come down here to acknowledge a public servant who has made such an incredible contribution to this institution and our shared State of Vermont.

Today, I would like to honor the 25 years of service of Susan Boardman Russ, who has served Senator JEFFORDS and the people of Vermont with extraordinary distinction.

Vermont is a small place. I have known Susan most of her life. Her father delivered two of my three children.

Over the years, I have watched her grow with a mixture of awe and admiration. Susan is brilliant, articulate, and has always kept her eyes focused on what is best for Vermont.

Senator JEFFORDS is to be commended for recognizing her talent early on and for keeping her in the fold this long. While Susan has moved with her husband and beautiful daughter to Houston, TX, I know she will always be a Vermonter at heart.

Recently, one of Vermont's finest journalists, Christopher Graff, wrote a beautiful tribute to Susan. I ask unanimous consent that it be printed in the RECORD.

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

SUSAN RUSS STEPS DOWN AS JEFFORDS' CHIEF OF STAFF

(By Christopher Graff)

MONTPELIER, VT. (AP)—Susan Boardman Russ was 14 years old, handing out campaign literature at the old Seaway Shopping Center in South Burlington for her Uncle Bob Boardman, who was running for the state Senate from Chittenden County.

The year was 1968.

Her school friend, Kathleen McGreevy, was handing out flyers for her uncle, Jim Jeffords, who was running for attorney general.

''My uncle was Democrat and hers was a Republican, but that did not matter much to two 14-year-olds,'' says Russ.

''Soon, we were efficiently sharing the load. To everyone I handed a Democratic Bob Boardman flyer I also handed a Republican Jim Jeffords flyer and she did the same.''

Both Boardman and Jeffords were winners that year, their two nieces began a lifelong friendship and Russ' life became intertwined with Jeffords' political career.

In 1972 she worked during the summer on Jeffords' unsuccessful bid for governor and on ''the night of his primary defeat I swore I would NEVER participate in another election,'' she says. ''I was 18 and heartbroken.''

That loss, though, was a minor setback for Jeffords, who went on to win the state's lone seat in the U.S. House in 1974 and moved to the U.S. Senate in 1988. Every step of the way Susan Russ has been there, starting as his front office manager in 1978, then four years later as his administrative assistant in the House office and finally as chief of staff of his Senate office.

Now, 35 years after she handed out her first Jeffords' flyer and 25 years after she went to work in Washington, Russ is leaving.

''It's been a perfect relationship,'' says Jeffords, adding that the two of them were a ''great combination.''

''Her ability to understand me, her common sense and her instincts to keep us out of trouble have been remarkable,'' he says.

The accolades come from all corners: Sen. Patrick Leahy, D–Vt., calls Russ ''a Vermont treasure. For 25 years she has devoted her life to working for Senator Jeffords to make the lives of Vermonters better.'' In the small world department, Leahy noted that Russ' father delivered two of Leahy's children.

Sen. Harry Reid, D–Nev., the No. 2 Senate Democratic leader, also has high praise for Russ, whom he first met through Russ' husband, Jack, who served as sergeant at arms in the House when Reid and Jeffords served there. Reid says Susan Russ was especially ''politically savvy'' in a job that required it.

''Chief of staff is a unique position because you need to have that political savvy, plus you have to a good manager of people, you have to recognize talent, and you can't be afraid to tell the senator when you think he or she is wrong,'' says Reid.

''I believe I have been blessed with having the best job imaginable and the most interesting job tolerable,'' says Russ. ''I have had a front row seat to some of the most challenging moments in Washington for the past two and a half decades.''

When Jeffords first went to Washington he was a little-known congressman from a tiny state who was a member of the minority party. Today he is one of the best-known senators in the world, achieving celebrity status with his decision in 2001 to abandon the GOP and become an independent, a decision prompted by opposition to the politicies of President George W. Bush.

Russ says at the time she opposed Jeffords' decision although she knew that ''Jim was clearly miserable.

''It was not because of any long held political or philosophical beliefs that I resisted Jim switching,'' she says, but that Jeffords had a long history with the Republican members and leadership. ''We knew the GOP family—who to trust—who not to trust.

''It is my nature to try to keep things smooth, no rocking the boat. This would surely rock the boat.

''With nearly three years since the decision behind me, I do realize that for Jim, it was the only decision he could have made.''

Asked to pick her favorite legislative experiences, she says there have been too many to do so, but mentions the 1985 Farm Bill with its whole herd buyout from among the

House experiences and the several victories with the dairy compact from among the Senate years.

''Each time, no one really believed it was possible but Jim refused to throw in the towel,'' she says.

Luke Albee, Leahy's chief of staff, gives Russ credit for extension of the compact. ''She was focused and tenacious and she said to us every day when we were exhausted and dispirited, 'This is going to happen because it has to happen.' ''

Russ has no hesitation in what she treasures the most from her decades in Washington: How Jeffords stood by her and her husband when Jack Russ, then the House sergeant at arms, was swept up in a federal probe into how congressmen misused the House bank.

''It would have been understandable for Jim the politician to try and distance himself from the House Bank Scandal,'' she says. ''By 1994, when Jim was facing a difficult reelection race, Jack had come to represent the 'scandal' in a very public way. Jim never hestitated in his support.'' Russ says the tone of Washington and the intensity of the battle have changed dramatically since 1978.

''Members of different parties used to have intense battles over issues on the floor of the House or Senate and when it was over go out and have dinner together. They never went into each other's districts to help challengers. There was a general sense of camaraderie that does not exist anymore between members of the two parties.''

Russ is moving to Texas to be closer to her husband's family. She has formed her own firm to advise businesses and non profits on the ways of government. She hopes the move will allow her to keep a hand in government but allow her more time to spend with her family.

Russ leaves Washington painfully aware that ''politics is not a game for the meek,'' but more importantly, ''I learned when all is said and done, you have to live with yourself and your decisions, so you better do what you think is right and let the chips fall where they may.''

SAUDI ACCOUNTABILITY ACT

Mr. FEINGOLD. Mr. President, I rise to comment on S. 1888, the Saudi Arabia Accountability Act of 2003, introduced by Senator SPECTER. I commend my colleague for his leadership on this issue. Combating terrorism is our highest national security priority at this time, and I have long had concerns regarding Saudi support for terrorist groups. While the administration has stated that the Government of Saudi Arabia has recently increased its cooperation with the United States, and while I do believe that last week's joint U.S.-Saudi announcement regarding Al-Haramain branches in Pakistan, Indonesia, Kenya and Tanzania is a positive step, it remains evident that the Saudi Government has often turned a blind eye to many activities that foster terrorism and, in some cases, Saudi leadership appears to have supported terrorism directly. This bill serves to exert pressure on Saudi Arabia to increase its counterterrorism efforts or to face limited sanctions. Cutting the links between terrorist organizations and their sponsoring governments is one of the most crucial tasks in the fight against terrorism, and I support the goals of this legislation.

However, the legislation raises other concerns that must be carefully considered by Congress. I am concerned that the legislation demonstrates the degree to which we, as policymakers, wear blinders in our relationship with Saudi Arabia. The legislation expresses dissatisfaction with the Government of Saudi Arabia solely for their lack of cooperation on the global war on terrorism. But Congress must not fail to mention the government's repression of women, grand-scale corruption, widescale detentions, and restrictions on freedom of expression and assembly. I fear that these omissions risk sending the wrong message about U.S. foreign policy priorities to the Middle East and other areas of the world. U.S. foreign policy objectives of promoting human rights and democracy must not be neglected while combating terrorism. These do not have to be contradictory goals. Even as we urge the Saudi Government to act more decisively and consistently against terrorism, we must ensure that the U.S. does not inadvertently encourage repression of desperately needed reforms in Saudi Arabia. Only by addressing both sets of issues can we achieve a future in which the U.S. relationship with Saudi Arabia stands on a firm footing.

The national security implications of failing to speak out bluntly about Saudi support for terrorism prompted me to cosponsor S. 1888. However, I hope that the Senate Foreign Relations Committee will take the opportunity to address some of these issues I have raised.

THE INTERNATIONAL FUND FOR IRELAND

Mr. LEAHY. Mr. President, I see the Senator from Maryland on the floor, an important member of the Foreign Operations Subcommittee, and I am under the impression that she would like to discuss an issue concerning the International Fund for Ireland, IFI, with Senator MCCONNELL and myself.

Ms. MIKULSKI. I thank the Senator, who, like me, is a strong supporter of the International Fund for Ireland. As the Senator from Vermont knows, peace and reconciliation efforts in Northern Ireland, under the Good Friday Agreement, will be assisted by efforts to build community institutions that promote tolerance and cooperation at the local level. I very much appreciate IFI's investment in these types of programs in Northern Ireland and the border counties of Ireland. I want to particularly commend IFI for the grant awarded to the Community Foundation for Northern Ireland, formerly the Northern Ireland Voluntary Trust. I would urge IFI, where appropriate, to increase its investment in these community-building efforts, as they are an important complement to IFI's economic development efforts.

Mr. LEAHY. I thank the Senator from Maryland. I also believe that IFI should consider increasing its support for these types of programs.

Mr. MCCONNELL. I agree with what the Senators from Maryland and Vermont have said concerning IFI and the Community Foundation for Northern Ireland.

RECOGNIZING PAUL M. IGASAKI, FORMER VICE CHAIR, U.S. EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Mr. DURBIN. Mr. President, I recognize Paul Igasaki, a Chicago native, for his contributions to the important work of advancing our civil rights. Mr. Igasaki has dedicated his entire professional career to ensuring justice for the powerless in our society who are often neglected and ignored.

In his most recent years of public service as a commissioner, vice chair, and acting chair of the U.S. Equal Employment Opportunity Commission, EEOC, Mr. Igasaki not only enforced laws that helped prevent employment discrimination practices, he himself broke the glass ceiling as the first Asian American appointed to the high office.

Mr. Igasaki was successful in reducing overwhelming case backlog that was impairing the effective functioning of the agency. His recommendations led to the development of the National Enforcement Plan and the Priority Charge Handling Program, which have reduced the EEOC case inventory by over 70 percent. These structural changes have allowed the agency to focus on more serious cases where the EEOC's involvement can make a difference to the lives of American workers.

Similarly, Mr. Igasaki cochaired an EEOC task force that recommended focused litigation strategy, placement of attorneys in area offices, and greater cooperation between attorneys and investigators in agency, which have led to increased law enforcement effectiveness of the agency.

One of his most notable accomplishments during his term on the EEOC was his role in guiding the settlement of the Mitsubishi Motors of America case—the largest case involving sexual harassment at the workplace. His success with this case was influential in moving the Japanese government to implement gender discrimination and sexual harassment enforcement laws for their own country.

In the aftermath of the September 11th terrorist attacks, Mr. Igasaki brought valuable perspectives from his personal experiences as a Japanese American to the EEOC's efforts to combat unfair backlash and scapegoating of Arab Americans, South Asian Americans, Muslim or Sikh Americans and others who were wrongly targeted by hate and discrimination.

Mr. Igasaki mother's family owned a small truck farm near San Diego. Like thousands of other Japanese Americans, Mr. Igasaki's grandparents had been in the United States for almost a half century, and like most immigrants

they were proud and loyal Americans. Yet, following the devastating attacks at Pearl Harbor, Mr. Igasaki's family was subject to harassment around town and at school. One day, the FBI showed up at their home, and without warning, warrant or explanation, they took his grandfather into custody. His family would not know where he was, what his condition was or why he had been taken for several months. They relied on community rumor, knowing that other Japanese Americans had been arrested for no apparent reason.

When our government issued the relocation orders for Japanese Americans, Mr. Igasaki's family had two weeks to give up the farm and nearly all of their property. Only in the horse stall that the family shared in the relocation center at Santa Anita Racetrack did they find out that Mr. Igasaki's grandfather was arrested because he was the secretary of the local Celery Growers Association and because he had taken some notes of their meetings in Japanese. Their family eventually reunited when they were sent to a more permanent camp in Arizona where they were held for the duration of World War II.

Having experienced the pain and injustice of such treatment based on no reason other than their ethnic ancestry, Mr. Igasaki's became a passionate voice of conscience in the months following the September 11th attacks. His voice comforted all Americans who faced discrimination at the workplace because of their ancestry or appearance, and the work of the EEOC was that much more important because of Mr. Igasaki's presence.

His voice has also been an important one in the development of the national Asian American civil rights movement. Mr. Igasaki has served as the Washington, DC, representative of the Japanese American Citizens League, executive director of the Asian Law Caucus, and executive director of the City of Chicago's Commission on Asian American Affairs.

A more detailed list of Mr. Igasaki's accomplishments is described in a resolution that the national board of the Japanese American Citizens League recently adopted. I ask unanimous consent that this resolution be printed in the RECORD.

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

RESOLUTION IN APPRECIATION OF AND COMMENDING PAUL M. IGASAKI FOR HIS SERVICE ON THE EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Whereas, Paul M. Igasaki served our nation on the Equal Employment Opportunity Commission (EEOC) with distinction for eight years from 1994 to 2002;

Whereas, Mr. Igasaki was initially nominated by President Clinton and confirmed by the United States Senate in 1994, served as Acting Chairman from January to October 1998 and was confirmed for a second term as Vice Chair on October 21, 1998;

Whereas, Mr. Igasaki was the first Asian Pacific American to serve in these positions at the EEOC;

Whereas, Mr. Igasaki was the architect of the EEOC's strategy for handling job discrimination charges more efficiently which resulted in the prosecution of egregious cases of discrimination and a reduction in charge inventory by more than 50%;

Whereas, Mr. Igasaki sought support for and the approval of the EEOC's historic FY 1999 budget increase for this important but under-funded agency;

Whereas, Mr. Igasaki endeavored to ensure equal employment opportunities through his work as a Commissioner at the EEOC as well as by promoting diversity in hiring at all levels of the agency—in the Washington, DC headquarters and in the regional offices;

Whereas, Mr. Igasaki's outreach to historically underserved communities and his understanding of the harm of ethnic profiling made him an invaluable resource at the EEOC, promoting an environment which allowed those affected by employment discrimination in the aftermath of the horrific attacks on 9/11 to report their cases;

Whereas, Mr. Igasaki was recommended for another term at the EEOC by Senate Democratic Leader Tom Daschle in May 2002;

Whereas, despite Mr. Igasaki's notable achievements and years of dedicated service as a committed and competent public servant at the EEOC, the White House declined to nominate him for another term;

Whereas, failing to be renominated, Mr. Igasaki's term expired, and he left the EEOC at the end of 2002;

Whereas, Mr. Igasaki has a long and distinguished track-record of working on important civil rights issues through such organizations as the Asian Law Caucus, the City of Chicago's Human Relations Commission, the Chicago Commission on Asian American Affairs and the American Bar Association;

Whereas, Mr. Igasaki has also been a longtime member of the JACL, having served as the President of the Chicago chapter and as the Washington, DC Representative where he worked on the Civil Rights Act, immigration reform and was a crucial voice in implementing the Civil Liberties Act of 1988 and the Office of Redress Administration;

Whereas, Mr. Igasaki has always maintained a staunch commitment to and involvement in the Asian Pacific American community and the issues facing our community;

Whereas, Mr. Igasaki has received numerous professional and personal accolades for his achievements;

Therefore be it resolved that the National Board of the Japanese American Citizens League (JACL) on behalf of the entire organization highly commends Paul M. Igasaki for his years of dedicated service at the Equal Employment Opportunity Commission and extends our deepest gratitude to him for his work on behalf of all Americans to combat discrimination in the workplace;

Be it further resolved that the Japanese American Citizens League recognizes and appreciates the considerable contributions made by Paul M. Igasaki as an advocate for civil rights and role model for the Asian Pacific American community;

Be it further resolved that the Japanese American Citizens League thanks Paul M. Igasaki for his tireless efforts to promote and defend civil rights, civil liberties and equality before the law.

Mr. DURBIN. I urge my colleagues to join me in recognizing the important achievements of Mr. Paul Igasaki, and wishing him well in his future efforts to advance civil rights of all Americans.

ADDITIONAL STATEMENTS

HAROLD ''TUBBY'' RAYMOND'S INDUCTION INTO COLLEGE FOOTBALL HALL OF FAME

● Mr. CARPER. Mr. President, I rise today in recognition of Harold Raymond upon his induction into the College Football Hall of Fame. After 36 seasons as the University of Delaware's head football coach and 48 years in the Blue Hen program, he has earned a reputation for talent, dedication, and loyalty. Known to friends and colleagues as ''Tubby,'' he is a man with a kind heart, diverse interests and great abilities. Tubby embodies the best of the State of Delaware, the University of Delaware, and the institution of coaching.

In a coaching career that has spanned 10 United States presidencies, Tubby led the Blue Hens to three national championships, 16 NCAA playoffs and 14 Lambert Cups. He is one of nine college football athletes to win 300 games and one of just four who accomplished that feat at one institution. He also led his team to three national championships. In his charge, the Blue Hens won more than 50 percent of Delaware's 575 all-time victories in 100 seasons of intercollegiate competition. He retired with a breathtaking record of 300–118–3.

Raymond, a native of Flint, MI, was a quarterback and linebacker at the University of Michigan. It was there, playing for Coach Fritz Crisler, that Raymond learned the Wing-T offense, which he later implemented at Delaware. He has written five books on the subject, as well as producing several instructional videos.

Tubby began coaching in 1949 as an assistant football coach at University High in Ann Arbor, MI. In 1950, he earned a degree in education from the University of Michigan and became head coach at University High.

In 1954, Tubby arrived in the First State, serving as both football backfield coach and head baseball coach for the University of Delaware. In 1966, he took the reins from Dave Nelson as UD's head football coach. Since then, his teams have produced 32 winning seasons.

Over the years, Raymond had offers to coach at Syracuse, Maryland, Arizona, Iowa and Army. Marv Levy twice tried to hire him, once when Levy was coaching at the University of California and again when he was with the Kansas City Chiefs. But Raymond was content to stay with what he calls his ''family'' at Delaware.

On August 29, 2002, his ''family'' paid tribute to him when they celebrated Tubby Raymond Day. Completing the eventful night game in style, the Fightin' Blue Hens, under the direction of new head coach K.C. Keeler, defeated NCAA Division I–AA powerhouse Georgia Southern 22–19 before an electrified crown of over 19,000. At halftime in the game, with the Hens holding a 14–6

lead, the Delaware Stadium playing field was formally named Tubby Raymond Field. Less than 16 months later, the Blue Hen team that Tubby helped to recruit and then turned over to his successor K.C. Keeler went on to defeat Colgate 40–0 in the finals of the NCAA's Division I–AA football playoffs, making the Blue Hens national champions for 2003.

Tubby epitomizes the University's emphasis on developing student-athletes, too. Throughout his tenure, he encouraged his players to succeed in the classroom as well as on the football field. He will tell you that he is as fiercely proud of those who succeed in careers off the gridiron as he is in those who succeed in the NFL.

Tubby's legacy will never be forgotten by those he touched, the players he coached, and the students he inspired. On behalf of all of them and those of us who call Delaware home, I want to thank him for his leadership, congratulate him on a remarkable coaching career and wish him and his family only the very best in all that lies ahead for him and for them.●

TRIBUTE TO JIM WOLFE

● Mr. BIDEN. Mr. President, I rise today to honor a true business leader and long-time friend in my State of Delaware, Jim Wolfe. Many of us in public office talk about creating good-paying jobs and fighting for the middle class, Jim Wolfe has lived those goals throughout his professional career.

For the past 11 years, Jim Wolfe has led the Chrysler, now the DiamlerChrysler Automobile Assembly Plant in Newark, DE. Tomorrow, he is hanging up his hat as plant manager to take the helm as president and CEO of the 2,800-member Delaware State Chamber of Commerce.

As plant manager of Delaware's DiamlerChrysler plant, which is home to the popular, award-winning Dodge Durango, Jim orchestrated a dozen overhauls of the facility to retool it for new car models. More significantly, he oversaw the re-training of thousands of workers to upgrade their skills.

The DiamlerChrysler plant in Delaware is one of only a few U.S. auto facilities remaining on the East Coast. It is an economic engine in Delaware, employing more than 2,300 people and contributing $363 million annually to our State's economy. The financial domino effect goes even further: one auto worker creates another 1.6 jobs in other industries, such as transportation, retail services, and labor.

Jim Wolfe is no stranger to the Delaware State Chamber of Commerce. For the past year he has served as Chairman of the Chamber's independent Board of Directors. He is a long-time member of the Chamber's Board of Directors and Executive Committee, as well as serving as Chairman of the Delaware Manufacturing Association.

On a personal note, Jim has been a great and trusted friend and advisor to me for many years. I have visited with him and his workers at the Newark DiamlerChrysler Plant more times than I can count, and he always gave it to me straight. When the facility was in jeopardy of closing in the early 1990s, he counseled me on how to help save this manufacturing gem for our State, which we accomplished.

Jim is a 40-year employee of Chrysler. We stole him from his native Michigan, but he and his wife Laura are now part of the Delaware family.

Jim's stature in the business community has been earned and is well-deserved. He will bring a hands-on knowledge of the business world to his new position directing the Chamber's many affiliates, including the Manufacturing Association, the Delaware Retail Council, The Public Policy Institute, and the Small Business Alliance.

DiamlerChrysler's loss is truly the Delaware State Chamber of Commerce's gain. But we all win because we'll continue to benefit from Jim's affable personality, skilled business acumen and foresight as a community leader in Delaware.●

MESSAGES FROM THE PRESIDENT

Messages from the President of the United States were communicated to the Senate by Ms. Evans, one of his secretaries.

EXECUTIVE MESSAGES REFERRED

As in executive session the Presiding Officer laid before the Senate messages from the President of the United States submitting sundry nominations which were referred to the appropriate committees.

(The nominations received today are printed at the end of the Senate proceedings.)

REPORT OF PRESIDENTIAL DETERMINATION 2003–39 RELATIVE TO CLASSIFIED INFORMATION CONCERNING THE AIR FORCE'S OPERATING LOCATION NEAR GROOM LAKE, NEVADA—PM 60

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Environment and Public Works:

To the Congress of the United States:

Consistent with section 6001(a) of the Resource Conservation and Recovery Act (RCRA) (the ''Act''), as amended, 42 U.S.C. 6961(a) notification is hereby given that on September 16, 2003, I issued Presidential Determination 2003–39 (copy enclosed) and thereby exercised the authority to grant certain exemptions under section 6001(a) of the Act.

Presidential Determination 2003–39 exempted the United States Air Force's operating location near Groom Lake, Nevada, from any Federal, State, interstate, or local hazardous or solid waste laws that might require the disclosure of classified information concerning that operating location to unauthorized persons. Information concerning activities at the operating location near Groom Lake has been properly determined to be classified, and its disclosure would be harmful to national security. Continued protection of this information is, therefore, in the paramount interest of the United States.

The determination was not intended to imply that, in the absence of a Presidential exemption, RCRA or any other provision of law permits or requires the disclosure of classified information to unauthorized persons. The determination also was not intended to limit the applicability or enforcement of any requirement of law applicable to the Air Force's operating location near Groom Lake except those provisions, if any, that might require the disclosure of classified information.

GEORGE W. BUSH.

THE WHITE HOUSE, *January 28, 2004.*

STATEMENT OF JUSTIFICATION RELATIVE TO THE AUSTRALIA GROUP CHEMICAL AND BIOLOGICAL WEAPONS NONPROLIFERATION REGIME—PM 61

The Presiding Officer laid before the Senate the following message from the President of the United States, together with an accompanying report; which was referred to the Committee on Foreign Relations:

To the Congress of the United States:

Consistent with the resolution of advice and consent to ratification of the Convention on the Prohibition of the Development, Production, Stockpiling, and Use of Chemical Weapons and on Their Destruction, adopted by the Senate of the United States on April 24, 1997, I hereby certify pursuant to Condition 7(C)(i), Effectiveness of the Australia Group, that:

Australia Group members continue to maintain equally effective or more comprehensive controls over the export of: toxic chemicals and their precursors; dual-use processing equipment; human, animal, and plant pathogens and toxins with potential biological weapons applications; and dual-use biological equipment, as that afforded by the Australia Group as of April 25, 1997; and

The Australia Group remains a viable mechanism for limiting the spread of chemical and biological weapons-related materials and technology, and the effectiveness of the Australia Group has not been undermined by changes in membership, lack of compliance with common export controls and nonproliferation measures, or the weakening of common controls and nonproliferation measures, in force as of April 25, 1997.

The factors underlying this certification are described in the enclosed statement of justification.

GEORGE W. BUSH.

THE WHITE HOUSE, *January 28, 2004.*

MESSAGE FROM THE HOUSE

At 12:45 p.m., a message from the House of Representatives, delivered by Ms. Niland, one of its reading clerks, announced that the House has passed the following bills, in which it requests the concurrence of the Senate:

H.R. 1385. An act to extend the provision of title 39, United States Code, under which the United States Postal Service is authorized to issued a special postage stamp to benefit breast cancer research.

H.R. 3493. An act to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments made by the Medical Device User Fee and Modernization Act of 2002, and for other purposes.

The message also announced that the House has passed the following bill, without amendment:

S. 610. An act to amend the provision of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration, and for other purposes.

The message further announced that pursuant to section 1238(b)(3) of the Floyd D. Spence National Defense Authorization Act for Fiscal Year 2001 (22 U.S.C. 7002), amended by Division P of the Consolidated Appropriations Resolution, 2003, and the order of the House of December 8, 2003, the Speaker reappoints the following Member on the part of the House of Representatives to the United States-China Economic and Security Review Commission: Ms. June Teufel Dreyer of Coral Gables, Florida, for a term to expire December 31, 2005.

MEASURES REFERRED

The following bills were read the first and the second times by unanimous consent, and referred as indicated:

H.R. 1385. An act to extend the provision of title 39, United States Code, under which the United States Postal Service is authorized to issue a special postage stamp to benefit breast cancer research; to the Committee on Governmental Affairs.

H.R. 3493. An act to amend the Federal Food, Drug, and Cosmetic Act to make technical corrections relating to the amendments made by the Medical Device User Fee and Modernization Act of 2002, and for other purposes; to the Committee on Health, Education, Labor, and Pensions.

EXECUTIVE REPORTS OF COMMITTEES

The following executive reports of committees were submitted:

By Mr. WARNER for the Committee on Armed Services.

Air Force nominations beginning Brigadier General Roger P. Lempke and ending Colonel James P. Toscano, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 20, 2003.

Air Force nomination of Col. James E. Hearon.

Air Force nomination of Maj. Gen. Thomas L. Baptiste.

Air Force nomination of Maj. Gen. Donald J. Wetekam.

Navy nomination of Capt. Ann D. Gilbride.

Navy nominations beginning Capt. Jon W. Byless, Jr. and ending Capt. William H. Payne, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on February 27, 2003.

Navy nomination of Rear Adm. (lh) Fenton F. Priest III.

Navy nomination of Rear Adm. (lh) Paul E. Sullivan.

Mr. WARNER. Mr. President, for the Committee on Armed Services I report favorably the following nomination lists which were printed in the RECORDS on the dates indicated, and ask unanimous consent, to save the expense of reprinting on the Executive Calendar that these nominations lie at the Secretary's desk for the information of Senators.

The PRESIDING OFFICER. Without objection, it is so ordered.

Air Force nominations beginning Paul V. Bennett and ending Victoria G. Zamarripa, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on March 26, 2003.

Air Force nominations beginning Nelson * Arroyo and ending Paul D. * Sutter, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 2003.

Air Force nominations beginning James J. * Baldock IV and ending Brian K. * Wyrick, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 2003.

Air Force nominations beginning Kimberly L. * Arnao and ending James M. Winner, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 2003.

Air Force nominations beginning David H. * Adams, Jr. and ending James A. * Young, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 2003.

Air Force nominations beginning Laurie A. Abney and ending Deedra L. * Zabokrtsky, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 2003.

Air Force nominations beginning John T. Aalborg, Jr. and ending William A. Zutt, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on September 4, 2003.

Army nominations beginning Stephen G. Beardsley III and ending Patrick O. Wilson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 17, 2003.

Army nominations beginning John R. Angelloz, Jr. and ending Michael C. McDaniel, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 20, 2003.

Army nomination of James R. Ward.

Army nomination of Michael K. Vaughan.

Army nominations beginning David S. Feigin and ending John E. Hartmann, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 25, 2003.

Army nominations beginning Joseph L. Craver and ending William Hann, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 25, 2003.

Army nomination of Carol Ann Mitchell.

Army nominations beginning Carol A. Bossone and ending Curtis M. Klages, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 25, 2003.

Army nominations beginning Daniel G. Rendeiro and ending Diane K. Patterson, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 25, 2003.

Army nominations beginning Michael T. Endres and ending James A. Chervoni, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 25, 2003.

Navy nominations beginning Tab E Austin and ending Sabrina M Stedman, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 20, 2003.

Navy nominations beginning Albert A. Alarcon and ending Jeffrey W. Winters, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 21, 2003.

Navy nominations beginning Craig L. Abraham and ending Sarah L. Wright, which nominations were received by the Senate and appeared in the CONGRESSIONAL RECORD on November 25, 2003.

(Nominations without an asterisk were reported with the recommendation that they be confirmed.)

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. 2034. To establish 3 memorials to the Space Shuttle Columbia in the State of Texas; to the Committee on Energy and Natural Resources.

By Mr. GRAHAM of South Carolina (for himself, Mr. DASCHLE, Mr. LEAHY, Mr. DEWINE, Mrs. CLINTON, Ms. MURKOWSKI, Mr. ALLEN, Mr. SMITH, Ms. LANDRIEU, Mr. REID, Mr. LAUTENBERG, Mr. PRYOR, Mr. KERRY, Ms. CANTWELL, Mrs. LINCOLN, Mr. AKAKA, Mr. LIEBERMAN, Mr. SCHUMER, Mrs. BOXER, Mrs. MURRAY, Mr. DORGAN, Mr. JOHNSON, Mr. BINGAMAN, Mr. DAYTON, Mr. KENNEDY, Ms. MIKULSKI, and Mr. NELSON of Nebraska):

S. 2035. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to expand certain authorities to provide health care benefits for Reserves and their families, and for other purposes; to the Committee on Armed Services.

By Mrs. FEINSTEIN:

S. 2036. A bill for the relief of Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda; to the Committee on the Judiciary.

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 2037. A bill to transfer administrative jurisdiction of a parcel of real property comprising a portion of the Defense Supply Center in Columbus, Ohio, and for other purposes; to the Committee on Armed Services.

By Mr. BAYH (for himself, Mr. CRAIG, Ms. LANDRIEU, and Mr. DURBIN):

S. 2038. A bill to amend the Public Health Service Act to provide for influenza vaccine awareness campaign, ensure a sufficient influenza vaccine supply, and prepare for an influenza pandemic or epidemic, to amend the Internal Revenue Code of 1986 to encourage vaccine production capacity, and for other purposes; to the Committee on Finance.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 2039. A bill to waive time limitations specified by law in order to allow the Medal of Honor to be awarded posthumously to Rex T. Barber of Terrebonne, Oregon, for acts of

valor during World War II in attacking and shooting down the enemy aircraft transporting Japanese Admiral Isoroku Yamamoto; to the Committee on Armed Services.

SUBMISSION OF CONCURRENT AND SENATE RESOLUTIONS

The following concurrent resolutions and Senate resolutions were read, and referred (or acted upon), as indicated:

By Mr. FEINGOLD (for himself, Mr. KOHL, Mr. CRAIG, Ms. STABENOW, Mr. SCHUMER, Mr. JEFFORDS, Mr. SPECTER, Mrs. CLINTON, Mrs. BOXER, Ms. COLLINS, Mr. CRAPO, Mr. DAYTON, Ms. SNOWE, Mr. DOMENICI, Mr. COLEMAN, Mr. LEAHY, and Mrs. FEINSTEIN):

S. Res. 293. A resolution expressing the sense of the Senate that the President and United States Trade Representative should ensure that any future free trade agreements do not harm the dairy industry of the United States; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. MCCAIN, Mr. ALLEN , Mr. AKAKA, Mr. PRYOR, Mr. KERRY, Mr. NELSON of Nebraska, Mr. DODD, Mr. DAYTON, Ms. MIKULSKI, Mr. GRASSLEY, and Mr. COCHRAN):

S. Res. 294. A resolution designating January 2004 as '' National Mentoring Month''; to the Committee on the Judiciary.

By Mr. SMITH (for himself, Mr. BIDEN, and Mr. ALLEN):

S. Con. Res. 87. A concurrent resolution welcoming the Prime Minister of Turkey to the United States; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 68

At the request of Mr. INOUYE, the name of the Senator from New York (Mr. SCHUMER) was added as a cosponsor of S. 68, a bill to amend title 38, United States Code, to improve benefits for Filipino veterans of World War II, and for other purposes.

S. 700

At the request of Mr. CAMPBELL, the name of the Senator from Connecticut (Mr. LIEBERMAN) was added as a cosponsor of S. 700, a bill to provide for the promotion of democracy, human rights, and rule of law in the Republic of Belarus and for the consolidation and strengthening of Belarus sovereignty and independence.

S. 1092

At the request of Mr. CAMPBELL, the name of the Senator from New Mexico (Mr. DOMENICI) was added as a cosponsor of S. 1092, a bill to authorize the establishment of a national database for purposes of identifying, locating, and cataloging the many memorials and permanent tributes to America's veterans.

S. 1108

At the request of Mrs. CLINTON, the name of the Senator from Connecticut (Mr. DODD) was added as a cosponsor of S. 1108, a bill to establish within the National Park Service the 225th Anniversary of the American Revolution Commemorative Program, and for other purposes.

S. 1143

At the request of Mrs. HUTCHISON, the name of the Senator from Washington (Ms. CANTWELL) was added as a cosponsor of S. 1143, a bill to amend the Public Health Service Act to direct the Secretary of Health and Human Services to establish, promote, and support a comprehensive prevention, research, and medical management referral program for hepatitis C virus infection.

S. 1189

At the request of Mr. DURBIN, the name of the Senator from Nebraska (Mr. NELSON) was added as a cosponsor of S. 1189, a bill to ensure an appropriate balance between resources and accountability under the No Child Left Behind Act of 2001.

S. 1335

At the request of Mr. GRAHAM of Florida, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1335, a bill to amend the Internal Revenue Code of 1986 to allow individuals a deduction for qualified long-term care insurance premiums, use of such insurance under cafeteria plans and flexible spending arrangements, and a credit for individuals with long-term care needs.

S. 1345

At the request of Mrs. MURRAY, the name of the Senator from Mississippi (Mr. COCHRAN) was added as a cosponsor of S. 1345, a bill to extend the authorization for the ferry boat discretionary program, and for other purposes.

S. 1431

At the request of Mr. LAUTENBERG, the name of the Senator from Hawaii (Mr. AKAKA) was added as a cosponsor of S. 1431, a bill to reauthorize the assault weapons ban, and for other purposes.

S. 1484

At the request of Mr. WYDEN, the name of the Senator from New Jersey (Mr. CORZINE) was added as a cosponsor of S. 1484, a bill to require a report on Federal Government use of commercial and other databases for national security, intelligence, and law enforcement purposes, and for other purposes.

S. 1588

At the request of Ms. LANDRIEU, the name of the Senator from Michigan (Mr. LEVIN) was added as a cosponsor of S. 1588, a bill to authorize the National Institute of Environmental Health Sciences to develop multidisciplinary research centers regarding women's health and disease prevention and conduct and coordinate a research program on hormone disruption, and for other purposes.

S. 1700

At the request of Mr. LEAHY, the name of the Senator from Nevada (Mr. REID) was added as a cosponsor of S. 1700, a bill to eliminate the substantial backlog of DNA samples collected from crime scenes and convicted offenders, to improve and expand the DNA testing capacity of Federal, State, and local crime laboratories, to increase research and development of new DNA testing technologies, to develop new training programs regarding the collection and use of DNA evidence, to provide post-conviction testing of DNA evidence to exonerate the innocent, to improve the performance of counsel in State capital cases, and for other purposes.

S. 1813

At the request of Mr. LEAHY, the names of the Senator from Connecticut (Mr. DODD) and the Senator from Minnesota (Mr. DAYTON) were added as cosponsors of S. 1813, a bill to prohibit profiteering and fraud relating to military action, relief, and reconstruction efforts in Iraq, and for other purposes.

S. 2006

At the request of Mr. KENNEDY, the name of the Senator from Montana (Mr. BAUCUS) was added as a cosponsor of S. 2006, a bill to extend and expand the Temporary Extended Unemployment Compensation Act of 2003, and for other purposes.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. HUTCHISON (for herself and Mr. CORNYN):

S. 2034. To establish 3 memorials to the Space Shuttle Columbia in the State of Texas; to the Committee on Energy and Natural Resources.

Mrs. HUTCHISON. Mr. President, today in honor of the memory and sacrifice of seven astronauts whose lives were tragically cut short one year ago in the destruction of the Space Shuttle Columbia, I bring to the floor a bill to authorize the construction of several memorials in communities that were severely effected by the event.

This bill authorizes $5 million to be used in communities along the Space Shuttle Columbia Recovery Corridor: specifically, Lufkin, Hemphill, and Nacogdoches, TX. Each of these communities have started work with NASA to memorialize the disaster and the indomitable spirit of adventure and courage, the spirit that defies complacency and accepts challenge, the spirit that each of these astronauts, and each of these communities showed.

This spirit of adventure turned space travel from dreams to a reality. It is this spirit of challenge which fueled the courage and ambition of seven men and women into the sky on January 6, 2003. It is also this same spirit that drives these communities to permanently commemorate the high price we sometimes pay for reaching new horizons.

Hemphill, TX, where the nose cone of the Shuttle was found, is also where the remains of the crew were recovered. The VFW post in Hemphill fed thousands of volunteers for weeks without so much as a complaint or a dime. The men and women of Hemphill did not take their task lightly, but rather with a solemn grace and dignity.

The greatest amount of debris came down in the populated areas of Nacogdoches, TX. Backyards and streets were littered with debris, permanently altering the community. The citizens of Nacogdoches pulled together and focused on the recovery, working day and night with NASA until the job was complete. A spirit of courage overran the community of Nacogdoches and their sacrifice should never be forgotten.

The population of Lufkin, TX doubled overnight as the retrieval effort started. The people of Lufkin opened their doors and hearts to thousands and made their civic center NASA's Columbia retrival command center. From combing the streets and fields for debris to making home cooked meals for the recovery workers, the people of Lufkin mustered around the Columbia tragedy.

In recent years, America has borne too much tragedy and experienced too much grief, but our collective loss still sears our souls and the pain is never easy to bear. Today, just one year after they vanished into the deep blue skies of Texas, we pause to remember and honor Rick Husband, Kalpana Chawla, Laurel Clark, Ilan Roman, William McCool, David Brown, and Michael Anderson.

And though the families' losses cannot be diminished, their pain and grief is shared around the world and our prayers are with them. This bill will memorialize their sacrifice and will honor the courageous spirit of the communities effected. Their sacrifices will never be forgotten.

I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2034

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

SECTION 1. SHORT TITLE.

This Act may be cited as the ''Columbia Space Shuttle Memorials Act of 2004''.

SEC. 2. DEFINITIONS.

In this Act:

(1) MEMORIAL.—The term ''memorial'' means each of the memorials to the Space Shuttle Columbia established by section 3(a).

(2) SECRETARY.—The term ''Secretary'' means the Secretary of the Interior, acting through the Director of the National Park Service.

SEC. 3. MEMORIALS TO THE SPACE SHUTTLE COLUMBIA.

(a) ESTABLISHMENT.—There are established as units of the National Park System 3 memorials to the Space Shuttle Columbia to be located on the 3 parcels of land in the State described in subsection (b) on which large debris from the Space Shuttle Columbia was recovered.

(b) DESCRIPTION OF LAND.—The parcels of land referred to in subsection (a) are—

(1) the parcel of land owned by the Fredonia Corporation, located at the southeast corner of the intersection of E. Hospital Street and N. Fredonia Street, Nacogdoches, Texas;

(2) the parcel of land owned by Temple Inland Inc., located 10 acres of a 61–acre tract bounded by State Highway 83 and Bayou Bend Road, Hemphill, Texas; and

(3) the parcel of land owned by the city of Lufkin, Texas, located at City Hall Park, 301 Charlton Street, Lufkin, Texas.

(c) ADMINISTRATION.—The memorials shall be administered by the Secretary.

(d) ADDITIONAL SITES.—The Secretary may recommend to Congress additional sites in the State of Texas related to the Space Shuttle Columbia for establishment as memorials to the Space Shuttle Columbia.

SEC. 4. AUTHORIZATION OF APPROPRIATIONS.

There is authorized to be appropriated to carry out this Act $5,000,000 for fiscal year 2004, to remain available until expended.

By Mr. GRAHAM of South Carolina (for himself, Mr. DASCHLE, Mr. LEAHY, Mr. DEWINE, Mrs. CLINTON, Ms. MURKOWSKI, Mr. ALLEN, Mr. SMITH, Ms. LANDRIEU, Mr. REID, Mr. LAUTENBERG, Mr. PRYOR, Mr. KERRY, Ms. CANTWELL, Mrs. LINCOLN, Mr. AKAKA, Mr. LIEBERMAN, Mr. SCHUMER, Mrs. BOXER, Mrs. MURRAY, Mr. DORGAN, Mr. JOHNSON, Mr. BINGAMAN, Mr. DAYTON, Mr. KENNEDY, Ms. MIKULSKI, and Mr. NELSON of Nebraska):

S. 2035. A bill to amend title 10, United States Code, to revise the age and service requirements for eligibility to receive retired pay for non-regular service; to expand certain authorities to provide health care benefits for Reserves and their families, and for other purposes; to the Committee on Armed Services.

Mr. SMITH. Mr. President, I rise today to join my colleagues in cosponsoring the National Guard and Reserves Reform Act for the 21st Century.

I am proud of Oregon's citizen-soldiers, and I firmly believe we need the Guard and Reserves more today than we have in decades. Forces of the United States National Guard and Reserves make essential and effective contributions to Operation Iraqi Freedom and other ongoing military operations. Oregon units have been on the vanguard of these operations.

While our dependence on the reserves has increased, their basic pay and benefits structure remained largely unchanged until last year. Through a strong bipartisan effort Congress passed a bill to extend TRICARE benefits to National Guard and Reservists. We need to assure our military that as we continue to support their readiness capabilities, we remember the personal well-being of Oregonians in uniform as well as that of their families.

This bill will improve the medical readiness of our Reserve and Guard forces, increase recruiting and retention, and offer faster and less cumbersome mobilizations. Healthier citizen-soldiers make our military more effective. As we continue the war on terror, we need a healthy and motivated fighting force. This legislation will work toward that end.

The Guard and Reserves in my State have selflessly responded to the call of our country, and we cannot forget that part-time soldiers have full-time health needs. In order to ensure our citizen-soldiers are healthy when they are needed, I urge my Congressional colleagues to pass this bill to continue health care coverage to our Reservists and Guardsmen.

By Mrs. FEINSTEIN:

S. 2036. A bill for the relief of Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda; to the Committee on the Judiciary.

Mrs. FEINSTEIN. Mr. President, I rise today to offer legislation to provide lawful permanent residence status to Jose Buendia Balderas, Alicia Aranda De Buendia and Ana Laura Buendia Aranda, Mexican nationals who live in the Fresno area of California.

I have decided to introduce legislation on their behalf because I believe this family is deserving of an exception.

Firstly, an immigration judge has granted the family relief, only to have that decision overturned by the Board of Immigration Appeals. Immigration Judge Polly A. Webber heard that Jose Buendia and his wife, Alicia Aranda de Buendia, should be granted cancellations of removal under the Immigration and Nationality Act. In her decision, Immigration Judge Webber stated that she felt that the Buendias 9-year-old son would face exceptional and extremely unusual hardship if the family was deported from the United States.

The immigration judge's decision was based on testimony taken from Jose and Alicia Buendia, as well as Alicia Buendia's sister, who is a lawful permanent resident. The immigration judge found that if the Buendia's son ''wanted to go to school in Mexico past sixth grade, he would have major obstacles in being able to do so, which the Court can only take as extreme hardship in terms of 2-hour transportation that may or may not be available, separation from parents, perhaps having to live in a strange environment with strange people, moving away from his relatives in the United States . . . being subjected to substandard health care, economic instability, and poor living conditions.''

Unfortunately, the Board of Immigration Appeals overturned the immigration judge's decision. In a one paragraph decision the Board of Immigration Appeals concluded ''that the respondent failed to establish the required hardship to his United States citizen son, who was age 9 at the time of the hearing.'' That one sentence was the basis for overturning an immigration judge's decision.

Secondly, Mr. Buendia attempted to legalize his immigration status but was not successful due to an unscrupulous lawyer and a misinterpretation by the Immigration and Naturalization Service concerning applicants eligibility to apply for legalization under the 19876 amnesty law.

Because Mr. Buendia has been in this country for so long, he qualified for legalization pursuant to the Immigration and Reform Control Act of 1986. Unfortunately his legalization application was never acted upon.

One reason it was not acted upon is because his attorney, Jose Velez, was convicted of fraudulently submitting legalization and Special Agricultural Worker applications. Because of the criminal conviction, all of Mr. Velez's applications were suspect. Although Mr Buendia's application under the legalization program was found not to contain any fraudulent documentation associated, here began his problems.

Mr. Buendia's legalization application was flagged under Operation Desert Deception, a large-scale investigation which targeted providers of fraudulent applicants and documentation under the legalization and Special Agricultural Workers program. Dozens of people, including INS officers, were convicted of legalization fraud, bribery or tax evasion. At the time of filing Mr. Buendia's application with the Immigration and Naturalization Service the attorney, Jose Velez, was under investigation.

Although Mr. Buendia qualified for legalization because he arrived in the United States prior to January 1, 1982 he was not able to attend his interview in 1990 due to the investigation into his attorney.

Thirdly, it took the Immigration and Naturalization Service nearly 7 years to make a finding concerning his case. He was originally scheduled to be interviewed in June of 1990 on his application for legalization. The official Memo to File by the Immigration and Naturalization Service determining Mr. Buendia's application contained no fraudulent information was not posted until January 1997.

Fourthly, in the intervening years another problem arose. An interpretation by the Immigration and Naturalization Service as to the application of the law to legalization cases such as Mr. Buendia's. Because Mr. Buendia departed the United States in 1987 to marry his wife in Mexico, the Immigration and Naturalization Service stated he was no longer eligible for legalization when it again reviewed his application in 1997. This issue was litigated in CSS v. Meese and Mr. Buendia was a class member in this lawsuit. Unfortunately this lawsuit provide unhelpful to Mr. Buendia because the end result of the litigation was a much more limited class of eligible applicants.

Finally, and of substantial importance, this family has been here for 17 years and built a life here. The Buendias own property, are hard workers, are community minded and have two children in school—one of whom is a U.S. citizen.

Mr. Buendia is a valued employee of Bone Construction. He has been employed by this cement company for the past 5 years. He has proven himself, rising to become a lead foreman. His employer, Timothy Bone, says Mr. Buendia is a ''reliable, hardworking and conscientious'' employee.

Mr. Buendia has an exemplary work history. From 1981 to 1989 he worked for Ascension Hernandez as a landscaper in League City, TX. Thereafter he moved to Las Vegas, NV where he continued to work in landscaping. In 1990 he and his family settled in Reedly, CA where he began working in construction. Knowing nothing about construction, having a background in landscaping, Mr. Buendia was disciplined and persistent in his training and is now a lead foreman for a cement construction company. Mr. Buendia is such a hard worker that he even has his own cement company, which he works on weekends.

Alicia Buendia, Jose Buendia's wife, works as a seasonal fruit packer. Cliff Peters, the owner of Wildwood Orchards where Alicia Buendia worked during the 2003 season, says she is ''a hard worker, dependable, and consistently did a good job.'' He added that work would be available to her on an ongoing seasonal basis. Mrs. Buendia has worked as a seasonal fruit packer for several years.

Their daughter, Ana Laura, is in the 10th grade at Reedley High School where she has earned a 4.0 GPA which shows she is a highly motivated student. An important consideration in this case is that Ana Laura was brought to the United States by her parents when she was only 2 years old. Ana Laura, who will be 16 years old this year, has known no other country than the United States. She believes she is an American. But now she is told she must return to Mexico, a country she has never lived in.

The Buendia's son, Jose, who was born in the United States, is in 8th grade. Like his sister, this is the only country he knows.

Ana Laura and Jose's elementary school principal speaks highly of not only the children but the Buendias. This even though the children are now in high school. Mary Ann Carousso, principal, says in an e-mail to my office, ''I can tell you that I have rarely met 2 more active, concerned, supportive parents than Alica [sic] and Jose Buendia! . . . I don't think they ever missed a parent club meeting.'' Principal Carousso also says that ''Both Jose and Alicia continued to help at our school for several years after their youngest child had graduated . . . Jose, Sr. frequently hauled chairs across a dark parking lot at 9:00 p.m. at night following a parent club meeting . . . He often talked about what parents should be doing to help the school out so that excess money didn't have to be spent on simple construction projects. Alicia is a mom who just never says no to requests for help.'' With that type of endorsement it seems to me we should be thankful to have such involved parents in our communities.

This family has embraced the American dream, and I believe they should be allowed to continue to live in this country. If this legislation is approved, the Buendias will be able to continue to make significant contributions to their community and the United States. It is my hope that Congress passes this private legislation.

I ask unanimous consent numerous letters of support our office has received from members of the Reedley community be printed in the RECORD.

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

BONE CONSTRUCTION, INC.,
Fresno, CA, December 16, 2003.

Senator DIANNE FEINSTEIN,
U.S. Senate, Hart Senate Office Building, Washington, DC.

Thank you for responding to Jose and Alicia Buenda's tragic story. Simply, in my judgment the Immigration and Naturalization Service has run amok in regards to Jose's persistent effort to properly be granted citizenship. And, consequently, he and Alicia are being treated outrageously unjust and ordered to be deported from Bakersfield on December 31, 2003 for no legitimate reason, leaving behind their two children without parental guidance and financial support. Personally, I am embarrassed by ''the system's'' total disregard for the Buenda family and failure to recognize their ''rights'' and exemplary citizenship. The Buenda's story is a tragedy and someone should be held responsible.

Jose has been employed with Bone Construction Inc., for the past four years. He is a gentleman and model employee who has earned the position of lead foreman. He and his family enjoy our benefit package of health insurance and a retirement plan. He possesses a valid social security number, work visa and driver's license. And he has requested the appropriate withholding taxes. Simply, he is self directed and a leader in our organization with a very promising future.

Your response is urgently being anticipated. Jose has turned to me for counsel. He is obviously terrified by the order of deportation and does not know what to do in regards to compliance. For sure, he does not want to be a fugitive. We are working feverishly to find a compassionate ear and immediate assistance. We are praying for a Christmas miracle.

Respectfully,

TIMOTHY F. BONE.

WILDWOOD ORCHARDS,
January 9, 2004.

Re Alicia A. Buendia.

To Whom It May Concern: Alicia Buendia worked in the Wildwood Orchards packing shed during the 2003 season. She earned approximately $10.00 per hour packing fresh fruit on a piecework basis.

She was a hard worker, dependable, and consistently did a good job. Work would be available to her on an ongoing seasonal basis.

Sincerely,

CLIFF PETERS,
Owner.

From: Mary Ann Carousso <carousso-m@kingscanyonusd.k12.ca.us>
To: <shelly_abajian@feinstein.senate.gov>
Date: Tuesday, January 6, 2004
Subject: Jose & Alicia Buendia

Good morning, Shelly.

First, here is the information you wanted on the children.

(1) Ana ''Laura'' Buendia, Grade 10, Reedley High School (John Campbell, principal).

Biology with Tony Rocella
Drama 2 with Erin Bray
French 2 with Gail Hutchinson
PE with Pablo Saenz
Tutorial with Pablo Saenz
Video Prod. with Noe Camacho
English with Jennifer Moore
Geometry with James Rudometkin
Jose ''Alex'' Buendia, Grade 8, Grant Middle School, (Bill Wachtel, principal).
Homeroom with Lynn Mann
Science with Eric Thiessen
Algebra with Lee Bull
Reading/Writing with Jean Crawford
PE with Rick Furlong
Computer with Kristie Bartlett
Academic Skills with Monica Benner

Secondly, I promised to give you some notes on the conversation we had last night. Both Laura and Alex attended elementary school here at Jefferson School, where I am the principal. I can tell you that I have rarely met 2 more active, concerned, supportive parents than Alicia and Jose Buendia! As a new principal, I appreciated the eagerness that Jose and Alicia demonstrated in stepping up to any matter of parental involvement! Neither of them let the language barrier stand in the way of their VERY ACTIVE involvement at our school. I don't think they ever missed a parent club meeting. Alicia was at school several days a week volunteering for whatever project I needed help on. She attended district level meetings as our parent representative for several years. Both Jose and Alicia continued to help at our school for several years after their youngest child had graduated. (I used to tease them about having more children so I could keep them at Jefferson forever!) Jose, Sr. frequently hauled chairs across a dark parking lot at 9:00 p.m. at night following a parent club meeting that had to be held at our neighboring school. He often talked about what parents should be doing to help the school out so that excess money didn't have to be spent on simple construction projects. Alicia is a mom who just never says no to requests for her help. Both Ana (Laura) and Jose, Jr. (Alex) were good students at Jefferson, whose teachers were always delighted to see their names on their rosters at the beginning of the year. I can't help but feel that, if anything, these 2 extraordinary parents are being punished for simply being too honest. I want VERY MUCH to help them. I have appreciated TREMENDOUSLY the work of Senator Feinstein's office in assisting these great folks. My letter of support is included in the Buendia packet. Please let me know how I can rally support for these amazing people. I owe them that at the very least, for their extraordinary friendship to Jefferson Elementary School.

Sincerely,

MARY ANN CAROUSSO.

S. 2036

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

SECTION 1. PERMANENT RESIDENT STATUS FOR JOSE BUENDIA BALDERAS, ALICIA ARANDA DE BUENDIA, AND ANA LAURA BUENDIA ARANDA.

(a) IN GENERAL.—Notwithstanding subsections (a) and (b) of section 201 of the Immigration and Nationality Act, Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda shall each be eligible for issuance of an immigrant visa or for adjustment of status to that of an alien lawfully admitted for permanent residence upon filing an application for issuance of an immigrant visa under section 204 of that Act or for adjustment of status to lawful permanent resident.

(b) ADJUSTMENT OF STATUS.—If Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda enter the United States before the filing deadline specified in subsection (c), Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda shall be considered to have entered and remained lawfully and shall be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the application for issuance of an immigrant visa or the application for adjustment of status is filed with appropriate fees within 2 years after the date of enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBERS.—Upon the granting of an immigrant visa or permanent residence to Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda, the Secretary of State shall instruct the proper officer to reduce by 3, during the current or next following fiscal year, the total number of immigrant visas that are made available to natives of the country of birth of Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda under section 203(a) of the Immigration and Nationality Act or, if applicable, the total number of immigrant visas that are made available to natives of the country of birth of Jose Buendia Balderas, Alicia Aranda De Buendia, and Ana Laura Buendia Aranda under section 202(e) of that Act.

By Mr. VOINOVICH (for himself and Mr. DEWINE):

S. 2037. A bill to transfer administrative jurisdiction of a parcel of real property comprising a portion of the Defense Supply Center in Columbus, Ohio, and for other purposes; to the Committee on Armed Services.

Mr. VOINOVICH. Mr. President, I ask unanimous consent that the text of the bill be printed in the RECORD.

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

S. 2037

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

SECTION 1. TRANSFER OF ADMINISTRATIVE JURISDICTION, DEFENSE SUPPLY CENTER, COLUMBUS, OHIO.

(a) TRANSFER REQUIRED.—As soon as practicable after the date of the enactment of this Act, the Secretary of the Army shall transfer, without reimbursement, to the administrative jurisdiction of the Secretary of Veterans Affairs a parcel of real property consisting of approximately 20 acres and comprising a portion of the Defense Supply Center in Columbus, Ohio.

(b) USE OF THE REAL PROPERTY.—The Secretary of Veterans Affairs shall use the real property as the site for the construction of a new outpatient clinic for the provision of medical services to veterans.

(c) ENVIRONMENTAL ASSESSMENT OF REAL PROPERTY.—

(1) ASSESSMENT.—Prior to the transfer of the real property under subsection (a), the Secretary of the Army shall conduct an environmental assessment of such property to document all reasonably ascertainable information that exists on the environmental condition of such property.

(2) COSTS.—Any costs incurred in conducting the assessment under paragraph (1), including any costs associated with any actions undertaken to bring such property into compliance with any Federal, State, or local environmental laws or regulations, shall be borne by the Secretary of the Army.

(d) DESCRIPTION OF REAL PROPERTY.—

(1) SURVEY REQUIRED.—The exact acreage and legal description of the real property to be transferred under subsection (a) shall be determined by a survey satisfactory to the Secretary of the Army.

(2) COST.—The cost of the survey carried out under paragraph (1) shall be borne by the Secretary of Veterans Affairs.

By Mr. WYDEN (for himself and Mr. SMITH):

S. 2039. A bill to waive time limitations specified by law in order to allow the Medal of Honor to be awarded posthumously to Rex T. Barber of Terrebonne, Oregon, for acts of valor during World War II in attacking and shooting down the enemy aircraft transporting Japanese Admiral Isoroku Yamamoto; to the Committee on Armed Services.

Mr. WYDEN. Mr. President, I am pleased to be joined by Senator SMITH in introducing a bill to waive all statutory time limitations so that Colonel Rex T. Barber, of Terrebonne, OR may be posthumously awarded a Medal of Honor.

Colonel Rex T. Barber was a World War II fighter pilot who risked his life to shoot down Admiral Isoroku Yamamoto, the Commander in Chief of the Combined Japanese Fleet and architect of the attack on Pearl Harbor.

Our bill not only waives the statutory time limitations applying to the Medal of Honor, but also requests that the President posthumously award the medal to this deserving man.

On April 18, 1943, Barber, then a first lieutenant in the 399th Fighter Squadron of the South Pacific Air Forces, Army Air Corps, undertook a top secret mission to shoot down Yamamoto. Barber successfully attacked a bomber transporting Yamamoto despite heavy counterattacks by Japanese fighters escorting the admiral. Upon return to base, Barber found more than 100 holes in his aircraft. Admiral Yamamoto's plane crashed in flames, killing Yamamoto and his crew.

This brave exploit of Colonel Barber is well-documented, and I look forward to working with my colleagues in the Oregon delegation, the Congress, and ultimately the President, to see that his bravery is formally recognized.

I ask unanimous consent that the text to the bill be printed in the RECORD.

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

S. 2039

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

SECTION 1. AUTHORITY FOR AWARD OF THE MEDAL OF HONOR TO REX T. BARBER FOR VALOR DURING WORLD WAR II.

(a) WAIVER OF TIME LIMITATIONS.—Notwithstanding the time limitations in section 3744 of title 10, United States Code, or any other time limitation applicable with respect to the awarding of certain medals to

persons who served in the Air Force, the President is authorized and requested to award the Medal of Honor posthumously under section 3741 of that title to Colonel (retired) Rex T. Barber, United States Air Force, of Terrebonne, Oregon, for the acts of valor referred to in subsection (b).

(b) ACTION DESCRIBED.—The acts of valor referred to in subsection (a) are the conspicuous acts of gallantry and intrepidity of Rex T. Barber at the risk of his life and beyond the call of duty on April 18, 1943, while serving as a first lieutenant in the 339th Fighter Squadron of the South Pacific Air Forces, Army Air Corps, in successfully attacking and shooting down the enemy bomber aircraft transporting Admiral Isoroku Yamamoto, the Commander in Chief of the Combined Japanese Fleet and architect of Japan's attack on Pearl Harbor.

SUBMITTED RESOLUTIONS

SENATE RESOLUTION 293—EXPRESSING THE SENSE OF THE SENATE THAT THE PRESIDENT AND UNITED STATES TRADE REPRESENTATIVE SHOULD ENSURE THAT ANY FUTURE FREE TRADE AGREEMENTS DO NOT HARM THE DAIRY INDUSTRY OF THE UNITED STATES

Mr. FEINGOLD (for himself, Mr. KOHL, Mr. CRAIG, Ms. STABENOW, Mr. SCHUMER, Mr. JEFFORDS, Mr. SPECTER, Mrs. CLINTON, Mrs. BOXER, Ms. COLLINS, Mr. CRAPO, Mr. DAYTON, Ms. SNOWE, Mr. DOMENICI, Mr. COLEMAN, Mr. LEAHY, and Mrs. FEINSTEIN) submitted the following resolution; which was referred to the Committee on Finance:

S. RES. 293

Whereas the United States is home to thousands of dairy producers, with dairy farmers in every State;

Whereas, as of the date of this resolution, the United States and the Australia are negotiating the development of a free trade agreement;

Whereas these negotiations could have dire consequences for several of the agricultural industries of the United States, including the dairy industry;

Whereas improper treatment of dairy in the United States-Australia Free Trade Agreement could concentrate the exporting focus of Australia largely on the United States; and

Whereas significantly increasing access to the dairy markets of the United States for Australian imports would greatly undermine milk prices, thwarting Federal efforts to support dairy producers and their families: Now, therefore, be it

Resolved, That it is the sense of the Senate that the President and the United States Trade Representative should exercise great caution in negotiating and drafting the trading terms that would apply to the dairy industry under the proposed United States-Australia Free Trade Agreement.

Mr. FEINGOLD. Mr. President, as many of my colleagues know, Wisconsin's dairy industry is one of the largest industries in the State, generating billions of dollars for the State's economy. With an estimated impact of $18.5 billion, milk sustains over 16,000 farm families and nearly 200,000 jobs in the State. With thousands of dairy farms and hundreds of dairy processors, the industry is vital to creating and sustaining good jobs in Wisconsin. These numbers do not capture the full import of the dairy industry, however. In Wisconsin, dairy is more than an issue of dollars and cents—it is part of our heritage that every Wisconsinite takes pride in.

America's Dairyland is already threatened by bad trade agreements, but one of the worst for dairy farmers is currently in the works. U.S. negotiators are trying to wrap up a trade agreement with Australia, which is expected to include new terms of trade for agricultural commodities. Any agreement with Australia, and any subsequent agreement with New Zealand, could have a very negative impact on Wisconsin's dairy industry.

The administration has contemplated changes to our trade laws that would lay open our markets to dairy and other farm products from Australia and possibly New Zealand. Australian and New Zealand milk producers are among the many who have been using a trade loophole on milk protein concentrates to undercut our domestic dairy prices, a loophole that I am working to close. Further imports from Australia can only push U.S. milk prices lower.

This proposal comes at a time when dairy farmers are just beginning to think about a recovery from the low milk prices of the past few years. The impact of this agreement on the Nation's dairy industry, and Wisconsin in particular, will be significant. According to the National Milk Producers Federation, the flood of imports from Australia that would follow from a trade agreement could cost this country nearly one-quarter of our dairy farms. Wisconsin has been losing dairy farms at an alarming rate, and we certainly cannot afford a trade agreement that hastens that change.

I have opposed the efforts of the U.S. Trade Representative to pursue this agreement given its negative consequences for Wisconsin. I have clearly stated my position, and the position reiterated to me by dairy farmers across the State, to Ambassador Zoellick. Joined by 30 of my State colleagues, I have called upon President Bush to respond to the concerns of Americans regarding the negotiations on a free trade agreement with Australia. Today, along with several of my of my colleagues—Senators KOHL, CRAIG, STABENOW, SCHUMER, JEFFORDS, SPECTER, CLINTON, BOXER, COLLINS, DAYTON, CRAPO, DOMENICI, and SNOWE. I am submitting a resolution reiterating the fact that we must ensure that our dairy industry, especially dairy producers, will not suffer undue hardships if this agreement is put in place.

If the U.S. gives Australia significantly increased access to our dairy market, this will greatly undermine milk prices, thwarting federal efforts to support dairy producers and their families. Estimates suggest that an agreement with Australia would cost this country more than 150,000 jobs that depend on a healthy U.S. dairy sector. Wisconsin's communities area at great risk, and I call on all my colleagues to join me in working to protect the country's dairy industry from an unfair trade agreement with Australia.

Mr. KOHL. Mr. President, I join my colleague from Wisconsin in support of this resolution. I remain deeply concerned about the direction the President's negotiators are headed in the U.S.-Australia Free Trade negotiations.

I know there are lots of moving parts to this or any trade negotiation. But if recent reports are correct the U.S./Australia negotiations seem to be boiling down to a handful of critical issues—among them are dairy and drugs. Australia is angling for more access to our dairy markets. The Bush Administration, on behalf of pharmaceutical manufacturers, is pushing for greater access to Australia's Pharmaceutical Benefits Scheme.

I suspect I know who wins if the Bush administration has to make a trade-off between the interests of dairy farmers and huge pharmaceutical corporations. The Bush administration demonstrated remarkable loyalty to pharmaceutical manufacturers during debate on the Medicare bill. I suspect those loyalties are alive and well and fear they may trump the interests of thousands of dairy producers and processors across the country.

Out of an abundance of caution, I will reserve judgment on the final package until we have something more concrete to review. But the President's negotiators should be on notice that we will be closely following these negotiations to assure that dairymen's concerns are given every consideration.

SENATE RESOLUTION 294—DESIGNATING JANUARY 2004 AS ''NATIONAL MENTORING MONTH''

Mr. KENNEDY (for himself, Mr. MCCAIN, Mr. ALLEN, Mr. AKAKA, Mr. PRYOR, Mr. KERRY, Mr. NELSON of Nebraska, Mr. DODD, Mr. DAYTON, Ms. MIKULSKI, Mr. GRASSLEY, and Mr. COCHRAN) submitted the following resolution; which was referred to the Committee on the Judiciary:

S. RES. 294

Whereas mentoring is a strategy for motivating and helping young people succeed in life, by bringing them together in structured and trusting relationships with caring adults who provide guidance, support, and encouragement;

Whereas mentoring offers a supportive environment in which young people can grow, expand their vision, learn necessary skills, and achieve a future that the young people never thought possible;

Whereas a growing body of research shows that mentoring benefits young people in numerous ways, through improvements in

school performance and attendance, self-confidence, attitudes and relationships with adults, and motivation to reach their potential;

Whereas mentoring is an adaptable, flexible approach that can be tailored to focus on helping young people with academics, social skills, career preparation, or leadership development;

Whereas over 15,000,000 young people in this Nation still need mentors, falling into a ''mentoring gap'';

Whereas mentoring relies principally on volunteer mentors, so mentoring programs must recruit even more volunteers in order to expand their program to help more young people;

Whereas, in an effort to begin closing the mentoring gap, this year Congress has significantly increased Federal grant funding for local mentoring organizations to $100,000,000;

Whereas the recipients of these grants and other entities carrying out mentoring programs all across the country will need an influx of volunteers to meet the growing demand for mentoring;

Whereas nonprofit groups and leading media companies have joined together to designate January 2004 as National Mentoring Month to recruit more mentors for young people; and

Whereas the month-long celebration of mentoring will encourage more adults to volunteer their time as mentors for young people and enlist the involvement of nonprofit organizations, schools, businesses, faith communities, and government agencies in the mentoring movement: Now, therefore, be it

Resolved, That the Senate—

(1)(A) designates the month of January 2004 as ''National Mentoring Month''; and

(B) requests that the President issue a proclamation calling on the people of the United States and interested groups to observe the month with appropriate ceremonies and activities that promote awareness of and volunteer involvement with mentoring;

(2) praises individuals who are already giving their time to mentor young people; and

(3) supports efforts to recruit more adults as mentors, in an effort to close the Nation's mentoring gap.

Mr. MCCAIN. Mr. President, I am pleased to join with Senator KENNEDY in introducing a resolution designating January 2004 as ''National Mentoring Month.''

We all agree that young people need a supportive environment based on structured and trusting relationships with adults. Mentors play a significant role in many young peoples' lives by sharing their experiences and providing the support and encouragement that children need in order to grow into responsible, caring adults. Mentors often are the key to helping a young person achieve the type of future they might never have thought possible.

A growing body of research has shown the tremendous benefits of mentoring. Children with mentors are shown to improve in school performance and attendance; they are more self-confident; they have good social skills; and above all else, they're motivated to reach their full potential. Mentoring works. Unfortunately, a severe shortage of volunteers has left over 15 million young people without mentors.

National Mentoring Month highlights the needs and goals of mentoring in this country. This month, non-profit organizations, schools, businesses, faith communities, and government agencies will join together to encourage adults to serve as mentors for our young people. Programs must be expanded to recruit more volunteers to help fill the mentoring gap. Mentoring has successfully helped many children in this country and we must work together to expand such valuable programs.

SENATE CONCURRENT RESOLUTION 87—WELCOMING THE PRIME MINISTER OF TURKEY TO THE UNITED STATES

Mr. SMITH (for himself, Mr. BIDEN, and Mr. ALLEN) submitted the following concurrent resolution; which was referred to the Committee on Foreign Relations:

S. CON. RES. 87

Whereas for more than 50 years a strategic partnership has existed between the United States and Turkey that has been of enormous political, economic, cultural, and strategic benefit to both countries;

Whereas the United States and Turkey share common ideals and a clear vision for the 21st century, where freedom and democracy are the foundations for peace, prosperity, and progress;

Whereas the Government of Turkey has demonstrated its unequivocal support for the war against terrorism throughout the world, and has called for the international community to unite against this threat;

Whereas Turkey commanded the International Security Assistance Force (ISAF) in Afghanistan from June 2002 to February 2003 and provided humanitarian and medical assistance in Afghanistan and in Iraq;

Whereas in October 2003 Turkey became the first predominantly Muslim state to authorize sending peacekeepers to Iraq when the Turkish Parliament voted to approve a deployment of 10,000 troops;

Whereas the people of Turkey also have been victims of international attacks on November 15, 2003, and November 20, 2003;

Whereas the Government of Turkey immediately condemned the terrorist attacks in the strongest possible terms, detained the perpetrators, and quickly brought them to justice.

Whereas the terrorist attacks in Turkey brought the United States and Turkey closer together, in spite of the terrorists' motive of driving the two countries apart;

Whereas the Government of Turkey has made its bases in Incirlik available as a transit point for United States troops returning to the United States from Iraq;

Whereas Prime Minister Erdoğan supports a renewed effort by the United Nations to reunify the divided country of Cyprus;

Whereas the United States supports Turkey's bid for membership in the European Union;

Whereas Turkey and Israel, the only democracies in the Middle East, established diplomatic relations in 1949, and have a multi-faceted and thriving relationship; and

Whereas Turkish Prime Minister Erdoğan brings a strong message from the Turkish people that Turkey will continue to support the United States campaign against international terrorism as well as United States efforts to rebuild and bring democracy and stability to Afghanistan and Iraq: Now, therefore, be it

Resolved by the Senate (the House of Representatives concurring), That Congress—

(1) offers its warmest welcome to Prime Minister Recep Tayyip Erdoğan upon his visit to the United States from January 26 through 31, 2004;

(2) asks Prime Minister Erdoğan to communicate the continuing support of Congress and of the people of the United States to the people of Turkey;

(3) recognizes that the visit of Prime Minister Erdoğan to the United States is a significant step toward broadening and deepening the strategic partnership, friendship and cooperation between the United States and Turkey;

(4) acknowledges Prime Minister Erdoğan's support for renewed negotiations in Cyprus; and

(5) thanks Prime Minister Erdoğan and the people and government of Turkey for—

(A) assuming command of the International Security Assistance Force in Kabul, Afghanistan from June 2002 to February 2003;

(B) providing humanitarian and medical assistance in Afghanistan and in Iraq; and

(C) their willingness to contribute to international peace, stability, and prosperity, especially in the greater Middle East region.

Mr. SMITH. Mr. President, I rise today to submit a resolution welcoming the Turkish Prime Minister Recep Tayyip Erdoğan to the United States. Prime Minister Erdoğan is visiting this week for important meetings with President Bush and other senior Administration officials to discuss significant issues that affect both of our countries. I am pleased that my colleagues Senator BIDEN and Senator ALLEN have joined me in offering this resolution at this time.

Prime Minister Erdoğan represents a country of great importance to the United States, one with whom we have a shared history of fighting Soviet aggression as partners in NATO, and one with whom we are joined in fighting terrorism today. Turkey has shown its willingness to support American objectives in Afghanistan—where it commanded the International Security Assistance Force for seven months, and where its soldiers continue to serve side-by-side with American troops—and in post-war Iraq, where it has authorized sending peacekeeping troops and has contributed humanitarian supplies for the Iraqi people.

Furthermore, Turkey shares our democratic values and love of freedom. These ideals have brought enormous benefits to its people and serve as an excellent example for its neighbors that secular Islam and democracy can coexist peacefully and constructively.

I am confident that the visit of Prime Minister Erdoğan will further cement the strategic partnership between Turkey and the United States. I welcome him to the United States.

NOTICES OF HEARINGS/MEETINGS

SUBCOMMITTEE ON PUBLIC LANDS AND FORESTS

Mr. CRAIG. Mr. President, I would like to announce for the information of the Senate and the public that a hearing has been scheduled before the Subcommittee on Public Lands and Forests of the Committee on Energy and Natural Resources.

The hearing will be held on Wednesday, February 4, at 2:30 p.m. in room SAD–366 of the Dirksen Senate Office Building.

The purpose of the hearing is to receive testimony on the following bills: S. 1354, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, and for other purposes; S. 1575 and H.R. 1092, to direct the Secretary of Agriculture to sell certain parcels of Federal land in Carson City and Douglas County, Nevada; S. 1778, to authorize a land conveyance between the United States and the City of Craig, Alaska, and for other purposes; and S. 1819 and H.R. 272, to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries.

Because of the limited time available for the hearing, witnesses may testify by invitation only. However, those wishing to submit written testimony for the hearing should send two copies of their testimony to the Committee of Energy and Natural Resources, United States Senate, Washington, D.C. 20510–6150.

For further information, please contact Frank Gladics at 202–224–2878.

AUTHORITY FOR COMMITTEES TO MEET

COMMITTEE ON ARMED SERVICES

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on January 28, 2004, at 11:00 a.m., in open session to receive testimony on efforts to determine the status of Iraqi weapons of mass destruction and related programs.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON ARMED SERVICES

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Armed Services be authorized to meet during the session of the Senate on January 28, 2004, at 4:00 p.m., in open session to consider the following Nominations: Francis J. Harvey to be Assistant Secretary of Defense for Networks and Information Integration; Lawrence, T. Dirita to be Assistant Secretary of Defense for Public Affairs; and William A. Chatfield to be Director of Selective Service.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION

Mr. CORNYN. Mr. President: I ask unanimous consent that the Committee on Commerce, Science, and Transportation be authorized to meet on Wednesday, January 28, 2004, at 9:30 am on NASA'S Future Space Mission, in SR. 253.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON FOREIGN RELATIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Foreign Relations be authorized to meet during the session of the Senate on Wednesday, January 28, 2003 at 10:30 a.m. to hold a hearing on Pakistan & India: Steps Toward Rapprochement.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON HEALTH, EDUCATION, LABOR AND PENSIONS

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on Health, Education, Labor, and Pensions be authorized to meet for a hearing on What's Driving Health Care Costs and the Uninsured? during the session of the Senate on Wednesday, January 28, 2004 at 10:30 a.m. in SD–430.

The PRESIDING OFFICER. Without objection, it is so ordered.

COMMITTEE ON THE JUDICIARY

Mr. CORNYN. Mr. President, I ask unanimous consent that the Committee on the Judiciary be authorized to meet to conduct a hearing on Wednesday, January 28, 2004, at 10:00 a.m. on ''Judicial Nominations,'' in the Dirksen Senate Office Building Room 226.

Witness List

Panel I: Senators.

Panel II: Franklin S. Van Antwerpen to be United States Circuit Judge for the Third Circuit.

The PRESIDING OFFICER. Without objection, it is so ordered.

EXECUTIVE SESSION

EXECUTIVE CALENDAR

Mr. FRIST. Mr. President, I ask unanimous consent that the Senate immediately proceed to executive session to consider the following nominations on today's Executive Calendar: Calendar Nos. 536 through 543, and all nominations on the Secretary's desk.

For the information of Members, these are military promotions reported today by the Armed Services Committee.

I further ask unanimous consent that the nominations be confirmed en bloc, the motions to reconsider be laid upon the table, the President be immediately notified of the Senate's action, and the Senate then return to legislative session.

The PRESIDING OFFICER. Is there objection? Without objection, it is so ordered.

The nominations considered and confirmed en bloc are as follows:

AIR FORCE

The following Air National Guard of the United States officers for appointment in the Reserve of the Air Force to the grades indicated under title 10, U.S.C., section 12203:

To be major general

Brigadier General Roger P Lempke, 0000
Brigadier General Albert P Richards, Jr, 0000
Brigadier General Albert H Wilkening, 0000

To be brigadier general

Colonel Terry L Butler, 0000
Colonel John A Caputo, 0000
Colonel Richard H Clevenger, 0000
Colonel Michael D Dubie, 0000
Colonel Jerald L Engelman, 0000
Colonel William H Etter, 0000
Colonel Edward R Flora, 0000
Colonel Rufus L Forrest, Jr, 0000
Colonel Richard M Green, 0000
Colonel Terry P Heggemeier, 0000
Colonel Vergel L Lattimore, 0000
Colonel Duane J Lodrige, 0000
Colonel Maria A Morgan, 0000
Colonel James K Robinson, 0000
Colonel Michael J Shira, 0000
Colonel James P Toscano, 0000

The following Air National Guard of the United States officer for appointment in the Reserve of the Air Force to the grade indicated under title 10, U.S.C., section 12203:

To be brigadier general

Col. James E. Hearon, 0000

The following named officer for appointment in the United States Air Force to the grade indicated while assigned to a position of importance and responsibility under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Thomas L. Baptiste, 0000

The following named officer for appointment in the United States Air Force to the grade indicated under title 10, U.S.C., section 601:

To be lieutenant general

Maj. Gen. Donald J. Wetekam, 0000

NAVY

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral (lower half)

Capt. Ann D. Gilbride, 0000

The following named officers for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral (lower half)

Capt. Jon W. Bayless, Jr., 0000
Capt. Jay A. Deloach, 0000
Capt. Edward NMN Masso, 0000
Capt. William H. Payne, 0000

The following named officer for appointment in the United States Naval Reserve to the grade indicated under title 10, U.S.C., section 12203:

To be rear admiral

Rear Adm. (lh) Fenton F. Priest, III, 0000

The following named officer for appointment in the United States Navy to the grade indicated under title 10, U.S.C., section 624:

To be rear admiral

Rear Adm. (lh) Paul E. Sullivan, 0000

NOMINATIONS PLACED ON THE SECRETARY'S DESK

AIR FORCE

PN460 Air Force nominations (13) beginning Paul V. Bennett, and ending Victoria G. Zamarripa, which nominations were received by the Senate and appeared in the Congressional Record of March 26, 2003.

PN906 Air Force nominations (17) beginning Nelson * Arroyo, and ending Paul D. * Sutter, which nominations were received by the Senate and appeared in the Congressional Record of September 4, 2003.

PN907 Air Force nominations (38) beginning James J. * Baldock, IV, and ending Brian K. * Wyrick, which nominations were

received by the Senate and appeared in the Congressional Record of September 4, 2003.

PN908 Air Force nominations (75) beginning Kimberly L. * Arnao, and ending James M. Winner, which nominations were received by the Senate and appeared in the Congressional Record of September 4, 2003.

PN909 Air Force nominations (118) beginning David H. * Adams, Jr., and ending James A. * Young, which nominations were received by the Senate and appeared in the Congressional Record of September 4, 2003.

PN910 Air Force nominations (92) beginning Laurie A. Abney, and ending Deedra L. * Zabokrtsky, which nominations were received by the Senate and appeared in the Congressional Record of September 4, 2003.

PN911 Air Force nominations (1875) beginning John T. Aalborg, Jr., and ending William A. Zutt, which nominations were received by the Senate and appeared in the Congressional Record of September 4, 2003.

ARMY

PN1128 Army nominations (30) beginning Stephen G. Beardsley, III, and ending Patrick O. Wilson, which nominations were received by the Senate and appeared in the Congressional Record of November 17, 2003.

PN1149 Army nominations (2) beginning John R. Angelloz, Jr., and ending Michael C. McDaniel, which nominations were received by the Senate and appeared in the Congressional Record of November 20, 2003.

PN1150 Army nominations of James R. Ward, which was received by the Senate and appeared in the Congressional Record of November 20, 2003.

PN1165 Army nomination of Michael K. Vaughan, which was received by the Senate and appeared in the Congressional Record of November 21, 2003.

PN1177 Army nominations (11) beginning David S. Feigin, and ending John E. Hartmann, which nominations were received by the Senate and appeared in the Congressional Record of November 25, 2003.

PN1178 Army nominations (2) beginning Joseph L. Craver, and ending William Hann, which nominations were received by the Senate and appeared in the Congressional Record of November 25, 2003.

PN1179 Army nomination of Carol Ann Mitchell, which was received by the Senate and appeared in the Congressional Record of November 25, 2003.

PN1180 Army nominations (4) beginning Carol A. Bossone, and ending Curtis M. Klages, which nominations were received by the Senate and appeared in the Congressional Record of November 25, 2003.

PN1182 Army nominations (23) beginning Daniel G. Rendeiro, and ending Diane K. Patterson, which nominations were received by the Senate and appeared in the Congressional Record of November 25, 2003.

PN1183 Army nominations (11) beginning Michael T. Endres, and ending James A. Chervoni, which nominations were received by the Senate and appeared in the Congressional Record of November 25, 2003.

NAVY

PN1151 Navy nominations (2299) beginning Tab E. Austin, and ending Sabrina M. Stedman, which nominations were received by the Senate and appeared in the Congressional Record of November 20, 2003.

PN1167 Navy nominations (29) beginning Albert A. Alarcon, and ending Jeffrey W. Winters, which nominations were received by the Senate and appeared in the Congressional Record of November 21, 2003.

PN1184 Navy nominations (92) beginning Craig I. Abraham, and ending Sarah L. Wright, which nominations were received by the Senate and appeared in the Congressional Record of November 25, 2003.

LEGISLATIVE SESSION

The PRESIDING OFFICER. Under the previous order, the Senate will return to legislative session.

UNANIMOUS CONSENT REQUEST—S. 1072

Mr. FRIST. Mr. President, I have been in discussions with a number of Senators regarding next week's schedule. We had previously stated that it would be our intention to begin consideration of the highway bill on Monday.

I had hoped we could start with opening statements on the bill on Monday and limit Monday to debate only to allow the Finance Committee to complete their work on their section of the highway bill. Unfortunately, we were unable to reach a consent to begin; therefore, it will be necessary that I file cloture on a motion to proceed.

Having said that, I now ask unanimous consent that at 2 p.m. on Monday, February 2, the Senate proceed to the consideration of Calendar No. 426, S. 1072, the highway bill.

Mr. REID. Mr. President, on behalf of Senator GRAHAM of Florida, I object.

The PRESIDING OFFICER. The objection is heard.

SAFE TRANSPORTATION EQUITY ACT OF 2003—MOTION TO PROCEED

CLOTURE MOTION

Mr. FRIST. With that objection, I now move to proceed to the consideration of S. 1072, and I send a cloture motion to the desk on the motion to proceed.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We the undersigned Senators, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close debate on the motion to proceed to Calendar No. 426, S. 1072, a bill to authorize funds for Federal-aid highways, highway safety programs, transit programs, and for other purposes:

Bill Frist, James M. Inhofe, John Cornyn, Susan Collins, Craig Thomas, Pat Roberts, Conrad Burns, Thad Cochran, Norm Coleman, Richard Shelby, Mike Crapo, Robert F. Bennett, George V. Voinovich, Ted Stevens, Lamar Alexander, Lindsey O. Graham.

Mr. FRIST. I now ask consent that the mandatory quorum be waived and that the vote on the motion to invoke cloture occur at 5:45 on Monday, February 2.

Mr. REID. Mr. President, reserving the right to object, let me just say that I am disappointed we are not going to move forward on the bill Monday. That is very valuable time. We are not going to have a lot of time to finish this bill. This is a bipartisan bill. This is my fourth highway bill, third or fourth highway bill, and this is a most fair bill. We have every State that will get at least 95 percent of the money they pay in. Every State gets an increase of what they have gotten in the last bill. It is fair.

In the past, some States did extremely well and some States did poorly. Take the States of California and Texas, for example. At the end of this bill they will get 95 percent of the money they pay in. That is very costly. Therefore, that being the case, and it certainly seems fair to me that they should get 95 percent of what they pay in, their 5 percent that they are not getting pays for a lot of the States that do not have many people. These are bridge States. They still have the interstate going through them and there is a lot for maintenance.

The bill is far from perfect. We have done the best we can to try to make it a better bill than those in the past. We need to get to it. This is an extremely important bill. This is not a bill for the Democrats or a bill for the Republicans. It is a bill that will allow the construction to go forward on highways and transit for the next 5 or 6 years.

The reason that is important, we can come back and do a 1-year bill like we did last year. But there is no way—and the Presiding Officer was a Governor of a very large and important State—there is no ability to plan with a 1-year program.

I hope we can get this done. It is important to every State in the Union. I know some people are not happy with what is in the bill. We have done the best we can; if everyone wants their dollars back, we cannot. We will find a lot of States that will not be very happy. If we want everyone to get the average, there is no average.

We are happy to work with every State and are doing better than we had done in the bill. But the allocation will not be changed. It was done with a computer. The information was fed into the computer. It would be extremely difficult to start all over again and come up with a new allocation, especially in a timeframe when we will have to work on this bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. FRIST. Mr. President, I very much appreciate the comments by the assistant Democratic leader. It is absolutely critical we get to this bill. I suspect this cloture vote on Monday will be overwhelming, probably 95 to 5 or 98 to 2 or 99 to 1. Maybe everybody will vote for it. But what it does, from a scheduling standpoint, on a bill that deserves debate, as good a bill as it is—and it is the most fair bill it could possibly be, as we have just heard it described—there is going to be debate. I think both the assistant Democratic leader and myself, and the leadership on both sides of the aisle, have agreed to bring this bill to the floor at the earliest possible date.

I am disappointed because I literally said 3 months ago we were going to go

to the highway bill on Monday, and that we were going to spend the appropriate amount of time on it, that people would be able to debate and amend it as necessary. A few people, for whatever reason—maybe some good reasons—are going to set us back. It sets the overall agenda of the Senate back. And what, in effect, it does is it causes us to lose a day when we were going to have debate only. We were not going to have amendments on Monday but, in effect, we lose the opportunity to start on a very important bill.

I mention that now because it is early in the second session of this Congress, and we have to have cooperation. I plead with our Members to have cooperation so we can do what this body does best, and that is to debate, bring bills to the floor and debate them, and vote them up, vote them down, defeat them, pass them. It is inevitable we will get there.

People are going to watch what the vote is going to be Monday night. It will be overwhelming. And I am not pointing just my finger at the person who objected because he is really speaking for, probably, a couple other people as well, but we have to proceed with this bill. It is an important bill.

Leadership on both sides of the aisle has said that we are going to spend an appropriate amount of time on this bill. So people have some idea, it could be a week, and it could be as long as 2 weeks, but we have to get to the bill. Then we can bring amendments up and debate them.

Mr. REID. Will the distinguished leader yield?

Mr. FRIST. I am happy to yield.

Mr. REID. I will make a suggestion. After the vote is completed, it will be approximately—let's see, what time are we going to vote?

Mr. FRIST. At 5:45.

Mr. REID. So starting at 6:15 on Monday maybe the two subcommittee leaders and the two full committee leaders could begin their statements, and then we could go right to the meat of the bill on Tuesday. I would certainly recommend we try to get Senators INHOFE, JEFFORDS, BOND, and REID to get their statements out of the way Monday night, and then go to the bill Tuesday. That way we will not have lost any time except a little time of the staff.

Mr. FRIST. Mr. President, I think we should encourage that proposal. Again, the whole purpose is to get the bill to the floor, and to debate it and appropriately amend it and do what we all want to do to support appropriately the infrastructure that is very much the foundation upon which our economy works day in and day out.

ORDERS FOR THURSDAY, JANUARY 29, 2004 AND MONDAY, FEBRUARY 2, 2004

Mr. FRIST. Mr. President, I ask unanimous consent that when the Senate completes its business today, it adjourn until 11 a.m., Thursday, January 29, for a pro forma session only; provided that the Senate then immediately stand in adjournment until 1 p.m., Monday, February 2. I further ask consent that on Monday, following the prayer and pledge, the morning hour be deemed expired, the Journal of proceedings be approved to date, the time for the two leaders be reserved for their use later in the day, and the Senate then begin a period of morning business with the time until 2 p.m. equally divided between the two leaders or their designees, with Senator GRAHAM of Florida controlling the minority time; provided that at 2 p.m. the Senate resume consideration of the motion to proceed to the consideration of S. 1072, the highway bill.

The PRESIDING OFFICER. Without objection, it is so ordered.

PROGRAM

Mr. FRIST. Tomorrow morning, the Senate will convene a pro forma session. No business will be transacted during Thursday's session. The Senate will then reconvene on Monday, February 2 at 1 p.m. At 2 p.m. we will resume debate on the motion to proceed. Under the order, the Senate will vote on invoking cloture on the motion to proceed to the highway bill at 5:45 p.m. Monday. If cloture is invoked, we will stay on that motion until it is disposed of. I encourage Members to come to the floor on Monday to begin their opening statements on the highway legislation.

ADJOURNMENT UNTIL THURSDAY, JANUARY 29, 2004, AT 11 A.M.

Mr. FRIST. If there is no further business to come before the Senate, I ask unanimous consent that the Senate stand in adjournment under the previous order.

There being no objection, the Senate, at 6:42 p.m., adjourned until Thursday, January 29, 2004, at 11 a.m.

NOMINATIONS

Executive nominations received by the Senate January 28, 2004:

EXPORT-IMPORT BANK OF THE UNITED STATES

LINDA MYSLIWY CONLIN, OF NEW JERSEY, TO BE A MEMBER OF THE BOARD OF DIRECTORS OF THE EXPORT-IMPORT BANK OF THE UNITED STATES FOR A TERM EXPIRING JANUARY 20, 2007, VICE APRIL H. FOLEY.

DEPARTMENT OF EDUCATION

EUGENE HICKOK, OF PENNSYLVANIA, TO BE DEPUTY SECRETARY OF EDUCATION, VICE WILLIAM D. HANSEN, RESIGNED.

DEPARTMENT OF VETERANS AFFAIRS

PAMELA M. IOVINO, OF THE DISTRICT OF COLUMBIA, TO BE AN ASSISTANT SECRETARY OF VETERANS AFFAIRS (CONGRESSIONAL AFFAIRS), VICE GORDON H. MANSFIELD.

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MATTHEW T. ASHE JR., 0000
MARIAELENA AUGUSTIN, 0000
ROBERT A. BALLARD, 0000
BRADLEY A. BARKER, 0000
PAMELA G. BARNES, 0000
MARK L. BATCHELOR, 0000
ROSS P. BERTUCCI, 0000
WILLIAM M. BLACK JR., 0000
STEVEN L. BOGGS, 0000
CALVIN F. BOLES IV, 0000
MARK J. BOURDON, 0000
MARK A. BOWEN, 0000
DAVID E. BRASUELL, 0000
TIMOTHY M. BRUTON, 0000
SHELIA F. BRYANTTUCKER, 0000
AYDIN D. BUDAK, 0000
MILES A. BURDINE, 0000
FREDERICK C. BURK, 0000
PAUL V. BURKE, 0000
DOUGLAS D. BURPEE, 0000
MICHAEL M. BUSH, 0000
JEFFRY S. BUTTER, 0000
PERRY L. BUXO, 0000
JUSTIN P. CARLITTI, 0000
RAYMOND A. CELESTE JR., 0000
PETER F. CIESLA, 0000
DAVID J. CLEMENT, 0000
JOSEPH M. CODEGA, 0000
FRANS J. COETZEE, 0000
JAMES T. COLE, 0000
FRANK J. CORTE JR., 0000
PHILIP M. CROSSWAIT, 0000
EDWARD D. DANIEL, 0000
BRIAN E. DELAHAUT, 0000
THOMAS F. DIETRICH, 0000
ANSELM J. DYER, 0000
ANTHONY FERNANDEZ III, 0000
WILLIAM A. FOX III, 0000
VAL T. FRANKLIN, 0000
JEFFREY W. FREEMAN, 0000
TIMOTHY G. FROEBE, 0000
NANCY R. GADZALA, 0000
JAMES C. GARMAN, 0000
TIMOTHY R. GAUGHRAN, 0000
WILLIAM P. GOGGINS JR., 0000
ERIK GRABOWSKY, 0000
MARK C. GRAHAM, 0000
OLIVER M. GRANT, 0000
SUZANNE M. HANNI, 0000
DONALD J. HARD, 0000
JAMES S. HARTSELL, 0000
WILLIAM E. HATTON, 0000
JINCY L. HAYES, 0000
MARCELINO HERNANDEZ, 0000
LOUIS HERRERA JR., 0000
TODD J. HIXSON, 0000
JEFFREY M. HORIGAN, 0000
NEIL J. HORNUNG, 0000
JOHN D. HORRES, 0000
FRANK W. IRELAND, 0000
ALLEN D. JOHNSON, 0000
MICHAEL JOHNSON, 0000
RICHARD T. JOHNSON, 0000
WADE M. JOHNSON, 0000
WILLIAM KANE, 0000
WILLIAM E. KAUFER JR., 0000
PATRICK C. KELLEY, 0000
WARREN C. KELLIS, 0000
ROBERT A. KNIEF, 0000
KAVIN G. KOWIS, 0000
CARL R. LAMMERS, 0000
MICHAEL D. LENTZ, 0000
DOUGLAS C. LINDEN, 0000
BRIAN J. LOUF, 0000
KARL E. LUNDBERG, 0000
ROGER R. MACHUT, 0000
MARK M. MANCINI II, 0000
PETER MARTINO, 0000
ERNEST A. MATACOTTA, 0000
CHARLES J. MAY II, 0000
JOHN F. MCCABE IV, 0000
KEVIN J. MCCARTHY, 0000
MICHAEL F. MCCARTHY, 0000
LINDA L. MCGOWAN, 0000
DAVID M. MCMILLER, 0000
STEVEN L. MERRILL, 0000
CLARK W. METZ, 0000
JOSE A. MICHEL, 0000
BRUCE A. MILTON, 0000
ROBERT A. MONTGOMERY, 0000
JEFFREY J. MORSCH, 0000
ALVIN S. MOSHER, 0000
EDWARD V. NAKAS, 0000
BORISFRANK A. NAZAROFF, 0000
CHARLES R. NICHOLS, 0000
MARK A. OLSON, 0000
JAMES A. PAVLIK, 0000
RICHARD P. PERKINS, 0000
LORIE M. PESONEN, 0000
JAMES L. PILLOW, 0000
ANTHONY E. POLETTI, 0000
JEFFREY A. PORTER, 0000
DAVID W. PRAFKA, 0000
GREGORY J. RASSEL, 0000
SCOTT E. RESKE, 0000
RONALD H. RIVES, 0000
WILLIAM L. RODGERS, 0000
DAVID C. ROSSBERG, 0000
STEVEN M. RUBIN, 0000
RAYMOND E. RUHLMANN III, 0000
RANDOL D. RULE, 0000
DAVID R. SAHM, 0000
MARK W. SAMOLINE, 0000
DONALD W. SAMPSON, 0000
MARK A. SCHULTE, 0000
WARD E. SCOTT, 0000
GLEN R. SMITH, 0000
LUTHER B. SMITH III, 0000
GARY M. SPRUILL, 0000
JAMES R. SWEENEY II, 0000
MARK T. TABERT, 0000
PHILLIP E. TAGGART, 0000

WILLIAM E. UNDERWOOD IV, 0000
MICHAEL D. VISCONAGE, 0000
JEFFREY D. VOLD, 0000
RONALD J. WALRATH, 0000
PETER L. WANG, 0000
STEPHEN P. WARD, 0000
PHILIP G. WASIELEWSKI, 0000
WILLIAM R. WATSON, 0000
DAVID T. WATTERS, 0000
ALAN B. WILL, 0000
SHERYL G. WILLIAMS, 0000
DONALD C. WILSON, 0000
CLAYTON T. WRIGHT, 0000
EDDIE D. YOUNG, 0000
JASON D. YOUNG, 0000

IN THE COAST GUARD

THE FOLLOWING NAMED OFFICER OF THE UNITED STATES COAST GUARD TO BE A MEMBER OF THE PERMANENT COMMISSIONED TEACHING STAFF OF THE COAST GUARD ACADEMY IN THE GRADE INDICATED UNDER TITLE 14, U.S.C., SECTION 188:

To be lieutenant commander

GLENN M. SULMASY, 0000

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. DOUGLAS M. PIERCE, 0000

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

LINDSEY O. GRAHAM, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

DONALD L. BUEGE, 0000
JOHN A. CAPARISOS, 0000
RANDY M. CUEVAS, 0000
TYLER S. GUY, 0000
ISAMU MATSUMOTO, 0000
KENNETH G. TOWNSEND, 0000
SAMUEL R. WEINSTEIN, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ALAN C. DICKERSON, 0000
ROBERT F. FEREK, 0000
VINCENT P. FLORYSHAK, 0000
CATHERINE KEY, 0000
JEFFREY G. LIGHT, 0000
ELEONORE PAUNOVICH, 0000
CAMILLE PHILLIPS, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

WALTER F. BURGHARDT JR., 0000
ALBERTA E. BURLEIGH, 0000
DEBBIE L. DOBSON, 0000
JOSEPH F. GRASSO, 0000
JEFFREY P. HILOVSKY, 0000
JOSEPH F. LONGOFONO, 0000
WILLIAM B. MARTIN, 0000
RICKY K. MARTINEZ, 0000
WILLIAM H. MCALISTER, 0000
CHRISTOPHER L. TAYLOR, 0000
RICHARD M. WALTERS, 0000
PHILLIP Y. YOSHIMURA, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MONICA M. ALLISONCERUTI, 0000
WENDY E. BRYANT, 0000
JAMES T. FORREST, 0000
RAYMOND J. HARDY JR., 0000
JOHN R. HART, 0000
THOMAS M. HAYES III, 0000
ALISA W. JAMES, 0000
PATRICIA A. KERNS, 0000
STEVEN D. LINDSEY, 0000
MICHAEL R. LUND, 0000
CHARLES R. MANNIX JR., 0000
GEORGE F. MAY, 0000
LISA T. MILLER, 0000
ANN M. MITTERMEYER, 0000
DIXIE A. MORROW, 0000
SAMUEL C. MULLIN III, 0000
THERESA A. NEGRON, 0000
MARTIN C. OBRIEN, 0000
GREGORY G. PARROTT, 0000
DANIEL V. PETERSON, 0000
JAMES R. THOMAS JR., 0000
MARK J. YOST, 0000

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

PATRICIA S. ANGELILAMB, 0000
LINDA K. ARNSDORF, 0000
CHRISTINE E. BADER, 0000
CHRISTINE M. BUCHER, 0000
MARY M. CAPPARELLI, 0000
TERRELL A. CUNNINGHAM, 0000
DEBORAH A. DANNEMEYER, 0000
DEBORAH J. DODSON, 0000
EDWINA DORSEY, 0000
MARGARET A. DRAGANAC, 0000
SANDRA L. FINNESSY, 0000
CHRISTINE A. GRYGLIK, 0000
SUSAN H. KADECHKA, 0000
NANCY K. KERSH, 0000
SUSAN M. KNOX, 0000
LYNN A. MCDANIELS, 0000
KENNETH L. MCNEELY, 0000
CONNIE S. MILLER, 0000
KAREN A. NAGAFUCHI, 0000
THERESA A. OSBURN, 0000
DONNA A. RAJOTTE, 0000
MARYGENE RYAN, 0000
SHARON J. THOMAS, 0000
SUSAN K. WALTON, 0000
KATHLEEN L. ZYGOWICZ, 0000

IN THE ARMY

THE FOLLOWING NAMED ARMY NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE ARMY UNDER TITLE 10, U.S.C., SECTIONS 12203 AND 12211:

To be colonel

EDWARD M. WILLIS, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS RESERVE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

ANDREW T FINK, 0000
PAUL K FLETCHER, 0000
JEFFREY P HOLDER, 0000
THOMAS D JAGUSCH, 0000
DAVID W LANDERSMAN, 0000
RONALD L MASON, 0000
PATRICK J MCCARTHY, 0000
JOHN A NICHOLSON, 0000
OLLEN R RICHEY, 0000
JASON C SEAL, 0000
GUY A STRATTON, 0000
NICK TRUJILLO, 0000

IN THE AIR FORCE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE RESERVE OF THE AIR FORCE UNDER TITLE 10, U.S.C., SECTION 12203:

To be colonel

MICHAEL A. ALDAY, 0000
GNANAMANI ARUL, 0000
JOEL S. BOGNER, 0000
JOSEPH L. DAVIS, 0000
SANDRA D. DICKERSON, 0000
PAUL S. DWAN, 0000
JOHN A. ELLIS, 0000
JAMES W. GUYER, 0000
AIMEE L. HAWLEY, 0000
MARK D. HOPKINS, 0000
MICHAEL F. KELLEY, 0000
RAY L. KUNDEL, 0000
JOHN P. LENIHAN JR., 0000
JAMES M. MCGREEVY, 0000
JAMES E. MILLER, 0000
SUSAN E. NORTHRUP, 0000
VIANMAR G. PASCUAL, 0000
DANIEL Z. PECK, 0000
DANGTUAN PHAM, 0000
ROBERT L. SAUNDERS JR., 0000
DAVID J. SNELL, 0000

IN THE MARINE CORPS

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT TO THE GRADE INDICATED IN THE UNITED STATES MARINE CORPS UNDER TITLE 10, U.S.C., SECTION 624:

To be colonel

CURTIS S AMES, 0000
WILLIAM M ANDERSON, 0000
ANTHONY ARDOVINO, 0000
CHESTER A ARNOLD, 0000
JORGE ASCUNCE, 0000
ERIC D BARTCH, 0000
BRIAN D BEAUDREAULT, 0000
JEFFERY A BOWDEN, 0000
JAMES J BUCKLEY, 0000
JOHN W BULLARD JR., 0000
ROBERT S BURAN, 0000
JOHN M BURT, 0000
MICHAEL F CAMPBELL, 0000
HERMAN S CLARDY III, 0000
ROBERT E CLAY, 0000
ROBERT E CLAYPOOL, 0000
DAVID L CLOSE, 0000
TIMOTHY L CLUBB, 0000
THOMAS J CONNALLY, 0000
VINCE E CRUZ, 0000
SCOTT A DALKE, 0000
PAUL L DAMREN, 0000
GARY M DENNING, 0000
THEODORE E DEVLIN, 0000
JAMES M DOCHERTY, 0000
DEREK J DONOVAN, 0000
CHARLES S DUNSTON, 0000
KENNETH D ENZOR, 0000
JOHN R EWERS JR., 0000
WILLIAM M FAULKNER, 0000
JOHN J FITZGERALD JR., 0000
RICHARD P FLATAU JR., 0000
CLYDE FRAZIER JR., 0000
LARRY FULWILER, 0000
THOMAS M GASKILL, 0000
WILLIAM GILLESPIE, 0000
JAMES D GRACE, 0000
PAUL E GREENWOOD, 0000
MURRAY T GUPTILL JR., 0000
JOHN W GUTHRIE, 0000
EDWARD G HACKETT, 0000
DANIEL C HAHNE, 0000
NICHOLAS J HALL, 0000
WADE C HALL, 0000
BEN D HANCOCK, 0000
STEVEN M HANSCOM, 0000
STUART C HARRIS, 0000
ROBERT F HEDELUND, 0000
ROBERT S HELLMAN, 0000
STEPHEN K HEYWOOD, 0000
CHRISTOPHER E HOLZWORTH, 0000
JAMES D HOOKS, 0000
JONATHAN P HULL, 0000
ALVAH E INGERSOLL III, 0000
CHESTER E JOLLEY, 0000
JOSEPH JUDGE, 0000
JOHN C KENNEDY, 0000
SCOTT E KERCHNER, 0000
JOHN A KOENIG, 0000
ROBERT W LANHAM, 0000
GEORGE A LEMBRICK, 0000
CLARKE R LETHIN, 0000
GROVER C LEWIS III, 0000
WILLIAM K LIETZAU, 0000
KENNETH X LISSNER, 0000
KEVIN T MCCUTCHEON, 0000
JOHN E MITCHELL JR., 0000
WILLIAM P MIZERAK, 0000
ROYAL P MORTENSON, 0000
PAUL J OLEARY JR., 0000
CHRISTOPHER S OWENS, 0000
CARL T PARKER, 0000
PATRICK S PENN, 0000
JEFFERY M PETERSON, 0000
LOUIS J PULEO, 0000
LEE B RAGLAND, 0000
JOHN T RAHM, 0000
EDDIE S RAY, 0000
JAMES E REILLY III, 0000
SHAUGNESSY A REYNOLDS, 0000
ROBERT D RICE, 0000
MICHAEL A ROCCO, 0000
RITCHIE L RODEBAUGH, 0000
ERIC L ROLAF, 0000
JOHN RUPP, 0000
PAUL K RUPP, 0000
LAURA J SAMPSEL, 0000
RODMAN D SANSONE, 0000
JEFFERY A SATTERFIELD, 0000
PAUL K SCHREIBER, 0000
JAMES B SEATON III, 0000
RICHARD L SIMCOCK II, 0000
JOHN W SIMMONS, 0000
STEVEN S SIMPSON, 0000
ROBERT O SINCLAIR, 0000
DAVID A SMITH, 0000
EDWARD J SMITH, 0000
GERALD L SMITH, 0000
KEVIN L SMITH, 0000
PHILIP E SMITH, 0000
JAMES H SORG JR., 0000
DAVID L SPASOJEVICH, 0000
KEVIN P SPILLERS, 0000
PAUL J STENGER, 0000
JOHN E STONE, 0000
GREGG A STURDEVANT, 0000
RORY E TALKINGTON, 0000
DARRELL L THACKER JR., 0000
JAMES P VANETTEN JR., 0000
PETER M WARKER, 0000
WILLIAM E WETZELBERGER, 0000
JOSEPH H WHEELER III, 0000
BRUCE A WHITE, 0000
DAVID H WILKINSON, 0000
CLYDE M WOLTMAN JR., 0000
EDWARD YARNELL, 0000
GUY A YEAGER, 0000
GEORGE L YOUNG III, 0000
STEVEN M ZOTTI, 0000

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

ALPHONSO R. JACKSON, OF TEXAS, TO BE SECRETARY OF HOUSING AND URBAN DEVELOPMENT, VICE MELQUIADES RAFAEL MARTINEZ, RESIGNED.

CONFIRMATIONS

Executive nominations confirmed by the Senate January 28, 2004:

THE JUDICIARY

GARY L. SHARPE, OF NEW YORK, TO BE UNITED STATES DISTRICT JUDGE FOR THE NORTHERN DISTRICT OF NEW YORK.

IN THE AIR FORCE

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICERS FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADES INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be major general

BRIGADIER GENERAL ROGER P LEMPKE
BRIGADIER GENERAL ALBERT P RICHARDS, JR.
BRIGADIER GENERAL ALBERT H WILKENING

To be brigadier general

COLONEL TERRY L BUTLER
COLONEL JOHN A CAPUTO
COLONEL RICHARD H CLEVENGER
COLONEL MICHAEL D DUBIE
COLONEL JERALD L ENGELMAN
COLONEL WILLIAM H ETTER
COLONEL EDWARD R FLORA
COLONEL RUFUS L FORREST, JR.
COLONEL RICHARD M GREEN
COLONEL TERRY P HEGGEMEIER
COLONEL VERGEL L LATTIMORE
COLONEL DUANE J LODRIGE
COLONEL MARIA A MORGAN
COLONEL JAMES K ROBINSON
COLONEL MICHAEL J SHIRA
COLONEL JAMES P TOSCANO

THE FOLLOWING AIR NATIONAL GUARD OF THE UNITED STATES OFFICER FOR APPOINTMENT IN THE RESERVE OF THE AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be brigadier general

COL. JAMES E. HEARON

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED WHILE ASSIGNED TO A POSITION OF IMPORTANCE AND RESPONSIBILITY UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. THOMAS L. BAPTISTE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES AIR FORCE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 601:

To be lieutenant general

MAJ. GEN. DONALD J. WETEKAM

IN THE NAVY

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. ANN D. GILBRIDE

THE FOLLOWING NAMED OFFICERS FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral (lower half)

CAPT. JON W. BAYLESS, JR.
CAPT. JAY A. DELOACH
CAPT. EDWARD NMN MASSO
CAPT. WILLIAM H. PAYNE

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVAL RESERVE TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 12203:

To be rear admiral

REAR ADM. (LH) FENTON F. PRIEST III

THE FOLLOWING NAMED OFFICER FOR APPOINTMENT IN THE UNITED STATES NAVY TO THE GRADE INDICATED UNDER TITLE 10, U.S.C., SECTION 624:

To be rear admiral

REAR ADM. (LH) PAUL E. SULLIVAN

AIR FORCE NOMINATIONS BEGINNING PAUL V. BENNETT AND ENDING VICTORIA G. ZAMARRIPA, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON MARCH 26, 2003.

AIR FORCE NOMINATIONS BEGINNING NELSON * ARROYO AND ENDING PAUL D. * SUTTER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 4, 2003.

AIR FORCE NOMINATIONS BEGINNING JAMES J. * BALDOCK IV AND ENDING BRIAN K. * WYRICK, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 4, 2003.

AIR FORCE NOMINATIONS BEGINNING KIMBERLY L. * ARNAO AND ENDING JAMES M. WINNER, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 4, 2003.

AIR FORCE NOMINATIONS BEGINNING DAVID H. * ADAMS, JR. AND ENDING JAMES A. * YOUNG, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 4, 2003.

AIR FORCE NOMINATIONS BEGINNING LAURIE A. ABNEY AND ENDING DEEDRA L. * ZABOKRTSKY, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 4, 2003.

AIR FORCE NOMINATIONS BEGINNING JOHN T. AALBORG, JR. AND ENDING WILLIAM A. ZUTT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON SEPTEMBER 4, 2003.

ARMY NOMINATIONS BEGINNING STEPHEN G. BEARDSLEY III AND ENDING PATRICK O. WILSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 17, 2003.

ARMY NOMINATIONS BEGINNING JOHN R. ANGELLOZ, JR. AND ENDING MICHAEL C. MCDANIEL, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 20, 2003.

ARMY NOMINATION OF JAMES R. WARD.

ARMY NOMINATION OF MICHAEL K. VAUGHAN.

ARMY NOMINATIONS BEGINNING DAVID S FEIGIN AND ENDING JOHN E HARTMANN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 25, 2003.

ARMY NOMINATIONS BEGINNING JOSEPH L. CRAVER AND ENDING WILLIAM HANN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 25, 2003.

ARMY NOMINATION OF CAROL ANN MITCHELL.

ARMY NOMINATIONS BEGINNING CAROL A. BOSSONE AND ENDING CURTIS M. KLAGES, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 25, 2003.

ARMY NOMINATIONS BEGINNING DANIEL G RENDEIRO AND ENDING DIANE K PATTERSON, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 25, 2003.

ARMY NOMINATIONS BEGINNING MICHAEL T ENDRES AND ENDING JAMES A CHERVONI, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 25, 2003.

NAVY NOMINATIONS BEGINNING TAB E AUSTIN AND ENDING SABRINA M STEDMAN, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 20, 2003.

NAVY NOMINATIONS BEGINNING ALBERT A. ALARCON AND ENDING JEFFREY W. WINTERS, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 21, 2003.

NAVY NOMINATIONS BEGINNING CRAIG L ABRAHAM AND ENDING SARAH L WRIGHT, WHICH NOMINATIONS WERE RECEIVED BY THE SENATE AND APPEARED IN THE CONGRESSIONAL RECORD ON NOVEMBER 25, 2003.

EXTENSIONS OF REMARKS

FREEDOM FOR RICARDO SEVERINO GONZALEZ ALFONSO

HON. LINCOLN DIAZ-BALART

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. LINCOLN DIAZ-BALART of Florida. Mr. Speaker, I rise today to speak about Ricardo Severino Gonzalez Alfonso, a political prisoner in totalitarian Cuba.

Mr. Gonzalez is the president of the Manuel Marquez Sterling Journalists Society and an independent reporter in totalitarian Cuba. Mr. Gonzalez works and writes to inform the world about the gross human rights abuses that occur every day under the repressive regime of the Cuban dictator.

Unfortunately, writing and reporting the truth is not allowed under Castro's tyrannical dictatorship. All attempts to portray the absolute lack of freedom in totalitarian Cuba are viciously condemned and their authors are imprisoned or exiled. Mr. Gonzalez has been harassed by Castro's thugs since 1997, and on March 18, 2003, he was arrested for his insistence on publishing the truth about Castro's totalitarian Cuba.

The sham trial verdict that sentenced Mr. Gonzalez to 20 years in the Cuban gulag read:

''. . . he managed to get his articles, which were subversive and misleading in nature with regard to the Cuban system, published in various newspapers and magazines such as Reporters Without Borders.''

Mr. Speaker, Mr. Gonzalez was 53 years old when he was condemned to 20 years in Castro's gulag. The conditions in the Cuban totalitarian gulag are so atrocious as to almost guarantee that Mr. Gonzalez will not walk out if he were to have to serve the entirety of his sham sentence. Let me be very clear, Mr. Gonzalez has been sentenced to die in the gulag by the Cuban tyrant for writing the truth about Castro's brutal, repressive regime. It is imperative that Cuba be free as soon as possible, so that Mr. Gonzalez and all the political prisoners can also live in the freedom and dignity that they deserve.

My colleagues, we must cry out for the release of all those who languish in dungeons because they believe in human rights and freedom. We must demand the immediate release of Ricardo Gonzalez Alfonso and every political prisoner.

PERSONAL EXPLANATION

HON. JIM DeMINT

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. DEMINT. Mr. Speaker, I was absent during roll call vote 6; had I been present, I would have voted ''yea.''

HONORING THE STUDENTS OF POLK CREEK ELEMENTARY SCHOOL

HON. SHELLEY MOORE CAPITO

OF WEST VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mrs. CAPITO. Mr. Speaker, I rise today to honor the fourth grade class at Polk Creek Elementary School in Weston, West Virginia. These students in Mrs. Mary Wagoner's class recorded a CD entitled ''Thinking of You'' for distribution to the 100 Lewis County, West Virginia, residents serving our country in Iraq.

The students performed the songs ''Thinking of You,'' ''Allegiance Rap,'' ''You Are Our Heroes,'' ''The West Virginia Hills,'' ''American Tears'' and ''Mighty United'' for our soldiers.

All of us in this House share the sentiments expressed by these students. The men and women serving our country in Iraq are in the thoughts and prayers of us all. Hearing from these school children will improve the morale of our troops and show them they are in the thoughts of people back home.

I would like to thank Principal Thomas Garrett, Teacher Mary Wagoner, along with Whitney Ballard and Shaun Davis, for their hard work with the students at Polk Creek Elementary on this project. I am honored to represent the Lewis County community and thank Polk Creek Elementary for their efforts to honor our military personnel.

THE ROBERT J. DOLE COMMUNITY CENTER

HON. TODD TIAHRT

OF KANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. TIAHRT. Mr. Speaker, today, I am introducing legislation to authorize the Secretary of the Air Force to rename the community center at McConnell Air Force Base, currently known as ''Emerald City,'' as ''The Robert J. Dole Community Center.'' I would like to thank my colleagues from Kansas, Mr. Ryun, Mr. Moran and Mr. Moore, for agreeing to join as original cosponsors of the bill.

Senator Dole once said that his life ''is proof that America is a land without limits.'' He was born in Russell, Kansas, on July 22, 1923, the eldest son of Doran R. and Bina Talbott Dole. He graduated from Russell public schools and attended the University of Kansas, Lawrence, entering in the fall of 1941. He received an A.B. and LL.B from Washburn Municipal University in 1952.

Senator Dole entered active duty in the U.S. Army in June 1943 after completing his sophomore year at the University of Kansas. He served 5½ years in World War II and was a 10th Mountain Division platoon leader in the Allied liberation of Northern Italy. During this time, he was twice wounded and twice decorated for ''heroic achievement,'' and was discharged with the rank of Captain in July 1948, having convalesced for 3 years from grave wounds sustained in combat.

In 1950, he was elected to the Kansas Legislature and served for 2 years before being elected Russell County Attorney, a position he served in for 8 years. In 1960, he was elected to the U.S. House of Representatives and reelected in 1962, 1964 and 1966. He was elected to the U.S. Senate in 1968 and was reelected in 1974, 1980, 1986 and 1992.

One of the many lasting contributions that Bob Dole made to the State of Kansas and to the American people was the manner in which he worked to strengthen McConnell Air Force Base in Wichita over the course of his nearly 4 decades of service in the U.S. House of Representatives and the U.S. Senate.

Due largely to his efforts, infrastructure improvements at the base have included a base hospital, housing for single officers and enlisted personnel, and a multifaceted community center, ''Emerald City,'' which contains a bowling center, officer and enlisted clubs, a fitness center and a cafeteria.

In honor of Senator Dole's service to Kansas and to the men and women who have called McConnell Air Force Base home, I am pleased to introduce this legislation, which authorizes the Secretary of the Air Force to rename the community center at McConnell Air Force Base, currently known as ''Emerald City,'' as ''The Robert J. Dole Community Center.''

HONORING THE LIFE OF BILL L. KRATZ

HON. SAM GRAVES

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. GRAVES. Mr. Speaker, I have the honor today to recognize the life of Bill L. Kratz, who unexpectedly passed away on January 25, 2004. As a husband, father, Christian, and public servant, Mr. Kratz will be missed by many.

A life-long resident of Missouri, Bill Kratz was born on May 12, 1938, in Shelbyville, Missouri. On September 17, 1961, Bill married Patricia Lohman, and they settled in Independence, Missouri. They had two children, Dana and Keith, and eight grandchildren. Mr. Kratz served in the National Guard from 1961 to 1966 and was also employed by General Motors, from which he retired in 1989. After retirement, Mr. Kratz took an active role in the community by serving on the planning commission for the city of Independence since 2000 and assisted in the 2000 census.

Mr. Kratz was also active in his church, Messiah Lutheran Church, serving as an elder, chairman of the Adult and Family Board, chairman of the Board of Social Ministry, vice president of the congregation, and president of the congregation.

I offer my condolences to his wife, Patricia; children, Dana and Keith; and their families. In this time of sorrow, may the thoughts and prayers of friends and family comfort them and may his memory bring them peace.

PERSONAL EXPLANATION

HON. TIMOTHY V. JOHNSON

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. JOHNSON of Illinois. Mr. Speaker, due to the ice and snow storm in the Washington, D.C. area last night, my flight, American Airlines No. 1548 from Chicago's O'Hare International Airport to Washington, D.C.'s Ronald Reagan National Airport, was significantly delayed by 3½ hours. I therefore missed the two votes for the evening, Roll Call Nos. 6 and 7. Had I been present, I would have voted ''yea'' on H.R. 1385, an act authorizing the United States Postal Service to issue a special stamp to benefit breast cancer research; and I would also have voted ''yea'' on H.R. 3493, the Medical Devices Technical Corrections Act.

HONORING MARY LEIBHAM

HON. GEORGE RADANOVICH

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. RADANOVICH. Mr. Speaker, I rise today to honor Mary Leibham for 33 years of dedicated public service. Ms. Leibham will retire from the District Attorney Compliance and Closure Unit in early February. On Saturday, January 24, she will be honored at an event held at the SOS Club in Modesto, California.

Mary was born in North Dakota, but was raised in Sacramento, California. For the past 25 years, she has lived in Modesto, California. In 1971, Mary's extensive career in the Department of Social Services began as she transferred to the District Attorney Family Support Division as a family support officer. She returned to the Department of Social Services as a welfare fraud investigator in 1979. Less than a year later, Mary went back to the District Attorney Family Support Division as a family support officer and has since served as a senior family support officer, Family Support Program analyst, and is currently serving as Manager II, supervising the Compliance and Case Closure Unit (formerly District Attorney Family Support Division).

Ms. Leibham has had numerous accomplishments and has been involved with many noteworthy projects. She is the recipient of the 2001–2002 California Family Support Council Director's Award, as well as the 2001–2002 California Family Support Council Contribution in Training. Mary has participated in the Welfare Reform Task Force, the CDDA FSO College Committee, and the Stanislaus County Employee Mentoring Program-AIM Project for Everett Elementary and Chrysler Schools.

Mr. Speaker, I rise today to honor Mary Leibham upon her retirement from public service. Although her career in public service has ended, her contributions will be felt for generations to come. I invite my colleagues to join me in wishing Mary a fulfilling retirement.

CELEBRATING THE 75TH ANNIVERSARY OF THE SAN ANTONIO HISPANIC CHAMBER OF COMMERCE

HON. CIRO D. RODRIGUEZ

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. RODRIGUEZ. Mr. Speaker, seventy-five years ago, in 1929, the consul general of Mexico in San Antonio, then as today a center for trade between the United States and Mexico, formed what was to become the highly successful San Antonio Hispanic Chamber of Commerce. This week the Hispanic Chamber celebrates its 75th anniversary with pride in its past accomplishments and optimism for its future successes.

As the oldest organization of its kind, the San Antonio Hispanic Chamber of Commerce continues to be a leading advocate for Hispanic, minority, and woman-owned businesses in San Antonio through individual business advice, networking, and advocacy. Widely respected today as a positive force in the business life of our community, the Hispanic Chamber, like its membership, had to overcome social and economic barriers on the path to success.

Chartered in 1929 by Don Enrique Santibanez, the chamber focused on improving political and economic ties between the United States and Mexico. That mission remains central to the 21st Century Hispanic Chamber, which plays a lead role in promoting trade between the United States and our neighbors to the south in Latin America. The San Antonio Hispanic Chamber of Commerce has helped make San Antonio the gateway to the Americas.

Facing active discrimination, the early chamber had to do more than the typical chamber of commerce. Not only did it seek to promote business growth, it sought to develop Hispanic civic participation in the power centers of our community. As we continue to the battle against negative stereotypes the chamber continues its mission of training its members to become community leaders.

And it has met with great success. For those of us in Congress, the San Antonio Hispanic Chamber of Commerce serves as a great resource and source of inspiration. Locally, the Hispanic Chamber provides leadership, expertise, and encouragement to the vibrant and growing Hispanic business community. Their success is our success.

I would like to commend Chairman Leo Gomez and the 2003 Board of Directors for their leadership over the past year. They have continued the Chamber's tradition of molding Hispanic community leaders and advancing minority business interests. I know that the chamber's new chair, Elaine Mendoza, will take the chamber to new levels of success. Of course, the Hispanic Chamber's achievements reflect the hard work, dedication, and leadership of its staff, headed by chamber president Rita Elizondo. Our thanks to all of you for what you give to our community.

Mr. Speaker, I ask my colleagues to recognize the achievements of the San Antonio Hispanic Chamber of Commerce as it marks 75 years of progress.

RECOGNIZING BETTY LUCINDA ETCHISON

HON. BILL SHUSTER

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. SHUSTER. Mr. Speaker, I rise today to recognize Betty Lucinda Etchison for her nearly 58 years of committed service to the McLanahan Corporation. Her presence with the company will be sorely missed.

Betty Lucinda was born in Geeseytown, Pennsylvania, in 1928 to George J. and Rebecca H. Etchison. After graduating from Hollidaysburg High School in 1946, she began her journey through the McLanahan and Stone Corporation as a stenographer. At the time, she was only a temporary employee; but after proving herself as a capable worker, Ward McLanahan hired her as a full-time employee.

Under the direction of James Craig McLanahan, Ms. Etchison further disclosed her vast capabilities, quietly earning recognition for her incomparable performance on the job. Shortly after the company became the McLanahan Corporation, Ms. Etchison's distinguishing loyalty was acknowledged, as she became Michael McLanahan's personal secretary and remained in the same position for the next 31 years. Working tirelessly to overcome the obstacles of having to learn and master continually changing technology, Ms. Etchison flourished under her final boss, Sean McLanahan.

To the enjoyment of local citizens, her spirit and dedication translated into every aspect of her life. Ms. Etchison has been a life-long member of the Scotch Valley Grange, helping to prepare food and treating the crowds by playing the piano at numerous functions and selflessly contributing her time and musical talent to the Lutheran churches of Frankstown and Geeseytown. Her uncompromising sense of duty to the community in which she lives has been a source of inspiration.

Having worked diligently for four generations of the McLanahan family, Ms. Etchison has demonstrated an unyielding enthusiasm and care for the company which she has served. For her incomparable generosity, service to the McLanahan Corporation, and unabated commitment to excellence, Betty L. Etchison deserves the highest recognition. The legacy she has left behind is one that every American should emulate, and her contributions will not go unnoticed by the business for which she worked nor the community in which she lives. I would like to congratulate Ms. Etchison on her accomplishments, and I wish her the best of luck in her retirement.

PERSONAL EXPLANATION

HON. HAROLD ROGERS

OF KENTUCKY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. ROGERS of Kentucky. Mr. Speaker, on Tuesday, January 27, I was unavoidably detained due to the inclement weather and was not present for roll call votes numbers 6 and 7. The votes were on H.R. 1385 and H.R. 3493, respectively. Had I been present, I would have voted ''yea'' on both measures.

HONORING THE ANNIVERSARY OF THE FOUNDING OF THE DALLAS COWBOYS

HON. PETE SESSIONS

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. SESSIONS. Mr. Speaker, I rise today to honor the anniversary of the founding of the Dallas Cowboys. On this day in 1960, Clint Murchison, Jr., and Bedford Wynne were awarded an expansion franchise by the NFL at the league's annual owners meeting in Miami Beach.

The Dallas Cowboys have been a pillar of strength in the NFL since their founding 44 years ago. Legendary Coach Tom Landry guided America's Team to five NFC championship titles and two Super Bowl victories. Jimmy Johnson then returned the team to glory with back-to-back Super Bowl championships in 1993 and 1994. Barry Switzer then capped off the Cowboy's claim to the title of ''Team of the Nineties'' with their win in Super Bowl XXX.

The Cowboys also lead the league in producing seven Super Bowl Most Valuable Players and hold the record for playoff victories with 32 wins in the postseason. During this past season, the Cowboys recorded their 400th career franchise victory, including regular season and playoffs, in the Monday night overtime thriller against the New York Giants.

I congratulate Owner and General Manager Jerry Jones, Head Coach Bill Parcells, current and former Cowboys players, and the team's loyal fan base in Texas and across the country on the occasion of this great anniversary.

With the arrival of Coach Parcells this season, the Cowboys were able to make an unexpected bid into the playoffs, a tremendous improvement for the team. I wish Mr. Jones, Coach Parcells and all of the Cowboys players all the best for continued improvement for next season and congratulate them on this anniversary.

SOUTHWEST MISSOURI LOSES A LIVING LEGEND

HON. ROY BLUNT

OF MISSOURI

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. BLUNT. Mr. Speaker, I rise today to pay tribute to a Southwest Missouri golf legend who has joined Sam Snead, Gene Sarazen, and Ben Hogan on that first tee in the sky. Herman Keiser, a native of Springfield, MO, passed away December 24, 2003, at the age of 89. His death marked the end of a wonderful career as a golf professional, who in 1946, after a 31-month tour of duty in the U.S. Navy fighting World War II, won the 1946 Masters, a golf event that has been held at Augusta National Golf Club since its inception in 1934.

Mr. Keiser began his golfing career as an assistant golf professional at Portage Country Club in Portage, OH. Shortly after his arrival, he became the head golf professional at Firestone Country Club in Akron, OH, which hosted the World Series of Golf just this past year as well as numerous PGA and Champion Tour events.

The highlight of his career came when in 1946 Herman Keiser found himself on the first tee at Augusta National Golf Club preparing to play in a tournament founded by legendary Bobby Jones and won twice by Horton Smith. In fact, he had the pleasure of playing some practice rounds with Horton Smith prior to the first round of the tournament. During these cherished moments, Smith gave Keiser some very important tips that enabled him to read the difficult greens at Augusta.

After three rounds of golf, Keiser found himself 5 strokes ahead of legendary golfer Ben Hogan. Others in the field included the likes of Byron Nelson and Sam Snead. In his final round, Keiser shot a 74 which placed him at 6 under for the tournament. He was emotionally and physically spent and waited to see what Hogan would do after Keiser three-putted the 18th hole for his 74. All Hogan had to do was par the 18th hole, a very difficult Par 4 dogleg right. His second shot landed 12 feet from the hole where Hogan three putted giving Keiser the win that he so deserved. Keiser had remembered what Horton Smith had told him during the practice round. Unfortunately for Hogan, he did not have the same lesson. For Keiser, his 1946 win was ''the greatest thing that ever happened to me.''

In 1947, Keiser continued his golfing excellence by becoming a member of the successful Ryder Cup team that defeated Britain 11 to 1. Shortly after the team's success, Keiser returned to Ohio, where he purchased a driving range and became a life member of the Professional Golfers' Association of America.

Mr. Speaker, Herman Keiser came from Springfield, MO, to carve a small place for himself in the history of professional golf. He lived a wonderful life and contributed much to the game of golf. He will always be remembered in my home State and will be missed.

CITY OF ALEXANDRIA RESOLUTION REGARDING IMPACT OF USA PATRIOT ACT

HON. JAMES P. MORAN

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. MORAN of Virginia. Mr. Speaker, last week the President made a number of comments about the need to extend and enhance the USA PATRIOT Act during his State of the Union speech. It is with that address to the Nation in mind, that I rise today to insert into the RECORD a resolution passed by a local jurisdiction in my district. On November 11, 2003, the city of Alexandria, VA, passed a resolution which requests that Congress assess the impact of the USA PATRIOT Act and other Federal antiterrorism efforts. The resolution calls on Congress to repeal provisions of the act, other laws, regulations, policies, and practices that infringe on personal rights, liberties, and due process.

I support the community spirit and civic concern that led to the passage of this resolution. I agree with many of the points expressed in the resolution and have been troubled by the interpretation and implementation of a number of the PATRIOT Act's provisions. I look forward to these issues being revisited in the coming year. The American people deserve nothing short of a full and open debate on these issues so greatly affecting civil liberties and the role of government in peoples' personal lives.

RESOLUTION NO. 2088

Whereas, the Alexandria City Council is committed to upholding the United States Constitution and its Bill of Rights;

Whereas, the City of Alexandria has a long history of working to obtain and preserve the civil rights and liberties of its residents;

Whereas, the City has a diverse and multiethnic population, and everyday embraces the richness of community that includes immigrants, whose contributions to the City are vital to its economy, culture and civic character;

Whereas, the City has among its residents many who were affected directly and many more who were affected indirectly, by the tragic events of September 11, 2001, both in New York City and at the Pentagon, only a short distance from this Chamber as well as in Somerset County, Pennsylvania;

Whereas, this nation's need to respond to those terrible events, and to protect itself from future acts of terrorism, does not diminish the commitment of the City or of its residents, regardless of their personal circumstances, to the Constitutional rights and liberties that are the precious entitlement of all;

Whereas, the Alexandria City Council believes there is no inherent conflict between national security and the preservation of liberty—that Americans can be both safe and free;

Whereas, the Alexandria City Council is proud of the cooperative work among federal, state and local law enforcement officials to protect the safety of Alexandrians;

Whereas, federal, state and local government actions designed to protect the public from terrorist attacks, such as those that occurred on September 11, 2001, must be taken in a rational and deliberative fashion to ensure that any new security measure intended to enhance public safety does not impair constitutional rights or infringe on civil liberties;

Whereas, federal laws, regulations, policies, and practices adopted since September 11, 2001, including provisions of Public Law 107–56 (the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act or ''USA PATRIOT'' Act), and related Executive Orders, regulations and actions:

(a) authorize the indefinite incarceration of non-citizens to solitary confinement, based upon mere suspicion, without being charged with any crime, without counsel, and without a right to be heard;

(b) authorize the indefinite incarceration of citizens designated by the President based unspecified standards as ''enemy combatants'' to solitary confinement, without being charged with a crime, without counsel, and without a right to be heard;

(c) limit the traditional authority of the federal courts to curb law enforcement abuses including electronic surveillance;

(d) limit judicial oversight of federal ''sneak and peek'' searches and eliminate timely notice to the person who is the subject of the search that his or her property has been searched;

(e) grant broad governmental access to personal medical, financial, library, and educational records without judicial oversight;

(f) inhibit free speech and free association by defining any person or group as a terrorist, or an act as terrorism, without articulating the basis for the characterization or giving the person or group so characterized a right to be heard;

(g) encourage local and state law enforcement personnel to enforce federal immigration laws, and to use those laws as a pretext

for detention of, and denial of due process to, persons who are not reasonably suspected of criminal behavior;

(h) permit government surveillance of public meetings, including religious services, Internet chat rooms, holiday gatherings, and political rallies without judicial oversight;

Whereas, draft federal legislation, known as the Domestic Security Enhancement Act (''DSEA'' or ''Patriot II''), contains many new and sweeping provisions that further expand government surveillance authority, increase government secrecy, reduce governmental accountability, erode the separation of powers essential for Constitutional checks and balances, and diminish the right of all persons to the due process of law guaranteed by the Constitution: Therefore, be it

Resolved, That the Alexandria City Council:

1. Affirms its strong support for fundamental constitutional rights and its opposition to federal measures that infringe on civil liberties;

2. Affirms its strong support for the rights of immigrants and opposes measures that single out individuals for legal scrutiny or enforcement activity based solely on their country of origin;

3. Directs the Police Department of the City of Alexandria to ensure that it protects the constitutional rights of Alexandria residents, that it maintains a relationship of trust with those it is sworn to serve and protect, and that it continues to abide by the Alexandria Police Department directives that prohibit racial profiling or collecting information not reasonably related to suspicion of criminal behavior;

4. Directs public libraries in the City to promote unfettered access to information, which is the collective heritage of humanity and which is a fundamental human right, and to protect freedom of inquiry, universally recognized as a driving force for the progression of civilization itself, by:

(a) posting this notice to library users ''WARNING: Under Section 215 of the Federal ''USA PATRIOT'' Act (Public Law 107–56), records of the books and other materials you borrow may be obtained by federal agents. That federal law prohibits librarians from informing you if records about you have been requested or obtained by federal agents. Questions about this policy should be directed to: Attorney General John Ashcroft, U.S. Department of Justice, Washington, DC 20530,''

(b) ensuring there is regular destruction of records that identify a book borrower after the book is returned, or that identify the name of an Internet user after use;

5. Recommends that local businesses and institutions in the City, and in particular booksellers, notify consumers that purchase records are subject to disclosure to federal law enforcement agencies;

6. Directs the City Manager to ensure that, to the extent legally possible, no City resources—including law enforcement funds and educational administrative resources—may be used for unconstitutional activities, including but not limited to monitoring the exercise by political and religious groups of their First Amendment rights of expression, association, assembly or petition, or obtaining library, bookstore or website activity records without proper authorization and without notice to the subjects of the records;

7. Directs the Clerk of Council to:

(a) send a copy of this Resolution to Governor Warner with a letter urging him to ensure that state anti-terrorism laws and policies be implemented in a manner that does not infringe on personal rights, liberties and due process; and

(b) send a copy of this Resolution to Senators Warner and Allen, and Congressman Moran, accompanied by a letter asking that the resolution be read into the record, on the floor, and urging Congress to assess the impact of the ''USA PATRIOT'' Act and federal anti-terrorism efforts; to work to repeal provisions of the ''USA PATRIOT'' Act and other laws, regulations, policies and practices that infringe on personal rights, liberties and due process; and to ensure that no provision of the ''USA PATRIOT'' Act originally intended to expire remains in effect past its sunset date; and be it further

Resolved, That the provisions of this Resolution shall be severable, and that if any phrase, clause, sentence, or provision of this Resolution is declared by a court of competent jurisdiction to be contrary to the Constitutions of the United States or of the Commonwealth of Virginia, the validity of the remainder of this Resolution shall not be affected thereby.

BREAST CANCER STAMP EXTENSION

SPEECH OF

HON. LYNN C. WOOLSEY

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Tuesday, January 27, 2004

Ms. WOOLSEY. Mr. Speaker, I rise today in support of H.R. 1385, which continues the authorization of the breast cancer research stamp. This stamp has been just one small part of a comprehensive federal effort to combat this horrible disease, and I am pleased that it will continue. It's strange to think that a postage stamp has the ability to save lives, but the breast cancer stamp truly has such potential. With the continuation of this stamp, people around the country will have the opportunity to support research programs at the National Institute of Health and the Department of Defense. These research efforts are playing a critical role in understanding breast cancer, identifying who is at risk, and creating safer and more effective treatments that allow more people to survive and prosper after fighting this disease.

Perhaps no one understands the tragedy of breast cancer more than the people of Marin County in my Congressional district. For some reason, Marin has an unusually high rate of breast cancer. Far too many mothers, wives, sisters, and daughters have been lost in our community. We're doing all that we can to find out what is happening in Marin and what we discover will be used to fight breast cancer all over this country. In the face of so much community tragedy and loss, I have had the honor of working with breast cancer survivors and advocates in my community to help understand the causes of this epidemic and support those who are battling cancer. Watching their struggle has underscored the importance of federal efforts just like the creation and extension of the breast cancer stamp. By allowing Americans to give just a little bit every time they mail a card or a letter, we can help fund the research that will save the lives of our daughters and granddaughters.

I urge my colleagues to join me in supporting H.R. 1385 to help continue the fight against breast cancer.

TRIBUTE TO DR. TIM K. SIU

HON. ADAM B. SCHIFF

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. SCHIFF. Mr. Speaker, I rise today to pay special recognition to Dr. Tim K. Siu who is the recipient of the Distinguished Citizen Award from the San Gabriel Valley Boy Scouts.

A Rotarian since 1969, Dr. Siu has served Rotary International as District Governor and is presently a senior active member. Among his many accomplishments as a Rotarian, Dr. Siu has 33 years of perfect attendance and was a Paul Harris Fellow.

Dr. Siu has served as a member on the Board of Directors of the Tokai Bank of California, a member of the Board at California State University Los Angeles, on the Board of Directors for the West San Gabriel Valley YMCA, Professor Emeritus of University of Southern California Medical School, and Director of Disaster Committee of the American Red Cross. He is currently on the Board of Directors for San Gabriel Valley Medical Center, Board of Councilors for the University of Southern California Pharmacy School and on the Board of California State University Pomona.

In his community, Dr. Siu has served on the City of Alhambra Planning Commission and the Alhambra Civil Service Commission. He has been an officer and director of Alhambra Day Nursery, Wysong Retirement Home, Burke's Manor Senior Citizen Home, and Los Angeles County Medical Association. Dr. Siu is currently serving as a member of the Board of the San Gabriel Valley Medical Center where he is active in building an outpatient surgical center in San Gabriel.

Dr. Siu practiced anesthesiology. He taught anesthesiology at the University of Southern California Medical School until his retirement as Professor Emeritus. He was also the medical examiner for the National Youth Sports Program at USC, the San Gabriel Valley Pop Warner Program, and was the team doctor for the Alhambra High School Football Team.

Dr. Siu is involved in the Chinese community with the Chinese Historical Society, the Chinese-American Citizens Alliance, and the Chinatown Public Service Association. Currently, he is active in building a Chinese American Museum in the original Chinatown of Los Angeles.

Dr. Siu served in the United States Navy stationed at Great Lakes Naval Hospital in Illinois.

Dr. Siu is a native of Hawaii and is married to Dr. Annie Chi Siu. Tim and Annie have four daughters; a general dentist, an athletic administrator, an orthodontist and a registered nurse.

I ask all Members of Congress to join me today in congratulating Dr. Tim K. Siu on a truly exemplary professional and public service career.

TRIBUTE TO PAUL AND SHARON ELERICK, SANTA CRUZ COUNTY DEMOCRATS OF THE YEAR

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Ms. ESHOO. Mr. Speaker, I rise today to pay tribute to two extraordinary Americans and distinguished Californians, Paul and Sharon Elerick, who are being honored as Democrats of the Year by the Santa Cruz County Democratic Central Committee.

Paul and Sharon Elerick met in 1958 at an ice cream shop in Michigan and have been utterly devoted to each other ever since. They have raised two children, Paul Jr. and Denise, who are now raising their own families in Santa Cruz County.

Paul Elerick was elected Chair of the Santa Cruz County Democratic Central Committee in 1998 and served in that position until 2003. In that time, he managed three Democratic Headquarters and has contributed mightily to create countless successful campaigns.

Between them, Paul and Sharon Elerick have worked to elect some of the greatest leaders of Santa Cruz County, including Julian Comacho, John Bakalian, Leon Panetta, Bob Taren, Sam Farr, Dale Dawson, Gary Patton, Mardi Wormhoudt, Robley Levley, Ellen Pirie, Ron Ruiz, Bob Lee, Fred Keeley, John Laird and Bill Monning.

Mr. Speaker, I ask my colleagues to join me in extending to Paul and Sharon Elerick our sincerest congratulations as they are honored as the Santa Cruz County Democratic Central Committee's Democrats of the Year. We are a better community, a better country, a better people and a stronger democracy because of them and all that they have done.

PERSONAL EXPLANATION

HON. MICHAEL E. CAPUANO

OF MASSACHUSETTS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. CAPUANO. Mr. Speaker, on Tuesday, January 27, 2003, Louis Rabaglia, my 94 year-old Uncle and a former firefighter, required hospitalization and I had to remain in my District to address related concerns. Consequently, I was unable to cast votes on Rollcalls 6 and 7. Had I been present, I would have voted in the following manner: ''yea'' on Rollcall 6 and ''yea'' on Rollcall 7.

I ask unanimous consent that the CONGRESSIONAL RECORD reflect my intended votes.

PERSONAL EXPLANATION

HON. MAJOR R. OWENS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. OWENS. Mr. Speaker, because of an emergency in my district, I missed rollcall vote No. 6 and No. 7. If present I would have voted ''yea.''

HONORING MR. DALE BUTLER, JR.

HON. DENNIS A. CARDOZA

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. CARDOZA. Mr. Speaker, I rise today to honor a great friend to the 18th Congressional District, the State of California, and our Nation, Mr. Dale Butler, Jr. Dale is retiring from his 33-year tenure with Stanislaus County, and he is a living example of how the American dream is alive and well today.

Dale was raised on the Westside of Stanislaus County, a predominantly agricultural area in the San Joaquin Valley. His first job as a migrant farm worker gave him a work ethic that has followed Dale his entire life. The first major leadership role Dale took on was serving our nation in the U.S. Navy as a personnel specialist from 1962 to 1966. He then took his leadership abilities to the Riverbank Army Ammunition Plant as a production control scheduler. In 1971, Dale graduated from California State Stanislaus with a bachelor of arts degree in political science.

Following graduation, Dale began his career with Stanislaus County. From 1971 to 1999, Dale held a variety of administrative and management positions with the county. He has been involved in budgets, legislation analysis, recruitment selection, discipline, labor relations, training, and Equal Rights. He has held positions as a Principal Analyst, Senior Management Consultant in the Chief Executive Office, and Senior Personnel Analyst. He has also served Stanislaus County as the Equal Rights Officer from 1972 to 2001. Currently, he serves in the Stanislaus County Chief Executive Office as the Deputy Executive Officer, overseeing purchasing, central services, and fleet services divisions.

Not only has Dale served our Nation, but he has a deep commitment to the betterment of our Central Valley as well. Currently, he is the president of the Stanislaus County Fair Board, a member of the Stanislaus County Latino Community Round Table, the Stanislaus County Hispanic Leadership Council, the Mabuhay Club, and the Modesto Bee's Hispanic Advisory Council. Dale has also founded a number of organizations such as the Stanislaus County Latino Community Round Table, El Concilio de Stanislaus County for the Spanish-Speaking, Inc., and the Stanislaus County Disability Resources Agency for Independent Living. There have been a number of honors bestowed upon Dale such as, the Stanislaus County Latino Community Round Table's Outstanding Latino of the Year, the California Association of Physically Handicapped's Humanitarian of the Year, the American GI Forum's Hispanic of the Year, and the Volunteer of the Year from the Hispanic Chamber of Commerce.

Dale is married to Corazon Butler, and together they have three children, Christine, Diana, and Dale III. I am proud to recognize all of Dale's accomplishments, and to call him my friend. Today I call upon my colleagues to help me thank Dale for his service to the Central Valley, and to wish him a very happy retirement.

CLARIFICATION OF CONGRESSIONAL INTENT OF SECTION 102(g) OF DIVISION H IN H.R. 2673

HON. WILLIAM M. THOMAS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. THOMAS. Mr. Speaker, I rise to clarify the Congressional intent of Section 102(g) of Division H, Miscellaneous Appropriations and Offsets, in H.R. 2673, the Consolidated Appropriations Act, 2004.

Specifically, after discussing this Section with my colleague, Mr. GOODLATTE of Virginia, it is my understanding that it is the Congressional intent of that provision to also provide assistance to those producers who sustained eligible losses in the wildfire, known as the McNally Fire, which occurred in southern California in 2002.

I am pleased that this is indeed the Congressional intent of Section 102(g) because, as in the case of the 2003 southern California wildfires, while human action contributed to the genesis of the McNally Fire, the underlying natural conditions were such that it quickly became a natural disaster of enormous proportions and intensity. Among those underlying natural conditions were the weather, specifically drought conditions, and a buildup of undergrowth, dead or dying trees, and brush.

From my discussions with the Gentleman from Virginia, it is my further understanding that Section 102(g) is intended to provide assistance to those producers in the same manner as authorized in the underlying act cited in Section 102(g), Division H of the Conference Report to H.R. 2673, and specifically using the same loss thresholds as provided in that underlying act. The Congressional intent also is to ensure that the Secretary of Agriculture has the flexibility to make payments in a manner that quickly facilitates receipt of this assistance by eligible persons.

I appreciate the assistance rendered by the Gentleman from Virginia in this matter.

A TRIBUTE TO BYRON SHER—PUBLIC SERVANT EXTRAORDINAIRE

HON. TOM LANTOS

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. LANTOS. Mr. Speaker, I rise today to pay tribute to the distinguished senator of the 11th senate district of California, my good friend, Mr. Byron Sher. My Congressional district overlaps with many of the communities in Senator Sher's district, and this has afforded me the opportunity to work closely with the Senator on numerous issues.

Byron has based his long and productive political career upon the strong foundations of a distinguished academic pedigree. After an ambitious undergraduate career, he earned his Juris Doctor from Harvard Law School in 1952 and then was a Fulbright Research Scholar in New Zealand. Byron went on to teaching positions at some of the leading law schools around the country, including Southern Methodist, University of Southern California and Harvard Law School. Currently, he is an emeritus professor of law at Stanford University.

Mr. Speaker, Byron has been active in local and regional government since he came to Palo Alto in 1957, and since then, he has repeatedly shown his commitment to the community through dedicated public service. He was a member of the Palo Alto City Council for 9 years and served two terms as mayor. In addition, for many years, Byron has been an active participant in local, State, and national environmental boards.

As a member of the California State Legislature, Byron has many notable achievements, however I wish to take a moment to mention some of the numerous legislative successes that Senator Sher has accomplished in the area of environmental protection. He is the author of landmark laws to protect California's environment, including the California Clean Air Act, the Integrated Waste Management Act, the Surface Mining Reclamation Act, the Safe Drinking Water Act and the nation's first law to prevent toxic contamination from leaking underground storage tanks. He also authored laws to strengthen California's timber regulations and added new rivers to California's Wild and Scenic River System, safeguarding them for future generations. He is consistently rated among the top legislators by the most respected environmental, consumer, law enforcement, education and housing groups. I applaud his conscientious hard work on the part of our community and California.

It is always a privilege to pay tribute to an extraordinary public servant on his retirement from a long and illustrious career of public service. What makes Byron so special though, is that this is his second such retirement from public service. After eight terms in the California Assembly he was term limited out of office. In 1996, however, he found a way to continue his service to the people of California, winning a special election to fill a vacancy in the State Senate. Now having exhausted almost every public office available, we on the Peninsula wait with excitement to learn how Byron will use his exceptional talents to continue to give back to our community and the nation at large.

Mr. Speaker, I invite my colleagues to join me in paying tribute to Byron Sher as he completes a record of distinguished service in the California State legislature. The people of San Mateo County and the people of California have been well served by his extraordinary leadership and advocacy in both the State Assembly and the State Senate. I extend my personal best wishes to Byron and his family for a relaxing and well-deserved retirement.

PERSONAL EXPLANATION

HON. JOHN R. CARTER

OF TEXAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. CARTER. Mr. Speaker, during rollcall vote 6, H.R. 1385, to extend the provision of title 39, United States Code, under which the United States Postal Service is authorized to issue a special postage stamp to benefit breast cancer research and during rollcall vote 7, H.R. 3493, Medical Devices Technical Corrections Act, I was unavoidably detained due to inclement weather. If I had been present, I would have voted ''yea'' on rollcall vote 6 and 7.

MOURNING THE DEATH OF JOHN J. SEXTON

HON. RAHM EMANUEL

OF ILLIONIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. EMANUEL. Mr. Speaker, I rise today with a heavy heart. Early this morning, the people of Chicago lost a great friend in John J. Sexton who passed away after a long and difficult illness. John Sexton was a man who lived life to its fullest, and the friends and family he had are a testament to the quality of his character and the type of man he was.

John Sexton achieved his success in life through hard work and determination. He spent his life in public service and was dedicated to the people of Chicago, rising through the ranks with the City, from machinist, to foreman, to Assistant Superintendent of the Meter Division of the City's Water Department, and finally Superintendent of the Meter Division. His dedication to his job and the city he loved is an example of why Chicago is known as ''The City That Works.''

But, it was John's connection to and involvement in his community that John's friends will remember. John loved the northwest side of Chicago, his home for his entire life. John raised his family in the Hiawatha Park neighborhood where he was very active as president of the Hiawatha Boys Baseball Organization.

As church life plays such an important role in the lives of so many Chicagoans, John was a member of several esteemed Northwest side parishes. He grew up in Presentation Parish, attended grammar school at St. Angela's and high school at St. Michael's. As an adult he was a member of St. Francis Borgia Parish.

The Northwest side has produced some of Chicago's finest leaders, and John Sexton played an active part in the success of many of their careers. John's passion for politics began at 16, working as a precinct worker for former Alderman Thomas Casey. As a precinct captain in the mighty 36th Ward Regular Democratic Organization, John became a close confidant and friend to many elected officials, especially Alderman William J.P. Banks and State Senator James A. DeLeo.

John's top priority was always his family, and the love and support they provided him was the most important thing in his life. For 31 years he was married to his wonderful wife, Rosetta. Their family also includes their daughter, Laurie Moran, and her husband Joseph, their son, John Jr., their daughter, Diana, and John's sister, Mary Kay Kuhter.

Mr. Speaker, I join with the people of Chicago in mourning John Sexton, a man I was proud to call a friend. May God bless the Sexton family and the memory of a man who was truly loved by his friends, his community and his family.

HONORING THE LEBANON–WILSON COUNTY CHAMBER OF COMMERCE'S 80TH ANNIVERSARY

HON. BART GORDON

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. GORDON. Mr. Speaker, I rise today to recognize the 80th anniversary of the Lebanon-Wilson County Chamber of Commerce, an organization that has helped that Middle Tennessee community be one of the most desirable places in America to live.

The chamber can take a lot of credit for the quality of life enjoyed in Wilson County. Residents have an opportunity to work at good jobs, send their children to quality schools and experience a wide variety of recreational venues, including a new $125 million superspeedway that draws racing fans from all over the country. The chamber's advocacy for the business community and its economic development efforts have definitely paid big dividends to the county.

Chartered in September 1924, the Chamber of Commerce is fortunate to have had so many active, visionary members in its ranks. They have been instrumental in helping strengthen the county's diverse economy, including the retail, distribution and industrial base. Chamber leaders have helped attract many top-notch companies to the area. Dell computers, for example, employs approximately 1,400 people at its Wilson County assembly facility.

The Lebanon-Wilson County Chamber of Commerce has become one of the premier community advocates in the nation and has helped boost the area's quality of life in so many ways. As the chamber celebrates its 80 years of existence, I commend the organization for all it has done to make Wilson County such a desirable place to live and raise a family.

UNEMPLOYMENT EXTENSION

HON. RUSH D. HOLT

OF NEW JERSEY

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. HOLT. Mr. Speaker, I rise today to give voice to millions of unemployed American workers. The citizens I speak of are the very people who keep the United States of America open for business each day. However as we are gathered here today, these people are, desperately searching for work so that they may provide food for their families, keep a roof over their heads, and save money to send their children to college and one day enjoy a well-deserved retirement. In December we failed to aid these people by not extending the benefits provided under Temporary Extended Unemployment Compensation (TEUC) for millions of unemployed citizens, we now have the chance to succeed where we failed before.

Mr. Speaker, on behalf of these Americans, who are our constituents, our neighbors, and the people who have entrusted us with the care of our nation, it is essential that we renew their unemployment benefits, and it is essential that we do it now. At the close of last year we failed to renew these benefits under TEUC for as many as 450,000 unemployed workers and instead of families spending quality time with each other, exchanging gifts, and rejoicing in the new year, the bottoms of Christmas trees were left bare and the countdown to the New Year was a time for fathers and mothers, brothers and sisters to hope 2004 might be better. Middle class Americans cannot sustain the American dream while not receiving any income for three or four months, or even longer. We owe them this

continued assistance until this economy can provide them with jobs they desperately want again.

Mr. Speaker, the Congress must make the plight of middle class America its number one concern. Without the temporary extension of unemployment benefits under TEUC, Americans will continue to struggle to pay the bills in this still-weak job market. By extending the unemployment benefits for an additional six months, it will grant more time for unemployed Americans to find new jobs. While experts could explain various aspects about the business and economic cycles and how companies will begin hiring again in the future, this does not solve the present problem of how bread winners are going to pay bills and how food is going to get into the stomachs of children so that when they go to school, their day is spent learning and not focusing on the pain in their gut.

Mr. Speaker, to this end I submit that we not hesitate in renewing unemployment benefits and spend the taxpayers dollars on the soundest investment of all, the American worker. Its long past time that these unemployed workers get the benefits they deserve and time for us as a Congress to vote to restore the Temporary Extended Unemployment Compensation program.

TRIBUTE TO KATHY CLONINGER

HON. ELLEN O. TAUSCHER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mrs. TAUSCHER. Mr. Speaker, as co-leader of the Honorary Congressional Girl Scout Troop, I am pleased to congratulate Kathy Cloninger, who has recently been named as Chief Executive Officer of Girl Scouts of the USA. Under Kathy's leadership, Girl Scouts of the USA will truly become the preeminent organization advocating for America's girls.

As a former Girl Scout I know first hand the difference that scouting can make in a girl's life. More than 3 million girls look to Girl Scouts of the USA to help them grow into talented, successful young women.

As a former businesswoman, I also know first hand the difference that the leader of an organization can make. As co-leader of Troop Capitol Hill, I look forward to working closely with Kathy Cloninger. Her vision for Girl Scouting is inspiring.

Under Kathy's leadership, Girl Scouts of the USA will complete their transition from the Girl Scouts that I knew, to the Girl Scouts that is now rising to the challenge of addressing the needs of contemporary girls with contemporary issues. From Girl Scouts Beyond Bars to troops in public housing communities, as I tell my daughter, this is not your mother's Girl Scouts.

Mr. Speaker, I ask you to join me in congratulating Kathy Cloninger in her new position and wish her the best of luck.

PERSONAL EXPLANATION

HON. JOE WILSON

OF SOUTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. WILSON of South Carolina. Mr. Speaker, on rollcall No. 6 and 7 on Tuesday, January 27, 2004, I was unable to cast my vote due to inclement weather, being detained Charleston International Airport with multiple day-long delays and cancellations.

Had I been present, I would have voted the following:

Rollcall 6, to extend the provision of title 39, United States Code, under which the United States Postal Service is authorized to issue a special postage stamp to benefit breast cancer research, I would have voted ''yea''.

Rollcall 7, Medical Devices Technical Corrections Act, I would have voted ''yea''.

THE EUROPEAN POPULATION FORUM 2004

HON. JAMES C. GREENWOOD

OF PENNSYLVANIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. GREENWOOD. Mr. Speaker, the global community, particularly the poorest countries of the world, face significant problems in the area of reproductive health and family planning. A critical shortage of international funding for family planning exacerbates severe threats to maternal and child health. To examine current population developments, the European Population Forum 2004 was held January 12–14, under the auspices of the United Nations Economic Commission for Europe and the United Nations Population Fund. I encourage members of this body to take note of the following statement written by Werner Fornos, president of the Population Institute and recipient of the 2003 United Nations Population Award. The following article, which appeared in the International Herald Tribune on January 14, 2004, sheds light on the dangerous and false belief that population growth is no longer the global concern it was a decade ago.

[From the International Herald Tribune, Jan. 14, 2004]

A GLOBAL CONCERN

A POPULATION CRISIS STILL LOOMS

(By Werner Fornos)

As the European Population Forum in Geneva draws to a close, coming to grips with high fertility rates remains a daunting international challenge, particularly in the poorest countries of the world where population growth continues to outstrip resources, place pressure on the environment, and exacerbate social disintegration. Despite encouraging recent reports from the United Nations, human growth remains an issue that requires priority attention around the globe if there is to be realistic hope for achieving sustainable development.

Only 3 years ago, the United Nations estimated that by mid-century the planet's human population would have risen from about 6.2 billion to 9.3 billion. More recent figures project the 2050 population to be 400 million less than the previous estimate. When the numbers are examined more closely, however, we find that the population of the industrialized countries is estimated to remain constant through 2050 at about 1.2 billion. Virtually all human growth will occur in the developing world, where the population is expected to increase from the current 5.1 billion people to 7.7 billion.

Considering that developing countries bear the brunt of the earth's grinding poverty, desperate hunger, disease, illiteracy and unemployment, the recent downward revision of demographic figures does not warrant celebration. In fact, some developing countries, including Burkina Faso, Mali, Niger, Somalia, and Yemen, are likely to quadruple their population by mid-century.

Over the past 40 to 45 years, the world's population has doubled. But annual population growth has been decreasing since the 1990's, from a high approaching 90 million to less than 80 million. These declines have spawned a pervasive myth that population growth is no longer a matter of global magnitude—a myth that is spread, unsurprisingly, by the same crowd that 10, 15, and 20 years earlier insisted that population growth was never a problem in the first place: religious extremists and reactionary political ideologues.

The irony of the myth is that this year marks the 10th anniversary of the International Conference on Population and Development. That meeting, in Cairo, established important quantitative goals for the next 20 years, including efforts to ensure that every pregnancy is intended; to protect women from unsafe abortion; to promote education for all and to close the gender gap in education; to combat AIDS; and to bring women into the mainstream of development.

A key concern, however, is that expenditures for implementing family planning and reproductive health programs have fallen well short of the $17 billion that the Cairo meeting estimated would be required by 2000.

Industrialized countries were expected to come up with one-third of that total, or $5.7 billion, but by 2001 had contributed only $2.5 billion. Developing countries and private sources, expected to spend $11.3 billion on population activities by 2000 had contributed only $7 billion by 2001.

Global goals for drastically reducing poverty, maternal and child mortality, illiteracy and hunger will be mere wishful thinking unless and until population growth is substantially lowered. For this to happen, the international community must clearly understand that to achieve an improved quality of life for all, now is the time to accelerate population stabilization efforts, rather than retreat from them.

IN RECOGNITION OF DONALD A. DUFF

HON. JIM MATHESON

OF UTAH

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. MATHESON. Mr. Speaker, I rise to pay tribute to Mr. Donald A. Duff, of Salt Lake City, who is retired after forty-three years of Federal service on January 2, 2004. His abiding love of this country began at the age of seventeen during his service as a seasonal postal carrier in northwest Washington, DC.

In 1959, Mr. Duff enlisted in the United States Air Force, following in the footsteps of relatives who have served this nation in every conflict since the Revolutionary War. He also comes from a long line of relatives with close ties to our capital city including a great-great-grandfather who assisted Pierre L'Enfant in laying out the streets of Georgetown and a

great-grandfather who grew the first American Beauty Rose in the White House garden. Mr. Duff's father also served as an Admiralty lawyer, working with Presidents McKinley and Franklin Roosevelt to establish merchant marine laws. The U.S. Congress and the Maritime Commission recognized his work by naming in his honor a WWII Liberty Ship, the ''S.S. Edwin H. Duff.''

Mr. Duff served the Air Force Strategic Air Command Headquarters as a photo intelligence specialist, analyzing satellite and U2 photography during the Cold War. In 1962, he made the initial confirmation of a Russian missile in the Havana harbor that ultimately led to the Cuban Missile Crisis.

Mr. Duff also distinguished himself as a wildlife and fisheries biologist in the U.S. Forest Service, the U.S. Fish and Wildlife Service and the Bureau of Land Management. These agencies, as well as the Environmental Protection Agency, the American Fisheries Society, and Trout Unlimited have recognized him, for his expertise in conserving native fishes and in river restoration.

He was a member of America's first fisheries scientific exchange with the Republic of Ireland in 1989. In the ensuing years, he developed a management plan for restoration of Ireland's salmon species. Ireland was later awarded 19 million pounds from the European Union for this restoration, and Mr. Duff served as the chief external advisor from 1995–2000, restoring over 200 miles of salmon-bearing rivers and habitats. He has been instrumental in providing similar assistance to other European and Asian countries during his career.

I ask my colleagues to join me in recognizing Mr. Duff's achievements on the occasion of his retirement.

TRIBUTE TO THE COUNTY OF WILL

HON. JERRY WELLER

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. WELLER. Mr. Speaker, I rise today to honor the County of Will as it is recognized as the 2004 recipient of the Joliet Region Chamber of Commerce's annual ''Salute to Industry Award''. The County will be the 28th recipient of this award and lies within my 11th Congressional District in Illinois.

Will County was first established in 1836 by an act of the Illinois legislature, which subdivided it from Cook County. The area was a favorite hunting ground for the Indians as it had an abundant supply of water and timber. Travel was facilitated by the old Sauk Trail and by the Des Plaines, DuPage, and Kankakee Rivers.

Today, the County is the fastest growing county in Illinois and the fourth-fastest growing county in the nation. According to the U.S. Census the population of Will County as of April 2001, was a little over 502,000. It is estimated that Will County's population will reach over 800,000 by the year 2020 and over 1 million in 2030.

Will County is the only county in the State of Illinois that has the County Executive System. Mr. Joe Mikan is the current County Executive. The County Board is comprised of 27 members, of which three represent each of the nine districts.

County Executive Mikan and Will County elected officials are always striving for new advances to make it easier for constituents and businesses to operate in the County. They have streamlined business procedures, opened a Workforce Services division, and developed the Will County Archives Center. The County is also pursuing co-sponsorship of the future South Suburban Airport.

Mr. Speaker, I urge this body to identify and recognize other counties in their own districts whose actions have so greatly benefitted and strengthened America's families and communities.

RECOGNIZING JOAQUIN RECLOSADO, JR., A VETERAN'S VETERAN

HON. BOB FILNER

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. FILNER. Mr. Speaker, I rise to recognize Joaquin Reclosado, Jr., a Marine and California National Guard veteran who is the driving force behind the Annual Sunset Retreat Ceremonies held in Imperial County, California in my Congressional District.

On November 11, 2003, the Eighth Annual Sunset Retreat was conducted by local veterans to celebrate Veterans' Day. Each year, a ceremony is held for veterans, with special attention to veterans of a prior war, women veterans, and this year, Native American veterans.

The Sunset Retreat is the brainchild of Mr. Reclosado, universally recognized as ''Junior''. He organized the first event in 1996. He oversaw the committees, obtained equipment and the venue, contacted participants, and made certain that the event took place. But for Junior, all agree that the Sunset Retreat Ceremony would not happen!

He was born in Calexico, California in 1935 of Mexican and Filipino parents and attended school in Calexico. He joined the Marines in 1953, serving in Korea and leaving active service in 1963. The next 27 years, Junior spent with the Imperial County Sheriff's Department and serving in the California National Guard. He retired from the Guard at the age of 60 with the rank of Sgt. Major.

In addition to his duties with the annual Sunset Retreat, Junior is active with the American Legion, the Veterans of Foreign Wars, the Korean War Veterans Association, and the 1st Marine Division Association, both in Imperial Valley and in the state of California. He organizes Memorial Day ceremonies, MIA-POW recognitions, and the details of veterans' funerals. He arranges for veterans to visit local schools. He is a frequent participant in events of the Imperial Valley United Veterans Council.

Junior Reclosado is someone who is deeply involved in bringing deserved attention to the contributions of the men and women in the Armed Forces and to our country's veterans. He is a veterans' veteran!

I am pleased to take this opportunity to honor him and his service to his community and to our nation.

PERSONAL EXPLANATION

HON. LINDA T. SÁNCHEZ

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Ms. LINDA T. SÁNCHEZ of California. Mr. Speaker, due to the inclement weather my flight was cancelled yesterday and I was absent for rollcall vote No. 6 on H.R. 3493, and rollcall vote No. 7 on H.R. 1385.

Had I been present, I would have voted ''aye'' on each of these rollcall votes.

BILL TO HONOR FORMER GOVERNOR LUIS A. FERRÉ

HON. ANÍBAL ACEVEDO-VILÁ

OF PUERTO RICO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. ACEVEDO-VILÁ. Mr. Speaker, last October, the people of Puerto Rico lost a great man. Former Governor Luis A. Ferré was a visionary who dedicated his life to his country. As Governor from 1968 to 1972, he was a proponent of many projects that ensured great economic development for the island. To honor his life, today I am introducing legislation, as a companion to legislation introduced by Senator RICK SANTORUM in the Senate, to designate the Luis A. Ferré United States Courthouse and Post Office Building, located at 93 Atocha Street in Ponce, PR, as a tribute to his life and work.

Former Governor Ferré was a brilliant politician, musician, businessman, and philanthropist who dedicated his life to serving his people and moving Puerto Rico forward. During his term as Governor, he created, among other things, the Environmental Quality Board, the Departments of Natural Resources and Housing, the Office of Youth Affairs, and the Tourism Company. Throughout his life, he also demonstrated his unwavering commitment to Puerto Rican culture and the arts by founding what is now the biggest newspaper in Puerto Rico and the Art Museum of Ponce.

He was an extraordinary man whose efforts and endeavors gave luster to Puerto Rico and to his native city of Ponce. During his years in the public service, he demonstrated true commitment and dedication to his country and his city by initiating public works and creating projects that contributed to the modern and developed Puerto Rico that we enjoy today.

His love for Puerto Rico and its people will live on forever in the hearts of all Puerto Ricans. Giving his name to the U.S. Courthouse and Post Office building in Ponce is a simple but long-lasting way to recognize his work and honor his life, and I ask you to join me in celebrating his life.

CELEBRATING BLACK HISTORY MONTH

HON. PETER J. VISCLOSKY

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. VISCLOSKY. Mr. Speaker, it is with a great sense of honor that I rise to celebrate

Black History Month and its 2004 theme—Celebrating the 50th Anniversary of Brown v. Board of Education. On May 17th of this year, we will celebrate the anniversary of the Supreme Court's decision to desegregate public schools in America. Because of this ruling, many significant pathways have been opened within our country that focus on justice, equality, and the importance of education.

As we reflect on the importance of the Brown v. Board of Education ruling, I would like to take this opportunity to pay tribute to an individual from the First Congressional District that has represented the epitome of leadership in education within the African-American community, Dr. YJean Chambers. YJean passed away on Wednesday, November 12th, 2003, but her legacy of courage and dedication continues to inspire us all each day.

YJean and her family moved to Gary, Indiana from Kentucky when she was a young girl, seeking a better life for themselves. In 1939, she graduated from Gary Roosevelt High School ranking second in her class, and then went on to earn her Bachelor of Education degree from Illinois State University. She also went on to earn her Master of Arts degree from Purdue University, where she received Purdue University's highest award, Doctor of Humane Letters in 1993.

YJean knew how important education was to all members of her community and therefore shared her gift of knowledge and enthusiasm for learning by becoming a teacher in Madison, Illinois. After two years she began teaching speech and drama at her alma mater, Gary Roosevelt High School. In 1971, YJean became a full time professor at Purdue Calumet in Hammond, Indiana where she taught communications and was appointed Assistant Professor of Communications in 1973.

YJean gave selflessly to her community in so many ways, including being a member of several important educational organizations. She served as President of the Steel City Hall of Fame, sat on the Service Academies Nomination Board, was a member of the Board of Trustees of the Gary Community Schools, and was also a member of the Board of Directors of the Indiana School Board Association. YJean made history in Northwest Indiana by becoming the first African American woman elected to the Northwest Indiana Crime Commission and the first woman to serve on the Advisory Board of the Bank of Indiana.

Mr. Speaker, as we celebrate the anniversary of Brown v. Board of Education throughout Black History Month, let us pay tribute to our country's educational leaders such as Dr. YJean Chambers, who have taught us the true values of equality and determination. I respectfully ask that you and my other colleagues join me in commending Dr. Chambers, as well as all other outstanding African-American leaders in education for their efforts to build a better society for our country and the citizens of Northwest Indiana.

INTRODUCING A RESOLUTION TO DECLARE THE WEEK OF FEBRUARY 22, 2004 AS NATIONAL EATING DISORDERS AWARENESS WEEK

HON. JUDY BIGGERT

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mrs. BIGGERT. Mr. Speaker, I rise today to introduce a resolution declaring the week of February 22, 2004 as National Eating Disorders Awareness Week. I want to thank my friend TED STRICKLAND from Ohio for introducing this resolution with me, and for his support on this very important issue.

Conservative estimates indicate that 5 to 10 million girls and women and 1 million boys and men in the United States are struggling with eating disorders, including anorexia, bulimia, binge eating disorder, or borderline conditions. These conditions can lead to serious physical and mental health problems, yet affected individuals often do not seek treatment because of the shame and misunderstanding surrounding these disorders.

National Eating Disorders Awareness Week will serve as a way to increase public awareness of these disorders and to promote healthful eating habits and healthy body image. I urge my colleagues to join me in supporting this worthy endeavor, and I yield back the balance of my time.

HONORING LOWELL STANBERRY

HON. MICHAEL BILIRAKIS

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. BILIRAKIS. Mr. Speaker, I rise today to honor Lowell Stanberry, a good friend and great American who has dedicated his life to helping others and fighting for what he believes.

Lowell is a legend in Dade City, Florida, which I formerly represented. He has worked hard his entire life and has been vitally important to the city's economic prosperity. He has volunteered in various capacities for numerous volunteer, civic, and philanthropic organizations which work to improve the lives of those who have lived in Lowell's community.

Lowell also has been a lifelong conservative. He was a Republican long before it was politically-expedient. ''I think politics is kind of like religion,'' he says. ''If you were born a Republican, I think you die a Republican.''

He certainly has made his mark on local, state, and national politics. He helped make the Pasco County Republican Party what it is today. He has helped elect numerous public officials. I am unsure whether I would have won my first congressional election had it not been for Lowell's support. He also has been actively involved in other gubernatorial and presidential campaigns in Florida.

The East Pasco Republican Club recently honored Lowell with its Lincoln Heritage Award, which the group gives to an outstanding individual who upholds the ideals of service and intelligent compassion. I cannot think of a more deserving recipient than Lowell Stanberry.

Mr. Speaker, I am proud and honored to call Lowell a friend and fellow Republican. He has taught everyone with whom he has come into contact the importance of charity and of maintaining the courage of your convictions.

TRIBUTE TO THE LATE MR. JOHNY CESAIRE

HON. KENDRICK B. MEEK

OF FLORIDA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. MEEK of Florida. Mr. Speaker, I rise to pay tribute to one of Miami's unsung heroes, the late Johny Cesaire, also known popularly by my Haitian American constituency as P Jhony of Radio Pep La. His untimely demise due to cancer last Monday, January 16, 2004, leaves a deep void in our community.

Though I have had not the opportunity of bonding with him as did my mother, Congresswoman Carrie P. Meek, I do reserve the utmost respect and genuine admiration for his insatiable quest for simple justice and fairness for the less fortunate among us, particularly our newly-arrived Haitian refugees. Throughout his 10-year stint with Radio Pep La, he vividly put a true face and a brave voice on the struggle of Haitians across Florida and beyond by portraying their unjust and inhumane treatment on the part of government, along with its discriminatory immigration laws and provisions that, to this very day, continue to impact their lives negatively.

Mr. Cesaire was virtually the resilient and unyielding voice of the Haitian community that called to attention the cruel disenfranchisement of Haitians at almost every level of government. With his support the Haitian Refugee Immigration Fairness Act (HRIFA) came about in October of 1998 to bring longed-for hope and confidence to Haitians in South Florida and throughout the nation. Thanks to him, hundreds of Haitians and their families have been given a chance to seek the freedom and legalize their status in the United States.

Our community will be in mourning on Saturday, January 31, 2004 as his friends and admirers will come together at Holy Family Church to bury this seemingly ordinary man of God, who had done some great and extraordinary things during his earthly sojourn. I will certainly miss him for his undaunted leadership.

He talked and lived by the simple adage that the quest for personal achievement is not beyond the reach of those willing to dare the impossible on behalf of a people buffeted by so much discrimination and injustice.

This is the legacy that Johny Cesaire bequeathed to us, and it is with his nobility and compassion for the less fortunate that we will always remember him. I am greatly privileged to have been taught by him with this credo, and I thank him for giving me the honor of representing him in the U.S. Congress. I pray that God grant him Eternal Rest.

PERSONAL EXPLANATION

HON. FRANK W. BALLANCE, JR.

OF NORTH CAROLINA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. BALLANCE. Mr. Speaker, due to inclement weather, I was not present for rollcall votes Nos. 6 and 7. Had I been present, on rollcall vote No. 6, I would have voted ''yea''; on rollcall vote No. 7, I would have voted ''yea.''

MEDICAL DEVICES TECHNICAL CORRECTIONS ACT

HON. MARK E. SOUDER

OF INDIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. SOUDER. Mr. Speaker, I rise today in support of H.R. 3493, the Medical Devices Technical Corrections Act of 2003. This bill will help ensure medical devices are quickly approved and sent to market as intended by the Medical Device User Fee Modernization Act of 2002. In particular, the bill will clarify FDA third-party inspection requirements to ensure companies can use third-party inspectors for two consecutive inspections. Additionally, the legislation will authorize HHS to conduct a study to identify barriers to market entry for pediatric products, which often help small populations and, therefore, are not profitable to manufacturers.

These clarifications are critical to the medical device industry in the United States, which leads the world in the development and manufacturing of medical technology. Medical device companies produce nearly $78 billion annually and generate nearly 6 percent annual growth. The products produced by these companies have a tremendous impact on our country's economy by creating great high-paying American jobs and consistently generating annual trade surpluses in the billions of dollars.

Advances in medical technology are improving the quality of life for people around the world as new and more effective treatments for various diseases and medical conditions are developed. New medical technology also helps reduce the cost of health care and Medicare as health problems are prevented and treated more easily through early detection, less invasive procedures and faster recovery times for the patient.

The medical device industry is critical to the economy of Indiana as well as the district I represent, Indiana's 3rd district. A large majority of the nation's orthopaedic devices are produced in Warsaw, Indiana, where DePuy, Zimmer and Biomet, three of the Nation's leading companies in orthopaedic devices are located. These companies control roughly 40 percent of the global market share of orthopaedic joint replacements and generate $4 billion dollars annually in sales. The combined economic and societal impacts of these three companies to my district and the state are highly significant. I commend the House for summarily passing H.R. 3493 and I encourage my colleagues in the other body to vote in favor of H.R. 3493, the Medical Devices Technical Corrections Act of 2003.

NATIONAL NURSE ANESTHETISTS WEEK

HON. MAC COLLINS

OF GEORGIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. COLLINS. Mr. Speaker, during this week, the fifth annual National Nurse Anesthetists Week, I recognize the work of nurse anesthetists and the important role they play in the delivery of safe and effective health care. This year, millions of Americans will undergo surgery or deliver a baby, and most of them will receive their anesthesia care directly from a Certified Registered Nurse Anesthetist (CRNA). During this week devoted to recognizing the work of CRNAs, CRNAs are celebrating their long history of providing safe anesthesia care.

I would like to thank the more than 30,000 members of the American Association of Nurse Anesthetists (AANA), AANA's president, Tom McKibban, AANA's Executive Director, Jeffery Beutler, and the staff of the AANA for their effort in promoting measures to ensure that Americans across our nation have access to quality health care services at the times they need it most. More than their promotion of commonsense legislation, though, I want to thank the AANA and its members for the work they do everyday in providing excellent care for their patients in what are often challenging and trying times for these Americans and their loved ones. In addition, CRNAs practice in every setting and are the sole anesthesia provider in more than two-thirds of all rural hospitals, ensuring that most Americans can have access to care within their own community.

In addition to being a main provider within America's borders, CRNAs are also the main provider of anesthesia care to American service men and women stationed around the world. Overseas, CRNAs have been on the front lines supporting U.S. troops since World War I, and presently more than 165 nurse anesthetists are on duty in Iraq, comprising nearly 80 percent of the anesthesia providers serving in the conflict. For their service to their country and our men and women in uniform, our nation and this Congress will always be grateful.

In my own state of Georgia, there are currently 793 AANA members who provide care for the people of Georgia. I would also like to thank these CRNAs, Martha Kral, the President of the Georgia Association of Nurse Anesthetists (GANA), and Janice Izlar, GANA's Federal Political Director, for the quality health care services they provide to the people of Georgia.

It is my honor to recognize National Nurse Anesthetists Week and the work of CRNAs across the country. In the year ahead, I look forward to continuing to work with the AANA, that GANA, and CRNAs from across Georgia and across the nation to promote patient safety and to educate patients and their families about their anesthesia options and nurse anesthesia providers.

PERSONAL EXPLANATION

HON. JOHN BOOZMAN

OF ARKANSAS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. BOOZMAN. Mr. Speaker, I would like the RECORD to show that I was unable to attend votes yesterday, January 27, 2004, due to inclement weather in Washington, DC that prevented my return. Should I have been present, I would have voted ''yea'' on H.R. 1385. I would have also voted ''yea'' on H.R. 3493, the ''Medical Devices Technical Corrections Act.''

RECOGNIZING THE CONTRIBUTIONS OF FREDERICK AND BARBARA MCGEHAN

HON. MARK UDALL

OF COLORADO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. UDALL of Colorado. Mr. Speaker, I rise today to recognize two faithful public servants who are constituents of mine, Barbara and Frederick McGehan.

Fred McGehan, the Public Affairs Officer and Director of the Boulder Public Affairs Office at the National Institute of Standards and Technology (NIST) in Boulder, is retiring in February after 30 years of service at NIST. Barbara McGehan, the Public Affairs Officer for the NOAA Research Laboratories in Boulder, retired at the end of 2003, after 21 years of service to the Federal Government, 18 years dedicated to serving the National Oceanic and Atmospheric Administration (NOAA) in Boulder. I've had the pleasure of working with both Fred and Barbara for the last five of their many years in the Federal Government.

After earning her Bachelor of Arts in History and Government at the State University of New York at Buffalo, Barbara worked for U.S. Rep. Richard McCarthy in the U.S. House of Representatives from 1965 to 1968. She worked for the Maryland Democratic Party from 1971 to 1973. She and Fred moved to Colorado in 1977, where Barb worked at the Sacred Heart of Mary Church, first on the church newsletter and later as a substitute teacher at Sacred Heart School.

In November 1985, Barbara started at NOAA in Boulder with the program that became the NOAA Forecast Systems Laboratory (FSL). She worked for FSL until 1994, when she accepted the position of Public Affairs Officer for NOAA in Boulder.

Fred graduated from Holy Cross College in Worcester, Massachusetts in 1963 with a B.A. degree in English, and afterward from Columbia University with a graduate degree in journalism. Fred put his education and training to good use by working as a general assignment reporter at the Providence Journal in Rhode Island, and then covering science, space and medicine for Newhouse National News Service and the Baltimore Sun. With his experience in news reporting under his belt, Fred began his ''next career'' in public affairs at the National Institute of Standards and Technology (then known as the National Bureau of Standards) in its headquarters laboratory in Gaithersburg, Maryland, in 1974.

When he and Barb moved to Boulder in 1977, Fred continued his work at NIST as a science writer and public affairs specialist before taking over as Public Affairs Officer and Director of the Boulder Public Affairs Office. In his public affairs capacity and also while serving as Executive Officer and Acting Director of the NIST Boulder Laboratories and at various times during his nearly 30 years at NIST, Fred also has devoted enormous energy to working with the community.

Fred and Barbara have three grown children and are active in St. Thomas Aquinas Church in Boulder. Fred is an avid fan of Colorado Rockies baseball.

Of course, after so many decades of service, Fred and Barb deserve to have all the time in the world to spend with their children, be active in their community, and go to ball games. I'm sure they plan a very active retirement.

But Barb and Fred will be missed by their colleagues and by the millions of Americans who benefit every day from NOAA and NIST research and services. They were outstanding public affairs officers and advocates for their respective labs. During my visits to NIST and NOAA, they both helped me understand the many ways in which the labs influence people's everyday lives.

More importantly, Fred and Barb inspired me to continue my fight for Federal funding for research activities at NOAA and NIST and for infrastructure improvements that these labs so direly need. Fred and Barb have my assurance that I will continue to work in Congress to advance the needs and promote the tremendous achievements of Boulder's NIST and NOAA labs.

A SPECIAL TRIBUTE TO JIM DAUBEL FOR HIS DEDICATED SERVICE TO THE NEWS-MESSENGER

HON. PAUL E. GILLMOR

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. GILLMOR. Mr. Speaker, it is with great pride that I rise today to pay special tribute to an outstanding gentleman, and good friend, from Ohio. Jim Daubel is set to retire after a 26-year tenure as president, publisher, and editor of the Fremont News-Messenger.

Mr. Speaker, when Jim was just a boy, his father, Don Daubel, would take him to the old Fremont News-Messenger building on Arch Street. Jim remembers climbing up on the newsroom desks where he'd bang away on the typewriters the reporters would use everyday. As exciting as those memories were for Jim, they were just the beginning.

The Daubel family has been a journalism institution in Fremont dating back to 1925 when Jim's grandfather, F.J. Daubel, purchased the Fremont Messenger at a bankruptcy sale with his brother-in-law L.E. Kinn and associate J.N. Kinn. In 1937, the family purchased the Fremont News, creating the News-Messenger that Jim Daubel would know his entire life.

By the time Jim was in the 8th grade, he was working part-time in the print shop, a job he would hold through high school. After he went off to Marquette University in Wisconsin, where he would receive his journalism degree in 1963, he moved into the newsroom.

After almost 50 years in journalism, of which the last 30 were spent with The News-Messenger and Port Clinton News Herald, Jim said it was ''just time'' to step down and leave the business—and the paper—that has been such a part of him for as long as he can remember.

Jim will leave big shoes to fill in the halls of Fremont's News-Messenger. His wisdom, honesty, and forthrightness are attributes to which all in journalism should aspire. He has set an example for everyone on how to live a life of service, putting the greater interests of the community before one's own.

Mr. Speaker, I ask my colleagues to join me in paying special tribute to Jim Daubel. Our communities are served well by having such honorable and giving citizens, like Jim, who care about their well being and stability. We wish Jim and his family all the best as we pay tribute to one of our district's finest citizens.

HONORING R.H. ''ANDY'' ANDERSON

HON. RICK LARSEN

OF WASHINGTON

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. LARSEN of Washington. Mr. Speaker, today I rise to honor a man with a distinguished record of community service in the state of Washington. R.H. Anderson is set to retire after an exemplary career that has spanned six decades. His colleagues and friends know him as Andy. The people of the Second Congressional District also know him as a dedicated public servant who has worked to improve the quality of life for thousands of residents and businesses in Washington State.

A graduate of Seattle's Lincoln High School, Andy began his career as a photojournalist. He began learning about the world of politics as a student at the University of Washington when he was assigned to cover the HUAC hearings being held in Seattle.

Andy developed a love of radio and began spending time at a local jazz station. Soon he was doing odd jobs such as pulling records for late night disc jockey Bill Apple at KRSC, a radio station in Seattle. Apple soon recognized that Andy had real talent and a tremendous voice for radio. Andy began doing some news stories on the air, unpaid at first, before landing a job on the 10 p.m. to 1 a.m. slot.

Andy was then hired at Seattle radio station KVI, which had a jazz format at the time, as a temporary replacement for their regular disc jockey. Upon the return of the regular broadcaster, Andy found a niche at Everett station KRKO, where he was hired as a newscaster. His love of politics had been ignited while covering the HUAC hearings, and Andy was delighted to be covering the political world.

Andy began working at Bellingham radio and television station KVOS in 1955. He was on the cutting edge of the television era, and began covering politics and elections on camera. Andy could finally show his community the political universe that he had been describing with his voice for nearly a decade. In 1956, KVOS hired a young radio announcer by the name of Al Swift. Andy and Al formed a close friendship during their work together.

In 1965 Andy worked in Canada as an assistant to the president of Canawest Film Productions, an arm of KVOS. Andy wrote scripts and produced feature films, commercials, and corporate films. Andy moved back to Bellingham in 1976 and back into his role as news director after Al Swift left KVOS to work for Representative Lloyd Meeds.

Andy set up a major news organization at KVOS TV. His efforts brought a sizable viewing audience to local news programming, providing a great lead-in audience to the CBS evening news. The news department ran soundly under Andy's direction until 1983, when KVOS was sold and the news department eliminated.

Andy's old friend Al Swift, meanwhile, had been serving as a Member of Congress since 1979. Swift's District Manager, Bill McDonald, had passed away and Al Swift hired Andy as his new District Manager.

While serving as District Manager for Congressman Al Swift, Andy was instrumental in creating the PACE (now NEXUS) lane for frequent travelers between the United States and Canada. This expanded trade and reduced waiting time at the border. Thousands of individuals and businesses benefited from Andy's involvement in bringing rapid travel between the two nations.

After Congressman Swift chose to retire in 1994, Andy began a consulting business that he successfully ran for several years. Andy then retired but still maintained a burning desire for public service.

After I won election to Congress in 2000, I asked Andy to come out of retirement to join my team. For the past three years, he served as director of my Bellingham office, representing me in the northern area of my district. His tireless and outstanding efforts on behalf of the people of Washington's Second Congressional District are legendary and will be truly missed.

Andy's career in public service can be measured not only in economic benefits, but also in the amount of improved quality he brought to the lives of those in the region. He was always available to answer a question, investigate and solve a problem, and to champion programs to help the residents of Washington state.

Mr. Speaker, Andy's friends, colleagues, and family are holding numerous gatherings to celebrate his great career. I am honored to pay tribute to Andy Anderson, a true friend and a dedicated public servant. His direct work with the public may be ending, but the public will always know the impact of his service. The achievements of Andy Anderson will be felt for many decades due to his passion for improving the lives of his fellow residents. I ask all of my colleagues to join me in congratulating Andy on his fine career and his unwavering commitment to Washington State, and our nation.

TRIBUTE TO DON HARRIGER, GENERAL MANAGER, WESTERN MUNICIPAL WATER DISTRICT

HON. KEN CALVERT

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. CALVERT. Mr. Speaker, I rise today to honor and pay tribute to an individual whose dedication and contributions to the community

of Riverside, California are exceptional. Riverside has been fortunate to have dynamic and dedicated community leaders who willingly and unselfishly give their time and talent and make their communities a better place to live and work. Don Harriger, General Manager of the Western Municipal Water District is one of these individuals. On Wednesday, January 28, 2004, he will be honored at a special retirement dinner.

Don was appointed General Manager in 1989, and has been responsible for the planning, direction, management, and overall supervision of the activities and operations of the District.

Prior to his appointment as General Manager, Don served the District as Assistant General Manager. In that previous position, he was appointed by the court to two Watermaster Committees, appointments he currently still holds. The Western-San Bernardino and the Santa Ana River Watermaster Committees were established as part of the 1969 Stipulated Judgments that settled the massive water rights issues in the Santa Ana Watershed. In June of 2003, Don was elected chairperson of the Santa Ana River Watermaster Committee.

Before joining Western, Don was Chief Engineer and Assistant Manager of the Santa Ana Watershed Planning Agency, the forerunner of the present-day Santa Ana Watershed Project Authority (SAWPA), a joint powers agency responsible for regional water resources planning and project implementation. At SAWPA, he was primarily responsible for the technical direction of the development of the Santa Ana Watershed Basin Plan. Prior to his position at SAWPA, Don was associate engineer with the State of California, Department of Water Resources.

A California registered professional engineer, Don received his Bachelor of Science Degree in Civil Engineering from the University of Illinois and his Master of Science Degree from California State University Sacramento. He and his wife Arvina reside in Riverside.

Don's leadership at the Western Municipal Water District has contributed immensely to the betterment of the District and the community of Riverside, California. I am proud to call Don a fellow community member, American and friend. I know that many community members are grateful for his service and salute him as he retires.

HONORING JUDGE JOSEPH MATTINA UPON THE OCCASION OF HIS RETIREMENT

HON. THOMAS M. REYNOLDS

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. REYNOLDS. Mr. Speaker, as the Western New York community gathers tonight to celebrate the life and career of the Honorable Judge Joseph Mattina, I rise to pay tribute to this outstanding jurist and dedicated public servant.

Throughout his career, Judge Mattina has been an exemplary community leader. Over his 40 years as a Supreme Court and Surrogate Court Judge, he has displayed a selfless commitment to our fellow citizens and to the betterment of our community. He has truly served our society with tireless devotion, and his community contributions distinguish him as an example for us all.

As a judge, his name has become well known throughout both New York State and our nation. He has presided over significant and challenging trials, such as the Attica Prison Rebellion. He has also been influential in overseeing important programs throughout the State.

But Judge Mattina is known not only for his contributions to his profession, but for his contributions to our community. He is a decorated awardee, recipient of such awards as ''Outstanding Citizen of the Year'' and the ''National Brotherhood'' award. He has been honored by Time Magazine and has been inducted as a charter member of the Hall of Honor at the National Judicial College. He will be honored yet again this year when a state-of-the-art medical center located in Buffalo, NY is named after him: the Judge Joseph S. Mattina Medical Center. This is in recognition of his more than 35 years of service as a volunteer and as an important advocate of the construction of this facility.

Judge Mattina has earned a legacy of outstanding leadership and superb dedication. He has made significant and considerable contributions to our community, for which we are all incredibly thankful.

Mr. Speaker, I ask that this Congress join me in honoring Judge Joseph Mattina, and wish him the best of luck upon his retirement.

S. 877—CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003—CAN-SPAM ACT OF 2003 (PL 108–187)

HON. JOHN D. DINGELL

OF MICHIGAN

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. DINGELL. Mr. Speaker, this statement represents my views as well as the views of W.J. ''BILLY'' TAUZIN, Chairman of the Committee on Energy and Commerce, on S. 877 the Can-Spam Act of 2003 (''the Act''). Our views on Sections one through five of the Act are contained in a separate statement submitted today by Chairman TAUZIN.

Section 6 of the legislation prohibits a person from allowing commercial e-mail messages in violation of section (5)(a)(1) to be sent by a third party if that person had knowledge of such promotion, expected to receive economic benefit from such promotion, and took no action to prevent the transmission of the e-mail messages or report such messages to the Federal Trade Commission. This section should not be interpreted to preclude any action brought under section 5 arising out of the same conduct.

Section 7 of the legislation sets forth enforcement provisions for the Act.

Subsection (a) provides for enforcement of the Act by the Federal Trade Commission (FTC) under section 18(a)(1)(B) of the Federal Trade Commission Act.

Subsection (b) provides for enforcement of the Act by certain other Federal functional regulators.

Subsection (e) provides the FTC and the Federal Communications Commission (FCC) may seek injunctive relief or cease and desist orders without the showing of knowledge otherwise required under this Act.

Subsection (f) sets forth enforcement of the legislation by the States.

Paragraph (1) provides that the attorney general, or other official or agency of the State, may bring civil actions exclusively in Federal district court to enjoin violations of section 5 of the Act or obtain damages on behalf or residents of the State, equal to the greater of actual damages or statutory damages as determined under paragraph (3).

Paragraph (2) provides that State attorneys general may seek injunctive relief without the showing of knowledge otherwise required under the Act.

Paragraph (3) sets forth statutory damages.

Subparagraph (A) provides that for purposes of paragraph (1)(B)(ii) damages are determined by multiplying the number of violations, with discrete separately addressed unlawful messages each counting as a separate violation, by up to $250.

Subparagraph (B) limits the damages a state attorney general may recover for violations of section 5, other than section 5(a)(1) to no greater than $2,000,000.

Subparagraph (C) allows the court, in its discretion, to increase the amount of damages awarded under subparagraph (b) to three times the amount set therein if the court finds that the defendant's conduct was willful and knowing or the defendant's unlawful activity includes one or more of the aggravating violations set forth in section 5(b).

Subparagraph (D) provides for a reduction of damages. In assessing damages under subparagraph (A), the court may consider factors including whether the defendant has established and implemented, with due care, commercially reasonable practices and procedures designed to prevent violations of section 5. The court may consider whether the violation occurred despite commercially reasonable efforts to maintain compliance with the practices and procedures designed to prevent such violations.

Subsection (f) also provides that in the case of a successful action under paragraph (1), the court, in its discretion, may award costs of the action and reasonable attorney's fees to the State.

Subsection (g) provides for a limited right of action by bona fide Internet service providers. Paragraph (1) grants to Internet service providers adversely affected by a violation of section 5(a)(1), 5(b), or 5(d) or a pattern or practice that violates paragraph (2), (3), (4), or (5) of section 5(a) the right to bring civil action in Federal district court. The term ''Internet access service'' is defined to have the same meaning given that term in section 231(e)(4) of the Communications Act of 1934.

Subsection (g)(2) contains a special definition of ''procure'' for purposes of ISP enforcement actions that includes a scienter requirement with regard to whether a person who initiates commercial email on their behalf is engaging or will engage in a pattern or practice that violates this Act. It is the intent, with regard to the falsification violations of Section 5(a)(1), that ''conscious avoidance of actual knowledge'' be construed broadly in a manner consistent with a fundamental purpose of this Act to prohibit and deter falsification techniques in commercial e-mail. Therefore if the procurer has an indication that the initiator is

or has engaged in any falsified spamming technique prohibited by Section 5(a)(1) or 18 U.S.C. 1037, the Act is intended to be read so that such a procurer meets the standard of ''conscious avoidance of actual knowledge'' of violations of the Act by an initiator unless the procurer and takes reasonable steps to prevent such violations by the initiator.

Actual knowledge or conscious avoidance of actual knowledge could be evidenced, for example, by information obtained by the procurer directly from an initiator, or via a complaint, warning or cease and desist communication received from a recipient, Internet access service, or law enforcement alerting the procurer that an initiator to whom the procurer is providing consideration is violating the law. Conscious avoidance of actual knowledge could also be evidenced, for example, by: (1) Doing little or nothing to determine whether suspect initiators who are marketing partners, resellers, affiliates, agents or contractors of the procurer are violating or have violated Federal or State law; (2) failing to follow the procurer's stated policies or procedures prohibiting illegal e-mail advertising methods by initiators who are marketing partners, resellers, affiliates, agents or contractors; (3) repeatedly allowing initiators who are engaged in illegal e-mail advertising methods to provide false information or to fail to identify themselves when they sign up to conduct e-mail advertising for the procurer's products or services; (4) repeatedly paying initiators whom the procurer has terminated for violating the procurer's e-mail policies prohibiting illegal spamming methods; or (5) allowing initiators who have been terminated for violating the procurer's policies prohibiting illegal e-mail activities repeatedly to sign up for new accounts. The above is not an exhaustive list of ways in which the requisite state of mind can be evidenced.

Subparagraphs (f) and (g) allow enforcement actions for violations of certain parts of Section 5 to be brought by States and ISPs only for a ''pattern or practice'' of violations. The Act regulates a wide variety of commercial e-mail practices, some of which are deemed more deplorable than others and subject to higher penalties.

Such action may seek to enjoin further violations by defendants, or collect certain limited monetary damages. It is our intention that these cases be based on bona fide violations and not used as tools for anti-competitive behavior among competitors. Additionally, we intend that Internet access service providers provide actual Internet access service to customers.

Statutory damages for Internet service providers are at a lower level than those provided to federal and state regulators.

Section 8 provides for the effect of the legislation on other law.

Section (b) provides for preemption of state laws that expressly regulate the use of e-mail to send commercial messages, including laws that regulate the form or manner of sending commercial e-mail (e.g. labeling requirements). It does not preempt statutes dealing with fraud, falsity, or deception in any portion of a commercial e-mail message or attachment thereto. Thus, State opt-in spam laws, such California S.B. 186 enacted in the fall of 2003, state opt-out spam laws, and state ADV labeling requirements for commercial e-mail would be entirely preempted, except to the limited extent that those laws also prohibited use of falsification techniques or deception such as those prohibited in 18 U.S.C.1037, Section 5(a)(1) and Section 5(a)(2) of this Act. Similarly, State anti-spam laws, such as Virginia's, that expressly regulate or criminalize e-mail falsification techniques would not be preempted. In addition, Section 8(b) is not intended to preempt general purpose State deceptive trade practice laws, or State common law rules, such as State trespass to chattels theories, that have been used in anti-spam litigation. Nor does Section 8(b) preempt State laws relating to acts of fraud or computer crime. However, to the extent any State or local law regulates the manner of sending commercial e-mail, the mere titling of the law as an ''anti-fraud statute'' or the combination of commercial e-mail regulation provisions with actual falsification or computer crime provisions in the same statute is not sufficient to avoid preemption of those regulatory provisions by this Act.

Section 9 provides the FTC with authority to establish a do not e-mail registry.

The provision requires the FTC to set forth a plan and timetable for establishing a national do not e-mail registry. The FTC is required to report to the Congress on any practical, technical, security, privacy, enforceability or other concerns the FTC may have with such a registry.

We expect that the FTC will proceed with due care in this important inquiry. In particular, the FTC should take care not to inadvertently adopt a do not e-mail registry that would facilitate the availability of working e-mail addresses to persons who might use them in violation of this Act.

Section 14 requires the FCC to promulgate rules to prevent the sending of unsolicited e-mail messages to wireless customers, without the express consent of such customers.

S. 877—CONTROLLING THE ASSAULT OF NON-SOLICITED PORNOGRAPHY AND MARKETING ACT OF 2003—CAN-SPAM ACT OF 2003 (PL 108–187)

HON. W.J. (BILLY) TAUZIN

OF LOUISIANA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. TAUZIN. Mr. Speaker, this statement represents my views as well as the views of the Ranking Member of the Committee on Energy and Commerce, JOHN DINGELL, on S. 877, the CAN-SPAM Act of 2003 (''the Act''). The House passed S. 877 by unanimous consent on December 8, 2003, and the President signed S. 877 into law on December 16th 2003 (Public Law 108–187). These views are in addition to those included in the November 21, 2003 and December 16, 2003, floor debate on S. 877.

The purpose of the CAN-SPAM Act of 2003 is to prohibit certain predatory and abusive practices used to send commercial e-mail, provide consumers with the ability to more easily identify and opt-out of receiving other unwanted commercial e-mail, and to give such opt-outs the force of law. The legislation provides enforcement tools to the Federal Trade Commission (FTC), the Department of Justice (DOJ), other Federal regulators, States' Attorneys General and bona fide Internet service providers (ISPs) to enforce compliance with the Act.

The Act's scope provides extensive jurisdiction over commercial e-mail by, among other things, cross-referencing definitions of terms such as ''protected computer'' as that term is used in Section 1037(e) of Title 18, United States Code. This jurisdiction may be interpreted to extend extraterritorially. It is the intent of the Act to broadly assert jurisdiction over commercial e-mails—from any source—that are sent to U.S. recipients or that use protected computers in the U.S. to affect any of the deceptive spamming activities prohibited in Section 1037 of Title 18 or Section 5(a)(1) of the Act's civil provisions, as well as jurisdiction over computers and computer servers engaged in communication with the United States which are used to send such commercial e-mails that otherwise cause harm to commerce in the United States. However, the managers also recognize that because of the nature of the Internet, commercial e-mail which is in no way falsified may transit the United States as a matter of routine conveyance without the knowledge of the initiator or sender, without being received by any U.S. consumers and with minimal impact here. For example, a travel agency located in Spain using computers that are sometimes in communication with the United States might send unfalsified commercial e-mail promoting travel specials exclusively to consumers in Chile but those e-mails would be routed as a matter of course through computer servers located in California without the knowledge of the initiator or sender. The Act is not intended to regulate the contents of such legitimate commercial e-mail messages (by, for instance, imposing the Act's required inclusions and opt-out regime) merely because they transit the United States or are sent from computers in communication with the United States, provided such commercial e-mails are not falsified in a manner prohibited by Section 1037 of Title 18, or Section 5(a)(1) or directed to or received by U.S. consumers and do not otherwise cause harm here.

Section 1 of the legislation sets forth the short title, the CAN-SPAM Act of 2003.

Section 2 of the legislation sets forth various Congressional findings and determinations. Such findings and determinations are in addition to those in this statement.

Section 3 sets forth definitions.

The term ''Commercial electronic mail message'' is defined as any e-mail message, the primary purpose of which is commercial advertisement or promotion of a commercial product or service. The definition of commercial electronic mail message does not include transactional e-mail. The purpose of this provision and its relationship to the definition of ''transactional or relationship message'' is to exclude from most of the requirements of the legislation, e-mail messages that are pursuant to existing transactional relationships between a consumer and an e-mail sender.

The term ''Electronic mail message'' is intended to capture e-mail messages sent to a unique electronic mail address as that term is commonly understood and should be read to include messages sent to a unique electronic mail address where the reference to the Internet domain or ''domain part'' in the message is implicit and does not appear or is not displayed explicitly. This is not intended to expand or contract the commonly understood

concept of ''Electronic mail message'' and ''Electronic mail address'' but to ensure the bill covers those e-mail messages where either the domain part is implicit or is added upon transmission or delivery of the message to a recipient by the owner of the Internet domain to facilitate delivery of the message.

Section 4 sets forth civil and criminal penalties for fraudulent, abusive and predatory commercial e-mail.

The section provides that intentionally sending multiple commercial e-mail messages from a protected computer without authorization is subject to the penalties set forth in subsection (b) of section 4. The purpose of this provision is to prevent fraudulent use of third party's computer for purposes of sending commercial e-mail.

The section also provides that materially falsifying header information in multiple commercial e-mails is subject to the penalties set forth in subsection (b) of section 4. The purpose of this provision is to prevent fraudulent practices that disguise the route or source of a commercial e-mail message.

The section also provides that using information that materially falsifies the identity of the actual registrant for five or more e-mail accounts or online user accounts, or two or more domain names, and intentionally sending commercial e-mail messages from any combination of such addresses or accounts is a violation of this Act and subject to the penalties set forth in subparagraph (b) of section 4. The term ''online user accounts'' is meant to include registration for an account on a website that facilitates sending of e-mail messages to other users of such website. The purpose of this provision is to prevent the fraudulent establishment of e-mail accounts, online user accounts, web addresses or domain names from or through which unwanted commercial e-mail messages are intentionally sent or routed.

The section also provides that one who falsely represents one's self to be the registrant or bona fide successor in interest to the registrant of five or more Internet protocol addresses and intentionally sends multiple commercial e-mails from such addresses is subject to the penalties set forth in subsection (b) of section 4.

Subsection (b) of section 4 sets forth criminal penalties under the legislation. An offense as defined in section 4 is punishable by a fine or imprisonment of not more than five years or both if the offense is committed in furtherance of a felony (other than one defined in this Act), or the defendant has previously been convicted of a criminal offense under this Act or under the laws of any State, for conduct involving the sending of multiple unlawful commercial e-mail messages or unauthorized access to a computer system. Other violations under section (b) are punishable by a fine or imprisonment of not more than three years, or both.

Section 4 (in newly created 18 U.S.C. 1037(d)(2)) and Section 5(a)(6) contain definitions of ''materially'' that apply to certain falsification violations of the Act's criminal and civil provisions. The phrase ''identify, locate, or respond'' as used in this definition is intended to be interpreted broadly to encompass all methods of technical falsification that impede the ability of the recipient, an ISP, the FTC or appropriate Federal regulator, the DOJ, or a State Attorney General either to identify the source of the e-mail or whether the e-mail comes from an approved or known sender, to locate or bring enforcement action against an initiator of the e-mail, or to respond by taking countermeasures against or transmitting the e-mail message back to the initiator. Materially falsifying may also include, for example, falsifying certificates or similar sender authentication mechanisms used by a recipient or an Internet access service to identify the source of an e-mail message.

Section 5 of the legislation sets up a regulatory regime for sending commercial e-mail messages.

The section prohibits the sending of commercial e-mail messages or transactional or relationship messages with headings that are materially false or materially misleading. The section also prohibits knowingly sending commercial e-mail messages with deceptive subject headings.

The section requires a person sending commercial e-mail messages to conspicuously identify such messages as a solicitation or advertisement and provide to each recipient a conspicuous means of opting-out from receiving subsequent commercial e-mail messages. The term ''clear and conspicuous'' as it applies to the requirements of Section 5(a) is intended to be consistent with the meaning of that term as set forth in FTC guidance documents (e.g. ''Dot-Com Disclosures'' available via online publications at *http://www.ftc.gov*). It is intended that a required inclusion can meet the ''clear and conspicuous'' standard in a number of ways. The Act does not authorize the FTC to require the notice to be placed in a specific location such as the subject line or body of a commercial e-mail. The FTC is required by this Act to conduct a study of required labels in the subject line of commercial e-mail messages but cannot prescribe an inclusion of such label or notices in the subject line without further Congressional action. In addition, the sender of the commercial e-mail message must provide a reply e-mail address or other Internet-based mechanism, such as a clear and conspicuous link to an opt-out form, on a website that will enable recipients to reject further commercial communications within the scope of the opt-out from the sender. In addition, the sender must ensure the return e-mail address or other form of Internet-based communication is capable of receiving opt-outs for not less than 30 days from the transmission of each commercial e-mail message. We intend that senders of commercial e-mail provide a convenient, clear and simple way for consumers to opt-out of commercial e-mail. We also intend that senders of commercial e-mail devote sufficient resources to monitoring and maintaining records of consumer opt-outs so that giving effect to these consumers' opt-outs will be prompt and permanent.

The section expressly provides that senders of commercial e-mail may provide recipients with a menu of options of commercial e-mail messages that the recipient may or may not wish to receive. Such a menu must include the option of receiving no additional commercial e-mail messages. An opt-out menu gives consumers the option to continue to receive a sub-group of defined communications from a sender, if the consumer so desires.

The section provides that senders must give effect to customer opt-outs within ten business days of receiving such opt-outs. This time period is subject to regulatory modification by the FTC as described below. It further provides that subsequent affirmative consent by a consumer (an opt-in) will allow a sender lawfully to send commercial e-mail to a consumer so consenting. The burden of proving subsequent affirmative consent should be on the sender in any dispute between a sender and a recipient of commercial e-mail.

This provision prohibits the sender, or any other person who knows that the recipient has made an opt-out request, from selling, leasing, exchanging or otherwise transferring or releasing the e-mail address of the recipient other than for purposes of compliance with this Act or any other law.

Subparagraph (5) of section 5(a) sets forth specific required inclusions in commercial e-mail. These include clear and conspicuous identification that the message is an advertisement or a solicitation; a clear and conspicuous notice of the opportunity to opt-out of receipt of subsequent commercial e-mail messages; and a valid physical postal address of the sender.

Subsection (b) of section 5 provides that harvesting e-mail addresses or generating e-mail addresses by means of a dictionary attack constitutes an aggravating factor for illegal transmission of commercial e-mail under subsection (a) of section 5. Use of automated means to generate e-mail addresses, or gathering e-mail addresses is not by itself illegal, unless the commercial e-mail messages sent to the generated or harvested addresses as a result of such activity do not comply with the requirements of subsection (a).

Subpart (2) makes reference to online user accounts. As in section 4, the term online user accounts is meant to include registration for an account on a website that facilitates sending of e-mail to other users of such website or any other protected computer not affiliated with the website.

Subsection (c) of section 5 requires the FTC to conduct a rulemaking on the 10-day period required for e-mail senders to comply with customers' opt-out requests. As technology allows, we hope that that period will be shortened.

Subsection (d) sets forth additional requirements for transmission of commercial e-mail messages containing sexually explicit material. In particular, such e-mail messages must alert recipients in the subject heading of the e-mail that the message contains sexually explicit material. Additionally, the sender must provide a means of opting-out from receipt of such messages in a manner that does not involve viewing sexually explicit images.

My views, as well as those of Ranking Member JOHN DINGELL, regarding Sections six through 16 of the Act are continued in the Statement of JOHN DINGELL submitted contemporaneously with this statement.

PERSONAL EXPLANATION

HON. PATRICK J. TIBERI

OF OHIO

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. TIBERI. Mr. Speaker, on January 27, 2004, the flight I was scheduled to travel on from Columbus, OH to Washington D.C. was cancelled due to weather. As a result, I was unable to cast a vote on Rollcalls 6 and 7. Had I been able, I would have voted ''yea'' on

H.R. 3493 Medical Devices Technical Corrections Act of 2003 and H.R. 1385 to extend the authorization for the United States Postal Service to issue a special postage stamp to benefit breast cancer research.

HONORING THE CONTRIBUTIONS OF CATHOLIC SCHOOLS

HON. RAHM EMANUEL

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. EMANUEL. Mr. Speaker, I rise today in strong support of H. Res. 492, a resolution honoring the contributions of Catholic schools and supporting the goals of Catholic Schools Week.

The accomplishments of Catholic schools and their tremendous impact on students and communities throughout the nation is evident in the Fifth Congressional District of Illinois, where schools like St. Ferdinand Catholic Elementary, St. Patrick High School, and Notre Dame High School for Girls provide a quality education while instilling values that will serve their students throughout their lives. These schools provide strong academic curriculums and engender significant parental involvement. They not only teach students the importance of academic achievement, but also provide a balanced perspective on life that promotes responsibility, justice and social service.

Catholic schools also promote ethnic and racial diversity. Increasing numbers of children in Catholic schools in my district come from our minority communities. Students in Catholic schools achieve exceptionally high graduation rates, with increasing numbers advancing to higher education and giving back to the community through volunteer service.

It is also important to recognize that the Catholic school experience fosters more than just scholastic excellence. It provides spiritual guidance to students by encouraging fundamental ideals and an appreciation for family values, community service, and faith in their own lives. This, in turn, shapes Catholic school students into leaders of tomorrow.

I want to take this opportunity to applaud the recent accomplishments of two teachers at a Catholic school in my district—Mother Theodore Guerin High School in River Grove, Illinois—who have been recognized for their outstanding service to their students and to their community. Sister Adelaide Ortegal received the Dr. Nathan Jones Special Achievement Award last October. This honor is awarded to educators for their outstanding work with African-American students. Sister Ortegal has taught Art for thirty years and is the sponsor of the African-American Club at Mother Guerin.

I also want to recognize Mary Stephany, a social science teacher at Mother Guerin who has been chosen as an Ambassador to Chicago's Field Museum for 2003–2004. In this role, Ms. Stephany will be a liaison for her school, serve on education advisory committees to the museum, and mentor other teachers.

I thank these two outstanding individuals as well as all of the dedicated Catholic school teachers in my district for their love of learning and their devotion to their students.

Mr. Speaker, I support this important resolution and encourage Catholic schools in my district and across the United States to continue contributing to the development of strong moral, intellectual and social values in America's young people. I thank my colleague, Representative VITTER, for introducing this resolution, and I thank the National Catholic Educational Association and the United States Conference of Catholic Bishops for their sponsorship of Catholic Schools Week.

TRIBUTE TO MARK JOSEPH LUMER

HON. ROBERT E. (BUD) CRAMER, JR.

OF ALABAMA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. CRAMER. Mr. Speaker, I would like to take this opportunity to recognize Mr. Mark J. Lumer of Huntsville, AL, for his 28 years of outstanding service in supporting the U.S. military, in particular, our soldiers in Kosovo, Bosnia, Afghanistan, and the Middle East. He is the Contracting Executive at the United States Army Space and Missile Defense Command, USASMDC, in Huntsville, AL. I stand today to applaud Mark Lumer for his many years of service and loyalty in North Alabama's role in supporting our soldiers in the field.

Mark Lumer has risen through the ranks of the Federal Government and earned his current position as the Principal Assistant Responsible for Contracting at the USASMDC Contracting and Acquisition Management Office with offices in Washington, DC; Huntsville, AL; Colorado Springs, CO; and Kwajalein Missile Range in the Marshall Islands. As the Director of Contracts, he oversees over $14 billion in active contracts, annual expenditures of about $2 billion and a staff of approximately 80.

Mark Lumer achieved the highest distinction in his field as a member of the Senior Executive Service when he was recognized by President Bush in 2001 with the ''Presidential Meritorious Rank Award.'' In 2000, the Secretary of the Army presented Mr. Lumer with the ''Decoration for Exceptional Civilian Service,'' the Army's highest civilian award. In addition, he has been recognized nationally for his contributions to the small business industry located in historically underutilized business zone (HUBZone) areas and received an award from the President of the National Institute of Severely Handicapped for his innovative contracting techniques that substantially increased job opportunities for handicapped individuals.

A native of New York, residing in both Virginia and Alabama, Mark Lumer has made Huntsville his home away from home. He has taken an active role in the Huntsville community serving as a board member of the U.S. Space and Rocket Center Foundation and the Space Center Museum Committee. In addition, Mark Lumer is a leader in the Huntsville community as a much sought after speaker for local organizations such as the Huntsville Association of Technical Societies, Huntsville Chapter of the National Contract Management Association, and the Huntsville Association of Small Business in Advanced Technology.

Among his many contributions to North Alabama, Mark Lumer is most recognized for his support to the small business community to include minority and women-owned businesses. He is also an advocate for historically black colleges, universities, and minority institutions and ensures grants are awarded annually to these schools through local programs such as the Education and Employment for Technological Excellence in Aviation, Missiles, and Space.

I join his family, his wife Gail, his son Michael, his son-in-law Mo, his daughters Anne and Sarah, and friends and co-workers in congratulating him on a job well done. On behalf of the people of Alabama's 5th Congressional district, I want to express my gratitude to Mark for his extraordinary service to our community and our Nation.

HONORING COLONEL J. THOMAS MANGER, FAIRFAX COUNTY POLICE CHIEF

HON. TOM DAVIS

OF VIRGINIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. TOM DAVIS of Virginia. Mr. Speaker, Mr. MORAN of Virginia, Mr. WOLF, and I rise today to honor Chief Tom Manger for 27 years of dedicated service to the Fairfax County Police Department (FCPD.)

The FCPD is the largest local police department in the Commonwealth of Virginia, with 1,300 sworn and 500 civilian members. Manger first joined the FCPD in 1977 as a patrol officer. He quickly rose through the ranks, demonstrating great commitment to the safety and security of Fairfax County and the greater Washington, DC metropolitan area. Manger was promoted to deputy chief in 1995 and to acting chief in 1998. On January 10, 1999, the Fairfax Board of Supervisors appointed him chief of police.

Through impressive organization and development efforts, he brought officers closer to the people they serve, making community policing a top priority. Moreover, he held the department to the highest ethical policing standards, instituting a number of new policies to increase FCPD accountability to the public. Fairfax County's crime rate is the lowest in the country for a jurisdiction over one million people.

Over the past few years, Chief Manger has faced challenges ranging from hurricane flooding to anthrax scares. Under his leadership, the FCPD received the Fairfax County Human Rights Commission award for combating bias crimes. In 2002, when sniper shootings shocked the nation, Chief Manger tirelessly worked to capture and convict the two snipers for the murder of FBI employee Linda Franklin.

Throughout his accomplished career, Chief Manger has received numerous awards, including the Silver Medal of Valor. He significantly contributed to the FCPD tradition of excellence and will be greatly missed. We extend our heartfelt thanks for nearly three decades of service to Fairfax County and wish him the best of luck as police chief in Montgomery County, Maryland.

Mr. Speaker, Fairfax County's loss is Montgomery County's gain. Chief Manger is an outstanding police chief, and a shining example to all others in his field. We ask that our colleagues join us in applauding Chief Manger.

MARATHON VARSITY FIELD HOCKEY TEAM, NEW YORK STATE CHAMPIONS

HON. SHERWOOD BOEHLERT

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Mr. BOEHLERT. Mr. Speaker, I would like to take this opportunity to congratulate the Marathon Varsity Field Hockey Team for their outstanding performance this season. Winning the State Championship will remain a vivid moment of victory of each one of the team's members—for without their collective talent and dedication—it would not have been possible.

The long list of season accomplishments is truly something to take pride in. Breaking the state record with 68 consecutive wins, making the lady Olympians third in the nation with such an amazing winning streak, brings pride not only to Marathon but brings pride to the entire state of New York.

Head Coach Karen Funk deserves special praise for leading this fine group of student athletes to the highest possible achievement in the New York State Class C conference. Through Coach Funk's leadership these young ladies have proven that hard work and dedication on the practice field and in the classroom can produce champions on the playing field and in academics.

The 2003 Marathon Field Hockey Team: Ashley Abbatiello, Caitlin Barber, Shanna Barrows, Nikki Billings, Staci Billings, Rebecca Bliss, Grace Chrysler, Megan French, Jamie Gofgosky, Brittni Griep, Danielle Griep, Katie Gutchess, Leslieann Gutchess, Stefanie Hatch, Ashley Holbrook, Emily McDonald, Theresa Parker, Jacki Rose, Margo Stone, Frankie VanDeWeert, Sarah Veninsky, Katie Yudiciatis, Coach Karen Funk, JV Coach Patti Trabucco, JH Coach Sue Malmberg.

IN HONOR OF CALIFORNIA STATE SENATOR BYRON D. SHER

HON. ANNA G. ESHOO

OF CALIFORNIA

IN THE HOUSE OF REPRESENTATIVES

Wednesday, January 28, 2004

Ms. ESHOO. Mr. Speaker, I rise to honor California State Senator Byron Sher, the most highly regarded environmental legislator in California, who will be retiring this year after representing San Mateo and Santa Clara Counties in the California State Legislature for nearly a quarter century. Senator Sher will be honored on Friday, January 30, 2004 by the San Mateo County Democratic Party for his extraordinary public service.

Senator Sher began his public service in 1965 when he was elected to the Palo Alto City Council where he served for nine years, including two terms as Mayor. He was a Commissioner of the San Francisco Bay Conservation and Development Commission from 1978 to 1980, and served on the Committee on Environmental Quality for the National League of Cities and the League of California Cities. His work on these bodies would serve him exceedingly well in years to come.

Byron Sher was elected to the California State Assembly in November, 1980, where he served with distinction as a leader on environmental policy for over fifteen years. He was then elected to the Senate in 1996 in a special election to represent the 11th District, which is geographically and culturally diverse, spanning from Belmont to San Jose, and which includes major portions of the South San Francisco Bay and the San Mateo County Coast.

Throughout Senator Sher's legislative career, he has been regarded as the premier legislator on environmental issues. He is not only the first Chairman of the Senate Environmental Quality Committee, he is also the author of countless benchmark laws that have led the State of California to enact some of the most significant environmental protection policies in our Nation. Among the laws he has authored are the California Clean Air Act, the Integrated Waste Management Act, and the Safe Drinking Water Act. He has strengthened the State's timber regulations with his Surface Mining and Reclamation Act and been at the forefront of computer recycling programs to ensure that the dangerous byproducts of the information age, such as mercury, don't contaminate our landfills and water supplies. Senator Sher also authored the Nation's first law to prevent toxic contamination of water supplies from leaking underground storage tanks. Virtually all his legislation is considered the gold standard for environmental conservation and protection laws throughout our country.

Senator Sher is also considered one of the foremost experts on consumer protection and government ethics. He has consistently been ranked one of the State's top ten legislators for intelligence and integrity by the California Journal Magazine. Despite the many demands on his time, Senator Sher continues to serve as a member of the Steering Committee of the National Council on Competition and Electric Services, as a California Commissioner on the National Conference of Commissioners on Uniform State Laws, and as a member of the Wildlife Conservation Board.

Byron Sher has also been an important part of the academic community. He was a Fulbright Research Scholar in New Zealand and held academic teaching positions in law at Southern Methodist University, the University of Southern California and Harvard Law School before coming to Stanford University. At Stanford, Senator Sher's passion for the rights of his fellow citizens could be seen in the coursework he taught as a professor of law: Consumer credit, consumer protection, as well as contract and commercial law. At Stanford he's been Chairman of the Human Relations Commission and the Faculty Senate, and was a member of the University Budget Priorities Advisory Commission.

Mr. Speaker, I'm proud to call Byron Sher my friend and my colleague in public service. This quiet, humble, decent and brilliant man is a source of great pride to the Democratic Party, to our mutual constituents, to all Californians and to our entire Nation. I ask my colleagues to join me in honoring and thanking Senator Sher for his lifetime of extraordinary service to California and our country. Because of him and his distinguished service, we are unmistakably a stronger and a better Nation.

SENATE COMMITTEE MEETINGS

Title IV of Senate Resolution 4, agreed to by the Senate on February 4, 1977, calls for establishment of a system for a computerized schedule of all meetings and hearings of Senate committees, subcommittees, joint committees, and committees of conference. This title requires all such committees to notify the Office of the Senate Daily Digest—designated by the Rules Committee—of the time, place, and purpose of the meetings, when scheduled, and any cancellations or changes in the meetings as they occur.

As an additional procedure along with the computerization of this information, the Office of the Senate Daily Digest will prepare this information for printing in the Extensions of Remarks section of the CONGRESSIONAL RECORD on Monday and Wednesday of each week.

Meetings scheduled for Thursday, January 29, 2004 may be found in the Daily Digest of today's RECORD.

MEETINGS SCHEDULED

FEBRUARY 3

9:30 a.m.
Armed Services
To hold hearings to examine the Defense Authorization request for Fiscal Year 2005 and the future years defense program.
SH–216

Foreign Relations
Business meeting to consider pending calendar business.
SD–419

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine fund operations and governance relating to current investigations and regulatory actions regarding the mutual fund industry.
SD–538

Budget
To hold hearings to examine the President's fiscal year 2005 budget proposals.
SD–608

2 p.m.
Governmental Affairs
To hold hearings to examine workforce issues relating to preserving a strong United States Postal Service.
SD–342

FEBRUARY 4

9:30 a.m.
Energy and Natural Resources
Business meeting to consider pending calendar items.
SD–366

Foreign Relations
To hold hearings to examine AIDS and hunger.
SD–419

Governmental Affairs
To continue hearings to examine workforce issues relating to preserving a strong United States Postal Service.
SD–342

Indian Affairs
To hold hearings to examine President's fiscal year 2005 budget request.
SR–485

10 a.m.
Budget
To hold hearings to examine the President's fiscal year 2005 budget proposals.
SD–608

Finance
To hold hearings to examine the Administration's Health and Human Services budget priorities.
SD–215

Judiciary
To hold hearings to examine the nominations of William Gerry Myers III, of Idaho, to be United States Circuit Judge for the Ninth Circuit, William S. Duffey, Jr., to be United States District Judge for the Northern District of Georgia, and Lawrence F. Stengel, to be United States District Judge for the Eastern District of Pennsylvania.
SD–226

2:30 p.m.
Banking, Housing, and Urban Affairs
Economic Policy Subcommittee
To hold hearings to examine national flood insurance repetitive losses.
SD–538

Energy and Natural Resources
Public Lands and Forests Subcommittee
To hold hearings to examine S. 1354, to resolve certain conveyances and provide for alternative land selections under the Alaska Native Claims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, S. 1575, to direct the Secretary of Agriculture to sell certain parcels of Federal land in Carson City and Douglas County, Nevada, H.R. 1092, to direct the Secretary of Agriculture to sell certain parcels of Federal land in Carson City and Douglas County, Nevada, S. 1778, to authorize a land conveyance between the United State and the City of Craig, Alaska, S. 1819, to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries, and H.R. 272, to direct the Secretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries.
SD–366

FEBRUARY 5

10 a.m.
Banking, Housing, and Urban Affairs
To hold hearings to examine the Office of the Comptroller of the Currency's rules on national bank preemption and visitorial powers.
SD–538

Health, Education, Labor, and Pensions
To hold hearings to examine maintaining confidence in consumer products relating to mad cow disease.
SD–430

FEBRUARY 9

10 a.m.
Governmental Affairs
To hold hearings to examine the Department of Homeland Security's budget for fiscal year 2005.
SD–342

FEBRUARY 10

9:30 a.m.
Armed Services
To resume hearings to examine the Defense Authorization request for Fiscal Year 2005 and the future years defense program.
SR–325

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed fiscal year 2005 budget for the Department of Energy.
SD–366

2 p.m.
Veterans' Affairs
To hold hearings to examine the Adminstration's proposed fiscal year 2005 Department of Veterans Affairs' budget.
SR–418

FEBRUARY 11

9:30 a.m.
Indian Affairs
To hold hearings to examine the President's fiscal year 2005 budget request.
SR–485

FEBRUARY 12

10 a.m.
Budget
To hold hearings to examine the President's fiscal year 2005 budget proposals.
SD–608

Energy and Natural Resources
To hold hearings to examine the President's proposed fiscal year 2005 budget for the Department of the Interior.
SD–366

FEBRUARY 24

2 p.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentation of the Disabled American Veterans.
SH–216

MARCH 2

9:30 a.m.
Armed Services
To hold hearings to examine the defense authorization request for fiscal year 2005 and the future years defense program.
SH–216

10 a.m.
Energy and Natural Resources
To hold hearings to examine the President's proposed fiscal year 2005 budget for the Forest Service.
SD–366

MARCH 4

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentations of the Non-Commissioned Officers Association, the Military Order of the Purple Heart, the Paralyzed Veterans of America, the Jewish War Veterans, and the Blinded Veterans Association.
345 CHOB

MARCH 10

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentation of the Veterans of Foreign Wars.
SH–216

MARCH 18

10 a.m.
Veterans' Affairs
To hold joint hearings with the House Committee on Veterans Affairs to examine the legislative presentations of the Air Force Sergeants Association,

the Retired Enlisted Association, Gold Star Wives of America, and the Fleet Reserve Association.

345 CHOB

MARCH 25

10 a.m.

Veterans' Affairs

To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentations of the National Association of State Directors of Veterans Affairs, AMVETS, American Ex-Prisoners of War, the Vietnam Veterans of America, and the Military Officers Association of America.

345 CHOB

SEPTEMBER 21

10 a.m.

Veterans' Affairs

To hold joint hearings with the House Committee on Veterans' Affairs to examine the legislative presentation of the American Legion.

345 CHOB

Daily Digest

HIGHLIGHTS

Senate passed H.R. 3108, Pension Funding Equity Act.

The House passed S. 610, NASA Workforce Flexibility Act of 2003—clearing the measure for the President.

The House passed S. 1920, to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted.

Senate

Chamber Action

Routine Proceedings, pages S293–S331

Measures Introduced: Six bills and three resolutions were introduced, as follows: S. 2034–2039, S. Res. 293–294, and S. Con. Res. 87. **Pages S320–21**

Measures Passed:

Pension Funding Equity Act: By 86 yeas to 9 nays (Vote No. 5), Senate passed H.R. 3108, to amend the Employee Retirement Income Security Act of 1974 and the Internal Revenue Code of 1986 to temporarily replace the 30-year Treasury rate with a rate based on long-term corporate bonds for certain pension plan funding requirements and other provisions, after taking action on the following amendments proposed thereto: **Pages S294–S304**

Adopted:

Grassley Amendment No. 2233, of a perfecting nature. **Pages S294–98**

Rejected:

Specter Amendment No. 2263 (to Amendment No. 2233), to provide for the restoration of certain plans terminating in 2003 (upon division, a majority of the Senators present and not having voted in the affirmative, Senate failed to agree to the amendment). **Pages S296–97**

Kyl Amendment No. 2236 (to Amendment No. 2233), to restrict an employer that elected an alternative deficit reduction contribution from applying for a funding waiver. **Pages S297–98**

Safe Transportation Equity Act: Senate began consideration of the motion to proceed to S. 1072, to authorize funds for Federal-aid highways, highway safety programs, and transit programs. **Pages S328–29**

A motion was entered to close further debate on the bill and, in accordance with the provisions of Rule XXII of the Standing Rules of the Senate, a vote on cloture will occur on Monday, February 2, 2004. **Page S328**

Messages From the President: Senate received the following messages from the President of the United States:

Transmitting, pursuant to law, the report of Presidential Determination 2003–39 relative to classified information concerning the Air Force's Operating Location Near Groom Lake, Nevada; to the Committee on Environment and Public Works. (PM–60) **Page S319**

Transmitting, pursuant to law, a statement of justification relative to the Australia Group chemical and biological weapons nonproliferation regime; to the Committee on Foreign Relations. (PM–61) **Page S319**

Nominations Confirmed: Senate confirmed the following nominations:

By unanimous vote of 95 yeas (Vote No. 6), Gary L. Sharpe, of New York, to be United States District Judge for the Northern District of New York. **Pages S304–307, S330**

22 Air Force nominations in the rank of general.

7 Navy nominations in the rank of admiral.

Routine lists in the Air Force, Army, Navy. **Page S331**

Nominations Received: Senate received the following nominations:

Linda Mysliwy Conlin, of New Jersey, to be a Member of the Board of Directors of the Export-Import Bank of the United States for a term expiring January 20, 2007.

Eugene Hickok, of Pennsylvania, to be Deputy Secretary of Education.

Pamela M. Iovino, of the District of Columbia, to be an Assistant Secretary of Veterans Affairs (Congressional Affairs).

Alphonso R. Jackson, of Texas, to be Secretary of Housing and Urban Development.

1 Air Force nomination in the rank of general.

Routine lists in the Air Force, Army, Coast Guard, MarineCorps. **Pages S329–30**

Messages From the House: **Page S320**

Measures Referred: **Page S320**

Executive Reports of Committees: **Page S320**

Additional Cosponsors: **Page S321**

Statements on Introduced Bills/Resolutions: **Pages S321–26**

Additional Statements: **Pages S318–19**

Notices of Hearings/Meetings: **Pages S326–27**

Authority for Committees to Meet: **Page S327**

Record Votes: Two record votes were taken today. (Total—6) **Pages S299, S307**

Adjournment: Senate convened at 11 a.m., and adjourned at 6:42 p.m., until 11 a.m., on Thursday, January 29, 2004 for a pro forma session. (For Senate's program, see the remarks of the Majority Leader in today's Record on page S329.)

Committee Meetings

(Committees not listed did not meet)

WMD

Committee on Armed Services: Committee concluded a hearing to examine efforts to determine the status of Iraqi weapons of mass destruction and related programs, after receiving testimony from David Kay, former Special Advisor to the Director of Central Intelligence on Strategy Regarding Iraqi Weapons of Mass Destruction Programs.

BUSINESS MEETING

Committee on Armed Services: Committee ordered favorably reported 4,763 nominations in the Army, Navy, and Air Force.

NOMINATIONS

Committee on Armed Services: Committee concluded a hearing to examine the nominations of Francis J. Harvey, of California, to be Assistant Secretary of Defense for Networks and Information Integration, and Lawrence T. Di Rita, of Michigan, to be Assistant Secretary of Defense for Public Affairs; and William A. Chatfield, of Texas, to be Director of Selective Service, after each nominee testified and answered questions in their own behalf.

NASA

Committee on Commerce, Science, and Transportation: Committee concluded a hearing to examine the future space mission of the National Aeronautics and Space Administration (NASA), focusing on exploration activities in low Earth orbit, the space shuttle, the International Space Station, the Moon, Mars and other destinations, space transportation capabilities supporting exploration, and international and commercial participation, after receiving testimony from Sean O'Keefe, Administrator, National Aeronautics and Space Administration; Louis D. Friedman, Planetary Society, Pasadena, California; Neal Lane, Rice University Department of Physics and Astronomy, Houston, Texas; Howard E. McCurdy, American University Department of Public Administration School of Public Affairs, Washington, D.C.; and Richard Tumlinson, Space Frontier Foundation, Nyack, New York.

PAKISTAN AND INDIA

Committee on Foreign Relations: Committee met in closed session to receive a briefing regarding steps toward rapprochement in relation to Pakistan and India from members of the intelligence community.

PAKISTAN AND INDIA

Committee on Foreign Relations: Committee concluded a hearing to examine steps toward rapprochement, focusing on the aversion of nuclear war, the status of Kashmir, prospects for détente, and controls against arms proliferation, after receiving testimony from Frank Wisner, American International Group, New York, New York; Stephen P. Cohen, Brookings Institution, and Michael Krepon, Henry L. Stimson Center, both of Washington, D.C.

HEALTH CARE COSTS

Committee on Health, Education, Labor, and Pensions: Committee concluded a hearing to examine health issues relating to health care costs and the uninsured, focusing on inefficiencies in America's health care delivery systems, after receiving testimony from Douglas Holtz-Eakin, Director, Congressional Budget Office; Arnold Milstein, Pacific Business Group on Health, San Francisco, California; Karen Davis, The Commonwealth Fund, New York, New York; Christopher J. Conover, Duke University, Terry Sanford Institute of Public Policy, Durham, North Carolina; and Gail R. Wilensky, Project HOPE, Bethesda, Maryland.

BUSINESS MEETING

Committee on Indian Affairs: Committee ordered favorably reported S. 1721, to amend the Indian Land Consolidation Act to improve provisions relating to

probate of trust and restricted land, with an amendment in the nature of a substitute.

NOMINATION

Committee on the Judiciary: Committee concluded a hearing to examine the nomination of Franklin S. Van Antwerpen, of Pennsylvania, to be United States Circuit Judge for the Third Circuit, after the nominee, who was introduced by Senators Specter and Santorum, testified and answered questions in his own behalf.

House of Representatives

Chamber Action

Measures Introduced: 14 public bills, H.R. 3736–3749; and 10 resolutions, H.J. Res. 87–88; H. Con. Res. 351–353, and H. Res. 504–508 were introduced. **Pages H243–244**

Additional Cosponsors: **Pages H244–245**

Reports Filed: Reports were filed today as follows:

H.R. 2844, to require States to hold special elections to fill vacancies in the House of Representatives not later than 21 days after the vacancy is announced by the Speaker of the House of Representatives in extraordinary circumstances, amended (H. Rept. 108–404, Pt. 2). **Page H243**

Speaker: Read a letter from the Speaker wherein he appointed Representative Terry to act as Speaker Pro Tempore for today. **Page H129**

NASA Workforce Flexibility Act of 2003: The House passed S. 610, to amend the provisions of title 5, United States Code, to provide for workforce flexibilities and certain Federal personnel provisions relating to the National Aeronautics and Space Administration by a voice vote—clearing the measure for the President. **Pages H132–143**

Withdrawn:

Flake amendment that was offered but subsequently withdrawn that sought to require that budget requests for the Administration shall include a statement that demonstrates that the amount that was requested for the previous year was equal to or less than reductions in specific item budget requests made for that same year. **Pages H142–143**

H. Res. 502, the rule providing for consideration of the bill, was agreed to by a voice vote. **Page H132**

Recess: The House recessed at 10:36 a.m. and reconvened at 10:55 a.m. **Page H132**

Recess: The House recessed at 11:49 a.m. and reconvened at 1 p.m. **Page H143**

Extending the period for which chapter 12 of title 11 of the U.S. Code is reenacted: The House passed S. 1920, to extend for 6 months the period for which chapter 12 of title 11 of the United States Code is reenacted by a yea- and-nay vote of 165 yeas to 99 nays and one ''present'', Roll No. 10. **Pages H148–H222**

Rejected the Schakowsky motion to recommit the bill to the Committee on the Judiciary with instructions by a recorded vote of 170 ayes to 198 noes and one ''present'', Roll No. 9. **Pages H216–218**

Agreed to:

Sensenbrenner amendment (no. 2 printed in H. Rept 108–407), making technical changes to the text of H.R. 975 as passed by the House by a voice vote. **Page H219**

Rejected:

Baldwin amendment in the nature of a substitute (no. 1 printed in H. Rept. 108–407), that sought to make chapter 12 of title 11 of the U.S. Bankruptcy code, dealing with ''family farmer'' reorganization, permanent and expand eligibility requirements (rejected by a recorded vote of 158 ayes to 204 noes and one ''present'', Roll No. 8). **Pages H157–216**

H. Res. 503, the rule providing for consideration of the bill was agreed to by a voice vote. **Pages H144–148**

The House agreed to request a conference with the Senate on the bill as amended and rejected the Nadler motion to instruct conferees by a yea-and-nay vote of 146 yeas to 203 nays and one ''present'', Roll No. 11. **Pages H219–222**

Appointed as conferees: From the Committee on the Judiciary, for consideration of the Senate bill and the House amendment, and modifications committed to conference: Representatives Sensenbrenner, Hyde, Smith (TX), Chabot, Cannon, Hart, Conyers, Boucher, Nadler, and Watt (NC). **Page H222**

From the Committee on Financial Services, for consideration of sections 901–906, 908–909, 911, and 1301–1309 of the House amendment, and modifications committed to conference: Representatives Oxley, Bachus, and Sanders. **Page H222**

Committee Resignation: Read a letter from Representative Sullivan wherein he resigned from the

Committees on Government Reform, Transportation & Infrastructure, and Science. Page H222

Committee Resignation: Read a letter from Representative Blunt wherein he resigned from the Committee on Energy & Commerce. Page H222

Committee Resignation: Read a letter from Representative Bell wherein he resigned from the Committees on Science and Government Reform. Pages H222–223

Committee Elections: The House agreed to H. Res. 505, electing Representatives Hall and Sullivan to the Committee on Energy & Commerce, Representative Blunt to the Committee on International Relations, and Mr. Hall to the Committee on Science. Page H223

Committee Election: The House agreed to H. Res. 504, electing Representative Bell to the Committee on Financial Services. Page H223

Calendar Wednesday: Agreed to dispense with the Calendar Wednesday business of Wednesday, February 4. Page H223

Meeting Hour: Agreed that when the House adjourn today, it adjourn to meet at noon on Friday, January 30, and further that when it adjourn on that day, it adjourn to meet at 12:30 p.m. on Tuesday, February 3 for morning hour debate. Page H223

Antitrust Modernization Commission: Read a letter from the Speaker wherein he announced his appointment of Mr. Donald G. Kempf, Jr. of New York, New York and Mr. John L. Warden of New York, New York to the Antitrust Modernization Commission. Page H224

Presidential Messages: Read a message from the President wherein he notified Congress of his issuance of Presidential Determination 2003–39 and exercised the authority to grant certain exemptions under the Resource Conservation and Recovery Act—referred to the Committee on Energy and Commerce. Page H224

Read a message from the President wherein he certified the effectiveness of the Australia Group—referred to the Committee on International Relations. Page H224

Quorum Calls—Votes: 4 yea-and-nay votes and two recorded votes developed during the proceedings of the House today and appear on pages H215–216, H218, H218–219, and H221–222. There were no quorum calls.

Adjournment: The House met at 10 a.m. and adjourned at 8:03 p.m.

Committee Meetings

AGRICULTURE SECTOR—TEMPORARY GUEST WORKER PROPOSALS IMPACT

Committee on Agriculture: Held a hearing to review the Potential Impact of Recent Temporary Guest Worker Proposals on the Agriculture Sector. Testimony was heard from public witnesses.

OPERATION IRAQI FREEDOM FORCE ROTATION PLAN

Committee on Armed Services: Held a hearing on the Operation Iraqi Freedom Force Rotation Plan. Testimony was heard from the following officials of the Department of Defense: Gen. Peter J. Schoomaker, USA, Chief of Staff, Army; Gen. Michael W. Hagee, USMC, Commandant, Marine Corps; Lt. Gen. James E. Cartwright, USMC, Director, Force Structure, Resources and Assessment, and Lt. Gen. Norton A. Schwartz, USAF, Director, Operations, both with the Joint Chiefs of Staff.

FREDDIE MAC'S ACCOUNTING RESTATEMENT: ARE ACCOUNTING STANDARDS WORKING?

Committee on Energy and Commerce: Subcommittee on Commerce, Trade and Consumer Protection held a hearing entitled "Freddie Mac's Accounting Restatement: Are Accounting Standards Working?" Testimony was heard from Armando Falcon, Jr., Director, Office of Federal Housing Enterprise Oversight, Department of Housing and Urban Development; and Martin Bauman, Chief Financial Officer, Freddie Mac.

STROKE TREATMENT AND ONGOING PREVENTION ACT

Committee on Energy and Commerce: Subcommittee on Health approved for full Committee action, as amended, H.R. 3658, Stroke Treatment and Ongoing Prevention Act.

BROADCAST INDECENCY

Committee on Energy and Commerce: Subcommittee on Telecommunications and the Internet held a hearing entitled "'Can you say that on TV?': An Examination of the FCC's Enforcement with Respect to Broadcast Indecency." Testimony was heard from David H. Solomon, Chief, Enforcement Bureau, FCC; and public witnesses.

NATIONAL BANK RULES

Committee on Financial Services: Subcommittee on Oversight and Investigations held a hearing entitled "Congressional Review of OCC Preemption." Testimony was heard from Julie L. Williams, First Senior

Deputy Comptroller and Chief Counsel, Office of the Comptroller of the Currency; Department of the Treasury; and public witnesses.

ARMY NATIONAL GUARD PAY

Committee on Government Reform: Held a hearing entitled "Avoiding 'Financial Friendly Fire': A Review of Efforts to Overcome Army National Guard Pay Problems." Testimony was heard from Gregory D. Kutz, Director, Financial Management and Assurance, GAO; the following officials of the Department of Defense: Ernest J. Gregory, Acting Assistant Secretary, Financial Management and Comptroller; and Lt. Gen. Roger C. Schultz, USA, Director, Army National Guard, both with the Department of the Army; and Patrick T. Shine, Director, Defense Finance and Accounting Service, Military and Civilian Pay Services; and Kenneth Chavez, Unit Commander, B Company, Special Forces, Colorado Army National Guard.

POSTAL REFORM

Committee on Government Reform: Special Panel on Postal Reform and Oversight held a hearing entitled "Answering the Administration's Call for Postal Reform—Part I." Testimony was heard from Brian C. Roseboro, Acting Under Secretary, Domestic Finance, Department of the Treasury; the following officials of the U.S. Postal Service: S. David Fineman, Chairman, Board of Governors; and John E. Potter, Postmaster General; George A. Omas, Chairman, Postal Rate Commission; and David M. Walker, Comptroller General, GAO.

OVERSIGHT—RELIEVING BURDEN ON SMALL BUSINESS

Committee on Government Reform: Subcommittee on Energy Policy, Natural Resources and Regulatory Affairs and the Subcommittee on Regulatory Reform and Oversight of the Committee on Small Business held a joint hearing entitled "What is the Administration's Record in Relieving Burden on Small Business?" Testimony was heard from John D. Graham, Administrator, Office of Information and Regulatory Affairs, OMB; Patrick Pizzella, Assistant Secretary, Administration and Management, Department of Labor; Jeffrey Rosen, General Counsel, Department of Transportation; Kimberly Terese Nelson, Assistant Administrator, Environmental Information, EPA; and public witnesses.

MISCELLANEOUS MEASURES

Committee on the Judiciary: Ordered reported the following measures: H.R. 1073, To repeal section 801 of the Revenue Act of 1916; H.R. 1768, amended, Multidistrict Litigation Restoration Act of 2003; H. Res. 412, Honoring the men and women of the Drug Enforcement Administration on the occasion of its 30th Anniversary; H.R. 3095, Community Recognition Act of 2003; H.R. 339, amended, Personal Responsibility in Food Consumption Act; H.R. 2824, amended, Internet Tobacco Sales Enforcement Act; and H. Res. 56, Supporting the goals of the Japanese American, German American, and Italian American communities in recognizing a National Day of Remembrance to increase public awareness of the events surrounding the restriction, exclusion, and internment of individuals and families during World War II.

SURFACE TRANSPORTATION RESEARCH AND DEVELOPMENT ACT

Committee on Science: Subcommittee on Environment, Technology, and Standards approved for full Committee action, as amended, H.R. 3551, Surface Transportation Research and Development Act of 2003.

DEPARTMENT OF VETERANS AFFAIRS—LONG-TERM CARE POLICIES

Committee on Veterans' Affairs: Held a hearing on the Department of Veterans Affairs long-term care policies. Testimony was heard from Cynthia A. Bascetta, Director, Healthcare—Veterans' Health and Benefits Issues, GAO; the following officials of the Department of Veterans Affairs: John D. Daigh, Jr., M.D., Assistant Inspector General, Health Care Inspections, Office of Inspector General; and Robert H. Rosell, M.D., Under Secretary, Health; and public witnesses.

OVERSIGHT—CHILD WELFARE PROGRAMS

Committee on Ways and Means: Subcommittee on Human Resources held a hearing to review Federal and State Oversight of Child Welfare Programs. Testimony was heard from Wade F. Horn, Assistant Secretary, Administration for Children and Families, Department of Health and Human Services; Cornelia Ashby, Director, Education, Workforce, and Income Security, GAO;Wayne Stevenson, Deputy Secretary, Department of Children, Youth, and Families, State of Pennsylvania; William Bell, Commissioner, Administration for Children and Families, New York City; and public witnesses.

BORDER SECURITY TECHNOLOGY

Select Committee on Homeland Security: Subcommittee on Infrastructure and Border Security held a hearing entitled "Integrity and Security at the Border: The US VISIT Program." Testimony was heard from Asa Hutchinson, Under Secretary, Border and Transportation Security Directorate, Department of Homeland Security; Maura Harty, Assistant Secretary, Bureau of Consular Affairs, Department of State; and public witnesses.

COMMITTEE MEETINGS FOR THURSDAY, JANUARY 29, 2004

(Committee meetings are open unless otherwise indicated)

Senate

Committee on Foreign Relations: to hold hearings to examine the protocol additional to the safeguards agreement between the United States of America and the IAEA, 9:30 a.m., SD–419.

House

No committee meetings are scheduled.

CONGRESSIONAL PROGRAM AHEAD

Week of February 2 through February 7, 2004

Senate Chamber

On *Monday*, at 1 p.m., Senate will be in a period of morning business; at 2 p.m., Senate will resume consideration of the motion to proceed to consideration of S. 1072, SAFE Transportation Equity Act, with a vote on the motion to close further debate on the motion to proceed to occur at 5:45 p.m.

During the balance of the week, Senate may consider any other cleared legislative and executive business.

Senate Committees

(Committee meetings are open unless otherwise indicated)

Committee on Armed Services: February 3, to hold hearings to examine the DefenseAuthorization request for Fiscal Year 2005 and the future years defense program, 9:30 a.m., SH–216.

Committee on Banking, Housing, and Urban Affairs: February 3, to hold hearings to examinefund operations and governance relating to current investigations and regulatory actionsregarding the mutual fund industry, 10 a.m., SD–538.

February 4, Subcommittee on Economic Policy, to hold hearings to examine national flood insurance repetitive losses, 2:30 p.m., SD–538.

February 5, Full Committee, to hold hearings to examine the Office of the Comptroller of theCurrency's rules on national bank preemption and visitorial powers, 10 a.m., SD–538.

Committee on the Budget: February 3, to hold hearings to examine the President's fiscal year2005 budget proposals, 10 a.m., SD–608.

February 4, Full Committee, to hold hearings to examine the President's fiscal year 2005 budgetproposals, 10 a.m., SD–608.

Committee on Energy and Natural Resources: February 4, business meeting to consider pending calendar items, 9:30 a.m., SD–366.

February 4, Subcommittee on Public Lands and Forests, to hold hearings to examine S. 1354, toresolve certain conveyances and provide for alternative land selections under the Alaska NativeClaims Settlement Act related to Cape Fox Corporation and Sealaska Corporation, S. 1575, todirect the Secretary of Agriculture to sell certain parcels of Federal land in Carson City and Douglas County, Nevada, H.R. 1092, to direct the Secretary of Agriculture to sell certain parcelsof Federal land in Carson City and Douglas County, Nevada, S. 1778, to authorize a land conveyance between the United States and the City of Craig, Alaska, S. 1819, to direct theSecretary of Agriculture to convey certain land to Lander County, Nevada, and the Secretary ofthe Interior to convey certain land to Eureka County, Nevada, for continued use as cemeteries,and H.R. 272, to direct the Secretary of Agriculture to convey certain land to Lander County,Nevada, and the Secretary of the Interior to convey certain land to Eureka County, Nevada, forcontinued use as cemeteries, 2:30 p.m., SD–366.

Committee on Finance: February 4, to hold hearings to examine the Administration's Health and Human Services budget priorities, 10 a.m., SD–215.

Committee on Foreign Relations: February 3, business meeting to consider pending calendarbusiness, 9:30 a.m., SD–419.

February 4, Full Committee, to hold hearings to examine AIDS and hunger, 9:30 a.m., SD–419.

Committee on Governmental Affairs: February 3, to hold hearings to examine workforce issuesrelating to preserving a strong United States Postal Service, 2 p.m., SD–342.

February 4, Full Committee, to continue hearings to examine workforce issues relating topreserving a strong United States Postal Service, 9:30 a.m., SD–342.

Committee on Health, Education, Labor, and Pensions: February 5, to hold hearings to examinemaintaining confidence in consumer products relating to mad cow disease, 10 a.m., SD–430.

Committee on Indian Affairs: February 4, to hold hearings to examine President's fiscal year2005 budget request, 9:30 a.m., SR–485.

Committee on the Judiciary: February 4, to hold hearings to examine the nominations of William Gerry Myers III of Idaho, to be United States Circuit Judge for the Ninth Circuit, William S. Duffey, Jr., to be United States District Judge for the Northern District of Georgia, and Lawrence F. Stengel, to be United States District Judge for the Eastern District of Pennsylvania, 10 a.m., SD–226.

House Chamber

To be announced.

House Committees

Committee on Appropriations, February 4, Subcommittee on Commerce, Justice, State, Judiciary and Related Agencies, on Public Diplomacy, 10 a.m., 2359 Rayburn.

Committee on Armed Services, February 4, hearing on the Fiscal Year 2005 National Defense Authorization Budget Request from the Department of Defense, 10 a.m., 2118 Rayburn.

Committee on the Budget, Februay 3, hearing on the Administration's Budget for Fiscal Year 2005, 2 p.m., 210 Cannon.

February 4, hearing on the Department of the Treasury Budget Priorities Fiscal Year 2005, 2 p.m., 210 Cannon.

Committee on Energy and Commerce, February 4, Subcommittee on Telecommunications and the Internet, hearing entitled "The Current State of Competition in the Communications Marketplace," 10 a.m., 2322 Rayburn.

Committee on Government Reform, February 3, Subcommittee on National Security, Emerging Threats and International Relations, hearing on Effective Strategies Against Terrorism, 10 a.m., 2247 Rayburn.

February 4, Subcommittee on Civil Service and Agency Organization, hearing entitled "Esprit de Corps: Recruiting and Retraining America's Best for the Federal Civil Service," 10:30 a.m., 2154 Rayburn.

February 4, Subcommittee on Government Efficiency and Financial Management, oversight hearing entitled "Should We Part Ways with GPRA?" 2 p.m., 2247 Rayburn.

Committee on International Relations, February 4, hearing on L Visas: Losing Jobs Through Laissez-Faire Policies? 1 p.m., 2172 Rayburn.

Committee on the Judiciary, February 3, Subcommittee on Crime, Terrorism, and Homeland Security, oversight hearing entitled "Law Enforcement Efforts within the Department of Homeland Security," 1 p.m., 2141 Rayburn.

February 4, Subcommittee on Courts, the Internet, and Intellectual Property, oversight hearing on "Internet Domain Name Fraud—New Criminal and Civil Enforcement Tools," 10 a.m., 2141 Rayburn.

Committee on Resources, February 3, Subcommittee on Energy and Mineral Resources, oversight hearing entitled "The Impact of Science on Public Policy," 2 p.m., 1324 Longworth.

February 4, Subcommittee on Forests and Forest Health, oversight hearing on Issues Affecting Jobs in the Forest Industry, 2 p.m., 1334 Longworth.

Committee on Veterans' Affairs, February 4, hearing on the Administration's proposed Fiscal Year 2005 budget for the Department of Veterans Affairs, 10 a.m., 334 Cannon.

Committee on Ways and Means, February 3 and 4, hearings on the Administration's Budget Proposals for fiscal year 2005, 2 p.m., on February 3 and 10:30 a.m., on February 4, 1100 Longworth.

Next Meeting of the **SENATE**

11 a.m., Thursday, January 29

Senate Chamber

Program for Thursday: Senate will meet in pro forma session.

Next Meeting of the **HOUSE OF REPRESENTATIVES**

12 noon, Friday, January 30

House Chamber

Program for Friday: The House will meet at noon on Friday, January 30 in pro forma session.

Extensions of Remarks, as inserted in this issue

HOUSE

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