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## House of Representatives

The House met at 1 p.m.

The Chaplain, the Reverend Daniel P. Coughlin, offered the following prayer: Lord, our Protector and our Shield, wrap the Members of Congress in Your mantle of justice. Guide them in their judgments and in all their ways.

One of the great tasks You lay upon this body is "to provide for the common defense and the general welfare of the United States."

Knowing this is an awesome responsibility, be a buttress to their efforts to secure this Nation in peace and protect its people and institutions from all harm.

In and with all efforts to be ever vigilant and prepared, we know it is "in You we are to place all our trust;" for

"unless the Lord guard the city in vain does the watchman keep vigil".

Shower upon this Nation Your loving care now and forever.  
Amen.

### THE JOURNAL

The SPEAKER. 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. Will the gentleman from Texas (Mr. ARMEY) come forward

and lead the House in the Pledge of Allegiance.

Mr. ARMEY 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.

### MESSAGE FROM THE SENATE

A message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed without amendment bills of the House of the following titles:

### NOTICE

If the 107th Congress, 2d Session, adjourns sine die on or before November 22, 2002, a final issue of the Congressional Record for the 107th Congress, 2d Session, will be published on Monday, December 16, 2002, in order to permit Members to revise and extend their remarks.

All material for insertion must be signed by the Member and delivered to the respective offices of the Official Reporters of Debates (Room HT-60 or S-123 of the Capitol), Monday through Friday, between the hours of 10:00 a.m. and 3:00 p.m. through Friday, December 13. The final issue will be dated Monday, December 16, 2002, and will be delivered on Tuesday, December 17, 2002.

None of the material printed in the final issue of the Congressional Record may contain subject matter, or relate to any event that occurred after the sine die date.

Senators' statements should also be submitted electronically, either on a disk to accompany the signed statement, or by e-mail to the Official Reporters of Debates at "Record@Sec.Senate.gov".

Members of the House of Representatives' statements may also be submitted electronically by e-mail, to accompany the signed statement, and formatted according to the instructions for the Extensions of Remarks template at <http://clerkhouse.house.gov>. The Official Reporters will transmit to GPO the template formatted electronic file only after receipt of, and authentication with, the hard copy, and signed manuscript. Deliver statements to the Official Reporters in Room HT-60.

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By order of the Joint Committee on Printing.

MARK DAYTON, *Chairman*.

This symbol represents the time of day during the House proceedings, e.g.,  1407 is 2:07 p.m.

Matter set in this typeface indicates words inserted or appended, rather than spoken, by a Member of the House on the floor.



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H8735

H.R. 3340. An act to amend title 5, United States Code, to allow certain catch-up contributions to the Thrift Savings Plan to be made by participants age 50 or over; to reauthorize the Merit Systems Protection Board and the Office of Special Counsel; and for other purposes.

H.R. 5349. An act to facilitate the use of a portion of the former O'Reilly General Hospital in Springfield, Missouri, by the local Boys and Girls Club through the release of the reversionary interest and other interests retained by the United States in 1955 when the land was conveyed to the State of Missouri.

The message also announced that the Senate has passed with an amendment in which the concurrence of the House is requested, bills of the House of the following titles:

H.R. 3609. An act to amend title 49, United States Code, to enhance the security and safety of pipelines.

H.R. 3833. An act to facilitate the creation of a new, second-level Internet domain within the United States country code domain that will be a haven for material that promotes positive experiences for children and families using the Internet, provides a safe online environment for children, and helps to prevent children from being exposed to harmful material on the Internet, and for other purposes.

H.R. 4073. An act to amend the Microenterprise for Self-Reliance Act of 2000 and the Foreign Assistance Act of 1961 to increase assistance for the poorest people in developing countries under microenterprise assistance programs under those Acts, and for other purposes.

The message also announced that the Senate has passed bills of the following titles in which the concurrence of the House is requested:

S. 958. An act to provide for the use and distribution of the funds awarded to the Western Shoshone identifiable group under Indian Claims Commission Docket Numbers 326-A-1, 326-A-3, 326-K, and for other purposes.

S. 2845. An act to extend for one year procedural relief provided under the USA PATRIOT Act for individuals who were or are victims or survivors of victims of a terrorist attack on the United States on September 11, 2001.

S. 3044. An act to authorize the Court Services and Offender Supervision Agency of the District of Columbia to provide for the interstate supervision of offenders on parole, probation, and supervised release.

S. 3067. An act to amend title 44, United States Code, to extend certain Government information security reform for one year, and for other purposes.

The message also announced that the Senate agreed to the report of the committee of conference on the disagreeing votes of the two Houses on the amendment of the House to the bill (S. 1214) "An Act to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes."

#### ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair wants to thank the gentleman from Texas (Mr. ARMEY), who is retiring as of today, for his great service.

#### ANNOUNCEMENT BY THE SPEAKER

The SPEAKER. The Chair will entertain one-minute speeches today at the end of legislative business.

#### PRIVATE CALENDAR

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). Pursuant to the order of the House of Wednesday, November 13, 2002, the Private Calendar will now be called.

The Clerk will call the first individual bill on the Private Calendar.

#### NANCY B. WILSON

The Clerk called the bill (H.R. 392) for the relief of Nancy B. Wilson.

Mr. COBLE. Mr. Speaker, I ask unanimous consent that the bill be passed over without prejudice.

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

There was no objection.

#### SO HYUN JUN

The Clerk called the bill (H.R. 3758) for the relief of So Hyun Jun.

There being no objection, the Clerk read the bill as follows:

#### H.R. 3758

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

#### SECTION 1. IMMEDIATE RELATIVE STATUS FOR SO HYUN JUN.

(a) IN GENERAL.—So Hyun Jun shall be classified as a child under section 101(b)(1)(F) of the Immigration and Nationality Act for purposes of approval of a relative visa petition filed under section 204 of such Act by her adoptive parent and the filing of an application for an immigrant visa or adjustment of status.

(b) ADJUSTMENT OF STATUS.—If So Hyun Jun enters the United States before the filing deadline specified in subsection (c), she shall be considered to have entered and remained lawfully and shall, if otherwise eligible, be eligible for adjustment of status under section 245 of the Immigration and Nationality Act as of the date of the enactment of this Act.

(c) DEADLINE FOR APPLICATION AND PAYMENT OF FEES.—Subsections (a) and (b) shall apply only if the petition and the application for issuance of an immigrant visa or the application for adjustment of status are filed with appropriate fees within 2 years after the date of the enactment of this Act.

(d) REDUCTION OF IMMIGRANT VISA NUMBER.—Upon the granting of an immigrant visa or permanent residence to So Hyun Jun, the Secretary of State shall instruct the proper officer to reduce by 1, for the current or next following fiscal year, the worldwide level of family-sponsored immigrants under section 201(c)(1)(A) of the Immigration and Nationality Act.

(e) DENIAL OF PREFERENTIAL IMMIGRATION TREATMENT FOR CERTAIN RELATIVES.—The natural parents, brothers, and sisters of So Hyun Jun shall not, by virtue of such relationship, be accorded any right, privilege, or status under the Immigration and Nationality Act.

#### SEC. 2. ELIGIBILITY FOR CITIZENSHIP.

For purposes of section 320 of the Immigration and Nationality Act, So Hyun Jun shall

be considered to have satisfied the requirements applicable to adopted children under section 101(b)(1) of such Act.

Mr. MCCRERY. Mr. Speaker, I rise today in support of H.R. 3758, a private bill for the relief of So Hyun Jun (So Young June). This is a no-cost, no-controversy bill that will provide needed relief to my constituents John and Ok Sun Thornton of Leesville, Louisiana who adopted So Hyun in 2001.

So Hyun was born in South Korea on September 16, 1984 to Mrs. Thornton's sister. A car accident in 1999 left her parents incapable of caring for her. At that time, Mrs. Thornton and her husband were contacted about the possibility of taking custody of So Hyun. While visiting her family in Korea, Mrs. Thornton had occasion to see first-hand the hardships suffered by her niece. The Thorntons immediately agreed to bring her to the United States.

In February 2000, So Hyun arrived in Louisiana to live with her aunt and uncle. Mrs. Thornton traveled with So Hyun back to Korea during the summer of 2000 to collect her birth certificate and other important papers. It was during this trip that Mrs. Thornton's sister and her husband agreed to relinquish their parental rights, thus giving full custody to Mr. and Mrs. Thornton. Formal adoption proceedings were begun in August of 2000 and finalized in Louisiana State Court on March 6, 2001.

The Thorntons were careful to work with the Immigration and Naturalization Service (INS) to ensure that So Hyun's move to the United States went smoothly. Mr. Thornton contacted the INS a month prior to So Hyun's arrival to inquire about the procedure for bringing her to the United States. He was told the best method would be to bring her over on a tourist visa and then file the necessary forms to complete the adoption process. During this time, Mr. Thornton was misinformed three times about the correct form to complete. In January of 2001, Mr. Thornton once again called the INS Service Center with a question about the immigration forms, as So Hyun's visa was soon expiring. He was told that there was no need to renew the visa since they were adopting the child. However, upon the adoption's finalization, the INS Adjudication Office informed the Thorntons that So Hyun's visa could not be renewed, nor could she qualify for permanent resident status, as her adoption was not finalized by her sixteenth birthday. She missed that deadline by only seven months. And this comment from the INS was the very first mention of an age requirement.

While the Immigration and Naturalization Service may not extend permanent resident status to Miss Jun, she is eligible for private relief because her adoption was begun before she turned sixteen. Without this relief, Miss Jun risks deportation to Korea where no one is legally bound to care for her. Private relief is needed to help this adopted girl remain in the United States with her new family.

I want to thank Chairmen SENSENBRENNER and GEKAS along with Ranking Members JOHN CONYERS and SHEILA JACKSON-LEE for their assistance in securing passage of H.R. 3758. I hope the Senate will follow the House's lead today by passing this private relief bill before the end of the 107th Congress.

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

The SPEAKER pro tempore. This concludes the call of the Private Calendar.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON S. 1214, MARITIME TRANSPORTATION SECURITY ACT OF 2002

Mr. DREIER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 605 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 605

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (S. 1214) to amend the Merchant Marine Act, 1936, to establish a program to ensure greater security for United States seaports, and for other purposes. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore. The gentleman from California (Mr. DREIER) is recognized for 1 hour.

Mr. DREIER. Mr. Speaker, for the purpose of debate only, I yield the customary 30 minutes to my colleague, the gentleman from Florida (Mr. HASTINGS), pending which I yield myself such time as I may consume.

Mr. Speaker, it was my hope, I had actually assigned this rule for management to my colleague from Florida (Mr. DIAZ-BALART), and I have his prepared statement here, and I will go through his prepared statement, Mr. Speaker. I love Florida, and it is a great spot. My family actually has a home there, but I am a Californian; so I am just offering that as a bit of a warning as I proceed with the statement of the gentleman from Florida's (Mr. DIAZ-BALART).

During the consideration of the resolution, all time yielded will be for the purpose of debate only.

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

Mr. DREIER. Mr. Speaker, House Resolution 605 is a standard rule waiving all points of order against the conference report to accompany the Maritime Transportation Security Act of 2002 and against its consideration.

The underlying legislation is yet another integral part of our coordinated effort to provide the most effective and comprehensive homeland security plan possible. We are working to protect our citizens at home and abroad, we are working to protect our vital infrastructure, both physical and electronic, and we are working to improve our economic security. Today we will vote to protect our Nation's ports.

Our maritime industry, including hundreds of ports nationwide, contributes \$742 billion to the gross domestic product each year. The State of Florida has some of the largest ports in the country, and I should say I represent the Los Angeles area, which has the

Ports of Long Beach and Los Angeles, which are even larger than the ones in Florida I should add. The gentleman from Florida (Mr. DIAZ-BALART) represents the Port of Miami and Port Everglades. Thousands of passenger and container ships pass through these ports every year. Industries from retail sales to the airline industries are effected by the business that is done at these ports in both my State and in the State of Florida and around the country.

We must ensure that these ports are not only safeguarded from being used as a point of entry for dangerous elements, but also to protect them from an attack that could be devastating to our economy. The Port of Miami's impact on Miami-Dade County is estimated at more than \$8 billion and 45,000 jobs. In fiscal year 2001, the volume of cargo moving through the Port of Miami exceeded 8.2 million tons. Port Everglades' volume of business is equally impressive. In 2001, Port Everglades was host to over 3 million cruise passengers.

Our Nation's ports are significant partners in the U.S. economy and we must employ every conceivable option to protect them. This conference report will work to this end by requiring the Coast Guard to conduct vulnerability assessments of our ports, authorizing grants to help with port security upgrades around the country, and by assessing the security systems of certain foreign ports that do business with the United States.

Additionally, this legislation authorizes \$6 billion for the Coast Guard in fiscal year 2003, including \$550 million in additional resources to address longstanding budget shortfalls. The Coast Guard is charged with the tremendous duty of protecting our 95,000 miles of coastline. This legislation very appropriately addresses this reality.

I would like to thank the gentleman from Alaska (Mr. YOUNG) and the ranking minority member, the gentleman from Minnesota (Mr. OBERSTAR), as well as the subcommittee chairman, the gentleman from New Jersey (Mr. LOBIONDO), for their work on this very important issue. This is truly a bipartisan piece of legislation. In fact, every member of the conference committee has signed the report.

The conference report and the fair rule providing for its consideration deserve our support, and I would urge my colleagues to do this.

Mr. Speaker, I yield control of the balance of my time to the gentleman from Miami (Mr. DIAZ-BALART), who has arrived, and I know that he could have commented on Florida in a much better way than I, but I struggled to get through representation of his State if only on a temporary basis.

The SPEAKER pro tempore. Without objection, the gentleman from Florida will control the time.

There was no objection.

Mr. DIAZ-BALART. Mr. Speaker, I reserve the balance of my time.

Mr. HASTINGS of Florida. Mr. Speaker, I yield myself such time as I may consume.

Mr. Speaker, I thank the chairman of the Committee on Rules for yielding me time and I thank my colleague and neighbor from Florida for his comments.

Mr. Speaker, this important legislation helps ensure the security of our Nation's ports by establishing a comprehensive national antiterrorism system to reduce the vulnerability of ports and waterways against a terrorist attack and a transportation security incident. Additionally, the conference report authorizes funding for these new antiterrorism fighting provisions as well as the planning and implementation of security plans and response efforts at all of our Nation's ports.

It authorizes additional funding to the Coast Guard which is much needed, and it establishes a nationwide security ID program for all U.S. ports. Perhaps most importantly, the report outlines the responsibilities of various Federal agencies, local law enforcement, and private companies in the day-to-day security operations of ports in the case of any unforeseen event.

□ 1315

Following September 11, as a member of the Permanent Select Committee on Intelligence and Committee on Rules, I was and remain an outspoken critic of the lack of coordination between Federal agencies in times of crises. I am happy to see that the conference had the foresight and wherewithal to provide guidance to the many agencies affected by increased port security. Perhaps our airports and the Transportation Security Administration could learn a few things from this report.

Mr. Speaker, it is fitting that I find myself managing this rule with the gentleman from Florida (Mr. DIAZ-BALART). I think the gentleman would agree that there is no region in the country that is home to three major international ports in such close proximity as South Florida. And the rest of Florida, if we take into consideration the Tampa Bay area, the Pensacola Bay area, Jacksonville and Port Canaveral, then Florida obviously is critical when it comes to port security.

Further, there are no ports that have done more security improvements in the last 18 months than Port Everglades, the Port of Palm Beach and the Port of Miami, all three of which are located in the counties the gentleman from Florida (Mr. DIAZ-BALART) and I represent.

While the underlying report is good, it would be irresponsible of me to continue without noting two of the major flaws I believe still exist in the legislation.

First, ports who had planned for or implemented new security measures prior to September 11, 2001, that bring the port into compliance with provisions of S. 1214 should be able to be reimbursed for their expenses. The underlying report does not allow for this to occur.

Case in point, Port Everglades. As one of the largest cruise ships and container ports in the Nation, Port Everglades recognized the need to improve its security long before September 11, 2001. Nearly 2 years ago, the port invested millions of dollars into establishing a new security plan. In fact, in June of 1999, the Presidential Commission on Seaport Crime and Security visited Port Everglades and recognized many of the port's "best practices" as examples for ports throughout the country to follow.

Prior to September 11, the Port Everglades security improvement plan was to be implemented over several years. However, in response to September 11, Broward County, Florida, made security at Port Everglades its top priority. The County is committed to spending more than \$25 million for security improvements at the port in fiscal year 2003 alone, and the Ports of Palm Beach and Miami have similar investments in progress.

Under the report, Port Everglades will be able to be reimbursed for the security improvements it has made since September 11, as well as those it will make in the following year. However, I am appalled that Port Everglades, as well as the Ports of Palm Beach and Miami, will not be eligible to be reimbursed for the planning and implementation of various security improvements that they made prior to September 11, 2001. South Florida's three major ports and some others around the Nation were ahead of the game and made security improvements 18 months ago that Congress is just now getting around to requiring today.

Specifically, Port Everglades is an example of the intuitive thinking that ports should have been doing a long time ago, and to penalize it for being ahead of the game is just plain wrong.

Additionally, Mr. Speaker, I have major reservations about the level of funding authorized in the report. Clearly, the amount authorized is not enough to meet the security needs of our Nation's ports. In the next 18 months, South Florida's three international ports will spend more than \$60 million on security improvements. Under the 50/50 or 75/25 cost-sharing agreements laid out in the report, Port Everglades, Port Palm Beach and Port of Miami could easily command nearly half of the total amount authorized in this legislation.

Realistically, the \$75 million authorized in the report just is not enough to fund security improvements for all U.S. ports. I encourage my colleagues on the Committee on Appropriations to consider this reality when appropriating funds over the next 6 years.

In the end, Mr. Speaker, this rule is typical of one for a conference report, and I will be supporting it. Additionally, I will also be supporting the underlying conference report. I urge my colleagues to do the same, but, as I previously mentioned, the report has flaws and Congress must remain intent on

revisiting these issues that are critical to our Nation's security.

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

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

Mr. Speaker, I thank the gentleman from Florida (Mr. HASTINGS) as well as the gentleman from California (Mr. DREIER) for having initiated this discussion today on this very important rule.

I think it is important that we realize that the conference report before us is a very important piece of legislation. I know of few pieces of legislation that have ever been flawless that I have voted on, and so I would simply tell my friend that perhaps this piece of legislation could be improved as well, as any human endeavor, because I have seen some things that are perfectible but very few that are perfect.

Mr. HASTINGS of Florida. Mr. Speaker, will the gentleman yield?

Mr. DIAZ-BALART. I yield to the gentleman from Florida.

Mr. HASTINGS of Florida. Mr. Speaker, would the gentleman from Florida agree that Port Everglades and Port Miami are deserving of consideration?

Mr. DIAZ-BALART. Of course.

Mr. HASTINGS of Florida. And that the funding level, although we have problems in the Nation, may not be enough to cover the ports of the United States?

Mr. DIAZ-BALART. Mr. Speaker, I would agree with the gentleman. In the House bill before it went to conference we had a provision for reimbursement for ports for acts taken for security after September 11, and in the Senate there was no such provision. The inclusion of the House provision is something we should commend. We should keep in mind there are important provisions in this legislation which I think make it not only a conference report that we should support but that we should support with pride and enthusiasm.

I thank the conferees and all of the Members who have worked so hard to bring this important piece of legislation forward, specifically the gentleman from Alaska (Mr. YOUNG) and the gentleman from Minnesota (Mr. OBERSTAR), as well as the subcommittee chairman, the gentleman from New Jersey (Mr. LOBONDO) for their work on this critical issue of port security. This is a fundamental aspect of national security, of homeland security, to improve the protections for our ports that are obviously so important to our economy.

Mr. Speaker, with that of mind, cognizant of the importance of the underlying legislation and the fairness of this rule, I urge my colleagues to support the rule and the underlying legislation.

Mr. DIAZ-BALART. 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.

The motion to reconsider was laid on the table.

#### WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 3210, TERRORISM RISK PROTECTION ACT

Mr. SESSION. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 607 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 607

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 3210) to ensure the continued financial capacity of insurers to provide coverage for risks from terrorism. All points of order against the conference report and against its consideration are waived. The conference report shall be considered as read.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). 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 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 is the standard rule for consideration of conference reports and waives all points of order against consideration of the conference report.

Mr. Speaker, on September 11, 2001, the collective memories of Americans were altered forever. The terrorist attacks resulted in an incalculable loss, both in loss of life and the destruction of buildings and businesses.

While America has begun its recovery and is healing from last September, we must be mindful of the threat that continues to exist. Just yesterday, our intelligence officials indicated that terrorist groups may be planning a new wave of attacks against our homeland. Exposure to terrorism is not only a threat to our national security but is also a threat to the U.S. and the global economy.

There is no doubt that these terrorist attacks have resulted in the most costly, catastrophic loss in the history of property and casualty insurance. However, the ripple effects of the attacks continues to last and will linger on.

The shortage of terrorism insurance has left any number of our hospitals, stadiums, shopping malls, apartments, and office buildings either with astronomical rates for insurance or none at all.

It goes without saying that the attacks have been a real threat not only to our homeland but also to our economic security. The United States Chamber of Commerce estimates that the economy has suffered a loss of

more than \$15 billion and 300,000 jobs in the construction industry alone.

Mr. Speaker, insurance has been described as the glue which holds our economy together. Without reinsurance for the risk of terrorism, some insurance companies have been forced to specifically exclude it from their future policies. Without this terrorism coverage, lenders are unlikely to underwrite loans for major projects. This sequence of events could result in dangerous disruptions to the marketplace and further hurt our economy.

In April of this year, a Washington Post article cited two real-life examples. One, J.W. "Bill" Marriott, chairman and chief executive officer of Marriott International, said that although the hotel company remained insured for terrorism, he was expecting a 300 percent increase in premiums when it had to renew its new policies.

Another example was from Baylor University, which is located in Waco, Texas. According to David Brooks, vice president for finance and administration at Baylor University, the University had to go to 23 insurance companies searching for terrorism coverage.

These snapshots from around the country form a composite picture of a dire situation that requires action from this body, the United States Congress.

Heeding President Bush's call for Congress to act, the House passed H.R. 3210, the Terrorism Risk Protection Act, shortly after the September 11, 2001, attacks. The Terrorism Risk Protection Act provides a Federal backstop for financial losses in the event of future terrorism attacks.

□ 1330

This bill establishes a system of shared public/private compensation for insured losses resulting from acts of terrorism to protect consumers and create a transitional period for the private insurance markets to stabilize.

The Federal backstop is triggered when the Secretary of the Treasury determines that an act of terrorism has occurred with losses in excess of \$5 million. The Federal Government would pay 90 percent of the insured losses that exceeded the insured deductibility, which increases each year of the program, up to \$100 billion each year.

The conference report provides for full payback protection for the American taxpayer by guaranteeing that the first 10- to \$15 billion in losses would be paid by the insurance marketplace. The Secretary would retain the authority to fully recoup any additional costs as necessary.

Mr. Speaker, as my colleagues are fully aware, much of the recent attention has been focused on the tort provisions in this bill. The Joint Economic Committee released a study this May that estimated that lawsuits stemming from the September 11 attacks were already estimated to cost as much as \$20 billion. These lawsuits typically pay 33

to 40 percent of the award to the plaintiff's lawyers.

The 1993 World Trade Center bombing, which killed six people, resulted in 500 lawsuits by 700 individuals, businesses and insurance companies. Mr. Speaker, it has now been 8 years and the cases are only now just getting to the trial stage, where hundreds of plaintiffs have yet to even receive one cent of compensation. Mr. Speaker, this is not a circumstance or a situation that we want to repeat.

Though this bill does not solve the woes of our legal system, it does take the first solid steps towards reform. By providing reasonable reforms, victims of terrorism will more quickly and equitably receive compensation while also reducing the substantial uncertainty facing the insurance industry when pricing terrorism risk.

Mr. Speaker, I would like to take a moment to commend the conferees who have labored to produce this fine work. I would also like to recognize the leadership of the gentleman from Ohio (Mr. OXLEY), who has been so instrumental in the success of this critically important bill. Mr. Speaker, I urge my colleagues to support me in not only supporting this rule but also the underlying legislation.

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

Mr. MCGOVERN. Mr. Speaker, I want to thank my colleague from Texas for yielding me the customary 30 minutes and I yield myself such time as I may consume.

Mr. Speaker, the tragic events of September 11, 2001, will remain fresh in our minds for years to come. The shroud of terrorism continues to surround us and terrorists around the world continue to regroup, plan and carry out attacks on innocent civilians. The economic consequences of another terrorist attack on the United States are real and, without proper preparation, could be economically devastating.

After September 11, there was no question whether the insurance industry needed financial backing in case of another terrorist attack on the United States. We all agreed that another attack could potentially cripple the American economy. In response, the Committee on Financial Services produced a truly bipartisan bill that was approved unanimously by the full committee. It was not perfect, there were real disagreements over specific provisions in the original risk insurance bill, but it was a good start.

Unfortunately, Mr. Speaker, the majority leadership decided it had to meddle in the process and inserted language drastically changing the tort system in this country. The original bill was made worse and in the process bipartisanship was thrown aside.

Mr. Speaker, this conference gets us back to the land of bipartisanship. All the Democratic conferees signed the conference report and, after initially threatening to veto it, the White House

is now indicating that the President will sign the bill into law.

My concern is with the unnecessary delay here. This bill should have been completed last year. Without the tort language in the original House-passed bill, a conference report could have been easily agreed to and, with hard work, this bill might have been signed into law before the first of the year. By making this a political process rather than the truly bipartisan process it should have been and it started out to be, the majority showed us that they will bend over backward for special interests, especially before an election. Thankfully the other body was able to stand up to these special interests and, a year later, the result is a good bipartisan bill.

Mr. Speaker, I support this rule and I support this conference report which, as I said in the beginning, represents a bipartisan compromise. I would urge my colleagues to support the rule and support the conference report.

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

Mr. SESSIONS. Mr. Speaker, I yield such time as he may consume to the gentleman from Ohio (Mr. OXLEY), the chairman of the Committee on Financial Services.

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

Mr. OXLEY. Mr. Speaker, let me begin by thanking the gentleman from Texas for his usual excellent work as a member of the Committee on Rules that handles legislation coming from the Committee on Financial Services. I do rise in support of the rule. The efforts that the committee and the entire Congress made in antiterrorism legislation clearly is one of the most important bills that will pass the Congress this year.

It is no secret that after 9/11, the reinsurance industry, which is mostly offshore, indicated they would no longer write terrorism insurance. Since they are the insurers of the insurers, it meant that the domestic-based insurance companies were unable to spread their risk and as a result we have a crisis in insurance coverage for terrorism. That crisis has evidenced itself in many ways, not the least of which is a recent study that indicated over \$15 billion in valuable projects are on hold, not going forward, because of the lack of terrorism insurance; and because they cannot get terrorism insurance, they cannot get lending for those projects.

We are not just talking, Mr. Speaker, about New York City. I was recently in Chicago. There is a major project going on in Chicago that is simply now just a hole in the ground that will employ several hundred people. The President has indicated that their studies indicate some 300,000 jobs are at stake in the construction industry, the realtors, lenders and the like. So in many, many ways this is an economic issue and a jobs issue. That is why the President

has been so outspoken in virtually every opportunity that he has had asking the Congress for this important legislation. I suspect that the President has mentioned this issue perhaps more than any other issue in my memory and about the only time that he did not make a public statement about terrorism insurance was at the United Nations. But overall this issue, this crisis in insurance coverage, has been a major factor, I suggest, in the slowdown of the economy.

The Secretary of the Treasury was quoted as saying that it could very well knock 1 percent off our gross domestic product. That is a significant amount. We are fortunate today because we stand on the threshold of passing this important legislation that the President will willingly and gladly sign.

Let me just talk about the key elements briefly of this bill. The conference report provides full payback protection for American taxpayers, guaranteeing that the first 10- to \$15 billion in losses will be paid by the insurance marketplace with the Secretary fully able to recoup any additional amounts necessary. This was a critical component in the House bill that Chairman BAKER and I and others insisted upon, that if the taxpayers were going to be involved in this backup, it is important that those tax dollars be repaid. Even though it was not in the Senate version, we prevailed in the conference. It is important to point that out to my colleagues in the House.

Secondly, we have incorporated a transition period that provides immediate full commercial terrorism coverage for all American business consumers while long-term contracts under the bill are being negotiated; in other words, an immediate start at getting these projects up and running and 300,000 people back to work.

Three, the Federal backstop has been simplified and requires that insurers have to pay a sizable deductible before they are eligible for the Federal backstop. This deductible is increased from 7 to 15 percent of their premiums over the program to phase out the taxpayer exposure and foster the reemergence of a private insurance market for terrorism. It insures that only truly catastrophic events trigger any Federal involvement while continuing to provide equal protection for small and rural insurers.

Fourth, we have provided more disclosures and information to consumers, with more options to insure that terrorism coverage is available in all commercial policies.

In addition, we continue to provide strong penalties to punish insurers who defraud the government. State insurance and reinsurance programs can be fully covered by the Treasury Secretary to provide equivalent protections for Americans who are unable to obtain insurance in the private markets. And we continue to give victims

of terrorist attacks the ability to enforce court judgments against terrorists' assets.

Finally, while I would note that the legal protections may not be as strong as I or others would desire, they are all improvements over existing law and are very similar to those strongly approved in the Committee on Financial Services over 1 year ago.

Mr. Speaker, this conference report is timely and critical for America. We need it to protect jobs, protect our economy and protect the American people against future terrorist attacks. I urge all of our colleagues and friends to support the rule.

Mr. SESSIONS. Mr. Speaker, I yield 7 minutes to the gentleman from Alabama (Mr. BACHUS), the chairman of the Subcommittee on Financial Institutions and Consumer Credit.

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

Mr. BACHUS. Mr. Speaker, what we are doing today is simply a part of both responding to the terrorist attacks of September 11 and defending our country from continuing damage from those terrorist attacks. It is a very prudent thing that we do today. It is a part of the defense of our homeland and of our economy, for if our economy continues to be weakened by the terrorist attack, then the terrorists win. The President has called on us repeatedly to respond with legislation.

I commend this House. This House has passed, and passed last November, good legislation to address the problem. And what is the problem? Mr. Speaker, before the terrorist attack, normally, as a matter of course, protection against terrorist attacks was included in commercial property and casualty insurance policies. After the losses on September 11, which amounted to 40- or \$50 billion, it was impossible for insurance companies to predict when and if and the extent of these terrorist attacks in the future. It is impossible for us as a government to predict when and where and to what extent these attacks will occur. So there is no way for the insurance companies to assess that damage and to make reserves and charge premiums in an adequate amount.

So what have the insurance companies done? They have done two things. They have either in most cases not extended coverage or, two, they have simply picked a very high number for a premium and extended coverage at a very substantial amount for what, in all probability, will not occur at a specific location because of the actions that this government and this administration has taken since September 11. However, because terrorist insurance coverage has not been extended, billions of dollars of projects have been put on hold or canceled. In fact, a recent, and this is very recent, real estate group estimated that the lack of affordable terrorist insurance has resulted in the delaying or the cancella-

tion of more than \$15.5 billion worth of new commercial building projects just in the past few months. The Federal Reserve, in fact, Chairman Greenspan recently said that as a result of terrorist insurance coverage not being provided, not being available, it is producing as much as a 1 percent drag on our gross domestic product.

□ 1345

We talk about percentages of 1 percent. We talk about figures of \$20 or \$15 billion. What we are really talking about here is layoffs. We are talking about construction workers not working. We are talking about buildings not being built. We are talking about employees who work for companies that supply the office furniture for those buildings, who supply the goods that were to be sold in those buildings, the equipment in those buildings not being sold. As the President said, we have to respond comprehensively to what happened September 11. Thus, this bill.

Let us talk about the liability provisions of this bill, because there was in fact an unwillingness on the part of some to endorse this legislation simply because of what was proposed.

What is proposed here today is that, in the event of a large-scale terrorist attack upon this country in any location, one Federal court, one jurisdiction will take control and be charged with the administration of handling all the claims as a result of that attack, instead of having State and Federal courts all over the United States handling thousands of claims. Instead of that situation, which I think we all agree would be unmanageable, one Federal court picked for the convenience of those who had been hurt by this terrorist attack and picked for the efficient handling of the claims would be picked within 90 days of the terrorist attack, a Federal cause of action.

The lawsuits under this legislation would be tried in Federal court, Federal rules of procedure. However, the substantive law of the State or where the attack occurred would be the applicable law.

Finally, there has been a lot said about punitive damages. I for one have contended, and this bill makes it very clear, that punitive damages are not insured losses. Let me repeat that. Punitive damages are not insured losses. The taxpayers will not have to pay punitive damages under this legislation, and that is very important because the people that will be responsible for these attacks that ought to be punished will be the terrorists, not the American people.

All the legal reforms, as the gentleman from Ohio (Mr. OXLEY) said, are an improvement over the current law. The Federal Government of the American taxpayers will not be forced to re-insure any punitive damage claims. Private rights of action for punitive damages are unchanged.

In conclusion, let me simply commend the gentleman from Ohio (Mr.

OXLEY), chairman, and the gentleman from Louisiana (Mr. BAKER), chairman of the subcommittee, who have worked long and hard on this. I urge all Members of this conference, let us get on with strengthening our country, recovering from the attack of September 11 and doing everything we can do to prepare for other attacks, hoping they will not occur, but we have to act in self-defense.

Mr. SESSIONS. Mr. Speaker, I inquire about the time remaining.

The SPEAKER pro tempore (Mr. DAN MILLER of Florida). The gentleman from Texas (Mr. SESSIONS) has 10½ minutes remaining. The gentleman from Massachusetts (Mr. MCGOVERN) has 27½ minutes.

Mr. SESSIONS. Mr. Speaker, I yield such time as he may consume to my friend, the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of Committee on the Judiciary.

Mr. SENSENBRENNER. Mr. Speaker, I rise in support of this rule, it is the standard rule for conference reports, but also in opposition to the conference report itself because it fails to include critical liability protections for victims of terrorism, which are particularly important because the conference report creates a Federal indemnification program that puts the American taxpayer on the hook for damages caused by terrorists.

It is important to note what the trial lawyers did first to mark the first anniversary of the terrorist attacks on September 11. They are suing American companies that were victims of terrorist attacks themselves. According to the Washington Post: "Things really are returning to normal a year after the terrorist attacks. Trial lawyers—surprise!—are headed back to the courthouse, [and] there is a rush by lawyers to sue airport operators, airlines, security companies, the builders of the World Trade Center and others."

Let us face the facts. Terrorist-inspired litigation is not a garden variety tort case. A banana peel is an accident waiting to happen, but a terrorist is a suicidal fanatic bent upon killing individuals, innocent people, and causing mass destruction of property. Even the most diligent property owners cannot always guard against such attacks.

To protect innocent Americans, the provisions in the terrorism insurance legislation the House passed a year ago provided that, in a lawsuit for damages arising out of a terrorist attack, no punitive damages would be allowed against victims of terrorism. The bill before us today fails to include that basic protection; and, in doing so, it fails to ensure that Americans do not become the victims of terrorists twice: first during the initial wave of death and destruction caused by the terrorists and second by the legal aftershocks caused by the unquantifiable and unpredictable damage claims brought by the plaintiffs' bar.

While the bill before us today excludes punitive damages awarded in

court from insured losses paid by the United States taxpayer, the mere allegation of punitive damages always boosts the settlement value of the cases, and this bill leaves U.S. taxpayers paying the inflated costs of those cases settled out of court. So what the gentleman from Alabama (Mr. BACHUS), my friend, said, he is right, we taxpayers do not pay punitive damages, but knowing that there is a punitive damage award hovering over there means that the settlement value which is paid by the taxpayers ends up costing the taxpayers' money. So it requires the American taxpayers to engage in an egregious form of national self-flagellation. American taxpayers are punished for the evil acts of foreign enemies.

Even the Washington Post's editorial page has stated: "On insurance, the Democrats are objecting to Republican proposals to ban punitive damages in the event of terrorist attacks, which seems a reasonable proposal. The Democratic position on terrorism insurance smacks of the trial bar, which never saw a disaster that didn't justify a lawsuit."

And just a few weeks ago, the Washington Post stated that "the Democrats should indeed be embarrassed" by their efforts to defend lawyers at the expense of the American economy.

It is no surprise to me that all Democratic conferees signed this conference report.

The terrorism insurance bill the House passed last year also provided the defendants could only be liable for the amount of damages for pain and suffering in direct proportion to the defendant's percentage of responsibility for harm. That provision allows Americans who are victims of terrorists to rely, at the very least, on their own innocence to protect them from liability. My colleagues may remember that in the No Child Left Behind Act, which overwhelmingly passed both the House and the Senate, the very same rule was applied to protect teachers. If that provision is good enough for teachers, it should be good enough for victims of terrorism.

The bill that the House passed last year also provided that fees for attorneys suing victims of terrorism could not be greater than 20 percent of the damages awarded or any amount of the settlement received. That provision is simply a continuation of the long-standing Federal policy behind the Federal Tort Claims Act, namely that lawyers should not profit excessively when they are paid from the United States Treasury.

Especially today, in a time of war, excessive lawyer fees drawn from the U.S. Treasury should not be allowed to result in egregious war profiteering at the expense of victims, jobs, and businesses; and this bill, unfortunately, will allow this one segment of our society to legally, with the blessing of the United States Congress, engage in war profiteering.

This conference report does not include these protections for the victims of terrorism that were in the bill the House passed a year ago. It gives the plaintiffs' bar the keys to the United States Treasury, and it gives lawyers a license to further prey on the victims of terrorism.

We passed a compensation program the week after 9/11 for the survivors of the victims of those attacks, and some of the proceedings that have gone on under that law have resulted in embarrassment to the public and to the authors of that act and grist for investigative reporters. Should, God forbid, there be another terrorist attack and the provisions of this bill come into play, that same embarrassment will apply. There is an old adage "Fool me once, shame on you; fool me twice, shame on me." Let us not shame us by passing this bill. It should be voted down.

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

I want to take this opportunity to commend the gentleman from Ohio (Mr. OXLEY), the chairman; and the gentleman from New York (Mr. LAFALCE), ranking member; and all the members of the Committee on Financial Services for all of their work on this issue. As I said in my opening remarks, they initially came up with an okay bill that, unfortunately, as a result of some meddling from the majority leadership, turned into a very bad bill in my opinion.

What we have before us today in this conference report is a bill that represents bipartisan concerns and deserves bipartisan support, and I would urge my colleagues to support this rule, and I would urge my colleagues to support final passage of the conference report.

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

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

I urge my colleagues to join with me in supporting this rule and of course the underlying legislation which is so critically important not only to this country but to the economy of this country for consumers and for men and women who own businesses and have money invested in this country.

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.

#### RECESS

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

Accordingly (at 1 o'clock and 58 minutes p.m.), the House stood in recess subject to the call of the Chair.

□ 1515

AFTER RECESS

The recess having expired, the House was called to order by the Speaker pro tempore (Mr. HANSEN) at 3 o'clock and 15 minutes p.m.

WAIVING POINTS OF ORDER AGAINST CONFERENCE REPORT ON H.R. 333, BANKRUPTCY ABUSE PREVENTION AND CONSUMER PROTECTION ACT OF 2002

Mr. SESSIONS. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 606 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

H. RES. 606

*Resolved*, That upon adoption of this resolution it shall be in order to consider the conference report to accompany the bill (H.R. 333) to amend title 11, United States Code, and for other purposes. All points of order against the conference report and against its consideration are waived.

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 from Texas (Mr. FROST), 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 provides the standard rule under which we consider conference reports and waives all points of order against the conference report and its consideration.

Mr. Speaker, I am exceedingly pleased that today we will finally consider the conference report for much-needed bankruptcy reform legislation. I am proud of the tireless efforts of many of the staff members and the Members who have put countless hours towards the passage of this important legislation. Their efforts allow each of us to ensure that our bankruptcy laws operate fairly, efficiently, and free of abuse. We must end the days when debtors who are able to repay some portion of their debts are allowed to game the system. This bill is crafted to ensure the debtor's rights to a fresh start while protecting the system from flagrant abuses by those who are able to pay their bills. The result is a carefully crafted package that balances and protects Americans from all walks of life and provides access to bankruptcy for all Americans who have a legitimate need.

I urge my colleagues to support this rule and the underlying legislation.

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

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

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

Mr. FROST. Mr. Speaker, I rise in support of this conference report and

urge my colleagues to support this rule so that the House may proceed to the consideration of the conference agreement. The House has, in the past two Congresses, consistently supported bankruptcy reform. In the 107th Congress, the House passed its version of the bill by a vote of 306 to 108. This agreement, which is the product of months of negotiations, makes sensible changes in the law that will save American consumers millions of dollars a year. This conference agreement adheres to the principle that if an individual has the capacity to repay a substantial portion of their debt, then that debtor should have an obligation to repay. This conference agreement will rein in abuse of the system and ensure that those debtors who cannot pay are given the fresh start they need.

Mr. Speaker, I commend the conferees for their hard work on this issue and for bringing the House a conference report that is worthy of support.

I would point out, Mr. Speaker, that there are Members on our side of the aisle who strongly object to this conference report, and we will be hearing from them in the course of this debate.

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

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from New Jersey (Mr. SMITH), the chairman of the Committee on Veterans' Affairs.

Mr. SMITH of New Jersey. I thank my friend for yielding me this time.

Mr. Speaker, I rise in strong opposition to this rule. Some of my colleagues were not here back in 1993 and 1994 when we debated the Freedom of Access to Clinic Entrances Act, which penalized pro-lifers in a way that was totally unfair and discriminatory, mandating ruinous lawsuits, criminal penalties and the like, for doing the same thing that some other nonviolent civil disobedient person might do. If you stood in front of an abortion clinic, you could have the book literally thrown at you, and do the same thing in front of NIH or somewhere else and have a whole different set of penalties. Today we are dealing with the same thing but an extension of that very, very wrongheaded and misguided piece of legislation.

In 1994, Chairman Sensenbrenner said this about the same language we are debating today:

"Political protest has been at the forefront of social change. From the Boston Tea Party to the abolitionist movement, from the antiwar protests to the activism of the civil rights movement, civil disobedience has been an intimate part of our history. This is perhaps the first time in our Nation's history"—this is the second, today—"that those in the power have so openly sought to use the authority of government to broadly suppress the legitimate actions of a movement with which they do not agree. The legislation, FACE," which this makes it worse, you cannot discharge a civil

complaint that has been brought against you, the penalty, "sweeps with broad and heavy hand to target peaceful, nonviolent, constitutionally protected activities on the same terms as violent or forceful acts."

Chairman Sensenbrenner had it right then. He went on to say that this was McCarthyism. What we are dealing with today, with all due respect, is McCarthyism. Much has been made about the Starr memo. Let me say this: The difference is if you are from PETA or some other organization where sit-ins and civil, nonviolent disobedience, where you get arrested, is part of the intent of what you want to do to bring a focus, and Martin Luther King certainly had intent when he protested and got arrested more than a dozen times or so. The fundamental issue here is that pro-lifers are treated differently. Under the FACE bill, ruinous lawsuits, extreme penalties are levied against nonviolent protestors.

I urge a no on the rule.

Mr. FROST. Mr. Speaker, I yield 4 minutes to the gentleman from Virginia (Mr. BOUCHER).

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

Mr. BOUCHER. Mr. Speaker, I thank the gentleman from Texas for yielding me this time. I am pleased to rise in support of the rule for consideration in the House of the conference report to accompany the bankruptcy reform legislation. I urge approval both of the rule and of the conference report.

The reform of the Nation's bankruptcy laws, which our actions today will accomplish, is well justified. This reform is strongly in the interest of consumers. It will significantly reduce the annual hidden tax of approximately \$400 that the typical consumer pays because others are misusing the bankruptcy laws. That amount represents the increased cost of credit and the increased price of consumer goods and services occasioned by bankruptcy law misuse. This reform will lower that hidden tax.

The reform also helps consumers by requiring clearer disclosures of the cost of credit on credit card statements. And the reform will be a major benefit to single parents who receive alimony or child support. That person today is fifth in priority for the receipt of payment under the bankruptcy laws. The reform before us today elevates the spouse-support recipient to number one in priority.

This reform proceeds from a basic premise that people who can afford to repay a substantial part of the debt that they owe should do so. The bill requires that repayment while allowing the discharge in bankruptcy of the debts that cannot be repaid and in so doing responds to the broad misuse of chapter 7's complete liquidation provisions that we have observed in recent years.

The reform measure sets a threshold for the use of chapter 7. Debtors who

can make little or no repayment can use its provisions without limitation and can discharge all of their debts. Debtors whose annual income is below the national mean of about \$50,000 per year are also untouched by the provisions of this reform. They can make full use of chapter 7 and discharge all of their debts even if they could afford to make a substantial debt repayment.

And so, Mr. Speaker, the financially unfortunate and middle-income consumers are not affected at all by this reform. They can continue to use the bankruptcy laws as they can under current law. But upper-income consumers who can make substantial repayments will be expected to enter into court-supervised repayment plans under chapter 13. This modest requirement of personal financial responsibility is appropriate, and I am pleased today to urge approval of this well-justified reform which is contained within the conference agreement.

Mr. Speaker, I am pleased today to urge approval of the rule that brings that conference agreement to the floor as well as the conference agreement itself.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. PITTS).

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

Mr. PITTS. Mr. Speaker, I want to rise in opposition to this rule and make it clear that I support bankruptcy reform laws very much. But not this version, not with these words that have been inserted by the conference. They did take the reference to the FACE Act, standing for Free Access to Clinic Entrances, meaning an abortion clinic, that was passed in 1994; and we have the FACE language here in white and the identical words are in the bankruptcy reform bill. They did change "reproductive health services" to "lawful goods or services." That is the one change. The key words are "interferes with" or "physical obstruction." Under FACE, peaceful pro-life protesters are being arrested and sentenced to jail for just praying on a sidewalk outside an abortion clinic, or handing a leaflet to a woman as an alternative. One man was even successfully sued for leaving his business card on the clinic's door.

Mr. Speaker, under FACE, people are being fined hundreds of thousands of dollars. What we are doing in this bill is taking the identical language and putting it in the bankruptcy bill so now they cannot even file for bankruptcy, unfair bankruptcy. So we are condemning peaceful, innocent people who have a conscience to protest just to try to save the life of an unborn to a life of financial ruin.

I have a couple of letters, one from Harvard law professor Mary Ann Glendon, a good analysis of the bill, but let me just read the last paragraph:

"A large and nondischargeable debt, beyond one's capacity to pay, espe-

cially in the hands of a hostile and motivated creditor, is a financial death sentence. That is what even peaceful pro-life protesters have to fear if the proposed language is added to the existing aggressive judicial interpretation of FACE and similar laws."

Mr. Speaker, I will submit the other letter from the Catholic Bishops for the RECORD.

#### BANKRUPTCY CONFERENCE REPORT H.R. 333:

SEC. 330. Nondischargibility of debts incurred through violations of law relating to the provision of lawful goods and services

(a) Debts incurred through violations of law relating to the provision of lawful goods and services.—Section 523(a) of title 11, United States Code, as amended by section 224, is amended—

(1) in paragraph (18) by striking "or" at the end;

(2) in paragraph (19) by striking the period at the end and inserting "; or"; and

(3) by adding at the end the following:

"(20) that results from any judgment, order, consent order, or decree entered in any Federal or State court, or contained in any settlement agreement entered into by the debtor (including any court-ordered damages, fine, penalty, or attorney fee or cost owned by the debtor), that arises from—

"(A) the violation by the debtor of any Federal or State statutory law, including but not limited to violations of title 18, that results from intentional actions of the debtor that—

"(i) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing lawful goods or services;

"(ii) by force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with or attempt to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

"(iii) intentionally damage or destroy the property of a facility, or attempt to do so, because such facility provides lawful goods or services, or intentionally damage or destroy the property of a place of religious worship; or

"(B) a violation of a court order or injunction that protects access to a facility that or a person who provides lawful goods or services or the provision of lawful goods or services if—

"(i) such violation is intentional or knowing; or

"(ii) such violation occurs after a court has found that the debtor previously violated—

"(I) such court order or such injunction; or

"(II) any other court order or injunction that protects access to the same facility or the same person; except that nothing in this paragraph shall be construed to affect any expressive conduct (including peaceful picketing, peaceful prayer, or other peaceful demonstration) protected from legal prohibition by the first amendment to the Constitution of the United States."

(b) RESTITUTION.—Section 523(a)(13) of title 11, United States Code, is amended by inserting "or under the criminal law of a State" after "title 18".

#### FACE

(Freedom of access to [abortion] clinic entrances)

Signed by President Clinton in 1994—Introduced in the House by Rep. Chuck Schumer (D-NY)

Roll Call: <http://clerkweb.house.gov/cgi-bin/vote.exe?year=1994&rollnumber=70>

18 USC Sec. 248

#### Sec. 248. Freedom of access to clinic entrances.

(a) PROHIBITED ACTIVITIES.—Whoever—

(1) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person because that person is or has been, or in order to intimidate such person or any other person or any class of persons from, obtaining or providing reproductive health services;

(2) by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with or attempts to injure, intimidate or interfere with any person lawfully exercising or seeking to exercise the First Amendment right of religious freedom at a place of religious worship; or

(3) intentionally damages or destroys the property of a facility, or attempts to do so, because such facility provides reproductive health services, or intentionally damages or destroys the property of a place of religious worship.

(d) Nothing in this section shall be construed—(1) to prohibit any expressive conduct (including peaceful picketing or other peaceful demonstration) protected from legal prohibition by the First Amendment to the Constitution;

HARVARD LAW SCHOOL,

Cambridge, MA, November 12, 2002.

Hon. CHRISTOPHER SMITH,

House of Representatives,

Washington, DC.

DEAR CONGRESSMAN SMITH: I am taking the liberty of writing to you today because I am deeply concerned about the application of H.R. 333 to peaceful pro-life protesters. I hope the following opinion letter will be helpful to you.

The proposed legislation would create a new 11 U.S.C. § 523(a)(20), denying discharge for and judgments under the Freedom of Access to Clinic Entrances Act, 18 U.S.C. § 248 (2000), or under similar state laws, or under injunctions restricting protest at abortion clinics.

The impact of the provision on peaceful pro-life protesters would be grave. Existing law substantially restricts protest at abortion clinics, and in their zeal to eliminate violent protests and obstruction protests, courts and legislators have forbidden much protest that is peaceful and nonobstructive. Proposed § 523(a)(20) would add an additional sanction to all this existing law: money judgments for abortions protest would follow protestors to the ends of their lives. No matter their financial circumstances, no matter the size of the judgment or the nature of the protest, these judgments could never be discharged in bankruptcy.

#### 1. THE FREEDOM OF ACCESS TO CLINIC ENTRANCES ACT (FACE)

Proposed § 523(a)(20)(A) precisely tracks the key substantive language of FACE. FACE prohibits conduct that: "by force or threat of force or by physical obstruction, intentionally injures, intimidates or interferes with" access to "reproductive health services," or attempts to do so. 18 U.S.C. § 248(a)(1) (2000).

Proposed § 523(a)(20) denies discharge for any judgment arising from actions of the debtor that: "by force or threat of force or

by physical obstruction, intentionally injure, intimidate, or interfere with" access to lawful goods or services. The key language in the two block quotes is obviously identical save for the difference between singular and plural verbs ("whoever" is the subject in FACE; the debtor's "actions" is the subject in proposed §523(a)(2)).

Because the proposed language is substantively identical to FACE, it will be read in light of existing decisions under FACE. Existing interpretations of FACE will almost certainly be read into §523(a)(20). Worse, abortion clinics and their supporters will likely argue that by re-enacting the same statutory language, Congress has approved existing decisions and thus confirmed their status as valid and appropriate interpretations of FACE itself. This is a critical point, because existing interpretations of FACE in the lower courts, extraordinarily favorable to the abortion clinics and their supporters, have not yet been accepted or rejected by the Supreme Court of the United States. Congressional passage of proposed §523(a)(20) could figure prominently in eventual Supreme Court arguments on the interpretation of FACE, lending plausible support to the worst interpretations of the statute.

I will not consider in this opinion letter the interpretations of "force or threat of force," "intentionally injure," or "intimidate." Some interpretations of those provisions have been surprisingly expansive, but those forms of protest are not the issue for most protestors. The real work of FACE, and of proposed §523(a)(20), is in the provisions that target anyone who "by physical obstruction \* \* \* interferes with \* \* \* or attempt to \* \* \* interfere with" access to a clinic. Each of these terms has been construed or defined to mean more than first appears. No actual interference, and no actual physical obstruction is required for a violation. Courts have found violations in peaceful protest that did not actually prevent access to clinics.

"Physical obstruction" is defined in 18 U.S.C. §248(e)(4) to mean making ingress or egress "impassable \* \* \* or unreasonably difficult or hazardous." What is "unreasonably difficult" has, in the lower federal courts, sometimes turned out to be remote from physical obstruction.

Thus in, *United States v. Mahoney*, 247 F.3d 270 (D.C. Cir. 2001), the court found physical obstruction and interference with access from a single protestor kneeling in prayer outside a locked door to an abortion clinic. *Id.* at 283-84. The door was a "rarely used" emergency exit. The court said that someone might have used the door, and that the law does not distinguish frequently and infrequently used doors. More remarkable still, the court held that a single person kneeling in prayer rendered use of that door "unreasonably difficult" and forced patients to use a difference entrance. *Id.* at 284.

*Mahoney* also held that six other defendants physically obstructed and interfered with access to another door. The court of appeals' entire discussion of this holding is that five protestors "knelt or sat within five feet of the front door," that the sixth defendant "was pacing just behind them," and that they "offered passive resistance and had to be carried away." *Id.* at 283. The court does not even say whether they were arrayed across the sidewalk or along the sidewalk, whether they left a passage open, or any other fact that might go to a plain meaning understanding of "physical obstruction" or to preserving a reasonable right to protest. It was enough for a violation that they were near the door.

Both FACE and proposed §523(a)(20) are limited to "intentional" violations, but *mahoney* shows that protection to be illu-

sory. The court found specific intent to interfere with access to the clinic, even in the case of the lone protestor praying before the locked door. It relied on the fact that the protestor prayed that women approaching the clinic would change their minds about getting an abortion; the court quoted his prayer as evidence of criminal intent. 247 F.3d at 283-84. To similar effect is *United States v. Gregg*, 32 F. Supp. 2d 151, 157 (D.N.J. 1998), *aff'd* 226 F.3d 253 (3d Cir. 2000), cert. denied, 523 U.S. 971 (2001). Gregg had much more evidence of actual obstruction than *Mahoney*. Even so, the Gregg court relied on defendants' "anti-abortion statements, including imploring women not to go into the clinic or not to kill their babies," and on the fact that defendants "carried anti-abortion signs," as evidence of forbidden intent. The government in these cases has offered evidence of opposition to abortion as evidence of specific intent to obstruct access, and the courts have relied on this evidence for that purpose. Clinics and their supporters would of course argue that Congress has codified these holdings if it enacts proposed §523(a)(20).

Courts have emphasized that FACE plaintiffs need not prove actual obstruction. "It is not necessary to show that a clinic was shut down, that people could not get into a clinic at all for a period of time, or that anyone was actually denied medical services." *People v. Kraeger*, 160 F.Supp. 2d 360, 373 (N.D.N.Y. 2001). Plaintiffs need not "show that any particular person was interfered with by the defendants' obstruction." *United States v. Wilson*, 2 F. Supp. 2d 1170, 1171 n.1 (E.D. Wis.), *aff'd as United States v. Balint*, 201 F.3d 928 (7th Cir. 2000).

To sum up, proposed §523(a)(20) would re-enact statutory language that has been interpreted not to require actual obstruction, has been interpreted to prohibit a single protestor kneeling in prayer near an unused exit, and has been interpreted to treat anti-abortion statements as evidence of criminal intent. These interpretations would almost certainly be read into §523(a)(20), and there would be a serious argument that Congress had confirmed these interpretations in FACE itself.

## 2. INJUNCTIONS

Proposed §523(a)(20)(B) makes nondischargeable any debt arising from violation of an "injunction that protects access to" a facility that provides lawful goods or services. Nothing in proposed §523(a)(20)(B) even purports to confine this subsection to violent or obstructive protest.

Under FACE and under other sources of law, courts have issued injunctions establishing buffer zones and bubble zones, forbidding protestors from coming within stated distances of the property line of abortion clinics or within stated distances of persons approaching abortion clinics. In *Madsen v. Women's Health Center, Inc.*, 512 U.S. 753 (1994), the Supreme Court upheld the constitutionality of an injunction forbidding protestors to step onto clinic property, or onto public property within 36 feet of the clinic's property line. The effect was to confine protestors to the other side of the street. The Court also affirmed an injunction against making any noise audible within the clinic. In *Schenck v. Pro-Choice Network*, 519 U.S. 357 (1997), the Court upheld an injunction against any defendant "demonstrating within fifteen feet" of any doorway or driveway at any abortion clinic in the Western District of New York. The injunction in that case also prohibited any defendant from "trespassing" on any clinic's parking lot. (The injunction is set out *id.* at 366 n.2.)

Since *Madsen*, the lower courts have become more aggressive about issuing buffer

zone injunctions without first attempting to control alleged obstruction with less intrusive means. Examples include the buffer zone injunction issued on remand after the limited violations in *United States v. Mahoney*, under the case name *United States v. Alaw*, 180 F. Supp. 2d 197 (D.D.C. 2002), and the preliminary injunction confining a single protestor to the other side of the street in *United States v. McMillan*, 946 F. Supp. 1254 (S.D. Miss. 1995).

Many forms of protest inside such buffer zones would not obstruct or interfere with anything. A single picketer with a pro-life sign, held in contempt of court for standing quietly inside a buffer zone, would be covered by proposed §523(a)(20)(B), and any fines, compensation, or attorneys' fees awarded would be nondischargeable. The protection for peaceful protest in proposed §523(a)(20)(B) is supposed to come from the clause excluding protest protected by the First Amendment. But given *Madsen* and *Schenck*, this protection means little; much protest that is peaceful and nonobstructive is not protected by current interpretations of the First Amendment.

## 3. STATE LAWS

Proposed §523(a)(20)(A) also denies discharge for judgments arising from violation of state laws protecting access to clinics if the violation includes actions that by "force or threat of force or by physical obstruction, intentionally injure, intimidate, or interfere with" clinic access, or attempt to do so. Certainly this includes statutes like the New York Clinic Access and Anti-Stalking Act, which substantially tracks FACE. (This law is codified as N.Y. Penal Law §§240.70 and 240.71 (McKinney Supp. 2002), and N.Y. Civil Rights Law §79-m (McKinney Supp. 2002)).

It will be a matter of interpretation and litigation whether §523(a)(20)(A) denies discharge for other state laws imposing more expansive restrictions on pro-life protest. For example, in *Hill v. Colorado*, 530 U.S. 703 (2000), the Supreme Court upheld Colo. Rev. Stat. §18-9-122(3) (West 1999), which makes it illegal to approach within eight feet of another person without that person's consent, for any form of "protest, education, or counseling" within one hundred feet of the entrance to a health care facility. The Court relied in part on the state's interest in "unimpeded access to health care facilities." 530 U.S. at 715.

Now consider a pro-life protestor who approaches a person outside an abortion clinic and offers a leaflet. Plainly this protestor would be violating the statutory eight-foot bubble zone. The statute currently authorizes compensatory damages for this violation, Colo. Rev. Stat. §18-9-122(6) (West 1999) and Colo. Rev. Stat. §13-21-106.7 (West 1997), and it could easily be amended to add liquidated damages or civil penalties on the model of FACE. In discharge litigation under proposed §523(a)(20), abortion clinics and their supporters would argue that the statute was a reasonable prophylactic means to prevent physical obstruction that interferes with clinic access, and that any violation of the statute amounts to such physical obstruction and interference. Prospective patients would prefer to enter the clinic without being offered a leaflet, and they may think the proffer of the leaflet made their entrance unreasonably difficult. If any of these arguments were accepted, judgments for violating state bubble-zone statutes would be nondischargeable under proposed §523(a)(20).

I do not think that would be a correct interpretation of proposed §523(a)(20). But after examining judicial interpretations of FACE, I think there is a substantial risk that some courts would reach this interpretation. If

judgments for violating buffer-zone and bubble-zone injunctions are nondischargeable, it would likely seem a small step to hold that judgments for violating bubble-zone statutes are also nondischargeable.

#### 4. THE MAGNITUDE AND NATURE OF THE JUDGMENTS AT ISSUE

Proposed § 523(a)(20) is not confined to compensatory damages. The statutes at issue authorize punitive damages, liquidated statutory damages, civil penalties, attorneys' fees, expert witness fees, and criminal fines. Their purpose is to deter and punish, not just—or even principally—to compensate for any harm done. In fact, awards of actual compensatory damages are quite rare. The plaintiffs' preference for liquidated damages and penalties is most important in those cases in which there is no obstruction in the ordinary meaning of the word, or only brief and marginal obstruction. In such cases, there is little or no actual damage, but there still can be substantial monetary judgments.

FACE authorizes \$5,000 per violation in statutory damages, at the election of plaintiffs, either private or governmental. 18 U.S.C. § 248(c)(1)(B) (2000). In actions by the United States or by any State, it authorizes a civil penalty of \$10,000 per protestor for the first non-violent physical obstruction, and \$15,000 per protestor for each subsequent non-violent physical obstruction. 18 U.S.C. §§ 248(c)(2)(B) and 248(c)(3)(B) (2000).

The lower federal courts have held that the statutory damages are per violation, not per protestor. So if ten people combine to block a clinic entrance, a single judgment of \$5,000 in statutory damages (plus costs and attorneys' fees) may be entered jointly and severally against them. *United State v. Gregg*, 226 F.3d 253, 257–60 (3d Cir. 2000), cert. denied, 523 U.S. 971 (2001).

But this "per violation" protection does not prevent multiple awards for multiple violations, and each alleged act of interference may be parsed as a separate violation. Moreover, civil penalties may be awarded against each protestor, and civil penalties and statutory damages may be awarded in the same case for the same violation. Thus a federal court has entered \$80,200 in judgments against four members of a single family, for ten separate violations, none of them violent and none of them creating anything like an effective "blockade" of the clinic. *People v. Kraeger*, 160 F. Supp. 2d 360, 377–80 (N.D.N.Y. 2001). And of course there is no federal limit on the damage and penalty provisions that states might enact for judgments that would be nondischargeable under § 523(a)(20).

#### 5. THE EFFECT OF WITHHOLDING DISCHARGE

I am not an expert on bankruptcy law or debtor-creditor law, and I have not done extensive research on the options available to the protestor with a nondischargeable judgment beyond his capacity to pay. But the basics are clear enough to anyone with credit cards and a mortgage. If you are unable to pay, the creditors first threatens your credit rating, then your possessions; eventually, if there is enough at stake, the creditor sends the sheriff to seize your possessions. If you are unable to pay and unable to discharge the debt in bankruptcy, the threats and seizures would never end.

For the rest of his life, the protestor subject to a nondischargeable judgment would find it difficult or impossible to get credit. He could not get a mortgage; he could not get a loan for a new car. The creditor might be an abortion clinic motivated to make examples of pro-life protestors; such a creditor could make vigorous and continuing efforts to collect for as long as the protestor lived. In most states, the protestor's home could be seized, his wages could be garnished, his fi-

ancial accounts could be emptied. In some states, even his furniture could be seized. All or part of everything the protestor ever earned or acquired for the rest of his life could be seized by the abortion clinic creditor, until and unless the judgment was paid in full, with interest.

A large and nondischargeable debt, beyond one's capacity to pay, especially in the hands of a hostile and motivated creditor, is a financial death sentence. That is what even peaceful pro-life protestors have to fear if proposed § 523(a)(20) is added to the existing aggressive judicial interpretation of FACE and similar laws. I believe that any more optimistic interpretation of the bill is wishful thinking.

Very truly yours,

MARY ANN GLENDON,  
*Harvard Law Professor.*

#### SECRETARIAT FOR PRO-LIFE ACTIVITIES,

*Washington DC, November 13, 2002.*

DEAR MEMBER OF CONGRESS:

Disagreements have arisen in Congress over the conference report on the Bankruptcy Abuse Prevention and Consumer Protection Act, particularly over Section 330 on the dischargeability of debts arising from sit-ins at abortion clinics. A legal analysis of this provision by our Office of General Counsel is enclosed. Based on this analysis, we have a serious concern about the form in which the bankruptcy bill is being presented for final passage.

The bishops' conference has always strongly condemned any resort to violence in the pro-life struggle. We have never endorsed, or taken a position on, the practice of conducting sit-ins or other forms of nonviolent civil disobedience at abortion clinics. However, we have strongly opposed the Freedom of Access to Clinic Entrances Act (FACE) as a discriminatory and ideologically motivated attack on the rights of peaceful pro-life demonstrators. The current language on protesters in the bankruptcy bill closely parallels the language of FACE, and will be used to impose another layer of penalties upon protesters whose only offense was to place their bodies in the path of those who take innocent children's lives.

The discriminatory nature of this provision seems clear. It could be used to take away the savings, homes and other property of low- or middle-income peaceful protesters to pay fines and the attorneys' fees of their opponents—a form of punishment now reserved chiefly for those who are guilty of inflicting willful and malicious injury upon others. This penalty would apply even if the protesters caused no harm to person or property but only "interfered" with abortions.

We hope the House will reject the Rule on the Conference Report so this unfair and discriminatory provision can be removed.

Sincerely,

GAIL QUINN,  
*Executive Director.*

OFFICE OF THE GENERAL COUNSEL,  
*Washington, DC, September 12, 2002.*

#### MEMORANDUM

We have been asked for an analysis of the Schumer amendment to the Bankruptcy Abuse Prevention and Consumer Protection Act, H.R. 333.

#### SUMMARY

Under existing law, a pro-life demonstrator seeking bankruptcy protection may not discharge a debt for a judgment arising from injuries he or she intentionally causes. The Schumer amendment would expand the law by preventing a demonstrator from discharging a debt (a) based on lesser degrees of capability, *i.e.*, when the debtor did not intend or cause injury to person or property,

and (b) when the demonstrator, regardless of his or her state of mind, commits a second violation of a court order protecting a clinic, even if the violation was not intended to, and did not, interfere with clinical access.

An exception in the amendment for expressive conduct protected from legal prohibition by the First Amendment does not change this analysis. Obviously, with or without the exception, Congress lacks the power to prohibit by the First Amendment does not change this analysis. Obviously, with or without the exception, Congress lacks the power to prohibit conduct protected from prohibition by the First Amendment.

The amendment is not limited to violent or even criminal conduct. For reasons discussed below, it seems likely that the amendment will have a disproportionate impact on pro-life demonstrators.

#### ANALYSIS

Among the debts that may not be discharged in bankruptcy is any debt "for willful and malicious injury by the debtor to another entity or to the property of another entity." 11 U.S.C. § 523(a)(6). The word "willful" in section 523(a)(6) "modifies the word 'injury,' indicating that nondischargeability takes a deliberate or intentional injury, not merely a deliberate or intentional act that leads to injury." *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998) (original emphasis). "[D]ebts arising from recklessly or negligently inflicted injuries do not fall within the compass of § 523(a)(6)." *Id.* at 64. Debts arising from actions that cause no injury at all are likewise outside the scope of section 523(a)(6).

Section 523(a)(6) bars the discharge of debts resulting from judgments against pro-life activists arising from deliberate or intentional injuries that they cause. *In re Treshman*, 258 B.R. 613 (Bankr. D. Md. 2001) (debt for intentional injury resulting from violation of Freedom of Access to Clinic Entrances Act was not dischargeable in bankruptcy); *In re Bray*, 256 B.R. 708 (Bankr. D. Md. 2000) (debt for intentional injury resulting from violation of FACE was not dischargeable in bankruptcy); *In re Behn*, 242 B.R. 229 (Bankr. W.D. N.Y. 1999) (debt for intentional injury resulting from pro-life demonstrator's violation of temporary restraining order was not dischargeable in bankruptcy). There is some authority that an injury is *ipso facto* intentional when it results from violation of a court order directed specifically at the particular debtor, *Behn*, 242 B.R. at 238, but the same court left "to another day the question of the applicability of § 523(a)(6) in other fact patterns, such as if there had been no court order directed specifically at the debtor, and instead the debt arose out of a judgement for trespass or menacing." *Id.* at 239 n. 6. Criminal trespass statutes generally do not require injury in the sense of actual damage to property or an intent to cause such damage; unauthorized entry or remaining unlawfully on property is usually sufficient. *See* 75 Am.Jur.2d Trespass § 164.

The Schumer amendment can be divided into three parts. It prevents the discharge in bankruptcy of any debt from a judgment, order, censure order, decree, or settlement agreement arising from—

(1) The debtors violation of any Federal or State resulting from intentional actions of the debtor that by force, threat of force, or physical obstruction, does any of the following—

Intentionally injures any person;  
Intentionally intimidates any person;  
Intentionally interferes with any person;  
Attempts to injure, intimidate, or interfere with any person for any of the following reasons—

Because that person is or has been obtaining or providing lawful goods or services;

To intimidate that person from obtaining or providing lawful goods or services; or

To intimidate any other person or class of persons from obtaining or providing lawful goods or services.

(2) the debtor's violation of any Federal or State statute resulting from intentional actions of the debtor that—

Intentionally damage or destroy the property of a facility because it provides lawful goods or services, or

Attempts to damage or destroy the property of a facility because it provides lawful goods or services.

(3) a violation of a court order protecting access to a facility or person that provides lawful goods or services, or that protects the provision of such goods or services, if—

The violation is intentional or knowing, or  
The violation occurs after a court has found that the debtor previously violated such a court order, or any other court order protecting access to the facility or person.

The Schumer amendment does not require an intentional injury. Parts 1 and 2, dealing with violation of federal or state law, require only an intentional act. The phrase "intentionally injure, intimidate, or interfere with" does not require intentional injury because the word "or" is used. Part 3 requires only an intentional or knowing violation of a court order, or a second violation of a court order, intended or not. The amendment would therefore expand existing law by stripping pro-life demonstrators of bankruptcy protection for injuries they did not intend, or only attempted but did not cause. Indeed, the amendment does not even require any injury in the sense of actual damage to person or property. It would remove bankruptcy protection in cases where there is neither damage to person or property nor any intent or attempt to cause such damage.

The amendment is not limited to violent crime. Physical obstruction or violation of a court order is sufficient to trigger the amendment. No crime is necessary, only violation of some federal or state statute (not necessarily a criminal statute) or court order.

It seems likely that the amendment will have a disproportionate impact on pro-life demonstrators and be invoked most frequently against them. Though broader in its current form, the amendment is based on FACE and substantially tracks it. For the most part, other federal crimes are not implicated. The amendment uses the phrase "physical obstruction," for example, which appears nowhere in the federal criminal code except in FACE. Words like "intimidate" appear elsewhere in the code, but usually not in reference to the receipt or provision of goods or services. Most federal crimes do not carry a civil remedy; FACE does. Thus, the Schumer amendment is carefully designed to impact demonstrators. There may be other instances in which the amendment would be theoretically applicable (e.g., environmental protestors who disrupt logging operations), but abortion seems the most common instance in which the targets of protest regularly allege interference with their business and often seek large judgments against their adversaries.

The amendment seems unfair not only because it has the practical effect of singling out demonstrators, but because those demonstrators, like others, are presently subject to the nondischargeability of debts for intentional injuries. Present exceptions to dischargeability for particular crimes generally involve intentional financial wrongdoing or conduct in which the debtor created a grave and unjustifiable risk to human life. Had Congress intended to remove bank-

ruptcy protection for debt from some broader category of injury or conduct, it is unclear why that penalty should assume a form, as this amendment does, that in practical terms will be used only or primarily to deprive demonstrators, not others, of bankruptcy protection—unless, of course, the intent were to punish or chill speech, which is constitutionally impermissible.

To say that a demonstrator can avoid the problem by not violating an order or statute misses the point. The point is not to absolve unlawful conduct, but to fashion criminal and bankruptcy penalties that are proportionate to the gravity of the offense and the degree of injury and culpability—precisely what the law has traditionally done when assessing penalties. A minor or technical violation of a trespass statute resulting in no actual harm to person or property would hardly seem the sort of conduct that should trigger the severe nondischargeability penalty that this amendment would impose.

Perhaps even more significant is the risk that the amendment will chill lawful conduct. The amendment includes an exception for expressive conduct protected from legal prohibition by the First Amendment, but that does not change what the bill does or its likely chilling effect on protesters. Congress already lacks the power to prohibit conduct that is protected from prohibition by the First Amendment, and no bill can change that, yet anecdotally we hear of instances in which people decline to participate in legitimate pro-life demonstrations because of concerns about liability. Those concerns are not exaggerated give present misuse of the federal racketeering statute. People should not have to fear putting their assets at risk simply by doing what the Constitution permits. The amendment, in my view, is likely to heighten that fear and further deter legitimate and lawful protest.

MICHAEL F. MOSES,  
*Associate General Counsel.*

Mr. FROST. Mr. Speaker, I yield 10 minutes to the gentleman from New York (Mr. NADLER).

Mr. NADLER. Mr. Speaker, I rise today in opposition to this rule. For my colleagues on both sides of the aisle who have profound concerns about this bill, I hope that you will realize that the crucial vote will be on the rule, not the bill. Because the rule is where it will have real effect.

There are many reasons to oppose this bill. This bill is opposed by almost all bankruptcy professionals, people who know anything about bankruptcy. It is opposed by organized labor, by almost every women's group, by children's advocates, by every consumer group, by civil rights organizations, and by most bankruptcy scholars. It is supported and is being pressed forward by a coalition of banks, credit card companies and other business interests who want to profit exorbitantly at the expense of families and small businesses at a time of crisis.

It is shocking that at a time when the American people are rightly outraged at the illegal and unethical machinations of many in corporate America, at a time when thousands of Americans are losing their jobs, at a time when many businesses large and small are in bankruptcy trying to stay alive and reorganize and preserve jobs, it is shocking that we would even be considering this kind of a special inter-

est bill that will enrich lenders at the expense of families, jobs and small businesses and will force many businesses into liquidation and job destruction instead of reorganization and survival. Whatever Members may have thought of this legislation in the past, I hope they will take a very careful look at the bill we have before us today and think about what has happened since this bill was first proposed 5 years ago and since it was really debated on the floor at great length and people may have made up their minds.

We know that the lenders who have been demanding this bill, the big credit card companies and the big banks, are highly profitable. They are making big money off our constituents with high interest rates that have not come down with drops in bankruptcy or the prime rate. The prime rate is the lowest it has ever been. Have credit card interest rates come down?

My colleague from the State of Virginia says that there is a hidden tax of \$400 per family because of deadbeats who do not pay. That is nonsense. What he is really saying is that the credit card companies would lower their interest rates if this bill passed. The prime rate has gone down by 8 or 9 points. Have the credit card companies lowered their interest rates? Credit card companies will never lower their interest rates because it is an oligopolistic business and they gouge from the people what they can gouge.

We know that many large banks have played a role in some of the more egregious financial scandals that have robbed workers and investors of their life's savings and their jobs. We know that this bill which serves their interests and their interests only will make it easier for these same large institutions to squeeze small debtors even more, to squeeze small businesses even more, to place outrageous and undue pressure on people to give up their right to a fresh start, and to make even larger profits at the expense of the most vulnerable.

□ 1530

We know that the millionaires exemption, the unlimited homestead exemption in six States, will not be changed, will not be capped. The bill will only limit that outrageous loophole that allows one to put all of one's money into one's mansion, go bankrupt, and still have \$10 million in the mansion, and this bill will limit that only if a wealthy debtor manages to get found guilty of a specific type of fraud or of a limited number of crimes or the most extreme torts resulting in serious physical injury or death. It does nothing, let me say that again, this bill does nothing about a multi-millionaire who wants to shield millions of dollars in assets from creditors in a mansion, whether those creditors are small businesses or other lenders or in some cases the taxpayers. But the small debtor, him we will get.

What this bill will do is squeeze the more than 1½ million Americans who

each year get in over their heads and need to reorder their finances, pay off as much of their debts as they can and then start over. These small debtors, the ones who do not have huge mansions in Texas or Florida, will be squeezed beyond the breaking point by the draconian provisions of this bill.

Let me repeat that statistic. Last year there were a million and a half individual bankruptcies. The proponents of this bill will tell us that that is a sign that we need to change the system and allow the banks and the credit card companies to squeeze families even harder so fewer people will go into bankruptcy. But there is another way to look at this. These million and a half Americans every year who file for bankruptcy are not crooks. Ninety percent of the people who filed for bankruptcy did it either because they were laid off from their job, they got divorced, or they had a medical emergency. They are in bankruptcy because they lost jobs, because Congress failed to enact an adequate national health care insurance program, because Congress failed to provide a prescription drug benefit program, because people lost their retirement savings because they invested in Enron, because Congress allowed their unemployment insurance to run out, because Congress voted to ship their jobs overseas, or for a variety of other misfortunes. Yet our answer to them is not to give them a helping hand in crises but to make things even harder for them. Is that what we are going to offer them? Is that going to be our answer? That is unconscionable.

The so-called means test in this bill would hold people to what the IRS says they would need to live on even if their actual expenses are higher. That test was so draconian that Congress told the IRS they should not use it on tax cheats, but now we are going to let the big credit card companies do what we have told the IRS it cannot do.

This bill would require the courts to assume that the income of a family in bankruptcy is what it received in the 6 months preceding the bankruptcy filing. So if someone got laid off, if they are 55 years old and got laid off from their \$75,000-a-year middle management job at IBM and will never make \$75,000 again, it does not matter. Their income must be assumed to be \$75,000 even though they are now only making \$25,000. It does not matter what the future holds. If someone once made \$75,000, they will forever make \$75,000 says the income test that in this bill, and the judge has no discretion about that. It ignores the facts in reality. Many people in this economic climate will be in bankruptcy precisely because they lost the jobs that used to pay them a good income. Even still, if a family in crisis is found to be able on the basis of this ridiculous means test to pay as little as \$100 a month for the next 5 years, they will be denied chapter 7 relief. They will be branded by the law as abusers of the bankruptcy system.

We will be told that this bill does not affect families with incomes below the median income. That is not true. Read the bill. It still allows landlords to evict people below the median income more easily. It still allows creditors to bring abusive and coercive motions against people below the median income more easily. It still exempts many creditors from the application of the bankruptcy rule that prohibits abusive and coercive motions even against people below the median income. It still makes it harder to save the family car in bankruptcy, and it will make it easier to force many small businesses into liquidation and thus cost jobs instead of allowing those businesses to reorganize and survive. If my colleagues think this will not hurt families at all income levels, I have a few bridges I want to sell them.

I want to remind my colleagues that chapter 7 is no walk in the park. It requires a debtor to liquidate all his or her assets and repay as much of their debts as they can. A secured loan such as a home and a car must still be paid off or the debtor loses the property. Bankruptcy never relieves one of that obligation, and the bankruptcy stays in their credit report for years and impacts their ability to borrow money in the future and their ability to get a job or rent an apartment. Even a debtor witness called by supporters of this bill complained that she had these problems after she filed for chapter 7.

And the bill rewrites chapter 13. Even though two-thirds of the people who voluntarily go into chapter 13 and had promised to repay a portion of their debts failed to do so. They cannot make the goals of the plan. This will throw millions of people into chapter 13 involuntarily, and because it will be written the way it is written, we will have many, many debtors who are judged too rich for chapter 7 but they cannot meet the requirements of the bill for chapter 13. They do not have enough money under the means test; so they are too poor for chapter 13. Too rich for chapter 7, too poor for chapter 13. They cannot get any relief. They cannot go bankrupt. That is absurd.

The bill will make it harder for businesses to reorganize. Think about the large retail chains that are now in bankruptcy. Landlords will be able to shut down the reorganizations and have an absolute veto power over the planning process. Chains like K-Mart or the various cinema chains would have to close hundreds of stores and eliminate thousands of jobs instead of reorganizing.

What this bill does not do is protect workers who lose their wages or their retirement savings or their jobs because of corporate malfeasance and bankruptcy. There have been a number of proposals by the distinguished gentleman from Massachusetts (Mr. DELAHUNT), the lead sponsor of this bill, the gentleman from Pennsylvania (Mr. GEKAS), by the junior Senator from Missouri and the junior Senator

from Iowa to do this, yet there is nothing in this bill to protect workers from corporate wrongdoing. And if they are victims of corporate wrongdoing, we are going to sock them in the teeth with this bill. They have to take a number behind the crooks and behind the banks and the law firms.

This bill is part of the trifecta that we are giving businesses to make up for the accounting reform that was passed because of public outrage. We should not sacrifice our constituents to the special interests at a time when they are hurting worse than at any time in a decade. I urge a no vote on the rule. I urge a no vote on the conference report. And with a no vote on the rule we would have a chance of taking a fresh look in, I might remind my colleagues, a Republican House and Senate next January, a fresh look at this bill and see if we really want to say to the low income people and the middle income people in this country we are going to sock them in the teeth. I urge a no vote on this rule, and I thank the gentleman for yielding me this time.

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Indiana (Mr. PENCE).

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

Mr. PENCE. Mr. Speaker, I rise with a very heavy heart today to oppose this rule, and I must confess to being a bit befuddled to this very hour. I am a Member of this institution, like many, who supported the outstanding work that this Chamber did on bankruptcy reform, and it was politicized in the conference committee by the efforts of a Senator that I should not name and whose actions I dare not characterize into what has now become a debate over abortion in a bankruptcy bill. But since it has become that and more to the point, Mr. Speaker, it has become a debate over the freedom of speech, I must rise to oppose this rule because I would offer today that the freedom of speech and freedom to peacefully protest in the United States of America is more urgent and more important than any individual legislation will ever be, and I am not alone in thinking of this.

Professor Mary Ann Glendon, the Learned Hand Professor of Law at Harvard University, supports the view that this legislation will provide a chilling effect on the exercise of pro-life protestors in America. She is joined also in her opinion by the United States Conference of Catholic Bishops that argues "The current language on protestors in the bankruptcy bill will be used to impose another layer of penalties upon protestors whose only offense was to place their bodies in the path of those who take innocent children's lives," saying that the intent of the provision is clear. And even the Family Research Council, calling that provision morally bankrupt, said it was "plainly an attempt to silence by intimidation those who would participate in legitimate nonviolent protest."

Where the first amendment is concerned, prudence dictates caution, Mr. Speaker, and I urge a no vote.

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

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Missouri (Mr. AKIN).

(Mr. AKIN asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. AKIN. Mr. Speaker, America does not have many home grown terrorists, and that is because we have a first amendment. Unfortunately this bill before us does terrible damage to the first amendment that our forefathers and all of us have stood so bravely for in the past. In summary, a Harvard law professor says that this is the financial death sentence for peaceful protestors.

I recall so many years ago on a cold street standing with a sign and I recall this woman that was going in to consider getting an abortion or not, and I felt completely inadequate but I told her that we would help her with services if she decided to keep her child. Today that child is probably now trying to practice to get a driver's license.

I can never support a rule or a bill on this floor which would have effectively imposed a financial death sentence on somebody who is merely standing on a sidewalk trying to help save a life.

[From The Wall Street Journal, Aug. 15, 2002]

#### BANKRUPTCY AND ABORTION—II

We've written before about Senator Charles Schumer's not-so-magnificent obsession with abortion and bankruptcy. He's at it again. The New York Democrat continues to play abortion politics with a promising bankruptcy bill.

The legislation in question passed both the House and Senate in 1998 with bipartisan, veto-proof majorities. The bill would make it more difficult for borrowers to file for bankruptcy and thus evade debts that they can afford to pay. Banks, which lose millions of dollars each year to these Chapter 7 filers, favor the measure for obvious reasons. But consumers also stand to benefit from a crackdown, since they're the ones burdened with higher fees and interest rates to compensate lenders for revenue lost through defaults.

Congress passed the latest version early last year and it would be law today save for Mr. Schumer, whose agenda-laced rider on abortion has mired the bill in conference ever since. His amendment would prevent pro-life activists, and only them, from using bankruptcy to avoid paying fines. The provision, said Mr. Schumer, "ensures those who use violence to close clinics can't use bankruptcy as a shield."

But no anti-abortion protestor has every succeeded in doing such a thing. Current law, which already prevents people from using bankruptcy to avoid paying fines related to violence, makes the Schumer rider redundant. The Senator's real targets aren't violent protestors of abortion but peaceful ones. And the unspecific language in his proposal—"physical obstruction," "force or the threat of force" and other pliable expressions for enterprising litigators—is a bald attempt to blur any legal distinction between the two. As it's written, vigils, sit-ins, picketing and

other nonviolent activities could be interpreted as federal offenses.

We've seen this strategy from Mr. Schumer before. As a Congressman back in 1994, he successfully navigated into law the Freedom of Access to Clinic Entrances Act. Like his current proposal, FACE uses vague terminology to group together violent and peaceful protests for purposes of meting out federal punishment. Under FACE, a first-time offender convicted of "interfering with" or "intimidating" a clinic patron is subject to a \$10,000 fine and six months in jail. No doubt, when civil rights protestors occupied segregated lunch counters, they intimidated many. Still, the law managed to distinguish between civil disobedience and militancy.

All their talk about deterring violence notwithstanding, the Senator and his supporters are well aware that someone lunatic enough to bomb a building is unlikely to change his mind due to adjustments in the bankruptcy code. But someone planning to distribute adoption pamphlets outside a clinic, or participate in a prayer vigil on a public sidewalk, might very well have second thoughts if a civil fine could cost him his home.

Congress is set to revisit the issue when it returns next month. Mr. Schumer insists that he "is wholly committed to passing a bankruptcy bill." Don't believe it. If he were true to his word, he would removed his amendment, allow the bankruptcy bill to pass, and reintroduce his abortion provision as a separate piece of legislation.

But Democrats know that it's Republicans who are more likely to be blamed if bankruptcy reform dies. Watch for Mr. Schumer to keep his poison pill in place right through November and continue presenting his obstructionism as "a victory for women." It certainly won't hurt his fund raising.

Republicans, nonetheless, would be wise to wait him out. The issue here is not abortion so much as free speech. Using violent extremists as straw men, liberals are hoping to snatch a formidable tool of protest from the opposition. Their efforts should be resisted on principle.

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

Mr. SESSIONS. Mr. Speaker, I yield 2 minutes to the gentleman from Pennsylvania (Mr. GEKAS), a champion of this bill.

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

When we began this odyssey on bankruptcy reform some 5 years ago, we began with two staunch principles guiding our pathway. One was to guarantee that those who are so overburdened, so swamped, so flooded with financial obligations that they could no longer make their way into our society's ways that they would be given the ample opportunity for a fresh start. That is what bankruptcy is all about. We guaranteed it and expanded it. As a matter of fact, it can be said that someone seeking a fresh start today under the bankruptcy reform that we want to put into the law would have an easier time than the current law. So for that purpose alone we should be supporting this legislation.

The other principle was and is that those who do approach the possibility of repaying some of the debt should be accorded a mechanism by which they can repay some of that debt over a period of years. Mind, we said, not all the

debt; mind, we said, over a period of years, but yet the opportunity to regain some of the losses that the general public would encounter if this individual were allowed not to pay anything back. So those two principles have guided us right down to this moment here on this floor.

The other point that has to be made in support of the rule and the bankruptcy reform measure that underlies the rule is the fact, as was mentioned by both gentlemen from Texas in their opening remarks, that this measure over 5 years has enjoyed tremendous bipartisan support, gaining over 300 votes each and every time that it has come to the floor. Three hundred votes by any magician's count can determine through that number by itself that this was a bipartisan approval of the legislation, and it also is bicameral in different stages at different times, but by the time we came to this floor today it was bipartisan in nature.

I thank the gentleman for yielding me this time.

Mr. FROST. Mr. Speaker, I yield 5 minutes to the gentlewoman from Texas (Ms. JACKSON-LEE).

(Ms. JACKSON-LEE of Texas asked and was given permission to revise and extend her remarks.)

□ 1545

Ms. JACKSON-LEE of Texas. Mr. Speaker, just a couple of weeks ago, an unspeakable tragedy hit not only this Congress, but it hit this Nation. That was the loss of Senator Paul Wellstone, his wife and daughter, staff and others who traveled with him on that fateful day. We lost a warrior who was not afraid to speak for the voiceless and those that could not be heard.

So I stand here today unabashedly opposed to this conference report and this rule; and I believe Senator WELLSTONE would not mind me standing in respect and admiration for his fight, for it was his unrelenting work in the other body that caused this issue to remain in the forefront, that although the representation of this legislation is what many of us would have wanted it to be, a respect for consumer interests as well as fiscal responsibility, it is a stomping out of the rights of the poor who cannot speak.

For anyone to say that people go happily into the bankruptcy court, I take issue, for the facts will prove out that those who file bankruptcy, the bulk of Americans who file bankruptcy, are faced with catastrophic illnesses; or the elderly, who have fallen upon hard times because of their illness; divorcees; single parents; individuals who have been laid off and now face the economic hard times of this Nation, the very people right now who are now facing 5 and 6 percent unemployment; the airline industry employees who lost their jobs after 9-11; the small business owners who collapsed in New York after 9-11. Those are who file bankruptcy. Yet we have determined that these are the very individuals that

we are going to knock outside of the boundaries of having access to the bankruptcy court.

Let me tell you why. We have tried over and over again. Professor Warren at Harvard University, a specialist in bankruptcy law, for the past 5 years has said the means test is what it is, mean. It does not help my good friends in the credit union, because what it does is it puts a barrier, it closes the door, it puts the finger in the dike, if you will, for innocent, hard-working Americans who simply want to get themselves in order. It puts a means test in front of those who seek to enter the bankruptcy court; and as well, if you want to fight the issue, you must take monies that you do not have and go into a Federal Court to go and be able to dismantle that particular means test.

It argues against the mindset to support our children, for it promotes credit card debts and other debts over the ability to pay your child support payments. We have argued over and over about this, and it has not been fixed.

This is a bill that does not address the tragedy that I had in my community, Mr. Speaker, and that is the collapse of Enron. This bill does not address the tragedy of Cathy Peterson and her husband. I have committed to fight until the end so that Cathy Peterson's fight can be heard around the Nation.

What happened to Cathy Peterson? Her husband worked for Enron. While he worked for Enron, he was felled, if you will, with a catastrophic illness, terrible deadly cancer. And while Enron was engaged in its malfeasance, of course, you realize that Enron filed for bankruptcy, and within 24 hours 5,000 people were laid off or fired. Cathy Peterson's husband was one of those.

They had to pay their COBRA insurance. They lost their home, Mr. Speaker. They lost their home. He was suffering from an enormous tragic illness. They lost their home. He was fired. While Enron filed bankruptcy, while a corporate structure was allowed to stand, the Petersons were knocked off their feet.

So Cathy Peterson has asked us to put a provision in that disallows those who are filing bankruptcy, large corporations, from firing those who are off on the basis of catastrophic illnesses. We did not address that issue. So in Cathy Peterson's name, this bill should not go forward.

We must recognize that in the name of those Enron employees who were laid off, 5,000 of them, who would not have been able to secure a dime of recovery had it not been for the fight of the AFL-CIO, for the fight that I engaged in, for the fight that the Wall Street and Rainbow Push engaged in, that we were able through the court process to get each of them \$13,500. Some of them still have not recovered, laid off, children coming out of school.

This bankruptcy bill does not address the needs of Americans who have fallen

on hard times, who are sincere; and it does not address my good friends in the credit union industry, because those are the consumers who come every day to utilize those resources.

So in the name of women and children and hard-working Americans, taxpayers, this bill should not go forward. In the name of my dear friend and our friend, Senator Paul Wellstone, who stood in the other body, standing on behalf of those who could not speak, I am committed to say whatever happens, that we will fight to ensure that the bankruptcy laws of this Nation do not stand as a barrier to those who have worked and upon whose shoulders we have stood and built this economy.

I can stand and say with all emotion that anyone who views these passionate words as ones that cause them great discomfort, that is the purpose of these words, because the voiceless cannot speak today.

The issue of bankruptcy reform has been a heated topic of debate in this body since the first session of the 105th Congress, when shortly before the National Bankruptcy Review Commission issued its report recommending changes to the current bankruptcy laws; legislation was introduced to dramatically change the way in which consumer bankruptcies are administered under the U.S. Code, 11 U.S.C. sec. 101 et seq. We have battled with this issue until now and we see that the leadership of the House, with a renewed vigor, will force a vote on legislation for some of its favorite companies before the irons of the last election have even cooled and a day before we adjourn for the year.

Mr. and Ms. America, today is a preview of things to come. Today is the beginning of a time when corporate interests, in this case the interests of large creditors, will reign supreme and the interests of the little guy will slip further down to the bottom of the barrel.

I have consistently said that the greatest challenge before us in the bankruptcy reform efforts is solving the widely recognized inadequacies of the law in the area of consumer bankruptcy. As it has always been in the Congress, the key to this process, is, of course, successfully balancing the priorities of creditors, who desire a general reduction in the amount of debtor filing fraud, and debtors, who desire fair and simple access to bankruptcy protections when they need them. H.R. 333 does not accomplish this goal. Instead it runs the interest of consumers into the ground.

The bill before us today, will break the backs of working women, disappoints children, and discourages people who are struggling to do the right thing to get their lives back in order. This is a measure that unfairly subverts the interests of consumers to the interest of creditors—many whoms marketing strategies target individuals with questionable means of paying back the debt they incur.

During prior consideration of this bill I pointed out the unruly conduct of credit card companies that target college students with no income knowing that they are vulnerable and likely to charge up significant debts often without the knowledge and guidance of their parents. "An analysis [by Nellie Mae], a leading provider of student loans, of students who applied for credit-based loans with Nellie Mae in

calendar year 2000 showed that 78 percent of undergraduate students (aged 18–25) have at least one credit card. This is up from the 67 percent of undergraduates included in a similar study by Nellie Mae in 1998. In years past, these same students would not have been given credit cards, certainly not without a co-signer." This is continued evidence that the credit card industry continues to prey on the lack of wisdom that many of our nation's youth have about the burdens of accumulating massive amounts of debt. This bill gives them license to continue to do so.

This bill also uses an unrealistic inflexible formula to determine who is eligible for Chapter 7 bankruptcy relief. The measure uses Internal Revenue Service guidelines to determine what expenses a consumer has as opposed to using the debtors actual living expenses. The effect of this is to render many debtors ineligible for relief under Chapter 7 bankruptcy by estimating their living expenses as much less than they actually are. The formula also uses the debtors prior six months income to calculate what the debtor will have available to pay creditors even if that income is no longer available. The only way for the debtor to change these assumptions is to go into court. Let me ask you Mr. and Ms. America, what person seeking bankruptcy can afford to go to court and litigate the matter. The prospect of this expense alone is enough to force consumers to take extreme measures in order to satisfy their debts.

H.R. 333, also places the interests of creditor over the interest of children. By allowing a greater number of non-child support debts to survive bankruptcy, the measure diverts more money to creditors and away from parents paying and receiving child support. The bill sets up a competition for scarce resources between parents and children benefitting from child support both during and after the bankruptcy. Single parents facing financial crises brought on by divorce, nonpayment of support, the loss of a job, uninsured medical expenses or domestic violence will find it harder to regain economic stability through the bankruptcy process.

Many women find themselves as single parents and the primary providers for their children. As a result women are the fastest growing and largest group filing bankruptcy today. In 1999, over half a million women filed for bankruptcy by themselves—more than men filing by themselves or married couples. Of this number, over 200,000 women who filed for bankruptcy in 1999 tried to collect child support or alimony. The domestic support provisions of H.R. 333 does not solve the problems faced by women in bankruptcy and does nothing to address the additional problems it would cause to the hundreds of thousands of women forced into bankruptcy each year, including the single mothers forced into bankruptcy because they are unable to collect child support.

While women, children, students and the average working person in America are forced to make more available for creditors to seize in the event of financial difficulty, the bill makes minimal changes to that which the wealthy will be forced to part with in the same circumstance. Although the bill contains some new limits on the once unlimited homestead exemption, the so-called "millionaires' loophole," it still allows some rich debtors (those who have not been found to have committed certain types of wrongdoing, or those who

have owned their home in the state longer than 40 months) to protect an unlimited amount of value in their residences. The wealthy should not be permitted to walk away from their debts and pocket millions, while working Americans get squeezed by a stringent and inflexible new rule.

I am for bankruptcy reform, but I believe that it must be equitable and fair to all interested parties. I am for bankruptcy reform that recognizes the financial interest at stake for the debtor, his or her family and the creditors. As elected officials for the American people we must protect America's families. In this time when corporations like Enron and Worldcomm have laid off thousands of employees, we should at least consider granting them the priority status they deserve. Under a bill that I had proposed, H.R. 5110, the omnibus Corporate Reform and Restoration Act, we would have raised the bankruptcy claim for workers from \$4000 to \$15,000. This would have ensured that they receive compensation as priority creditors for the corrupt actions of corporate malfeasance.

Financial hardship is a serious matter that deserves legislative reform that is the product of a deliberative process. This bill, is an extreme bill undertaken at the behest of special interest groups. We must protect working-class families. We must work to find a viable solution that deters abuse of the bankruptcy system while preserving the fresh start for debtors whose debts have been discharged. It is ironic that the consumer lending industry actively solicits consumers with promises of easy access to credit. We all know the pitches: "buy-now, pay later;" "No interest expenses for the first six months/year etc;" "No credit check, your job is your credit." Then, after addicting debtors to this "financial crack" lenders come to us begging for reform. Surely lenders bare some culpability for these beguiling and misleading advertising blitzes which entice individuals who might not otherwise qualify or apply for credit. Surely they have some roll to play in the unprecedented levels of American debt.

Congress has a time honored tradition of careful consideration of bankruptcy laws dating back 100 years. In the past members of this body have elected to carefully preserve an insolvency system that provides for a fresh start for honest, hard working debtors, protects small businesses and jobs, and fairly balances the rights of debtors against the rights of creditors. This measure is an unfortunate departure from this tradition and places the financial well being of the American people in harms way. I oppose this legislation and urge my colleagues to do the same.

Mr. SESSIONS. Mr. Speaker, I yield 1 minute to the gentleman from Tennessee (Mr. JENKINS).

Mr. JENKINS. Mr. Speaker, I rise in support of this rule. This legislation appears to me to be a compromise that is filled with positive aspects of the give and take of the legislative process and saturated with the element of common sense that both sides to this controversy say that they strive to achieve.

In one aspect that has already been mentioned, it penalizes the adjudicated intentional violator of the law and the intentional tort feaser and precludes him from escaping the consequences of

his act by hiding behind the provisions of the bankruptcy act. I think this is entirely proper, because the bankruptcy act was never intended to protect anyone in this situation.

At the same time, it protects the innocent who are simply exercising their constitutional rights, who are lawfully assembled or expressing their freedom of speech.

I urge my colleagues to vote for the rule and to vote for the conference report.

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

Mr. SESSIONS. Mr. Speaker, I yield 1 minute to the gentleman from Arizona (Mr. SHADEGG).

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

Mr. Speaker, I rise in reluctant, but adamant, opposition to this rule. I say to my colleagues, make no mistake about it. The issue before us is not abortion, and the issue before us is not bankruptcy. The issue before us today is very important. It is the constitutional right of free speech and peaceful protest.

Mr. Speaker, this rule is an unprecedented and shameful attack on the right of free speech and peaceful protest. It does not matter where you stand on abortion; you should oppose this rule and you should oppose this legislation. If we pass this legislation, what we will be doing is for the first time in American history creating two categories of free speech, two categories of peaceful protest: one protected by our laws and one not protected. We will be saying that, based on content of your protest, you are either protected by our law or not protected.

It does not matter where you stand on the abortion law. If you care about the right of peaceful protest, if you believe in the right of people to exercise their constitutional first amendment rights, you must defeat this rule and we must go back and do this legislation again. Those who honor the right of free speech, those who honor the right of peaceable protest must understand this is a fundamental assault on the Constitution of the United States.

I urge the defeat of both the rule and the underlying legislation.

Mr. SESSIONS. Mr. Speaker, I yield 1½ minute to the gentlewoman from Pennsylvania (Ms. HART).

Ms. HART. Mr. Speaker, I rise in support of the rule for bankruptcy reform. This Congress and prior Congresses have been very dedicated to making sure that this country benefits from bankruptcy reform and these attempts have been made to draw up a very good bill. Now we finally have the opportunity to finish the job.

Congress has a responsibility to pass this legislation now and to stop the bankruptcy system's abusers, those who have actually the ability to repay these debts but use the current bankruptcy system as a financial planning tool. This gaming of the system carries too high a cost to consumers, by rais-

ing costs at an extremely critical time for our economy.

Our economy needs all the help it can get. Consumer spending and consumer credit are key elements of any plan for economic growth, and bankruptcy abuse is having such a horrific effect on consumers' finances that if current practices continue, approximately one out of seven households will have filed for bankruptcy within the past decade.

Bankruptcy legislation has been debated. It has been refined; it has been revised and amended for years. It is now time for action.

Unfortunately, much of this debate has been focused on the abortion provisions in this bill. I ask my colleagues to look at the real effects of those provisions. They are not effective. They will not harm lawful protesters. I urge my colleagues to support the rule.

Mr. SESSIONS. Mr. Speaker, I yield 4 minutes to the gentleman from Indiana (Mr. SOUDER).

(Mr. SOUDER asked and was given permission to revise and extend his remarks, and include extraneous material.)

Mr. SOUDER. Mr. Speaker, I rise deeply disappointed. I am a strong supporter of bankruptcy reform. I was a former retailer and business person, and many of my supporters are in support of this. I cannot believe that we are here on the floor debating this today and that this bill has been brought up.

We are likely to hear in the closing remarks from some of our leadership that this does not apply to pro-lifers and it does not sit on free speech. I think they are terribly wrong, and they put many of us in deep conflict in trying to defend civil liberties and, at the same time, reform bankruptcy; and many of us are deeply disappointed in our leadership that this bill has come forth.

I think many Americans around the country, as nearly every pro-family and pro-life group in America, has stood arm in arm against this bill. National Right to Life, which does not take positions on issues such as this, is about the only one, and it does not mean that they favor the bill; it just means they are silent.

This is going to be double-scored if the rule passes, and many Members are going to have their ratings go down among conservative groups, as well as liberal groups, permanently, because they have not listened to their constituents at the grassroots level and the organizations that represent them.

We are going to hear probably quoted from a memo by Kenneth Starr, who has been hired by the business interests to advocate a position that is manifestly inaccurate in his memo. He, for example, tries to address the question and correctly points out that "willful" and "intentional" are the same. But that memo is silent on "malicious," and that is a critical, critical point on this. He does not have anything in there on "malicious."

The FACE Act makes it a tie; it ties the two together and makes pro-lifers liable in a way that others are not. PETA is not liable. They do not have a FACE Act. This law focuses on pro-life demonstrators. Yes, it can reach many other demonstrators, possibly even anti-war demonstrators if they protest in front of a factory that produces weapons.

Peaceful protestors. The Mahoney case, one protester, kneeling in prayer, was in front of a locked door, was found guilty by the D.C. Circuit Court. One kneeling Christian, silently protesting abortion, has had the force of law thrown at them. Where are we going in America?

Also in the Starr memo there is another false assumption, and that is that somehow the courts are going to interpret this separate from the same-as-additional law. The courts never interpret a new law as redundant. They assume that we have a purpose. Senator SCHUMER is correct in saying there is a congressional intent with this law. The courts will rule that.

This is, in fact, a broad expansion of the government potentially restricting civil liberties in all parts of protest, but particularly those of us who were very pro-business, are first and foremost deeply motivated by defending the most innocent of life, the little children. We are not talking about violent protests. We tried to compromise. We definitely favor it for violent, but peaceful, kneeling prayer should never be deprived from civil liberties.

I urge my colleagues to carefully consider those commands from Mary Ann Gloran of the Harvard Law School.

Because the proposed language is substantively identical to FACE, it will be read in light of existing decisions under FACE. Existing interpretations of FACE will almost certainly be read into § 523(a)(20). Worse, abortion clinics and their supporters will likely argue that by re-enacting the same statutory language, Congress has approved existing decisions and those confirmed their status as valid and appropriate interpretations of FACE itself. This is a critical point, because existing interpretations of FACE in the lower courts, extraordinarily favorable to the abortion clinics and their supporters, have not yet been accepted or rejected by the Supreme Court of the United States. Congressional passage of proposed § 523(a)(20) could figure prominently in eventual Supreme Court arguments on the interpretation of FACE, lending plausible support to the worst interpretations of that statute.

I will not consider in this opinion letter the interpretations of "force or threat of force," "intentionally injure," or "intimidate." Some interpretations of those provisions have been surprisingly expansive, but those forms of protest are not the issue for most protestors. The real work of FACE, and of proposed § 523(a)(20), is in the provisions that target anyone who "by physical obstruction . . . interferes with . . . or attempts to . . . interfere with" access to a clinic. Each of these terms has been construed or defined to mean more than first appears. No actual interference, and no actual physical obstruction, is required for a violation. Courts

have found violations in peaceful protest that did not actually prevent access to clinics.

"Physical obstruction" is defined in 18 U.S.C. § 248(e)(4) to mean making ingress or egress "impassable . . . or unreasonably difficult or hazardous." What is "unreasonably difficult" has, in the lower federal courts, sometimes turned out to be remote from physical obstruction.

Thus, in *United States v. Mahoney*, 247 F.3d 279 (D.C. Cir. 2001), the court found physical obstruction and interference with access from a single protestor kneeling in prayer outside a locked door to an abortion clinic. *Id.* at 283–84. The door was a "rarely used" emergency exit. The court said that someone might have used the door, and that the law does not distinguish frequently and infrequently used doors. More remarkable still, the court held that a single person kneeling in prayer rendered use of that door "unreasonably difficult" and forced patients to use a different entrance. *Id.* at 284.

Mahoney also held that six other defendants physically obstructed and interfered with access to another door. The court of appeals' entire discussion of this holding is that five protestors "knelt or sat within five feet of the front door," that the sixth defendant "was pacing just behind them," and that they "offered passive resistance and had to be carried away." *Id.* at 283. The court does not even say whether they were arrayed across the sidewalk or along the sidewalk, whether they left a passage open, or any other fact that might to a plain meaning understanding of "physical obstruction" or to preserving a reasonable right to protest. It was enough for a violation that they were near the door.

Both FACE and proposed § 523(a)(20) are limited to "intentional" violations, but Mahoney shows that protection to be illusory. The court found specific intent to interfere with access to the clinic, even in the case of the lone protestor praying before the locked door. It relied on the fact that the protestor prayed that women approaching the clinic would change their mind about getting an abortion; the court quoted his prayer as evidence of criminal intent. 247 F.3d at 283–84. To similar effect is *United States v. Gregg*, 32 F. Supp. 2d 151, 157 (D.N.J. 1998), *aff'd*, 226 F.3d 253 (3d Cir. 2000), *cert. denied*, 523 U.S. 971 (2001). Gregg had much more evidence of actual obstruction than Mahoney. Even so, the Gregg court relied on defendants' "anti-abortion statements, including imploring women not to go into the clinic or not to kill their babies," and on the fact that defendants "carried anti-abortion signs," as evidence of forbidden intent. The government in these cases has offered evidence of opposition to abortion as evidence of specific intent to obstruct access, and the courts have relied on this evidence for that purpose. Clinics and their supporters would of course argue that Congress has codified these holdings if it enacts proposed § 523(a)(20).

Courts have emphasized that FACE plaintiffs need not prove actual obstruction. "It is not necessary to show that a clinic was shut down, that people could not get into a clinic at all for a period of time, or that anyone was actually denied medical services." *People v. Kraeger*, 160 F. Supp. 2d 360, 373 (N.D.N.Y. 2001). Plaintiffs need not "show that any particular person was interfered with by the defendants' obstruction." *United States v. Wil-*

*son*, 2 F. Supp. 2d 1170, 1171 n.1 (E.D. Wis.), *aff'd* as *United States v. Balint*, 201 F.3d 928 (7th Cir. 2000).

To sum up, proposed § 523(a)(20) would re-enact statutory language that has been interpreted not to require actual obstruction, has been interpreted to prohibit a single protestor kneeling in prayer near an unused exit, and has been interpreted to treat anti-abortion statements as evidence of criminal intent. These interpretations would almost certainly be read into § 523(a)(20), and there would be a serious argument that Congress had confirmed these interpretations in FACE itself.

□ 1600

Mr. SESSIONS. Mr. Speaker, I yield 1 minute to the gentleman from Utah (Mr. CANNON).

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

Mr. CANNON. Mr. Speaker, I rise today in support of H. Res. 606, the rule providing for consideration of the Bankruptcy Abuse, Prevention and Consumer Protection Act Conference Report. Congress has been working on balanced bankruptcy reform legislation for nearly 5 years. The conference report on H.R. 333 reflects countless hours of bipartisan efforts.

This conference report does not penalize any lawful behavior. It only applies when a person violates the law; second, a court then enters an award against that person; third, the person later files a bankruptcy other than a chapter 13 bankruptcy or liquidation bankruptcy; and fourth, that person thereafter seeks to discharge a debt based on fines or penalties assessed because of the unlawful protest activity.

This provision is written in an even-handed, neutral way. It does not single out abortion-related protests, but it targets any violent protestors of providers of any lawful goods or services. It would equally apply to the anti-IMF/World Bank protestors who threw rocks through the window of the bank and attempted to impede delegates from entering the World Bank's headquarters. It could also apply to similar protests by animal rights activists, environmentalists, and unions.

As a committed pro-life Member of Congress, I am satisfied that the compromise does not impose unconstitutional or discriminatory burden upon peaceful pro-life protestors. I want to thank the chairman, the gentleman from Wisconsin (Mr. SENSENBRENNER) for his leadership on this issue, and I urge my colleagues to support the rule and the underlying bill.

Mr. SESSIONS. Mr. Speaker, I yield 3 minutes to the gentleman from New Jersey (Mr. SMITH).

Mr. SMITH of New Jersey. Mr. Speaker, I thank the gentleman for yielding me this time.

Mr. Speaker, again, I want to reiterate, I rise in very strong opposition to this rule and to the underlying bill that will follow it if the rule does pass.

Let me again point out that this bankruptcy reform conference report

contains an unrelated provision that was not included in the bill that passed out of this body that discriminates against peaceful, pro-life protesters, and that is why I oppose this.

Mary Ann Glendon wrote an incisive analysis that every Member should read. The Catholic Conference has put out a very strong statement pointing out how unjust this language is. This takes the FACE bill passed back in 1994 over the opposition of my good friend, the distinguished chairman of the Committee on the Judiciary, the gentleman from Wisconsin (Mr. SENSENBRENNER) and myself, and makes it even worse by making civil fines that are levied nondischargeable.

Much has been made about the Starr memo, which I would respectfully submit misses the point by a mile and is unworthy of Ken Starr. He argues, for example, and the gentleman from Utah (Mr. CANNON) made this point a moment ago, that rigorous intent requirements; i.e. law-breaking, are included in the conference report. Martin Luther King was an intentional law breaker. We rightly honor him with a national holiday. A tremendous man who went to prison—served short prison sentences—and faced modest and proportionate penalties in his quest for social justice. For Dr. King, law breaking was a means to an end.

Pro-lifers, on the other hand, are subjected to ruinous penalties for the same acts of civil disobedience. Non-violent civil disobedience, obstruction, getting in the way, as was mentioned by one of my colleagues, kneeling in front of a door, praying at an abortion clinic, is construed to be a violation of the FACE Act and then, when the penalties are levied, the pro-lifers cannot discharge the ruinous judgements imposed on them.

Mr. Starr also says that section 330 is evenhanded. That, I say to my colleagues, is unmitigated nonsense, it is misleading, and it is false. Section 330 only has the appearance of evenhandedness. Other activists, labor activists, antiwar, PETA, all the groups that use civil disobedience as a means of bringing attention to their cause get a slap on the wrist, a 30-buck fine, they are out of jail the next day. Not so for pro-life protesters. They are under the FACE Act and are discriminated against and singled out for ruinous monetary penalties and criminal penalties and, again, we are talking about nonviolent activities.

Back in 1994 I would remind my colleagues I offered the substitute amendment to FACE on the floor that said for those who throw bombs or kill at abortion clinics, are jailed and appropriately fined. But for peaceful protesters, those men and women whose only motive is to try to deter an abortion, another act of violence, to say there is another way, so they have a sit-in. Perhaps they sit in front of a door or they have a pray-in. These things happen all the time. A successful complaint made by the abortion

clinic, for example, would be nondischargeable under this legislation.

So to say section 330 is evenhanded when the underlying statute is applied unevenly to pro-lifers versus all other activists is unmitigated nonsense, and again I am very discouraged that Mr. Starr would put out such a misleading memo.

Vote “no” on the rule.

Mr. FROST. Mr. Speaker, I continue to reserve the balance of my time.

Mr. SESSIONS. Mr. Speaker, I yield 6 minutes to the gentleman from Wisconsin (Mr. SENSENBRENNER), the chairman of the Committee on the Judiciary.

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

Mr. SENSENBRENNER. Mr. Speaker, before I begin my remarks, let me insert for the RECORD the memo written on October 4, 2002 by the Honorable Kenneth Starr addressed to Mr. BARTLETT of the Financial Services Roundtable, since the gentleman from New Jersey (Mr. SMITH) has repeatedly referred to it.

*Washington, DC, October 4, 2002.*

HON. STEVE BARTLETT,  
*President, the Financial Services Roundtable,  
Washington, DC*

DEAR MR. BARTLETT: This letter responds to your request for my views with respect to Section 330 of the Conference Report on H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act of 2002. In particular, you requested my view concerning two aspects of Section 330: the effect it will have on anti-abortion protests, be they lawful or unlawful; and the effect it will have on other types of protests, including the recent IMF/World Bank protests.

In my view, Section 330 will have very little practical effect. Importantly, the provision does not penalize any lawful behavior. To the contrary, it applies only if (i) a person violates the law; (ii) a court then enters an award against that person or the person settles the charges; (iii) the person later files a bankruptcy other than a Chapter 13 bankruptcy; (iv) the person thereafter seeks to discharge a debt based on fines, damage awards, or other penalties assessed because of the unlawful protest activity; and (v) the creditor continues to pursue the matter. Even then, Section 330 overlaps almost entirely with Bankruptcy Code §523(a), which already prohibits the discharge of fines payable to the government and civil damages resulting from intentional injury to others. As a result, Section 330 will have at most minimal practical effect. What is more, the Conference version of Section 330 contains rigorous intent requirements that should prevent any innocent protesters from being swept up in its provisions. Thus, even if Section 330 does have some limited practical effect, that effect should be felt only by the intentional lawbreakers it expressly targets.

In answer to your second question, Section 330 is written in an evenhanded, neutral fashion. It applies not only to abortion-related protests, but also to unlawful protests targeted at the providers of any lawful goods or services. By its express terms, Section 330 applies—with no exceptions—to all those who unlawfully intimidate or interfere with a person by physical obstruction or threat of force if those actions were motivated by the person's obtaining or providing of any lawful goods or services. Thus, it would apply, for example, to the anti-IMF/World Bank pro-

testers who apparently threw rocks through the window of a bank and attempted to impede delegates from entering or departing the World Bank's headquarters. So too, it would apply to similar protests by animal rights activists, environmentalists, and unions.

It bears emphasis that the Conference compromise bill represents a substantial improvement over the original Senate bill. Under the Senate bill, debt related to an unproven allegation of “harassment,” or an unintentional violation of a court order, could have been nondischargeable. In contrast, under the Conference compromise, there must have been an actual and intentional “violation” of either the federal Freedom of Access to Clinic Entrances Act, 18 U.S.C. §248 (“FACE”), or a court order. These significant improvements over the now-replaced Senate version are some of the reasons that Section 330 will not have significant practical or legal effect in light of the state of existing law.

*Section 330 is primarily a restatement of existing law*

Section 330 is primarily a restatement of existing law. The Bankruptcy Code has long provided that any debt “for a fine, penalty, or forfeiture payable to and for the benefit of a governmental unit” is not dischargeable in bankruptcy. 11 U.S.C. §523(a)(7). As a result, criminal fines and civil penalties payable to the government are already nondischargeable.

The Bankruptcy Code further provides that civil damages payable to private parties are nondischargeable if they result from “willful and malicious injury by the debtor to another entity or to the property of another entity.” 11 U.S.C. §523(a)(6). The courts have interpreted this language broadly to include injuries to intangible personal or property rights. See 4 Collier on Bankruptcy ¶523.12[2] (15th ed. rev. 2002). As a result, the pivotal limitation on this provision is the intent element—a debt is nondischargeable in bankruptcy only if the debtor intentionally caused the injury. See *Kawaauhau v. Geiger*, 523 U.S. 57, 61 (1998).

Our research has revealed that, to date, three courts have issued published decisions on the question whether debtors' abortion protest-related debts were dischargeable in bankruptcy. Each held the debts to be nondischargeable under Section 523(a)(6). See *In re Treshman*, 258 B.R. 613 (Bankr. D. Md. 2001); *In re Bray*, 256 B.R. 708 (Bankr. D. Md. 2000); *In re Behn*, 242 B.R. 229 (Bankr. W.D.N.Y. 1999). As one court explained, the debt was not dischargeable because the debtor had acted “with the specific intent to interfere with or intimidate the plaintiffs from engaging in legal medical practices and procedures.” *Bray*, 256 B.R. at 711. Each court also noted that the conduct at issue, which included apparent death threats, was unlawful and unprotected by the First Amendment.

Of course, the ultimate issue of dischargeability necessarily depends on the facts of each case. But Section 330 is drafted in such a way that it overlaps with Section 523(a)(6). Under Section 330, a debt is nondischargeable only if the debtor violated either FACE or a pre-existing court order or injunction.

Under the first of those circumstances, a debt is nondischargeable only if the debtor: (i) intentionally injured, intimidated, or interfered with a person, (ii) by force, threat of force, or physical obstruction, (iii) because the person was obtaining or providing any lawful goods or services (such as fur products or banking services). Because the injury, intimidation, or interference must be intentional, any such debt would likely satisfy the existing criteria for

nondischargeability under Section 523(a)(6). One might argue that Section 523(a)(6) erects a higher standard than Section 330 because it requires "willful and malicious" (as opposed to intentional) injury, but the terms "intentional," "willful," and "malicious" have similar meanings in the law. The Supreme Court has held, for example, that "willful" means "deliberate or intentional" in Section 523(a)(6). Geiger, 523 U.S. at 61. Thus, the Section 330 and 523(a)(6) standards appear to be very similar.

The second circumstance under which Section 330 renders debt nondischargeable is when (i) the debtor violated a court order or injunction that complies with the First Amendment and protects the provision of lawful goods or services, and (ii) either the debtor's violation was "intentional or knowing," or the violation occurred after the debtor had previously been found to have violated the same court order or another order protecting access to the same facility or person. This provision of Section 330 might expand somewhat on Section 523(a)(6), because a debtor might argue that although he meant to violate an injunction (such as an injunction prohibiting him from approaching within 8 feet of a clinic entrance), he had no intent to intimidate or impede anyone while within the restricted area. Thus far, however, the courts have held that damages attributable to violation of a court injunction against abortion-related protest activity are "ipso facto the result of a 'willful and malicious injury'" for purposes of Section 523(a)(6), in part because the violation reflects an "intention to cause the very harm to the protected persons that [the] order was designed to prevent." Behn, 242 B.R. at 238. While I find this rationale questionable, it reflects the fact that courts to date have already used Section 523(a)(6) for the same purpose that Section 330 would serve. Thus, Section 330 represents either a restatement of existing law or, at most, a modest extension of that law.

*Even if section 330 were interpreted more broadly than the existing nondischargeability provisions of the bankruptcy code, it would still have no effect on lawful protest and little effect on unlawful protest*

Even if courts were to interpret Section 330 more broadly than Section 523, the practical consequences would be minimal. Section 330 does not affect lawful protest at all. Even with respect to unlawful protest, it applies only if: a person committed an intentional violation of the federal FACE statute or a pre-existing court order or injunction; a court entered an award against that person, or the person settled the charges; the person later filed bankruptcy other a Chapter 13 bankruptcy; the person would otherwise be entitled to discharge a protest-related debt in bankruptcy, notwithstanding Section 523(a) and the Bankruptcy Code's other existing limitations on dischargeability; and the creditor continued to pursue the matter. It would appear that very few, if any, people will fall into this category. As noted above, we have found only three reported cases in which people challenged the dischargeability of abortion protest-related debt, and in each instance the court held the debt was nondischargeable under existing law. Thus, Section 330 would have had no effect in any of the reported cases to date.

Even if a small number of protesters are affected by Section 330, the Conference version of the bill seeks to ensure that "innocent" protesters will not be affected. As explained above, Section 330 applies only to those who either (1) intentionally injure, intimidate, or interfere with a person by force, threat of force, or physical obstruction; or (ii) intentionally or repeatedly vio-

late a court order that complies with the First Amendment. While some such conduct can be "peaceful," it is nonetheless intentional conduct that has a physical element to it (in the case of the FACE statute) or that has already been judicially determined to thwart legitimate state interests (in the case of an existing injunction). Moreover, peaceful of "innocent" conduct is not likely to lead to substantial damage awards that a debtor would need to discharge in bankruptcy. Instead, the reported cases to date have involved much more provocative, highly aggressive behavior, including perceived death threats, "wanted" posters, and the like. For these reasons, it is unlikely that anyone other than intentional and determined lawbreakers, no matter how sincere they may be, will be affected.

*Section 330 is non-discriminatory*

In any event, neutrality of operation is the order of the day. Section 330, as I indicated above, applies by its express terms to all those who unlawfully intimidate or interfere with a person by physical obstruction or threat of force if their actions were motivated by the victim's obtaining or providing of any lawful goods or services. Thus, it applies equally and neutrally to unlawful activity directed toward the providers or recipients of all lawful goods or services, not only abortion-related services.

The recent IMF/World Bank protests provide a useful example of Section 330's intended neutrality. Many protestors, it appears, attempted to interfere, by physical obstruction, with the ability of the IMF/World Bank delegates to attend or leave meetings because they disapproved of lawful services provided by the IMF and World Bank. Other protestors reportedly threw rocks through a window of a bank. All of this behavior is covered by the plain language of Section 330. Also protected are similar protests by animal-rights activists against stores that lawfully sell fur products and the like; environmentalists that target oil and other companies; and some unlawful union strike activity. As long as an unlawful protest satisfies the Section 330 criteria, it is covered to the same extent as an anti-abortion protest.

*Conclusion*

In sum, as modified in conference, Section 330 is primarily a restatement of existing law. It targets only intentional unlawful activity, and even then is not likely to have significant practical effect. To the extent that it does have such effect, Section 330 will apply neutrally and evenhandedly to anti-abortion protests and other protests aimed at business establishments.

While there is, to be sure, some risk that a court might construe the statute unreasonably, the conference minimized that risk by drafting the statute clearly. To provide further protection, however, one of the sponsors of the legislation (or another Representative) might consider making a statement of intent on the House floor. While courts vary in their treatment of such statements, some judges give consideration to floor statements, especially those made by a sponsor of the legislation. As a result, a suggested floor statement is attached to this letter, for such consideration as may be deemed appropriate.

Sincerely,

KENNETH W. STARR.

Mr. Speaker, I rise in support of the rule and the underlying bill. This is essential bankruptcy reform which will help revive our economy.

In 1998, \$40 billion of debt was written off, and that amounts to a hidden tax of \$400 for every family in this country who pays their bills on time and is

agreed upon, and that tax hits the poor people hardest because that type of a tax is regressive.

We need to pass this legislation to prevent bankruptcy from being used as a financial planning tool.

Now, my friends over here on my right claim that this is going to hurt poor people. That is absolutely not true, because people who are genuinely unable to repay their bills will be able to get their discharge through chapter 7. But where there is a possibility of people repaying their bills over a 5-year period of time, or some of their bills, then they have to go through a reorganization, so that the money is recouped and not passed on to the consumers.

I would point out that if this legislation goes down, either on the vote on the rule or the vote on the conference report, the current homestead exemption which is unlimited in places like Texas and Florida will end up still being the law and the corporate crooks will be able to put millions in their mansions and shield them from bankruptcy. There is a partial plug to prevent people who defraud the public from being able to do that, notwithstanding State law. So voting down the rule gives the corporate crooks a get-out-of-bankruptcy-free card.

Now, to my friends over here on my left, we have heard an awful lot of allegations that this bankruptcy provision that was negotiated between Senator SCHUMER and the gentleman from Illinois (Mr. HYDE) is an outrageous attempt to financially ruin pro-life protestors. There is not a person in this Chamber that has given his life more to the pro-life movement than the gentleman from Illinois (Mr. HYDE), and he negotiated this and he signed off on this agreement, and I think that we ought to respect his work for this pro-life movement.

We have heard that section 330 of the bill is an outrageous trampling of first amendment rights. Let me read it for my colleagues.

It says, "Except that nothing in this paragraph shall be construed to affect any expressive conduct, including peaceful picketing, peaceful prayer, or other peaceful demonstration protected from legal prohibition by the first amendment of the Constitution."

Read the bill. It does not affect first amendment rights. They are protected by the Constitution, and the black and white text of this provision protects things that are protected by the first amendment.

We have heard about the infamous Starr memorandum. A part of that says that section 330 does not affect lawful protest at all. What it does do is affect unlawful protest. And you are on the side of people who break the law, who want to break the law. What we do here is we protect people who want to abide by the law.

Now, in order for section 330 to come into play, there have to be nine steps that are done by the person whose debt

is to be declared nondischargeable, and I want to go through them.

First, there must be a violation of Federal or State statutory law. Second, the violation must result in some type of monetary liability such as civil or statutory damages. Third, the monetary liability must be based on a Federal or State court order or from a settlement agreement entered into by the debtor. Fourth, the violation of the law must result from an intentional act by the debtor. This does not apply to unintentional violations of the law and, thus, it would not apply to innocent protestors. Fifth, the intentional act must involve force, the threat of force, or physical obstruction. Sixth, the intentional act must result in intentional injury, intimidation, or interference, or intentional damage or destruction of property. Seventh, the debtor must have injured, intimidated, or interfered with a person because such person obtained or provided lawful goods or services or because a facility provides lawful goods or services. Eighth, the debtor must file for bankruptcy relief; and ninth, the party holding the monetary judgment against the debtor must bring an action in the bankruptcy court for the purpose of having the court determine whether the debtor's liability for the judgment is nondischargeable under section 330.

They have to do all nine of these things to get a debt nondischargeable.

Now, if the opponents of this bill and the opponents of the rule are successful, the current bankruptcy law which would stand makes all fines and forfeitures nondischargeable, including those that arise under the FACE Act. So defeating a necessary bankruptcy reform is not going to accomplish this purpose. The rule and the bill ought to pass.

Mr. SESSIONS. Mr. Speaker, at this time we are nearing the end of the speakers that we have and I would welcome an opportunity for the gentleman from Texas (Mr. FROST) to close, and then it would be my intent to briefly speak and then yield to our final speaker.

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

Mr. Speaker, as we have heard, there is controversy on this rule. This matter has been pending for some time. I personally support the rule and the bill, and I urge adoption of 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.

This has been a vigorous debate today, one which has I think allowed the opportunity for both sides of our conference to speak forthrightly about the issues and the ideas which they see on this bankruptcy bill. I will tell my colleagues that I believe that this is an economic development package, part of the plan that we have from the Republican Conference to help consumers and to help make sure the economy moves

properly. So I support not only this rule, but the underlying legislation.

Mr. Speaker, I yield 1 minute to the gentleman from Texas (Mr. ARMEY) to close.

Mr. ARMEY. Mr. Speaker, let me begin by thanking the gentleman from Pennsylvania (Mr. GEKAS), the gentleman from Wisconsin (Mr. SENSENBRENNER), the gentleman from Illinois (Mr. HYDE), and the Committee on the Judiciary for the extraordinarily long and hard years of dedicated work that they have attended to this subject.

Mr. Speaker, let me make another statement fairly clear. I believe it is safe to say that if it were not for my personal insistence this bill would not be on the floor today. Therefore, I think it is safe to conclude that it is I that put this bill on the floor. Why would I do that? Why would I put a bill on the floor that gives even myself a conflict of visions?

There are two great values that are addressed in this bill, two values that I hold dear in my heart and high in my hopes and dreams for this great Nation: The one that precious lives will be saved, and the other that they will be taught how to live precious lives.

Mr. Speaker, a good nation has a government that honors the goodness of its people. A good nation is a nation that has law that knows the goodness of its people and reflects and encourages them.

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A good Nation will have a law that honors what we teach our children, so that in the law itself our children are encouraged to those teachings which we pray into their lives will make their lives successful in their own right and a blessing in the lives of others.

One of those things we teach our children is to be careful what obligations we make in our lives, and to fulfill our obligations, and default only as a last resort and as a matter of personal embarrassment.

Our existing bankruptcy laws do not reflect that teaching. Our existing bankruptcy laws belie our teaching when we are parents at our best, instructing our children on the hopes that are our highest, about their personal responsibilities. In short, Mr. Speaker, our existing bankruptcy law says to our very same children: little darling, you are a fool if you do not file. It is wrong, Mr. Speaker.

This bill is not here about the money. To think this bill is about who gets the money or who keeps the money is too shallow an understanding. This bill is about the character of a Nation and the character of that Nation's law, and it is important. It is critical.

In this and in other ways, we must strive to have a government that knows the goodness of its own people and has the decency to expect it and to reflect it. That is why we are here with bankruptcy reform. That is what we are about.

And yes, because of a provision that was put into this bill in the other body, we are forced, and I, as deeply in my heart as any Member in this Chamber, am forced to find myself in conflict with another, perhaps even higher value, the right to present myself in encouragement to others to not do this thing that would destroy this life, and to do so without fear of punishment in our courts under a misguided law that has no respect for our very own Bill of Rights, and that is the FACE Act. It is a sabotage, we know that.

But bless his heart, our first, best champion for the life of the unborn, the gentleman from Illinois (Chairman HYDE), fought this demon to a draw to the best of his ability. We have people now who say to the gentleman from Illinois (Chairman HYDE), that is not good enough. I am not sorry, I say to the gentleman from Illinois (Chairman HYDE). I thank the gentleman from Illinois. He is, in this case, as he has always been, for the precious life of our precious babies, a good, true, and faithful servant. He did his best. I love the gentleman for his commitment. The gentleman from Illinois (Mr. HYDE) is to be respected for what he did here to help our cause.

How do we save our precious allies and friends and neighbors and devoted servants that go out there at risk already from the terror, the economic terror of the FACE Act? We do not do it by changing this law. The chairman of the committee has made that clear. There is no protection under FACE by defeating this bill.

If FACE is the evil, a trespass against our Bill of Rights, a trespass against our desire to save the unborn that we say it is, then let us not fight this mock battle; let us fight the real battle. The assault should be on FACE.

I believe I am correct in saying that those who find life precious on both sides of the aisle are the majority in this body, and the majority of this body drawn from both sides of the aisle can defeat FACE. That is what we ought to be doing.

So I say to my friends, save what we can; do not lose what we can over the hope that is without substance. Do not sacrifice the gains in the instruction of our children over the failed effort to protect those who would try to save our children. Vote for this rule; vote for this bill. Give our children a better break and a better understanding, and honor their parents as they teach their babies. Then come back, if you will, with a vengeance and defeat this atrocity against our basic human liberties called FACE. Get the villain and save the children.

Mr. JENKINS. Mr. Speaker, I rise in support of the rule for the consideration of H.R. 333, the Bankruptcy Abuse Prevention and Consumer Protection Act.

This legislation appears to be a compromise that is filled with positive aspects of the give and take involved in the legislative process and saturated with the element of comment sense that both sides to this controversy say that they strive to achieve.

Today, I rise to discuss one aspect that has been mentioned frequently on the floor today. The compromise language agreed to be the conference committee penalizes the adjudicated intentional violator of the law and the intentional tortfeasor and precludes him from escaping the consequences of this act by hiding behind the provisions of the bankruptcy act. This is entirely proper because the bankruptcy act was never intended to protect anyone in this situation.

At the same time, it protects the innocent who are simply exercising their constitutional rights—who are lawfully assembled or exercising their freedom of speech.

We should remember that this legislation is the product of years of hard work by the Judiciary Committee in both the House and Senate. This legislation answers a plea from across our land to address a serious weakness that exists in our system of providing relief to those who are overwhelmed by financial burdens.

I urge my colleagues to vote in favor of the rule.

Mrs. KELLY. Mr. Speaker, I rise today in strong support for the rule providing consideration for H.R. 333, the Bankruptcy Reform Conference Report, because this issue boils down to two words: personal responsibility. If a person assumes a debt, they are obligated to do everything in their power to pay it off. Creditors should be made whole, if possible. However, a safety net must remain for those who legitimately cannot pay their debts.

Some of my colleagues are trying to paint the word creditors to mean faceless financial institutions who are tricking consumers into assuming debt. They specifically speak of credit card debt. They unfortunately fail to note that credit card debt in the United States amounts to only three point eight percent of all household debt. Furthermore, only one percent of credit card accounts end up in bankruptcy. Of that one percent it is estimated that fifteen percent of those accounts can afford to repay some or all of their debt.

The people who are truly being hurt by our current bankruptcy system are Americans who play by the rules and pay off their debts. Bankruptcy costs the average American family about \$400 a year.

Needs-based bankruptcy reform is well overdue, and that is what this Bankruptcy Conference Report delivers. It is the people who game the system that we need to stop.

I listened to my colleague from Virginia (Mr. MORAN). He stated that more people filed for bankruptcy than graduated from college. That is a staggering fact. It's a transference of cost from those who overspend to those who carefully manage their money.

I support the Bankruptcy Conference Reports provisions which strengthen Code protections for ex-spouses and children. They have to be supported. In the current bankruptcy law, child support and alimony are placed seventh behind attorney fees as debt obligations. If enacted, this bill would move child support and alimony payments to first on the list of debt obligations.

Also under current law, some debtors use the automatic stay to avoid paying child support payments after they file for bankruptcy. The Bankruptcy Conference Report ensures less delay in the proper payment of child support. I vehemently oppose any legislation that would reduce the ability of women and children to receive support payments.

This Conference Report is a good legislation that moves us in the right direction, and I ask my colleagues from both sides of the aisle to join me in support of this reasonable reform by voting in favor of the rule providing for consideration of this Conference Report.

Mr. BEREUTER. Mr. Speaker, this Member rises today to express his support for the rule on the conference report for the Bankruptcy Abuse Prevention and Consumer Protection Act (H.R. 333). This Member is an original co-sponsor of H.R. 333, which the House first passed on March 1, 2001, by a vote of 306–108. This Member is pleased that the House and Senate conferees have finally reached an agreement on bankruptcy reform which President George W. Bush is expected to sign. It is important to note that bankruptcy reform bills passed both the House and the Senate in the 105th and 106th 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 this Congress, the Conference Report was delayed for too long over of all things, a tenuous connection drawn to the subject of abortion clinics by conferees from the other body.

First, this Member would thank the distinguished gentleman from Pennsylvania [Mr. GEGAS], for introducing the original House bankruptcy legislation, H.R. 333. This Member would also like to express his appreciation to the distinguished gentleman from Wisconsin [Mr. SENSENBRENNER], the Chairman of the Judiciary Committee, for his efforts in bringing this conference report to the House Floor for consideration.

This Member supports the conference report for the Bankruptcy Abuse Prevention and Consumer Protection Act for numerous reasons; however, the most important reasons include the following:

First, this Member supports the provision in the conference report for H.R. 333 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 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 the conference report of H.R. 333 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 the conference report of H.R. 333, 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 the conference report of H.R. 333 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 throughout the nation. It has allowed family farmers to reorganize their assets in a manner which balances the interests of creditors and the future success of the involved farmer.

If Chapter 12 bankruptcy provisions are not permanently extended for family farmers, its expiration on January 1, 2003, would be another 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 contracts 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 provision in the conference report of H.R. 333 which requires that people convicted of a felony or who owe a debt from a securities fraud violation in the five years before filing for bankruptcy cannot claim an unlimited homestead exemption. Currently, there are only six states, including Texas and Florida, which provide unlimited bankruptcy protection for a person's home. Nebraska is not one of those six states as it has a maximum homestead exemption of \$12,500. 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, 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 is 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 the conference report of H.R. 333.

Mr. SMITH of Texas. Mr. Speaker, I support the Bankruptcy Conference Report. I know there has been deliberation about the effect of section 330 of the bill on anti-abortion protests. But I believe section 330 will have little practical effect. And the rest of this bill will have an overwhelmingly positive impact on the bankruptcy system.

Section 330 does not penalize any lawful behavior. It will apply only if a person violates the law, a court enters an award against that person, the person later files a non-chapter 13 bankruptcy and seeks to discharge a debt based on their unlawful activity, and the creditor pursues the matter.

It does not apply only to abortion-related protests, but also to unlawful protests aimed at the providers of any lawful good or service.

The compromise reached in conference on this issue also contains very stringent requirements that should prevent any innocent protesters from being included in these provisions.

Moreover, this bill will curb bankruptcy abuse and protect consumers. It will also address the loophole in current law that allows debtors in certain states with unlimited homestead exemptions to shield an almost unlimited value of their homes from their creditors.

In order to game the system, some debtors move to a state with an unlimited homestead exemption just before they file for bankruptcy in order to take advantage of that state's more generous homestead protections.

H.R. 333 closes this loophole by requiring a debtor to reside in a state for at least two years before that debtor can claim the state's homestead exemption. In addition, a debtor must own the homestead for at least forty months before they can claim the state's homestead exemption protections.

H.R. 333 will stop corporate thieves from hiding their homestead assets from those whom they have defrauded. It will cap a debtor's homestead exemption at \$125,000 if the debtor was convicted of a felony, if the debtor violated a securities law, or if they engaged in any criminal act, intentional tort, or reckless misconduct that caused serious physical injury or death to another individual.

Homeownership strengthens the fabric of our society. It's the American dream—and over 70% of Americans are living it. Owning a house gives individuals and families a place to call home, where they can raise their children and become active participants in their neighborhoods and communities.

Since 1867, federal lawmakers have recognized the role of the states in determining appropriate homestead exemptions.

States are in a much better position to determine an appropriate exemption—they can more closely examine the factors that differ from state to state, such as property values, real estate inflation, and even demographics.

The balance between states' rights and the federal government is important. Any abuses of the homestead exemption can and should be addressed by the individual states themselves.

In Texas, the homestead exemption is embedded in the state constitution to prevent the sale of one's home to repay debts, except in three specific cases: when there is a debt for the purchase of a home, a debt to finance the improvements to the home, or a debt for property taxes or federal income and estate taxes.

The homestead exemption provisions were among the most contentious in the conference

and I am pleased we were able to reach a compromise on this issue. The compromise we reached will prevent 'bad actors' from abusing the homestead exemption without punishing those who legitimately belong in bankruptcy.

The overwhelming majority of people who declare bankruptcy do so because they have no other choice. Bankruptcy law is intended to give debtors a fresh start, not to punish them. Less than one percent of bankruptcy debtors abuse the bankruptcy process. This bill will address those 'bad actors' while retaining the goal of giving sincere debtors a fresh start.

I strongly support this conference report and I urge my colleagues to support it, as well.

Mr. SESSIONS. Mr. Speaker, I move the previous question on the resolution.

The previous question was ordered.

The SPEAKER pro tempore (Mr. GUTKNECHT). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

Mr. FROST. Mr. Speaker, I object to the vote on the ground that a quorum is not present and make the point of order that a quorum is not present.

The SPEAKER pro tempore. Evidently a quorum is not present.

The Sergeant at Arms will notify absent Members.

The vote was taken by electronic device, and there were—yeas 172, nays 243, not voting 17, as follows:

[Roll No. 478]

YEAS—172

Arney	English	Larsen (WA)	Simmons	Strickland	Walden
Bachus	Etheridge	Latham	Simpson	Sweeney	Walsh
Baird	Fletcher	LaTourrette	Skeen	Tanner	Watkins (OK)
Baker	Foley	Leach	Skelton	Tauscher	Weller
Barton	Ford	Linder	Smith (MI)	Taylor (NC)	Wilson (NM)
Bass	Fossella	Lucas (KY)	Smith (TX)	Thomas	Wu
Bentsen	Frelinghuysen	Lucas (OK)	Smith (WA)	Thompson (CA)	Wynn
Bereuter	Frost	Maloney (CT)	Snyder	Tiberi	Young (AK)
Berry	Galleghy	Maloney (NY)	Spratt	Turner	
Biggert	Ganske	Matheson	Stenholm	Upturn	
Blunt	Gekas	McCarthy (NY)			
Boehlert	Gibbons	McCrery			
Boehner	Gilchrest	McHugh			
Bonilla	Gillmor	McInnis			
Bono	Gilman	Meeks (NY)			
Boswell	Gonzalez	Miller, Dan			
Boucher	Gordon	Moore			
Brady (TX)	Goss	Moran (VA)			
Brown (SC)	Granger	Morella			
Burr	Graves	Myrick			
Buyer	Green (WI)	Nethercutt			
Calvert	Greenwood	Ney			
Camp	Hansen	Northrup			
Cannon	Hart	Nussle			
Cantor	Hastert	Ose			
Capito	Hastings (WA)	Oxley			
Carson (OK)	Herger	Peterson (PA)			
Castle	Hill	Petri			
Chabot	Hinojosa	Platts			
Clement	Hobson	Price (NC)			
Coble	Horn	Pryce (OH)			
Collins	Hulshof	Quinn			
Cox	Hyde	Radanovich			
Cramer	Isakson	Ramstad			
Crane	Israel	Regula			
Crenshaw	Issa	Reynolds			
Crowley	Jenkins	Riley			
Culberson	Johnson (CT)	Rivers			
Davis (FL)	Johnson, E. B.	Rogers (KY)			
Deal	Keller	Rohrabacher			
DeLay	Kelly	Rothman			
Dicks	Kind (WI)	Royce			
Dooley	King (NY)	Ryan (WI)			
Dreier	Kingston	Schrock			
Duncan	Kirk	Sensenbrenner			
Dunn	Knollenberg	Sessions			
Edwards	Kolbe	Shays			
Emerson	Lampson	Sherwood			
			Abercrombie	Hoeffel	Payne
			Ackerman	Hoekstra	Pelosi
			Aderholt	Holden	Pence
			Akin	Holt	Peterson (MN)
			Allen	Honda	Phelps
			Andrews	Hostettler	Pickering
			Baca	Hoyer	Pitts
			Baldacci	Hunter	Pombo
			Baldwin	Inslee	Pomeroy
			Ballenger	Istook	Portman
			Barcia	Jackson (IL)	Putnam
			Barr	Jackson-Lee	Rahall
			Barrett	(TX)	Rangel
			Bartlett	Jefferson	Rehberg
			Becerra	John	Reyes
			Berkley	Johnson (IL)	Rodriguez
			Berman	Johnson, Sam	Roemer
			Billirakis	Jones (NC)	Rogers (MI)
			Bishop	Jones (OH)	Ros-Lehtinen
			Blumenauer	Kanjorski	Ross
			Bonior	Kaptur	Roybal-Allard
			Boozman	Kennedy (MN)	Rush
			Borski	Kennedy (RI)	Ryun (KS)
			Brady (PA)	Kerns	Sabo
			Brown (FL)	Kildee	Sanchez
			Brown (OH)	Kilpatrick	Sanders
			Bryant	Kleczka	Sandlin
			Burton	Kucinich	Sawyer
			Capps	LaFalce	Saxton
			Capuano	LaHood	Schaffer
			Cardin	Langevin	Schakowsky
			Carson (IN)	Lantos	Schiff
			Chambliss	Larson (CT)	Scott
			Clay	Lee	Serrano
			Clayton	Levin	Shadegg
			Clyburn	Lewis (CA)	Shaw
			Conyers	Lewis (GA)	Sherman
			Costello	Lewis (KY)	Shimkus
			Coyne	Lipinski	Shows
			Cubin	LoBiondo	Shuster
			Cummings	Lofgren	Slaughter
			Cunningham	Lowey	Smith (NJ)
			Davis (CA)	Luther	Solis
			Davis (IL)	Lynch	Souder
			Davis, Jo Ann	Manzullo	Stark
			DeFazio	Markey	Stearns
			DeGette	Mascara	Stupak
			Delahunt	Matsui	Sullivan
			DeLauro	McCarthy (MO)	Sununu
			DeMint	McCollum	Tancredo
			Deutsch	McDermott	Tauzin
			Dingell	McGovern	Taylor (MS)
			Doggett	McIntyre	Terry
			Doyle	McKeon	Thompson (MS)
			Ehlers	McNulty	Thornberry
			Engel	Meehan	Thune
			Eshoo	Meek (FL)	Thurman
			Evans	Menendez	Tiahrt
			Everett	Mica	Tierney
			Farr	Millender-	Towns
			Fattah	McDonald	Udall (CO)
			Ferguson	Miller, Gary	Udall (NM)
			Filner	Miller, George	Velazquez
			Flake	Miller, Jeff	Vislosky
			Forbes	Mollohan	Vitter
			Frank	Moran (KS)	Wamp
			Gephardt	Murtha	Waters
			Goode	Nadler	Watson (CA)
			Goodlatte	Napolitano	Watt (NC)
			Graham	Norwood	Watts (OK)
			Green (TX)	Oberstar	Waxman
			Gutierrez	Obey	Weiner
			Gutknecht	Olver	Weldon (CA)
			Hall (TX)	Ortiz	Weldon (PA)
			Harman	Osborne	Wexler
			Hastings (FL)	Otter	Whitfield
			Hayes	Owens	Wicker
			Hayworth	Pallone	Wilson (SC)
			Hefley	Pascrell	Wolf
			Hilleary	Pastor	Woolsey
			Hilliard	Paul	Young (FL)
			Hinchev		
			Blagojevich	Combest	Davis, Tom
			Boyd	Condit	Diaz-Balart
			Callahan	Cooksey	Doolittle

NAYS—243

NOT VOTING—17

Ehrlich  
Grucci  
Hooley

Houghton  
McKinney  
Roukema

Stump  
Toomey

□ 1717

Messrs. SHUSTER, GRAHAM, BARR of Georgia and ROGERS of Michigan, Mrs. CUBIN, Messrs. EVERETT, REHBERG, BURTON of Indiana, OTTER, OSBORNE, MICA, TERRY, KENNEDY of Minnesota, NORWOOD, GOODLATTE, CHAMBLISS, PUTNAM, PORTMAN, POMBO, LEWIS of Kentucky, SAXTON, TIAHRT, LOBIONDO, SHAW, WILSON of South Carolina and SUNUNU, Ms. ROS-LEHTINEN, and Messrs. WHITFIELD, HOYER, McKEON, MENENDEZ, KERNS, BOOZMAN, THORNBERRY, LEWIS of California, FERGUSON, LAHOOD, YOUNG of Florida and JOHNSON of Illinois changed their vote from "yea" to "nay."

Mr. MORAN of Virginia, Mr. STENHOLM, Ms. RIVERS, Ms. EDDIE BERNICE JOHNSON of Texas, Mr. MEEKS of New York, Mrs. MYRICK, and Messrs. SPRATT, FOSSELLA, BROWN of South Carolina, CANTOR and EDWARDS changed their vote from "nay" to "yea."

So the resolution was not agreed to.

The result of the vote was announced as above recorded.

A motion to reconsider was laid on the table.

#### FURTHER MESSAGE FROM THE SENATE

A further message from the Senate by Mr. Monahan, one of its clerks, announced that the Senate has passed a bill of the following title in which the concurrence of the House is requested:

S. 3156. An Act to provide a grant for the construction of a new community center in St. Paul, Minnesota, in honor of the late Senator Paul Wellstone and his beloved wife, Sheila.

#### PROVIDING FOR CONSIDERATION OF SENATE AMENDMENTS TO H.R. 5063, ARMED FORCES TAX FAIRNESS ACT OF 2002

Mr. LINDER. Mr. Speaker, by direction of the Committee on Rules, I call up House Resolution 609 and ask for its immediate consideration.

The Clerk read the resolution, as follows:

#### H. RES. 609

*Resolved*, That upon adoption of this resolution it shall be in order to take from the Speaker's table the bill (H.R. 5063) to amend the Internal Revenue Code of 1986 to provide a special rule for members of the uniformed services in determining the exclusion of gain from the sale of a principal residence and to restore the tax exempt status of death gratuity payments to members of the uniformed services, with the Senate amendments thereto, and to consider in the House, without intervention of any point of order, a single motion offered by the chairman of the Committee on Ways and Means or his designee that the House concur in each of the Senate amendments with the respective amendment printed in the report of the Committee on

Rules accompanying this resolution. The Senate amendments and the motion shall be considered as read. The motion shall be debatable for one hour equally divided and controlled by the chairman and ranking minority member of the committee on Ways and Means. The previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

The SPEAKER pro tempore (Mr. GUTKNECHT). The gentleman from Georgia (Mr. LINDER) is recognized for 1 hour.

Mr. LINDER. Mr. Speaker, for purposes of debate only, I yield the customary 30 minutes to the gentlewoman from New York (Ms. SLAUGHTER), pending which I yield myself such time as I might consume. During consideration of this resolution, all time yielded is for the purpose of debate only.

Mr. Speaker, House Resolution 609 provides us the opportunity to take H.R. 5063, with the Senate amendments, and to consider without intervention of any point of order a motion offered by the chairman of the Committee on Ways and Means or his designee. The motion provides the opportunity for the House to concur in each of the Senate amendments with the amendment that has been printed in the Committee on Rules report accompanying this resolution. The rule also waives all points of order against consideration of the motion to concur in the Senate amendments with amendments, and it provides 1 hour of debate in the House equally divided and controlled by the chairman and ranking minority member of the Committee on Ways and Means.

Finally, Mr. Speaker, H. Res. 609 provides that the previous question shall be considered as ordered on the motion to final adoption without intervening motion or demand for division of the question.

Mr. Speaker, as we prepare to complete the work of the 107th Congress and take H.R. 5063 from the Speaker's table, there are a couple of items of importance that will be inserted in this vehicle that the House will now have the opportunity to support following the adoption of this rule.

First, the amendments provide for a full extension through March 31, 2003, of current funding and program rules in the Temporary Assistance for Needy Families program and the Child Care, Abstinence Education, and Transitional Medical Assistance programs.

In 1996, the creation of the Temporary Assistance for Needy Families program fixed block grants for State designated programs of time-limited and work-conditioned aid to families with children. It also created a mandatory block grant to States for child care for low-income families, funded through fiscal year 2002. While the first continuing resolution passed by the House in September extended these programs through December 31, 2002, the CR passed by the House this week further extended those programs through the date of January 11, 2003.

Unfortunately, in terms of the feasibility of approving funding for these programs through January 11 of next year, it makes much more programmatic sense for us to provide funds to the States on a quarterly basis and therefore extend the funding and program rules through an entire quarter to March 31, 2003.

Second, the amendment extends federally funded temporary unemployment benefits of current recipients and those in high unemployment States through January of 2003. In brief, this amendment will extend unemployment benefits for up to an additional 5 weeks per individual by moving the cutoff date to February 1, 2003. I believe that the House and Senate will eagerly support this provision that provides supplementary weeks of employment benefits to over 800,000 persons across the United States.

Mr. Speaker, I urge adoption of the rule and the subsequent motion to be offered by the chairman of the Committee on Ways and Means.

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

Ms. SLAUGHTER. Mr. Speaker, I thank the gentleman from Georgia (Mr. LINDER) for yielding me the customary half hour, and I yield myself such time as I may consume.

(Ms. SLAUGHTER asked and was given permission to revise and extend her remarks.)

Ms. SLAUGHTER. Mr. Speaker, I had hoped to come to the well today to congratulate my colleagues for crafting a measure in the nick of time that addressed the real need in the communities. But like the vast majority of the legislation emerging from the 107th Congress, this is a pitiful stopgap measure that in the end will benefit far fewer than the rhetoric from the other side of the aisle suggests. I wish the unemployed had the lobbying might of the credit card companies who are enjoying the consideration of a last minute bankruptcy bill that will hammer our most vulnerable constituents, or even the insurance companies at the moment being blessed with a last minute measure to absolve them of liability in the event of future attacks, but the unemployed do not have the attention of the majority party and we do not believe they ever will.

The measure before us today is woefully inadequate when it comes to addressing the needs of our Nation's unemployed workers. I would note that these are newly unemployed workers, those that have paid into the system in the event of an economic slowdown. Mr. Speaker, the economy has not hit a soft patch. It is in a recession. Moreover, the money these workers paid into the system is there. They are workers who paid into the system when times were good and are now in need when the economy is rough. Why put obstacles in front of working families that need this aid? Indeed, most of our constituents will not qualify for an additional 13 weeks of benefits in this bill.

ANNOUNCEMENT BY THE SPEAKER PRO TEMPORE

The SPEAKER pro tempore. Members are advised to turn off their cell phones.

Ms. SLAUGHTER. In my district close to 60,000 people remain unemployed due to a slowing economy. This measure will do little or nothing to alleviate the suffering of these families, and these statistics do not include the news this week that Eastman Kodak will cut 650 more jobs in my district or that Frontier Telephone will cut an additional 100 from its ranks almost immediately, before Thanksgiving Day.

In New York since the enactment of temporary Federal legislation in March of this year, the unemployed workers have been able to qualify for federally funded benefits which in New York can last up to 13 weeks, but this program is proving wildly inadequate for New York. Exceptionally large numbers of workers are running out of Federal benefits before they find new employment. The severity of the exhaustion problem reflects the State's shaky labor market, and I wish I could say that New York was alone, but my colleagues know better. The measure before us not only fails to make necessary improvements to the program, it fails even to extend the program in its current form. In the vast majority of States, it would provide no additional weeks of federally funded unemployment benefits to the workers who have already exhausted their regular, State unemployment benefits and cannot find work.

Under this proposal large groups of unemployed workers who will need additional weeks of unemployment benefits before job growth picks up would go without any further assistance. Between now and the end of January, an estimated 1.8 million jobless workers in need of assistance would fail to receive it under the majority plan.

This body could do much better. My colleague from New York (Mr. RANGEL) introduced legislation H.R. 5491 that would extend temporary Federal unemployment assistance for an additional 6 months through June 30, 2003. This measure would ensure that workers in every State are eligible for 26 weeks of extended unemployment benefits, and in States with high unemployment, like New York, workers would receive an additional 7 weeks of benefits. But it goes without saying that the measure before us today cannot be amended, and any meaningful consideration of the measure of the gentleman from New York (Mr. RANGEL) would be shut out under this rule.

I need to clarify another point for my colleagues. The House action report today indicates that Texas, New York, and California would be deemed "high unemployment States" under the chairman's bill, but according to the minority Committee on Ways and Means staff, that is not correct. The bill contains no expansion of the definition to allow States other than three, Alaska Washington, and Oregon, to qualify.

The problem with the current formulation which is fixed in the bill of the gentleman from New York (Mr. RANGEL) is that classification as a high unemployment State is based on the insured unemployment rate, which does not include long-term unemployment.

□ 1730

Thus, workers who receive the 13-week extension provided for in last year's tax bill, over and above the initial 26 weeks, are dropped from the calculation. So the formula is not a true measure of the unemployment situation in a State. States with long-term unemployment that exhausted their benefits are simply out of luck.

Another provision of this measure represents a case of too little too late. The Medicare/Medicaid reimbursement provision purports to temporarily address the controversy surrounding physician payments, but our Nation's hospitals are left out of the fix. Again, many of my colleagues I suspect are hearing from hospitals about their critical needs, and this measure will not alleviate their struggles.

Mr. Speaker, if the previous question is defeated, I will offer an amendment to the rule. Unlike the language in the bill which indemnifies the administration if it chooses to adjust Medicare physician payments, my amendment both protects beneficiaries from the harmful effects of physicians dropping out of the program and guarantees a patient increase for physicians.

Other Medicare providers, including hospitals, home health agencies and nursing homes that provide essential services to seniors and the disabled would be helped. The amendment ensures that all these providers have the resources needed to continue caring for their beneficiaries. This is about a bipartisan initiative which includes the House Republican provider package from earlier this year.

Mr. Speaker, I urge a "no" vote on the previous question so we can offer this important amendment.

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

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

Ms. SLAUGHTER. Mr. Speaker, I yield such time as he may consume to the gentleman from New York (Mr. RANGEL).

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

Mr. RANGEL. Mr. Speaker, I had hoped that with the overwhelming Republican victory in the House and Senate and a Republican President, that this would be an ideal time to see whether or not we can at least ease the need for the partisanship we had had in the past and to see whether or not we could get some basic things done for the country and plan better for the future of how we are going to work in the Congress.

I guess the major thing that we have to do is just talk with each other and

maybe not go through the process of having hearings and going to the committees and all of that formality, but at least to be able to alert people as to how you would like to close out this Congress.

So we are adding to the Military Tax Fairness Act, that no one could be against except communists, some pretty good measures. One is to give some relief to our stopgap extension for the funding of welfare. It is small. We do not know where we are going or what we are going to do, but there is no sense letting the poor folks suffer for our confusion, so moving on that at a later date makes a lot of sense since you could not complete it this year.

The unemployment benefit extension to me only gives relief to three States, Oregon, Washington and Arkansas, and does not come anywhere near acting as though we are addressing the ever-increasing unemployment, especially in my State; and I wish we would have done something with that.

I guess the major hurdle that we have to overcome, and one of the reasons why I am opposing the rule, is because no one has explained the creativity of how we are going to give assistance to Medicare physicians. I assume that Republicans on the Committee on Rules already know what this means; and just maybe, just maybe, they might explain how we can pay Medicare doctors and forget all of the other providers.

Now, it was explained to me that we do not have the money to pay anybody else and that the administration would pay the Medicare doctors, and if they did pay the Medicare doctors, that this would say that the administration cannot be sued. Now, I know some smart people are trying to figure this out.

First of all, I do not know who is going to sue the administration; but if you are giving them some type of amnesty for paying the Medicare doctors, then the same legal creative mind that is going to spare the administration for doing the right thing for paying the doctors should have them do the right thing to pay for Medicare, and we will not sue them; to pay for the nursing homes, and we will not sue them; to pay for the teaching hospitals, and we will not sue them.

So I do not know where we are going with this. But I would hate in the last few hours of this Congress to end up providing a fig leaf for the administration, when we know they are not thinking about doing anything illegal. So if they can do this without the Congress, let them do it and take care of the needs of the other people, because our hospitals are suffering; and I just do not know why we are rifle-shooting the Medicare physicians and just ignoring the health maintenance organizations and their needs.

So I expect as soon as I sit down that someone might explain this to me, and maybe, just maybe, we might be able on the previous question to change these things so we can leave together,

not as Democrats and Republicans, but as a Congress who could not complete their work on time and is just trying to get something done that we are proud of when we go home.

But I think the best way to do this is to defeat the rule and to come back with something that I really think would make us feel a little more proud of who we are.

I thank the gentlewoman for this opportunity; and I look forward to hearing from the majority, especially now that the chairman of the committee, he has not spoken to me since we have been back, but I would like to take this opportunity to congratulate him and hope we can set a new tone here, and I think just by explaining why we are not suing the administration for just singling out Medicare physicians, when we ought to sue if they ignore the rest of the people that deserve some type of assistance.

Mr. LINDER. Mr. Speaker, the gentleman from New York said he wished somebody could explain it to him. I think somebody will.

Mr. Speaker, I yield such time as he may consume to the gentleman from California (Mr. THOMAS).

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

First of all, I want to thank my friend. This is, as we sometimes have to do at the end of a session, dealing with some mistakes that were made, both intentionally and unintentionally.

As far as the tenor for the welfare renewal, in the continuing resolution the language that was assumed to have fixed the problem provided by the appropriators does not, and what we are doing is making sure that the program at least extends through March.

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

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

Mr. RANGEL. Mr. Speaker, I have no problem with that.

Mr. THOMAS. Mr. Speaker, reclaiming my time, on the unemployment, as the gentleman well knows, there is a cliff that is going to occur because of the expiration of the unemployment provisions on December 28. We have had debates about how long it should be and in what form it should be. This at least provides those who are getting the unemployment, who are expecting their 13 weeks, to be able to get the 13 weeks.

Mr. RANGEL. Mr. Speaker, if the gentleman will yield further, he did not go nearly far enough, but I could hardly vote against it. The interesting part is going to be this part.

Mr. THOMAS. Mr. Speaker, reclaiming my time, there is no guarantee that the administration will do anything. The difficulty in trying to move at this time those kinds of things that we call provider packages is that what is an appropriate provider package is in the eye of the beholder; and in trying to negotiate what it is that we are

going to do, it is simply an impossibility.

What we are aware of is that in one particular approach, which is the physician reimbursement structure, plugged numbers were put in for 1998 and 1999. They do not accurately reflect the number of cases that physicians were involved with.

It is possible that the administration would change those numbers. There is no guarantee that they would change the numbers, but they are concerned that if they did go in and put actual numbers in place of plugged numbers, someone may entertain a suit to go back into the 1990s or the 1980s and say this number was not an actual number, and we want to sue you to make that change.

So all this provision does is provide legal protection, that if the administration does decide to make an adjustment, that is, use real-world numbers now known rather than the plugged numbers, they would not be subject to lawsuits if they did not make additional changes.

Now, that means that all we are doing is creating an opportunity for the administration to make a decision if they so choose to do so. That does not mean that this in any way adequately addresses the needs of many other providers. But there is no other provider group that the administration could make adjustments from plugged numbers to real numbers, as in this particular case. It requires the investment of money to be addressed to those various groups, be they hospitals, skilled nursing facilities, home health care or others.

This is not about providing money to fix one group's problem versus another; it is to create an atmosphere in which, if the administration chooses to do so, they would be able to do so, and the cost would then be borne by the administration, not by the legislative branch. When we come back then at the beginning of the next Congress, we would address, as we normally do, those provider groups for which we would have to provide the finances to assist them.

So all this does is put in place a legal protection, so that if the administration does choose to adjust those numbers, they would not be required through any kind of a court case to adjust any other number.

Mr. RANGEL. Mr. Speaker, if the gentleman would yield further, I do not doubt the good intent that the gentleman has in providing some moneyless way, some way that we do not have any financial obligation to pay for it, to give relief to the Medicare physicians. But I might suggest that you are opening up Pandora's box with hospitals, nursing homes, Medicaid. I do not know why you would just go to this, just because we have not been able to address the problems of the people that are waiting for help. All of these hospitals are calling Members all over wondering for what reason are we singling out Medicare physi-

cians for what they might call special treatment. If Members are so sophisticated that they are going to say this is an entitlement that is completely in the hands of the administration and it is just a question of which numbers they are going to use, but we are now going to hold them harmless in case they make a mistake, then I really do not think that this is the way that we should go.

I had hoped, and I do hope, that this is the end of the type of procedure that we have that the minority finds out what you are up to when the bill comes out. But maybe we can conclude by taking this off the calendar, seeing what can be worked out and start getting ready to start the new Congress on a different footing. I think some of these things could be adjusted. But it seems like this is a monkey wrench in the whole darn thing.

Mr. THOMAS. Mr. Speaker, reclaiming my time, it sounds to me the gentleman is offering the classic argument of because it is not perfect, it should be opposed. It seems to me that if there is an ability to correct a mistake and that the administration simply wants legal protection to correct that mistake, that we ought to be able to do that.

If the gentleman says others are not being provided for adequately, I would be the first to agree with the gentleman; and that is the first order of business. But no one else can be taken care of unless we go through those weeks and months of negotiations of what a package should look like.

So I would simply say, in returning my time to the gentleman who was kind enough to yield it to me, if in fact using real-world numbers and providing the administration some legal protection from being sued because they did not do something else other than putting in real-world numbers is going to be something that someone opposes, it is amazing the point that we have come to.

If others could be resolved this way, we would be doing others. Just because this particular problem could be resolved and others cannot does not mean that one should be in opposition to resolving this particular problem. We will deal with the others when it is timely and appropriate, because we will have to negotiate and put dollars on the table to solve other providers' problems. This is one in which the administration is merely asking for legal protection, and I think we ought to provide it.

□ 1745

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Massachusetts (Mr. MCGOVERN).

Mr. MCGOVERN. Mr. Speaker, I thank the gentlewoman for yielding me this time.

Mr. Speaker, I rise in opposition to this rule. I would urge a "no" vote on the previous question.

Mr. Speaker, this bill was brought before the Committee on Rules in the

dead of night without any committee consideration. I am on the Committee on Rules, and we in the minority did not have a chance to review the legislative language even before we reported this rule. In fact, there was nobody present in the Committee on Rules last night that could answer any questions about the substance of this bill and, for that matter, the other bills that were brought before our committee. I think that on process alone this bill should be defeated.

Now, the majority claims that this bill will prevent people from losing their welfare benefits, from losing their unemployment compensation, and will allow the administration to fix the reimbursement problem. That is a tall tale if I have ever heard one.

The extension of the unemployment compensation is minimal. Because of the weak language in the bill, the House will have to address these issues again in January. I suppose one could make the argument that this is better than nothing, but not much more than that.

The so-called physicians' reimbursement fix is not a solution. There are problems with Medicare that began with the implementation of the BBA-mandated cuts on October 1, 2002. The majority may claim that this bill allows the majority to fix the physicians' reimbursement deduction, but it does not directly fix it. Nor does it address the cut in reimbursements for home health agencies, nursing homes, hospitals, and individual medical services.

Mr. Speaker, this is a last ditch attempt of the majority to pretend like they are doing something for the American people but, quite frankly, the American people deserve much more than this.

Now, at the conclusion of debate on this rule, the minority will call for a vote on the previous question. If the previous question is defeated, we will offer an amendment that will include real relief from the BBA-mandated cuts.

This House should not adjourn without providing real Medicare relief, but this bill does not provide that relief.

So I would strongly urge my colleagues to vote "no" on the previous question, defeat the rule, and support real Medicare relief that will benefit all of our seniors.

Mr. LINDER. Mr. Speaker, I yield 4 minutes to the gentlewoman from Connecticut (Mrs. JOHNSON).

Mrs. JOHNSON of Connecticut. Mr. Speaker, I want to remind my colleagues in the House that actually we passed a payer package to address the problems in the home health industry, the nursing home industry, the hospital industry, and the physician industry. We not only passed provider reforms, but we passed reforms that would be effective for 3 years so there would be stability in the medical community and our providers would be able to meet the challenges of this current period of difficulty with greater cer-

tainty. As to Medicare reimbursements in a period when malpractice insurance is rising by leaps and bounds, in a period when nursing costs are rising, when drug costs are rising, when blood costs are rising, it is really important for us to at least guarantee to our providers payment stability, as we did in the provider package that passed this House before the July recess and must do again before many months pass.

It is unfortunate that the other body has been unable to agree on a provider package and is still unable to negotiate on that package. If that were not the case, we would have a package before us here today.

As that is the case, it is extraordinarily important that we pass this clarifying language that merely clarifies current law, protecting against administrative review to the fiscal year calendar charges as well. So this is just a clarification of current law, and we believe that if that is done, the administration will be able to make adjustments as they have in many, many other instances. The fundamental problem is the underestimate of the number of Medicare patients that were going to move to the Medicare+Choice plans. Since not as many moved as were anticipated, those patients continue to see physicians. But we stopped paying the physicians for those patients.

So this is a very simple matter. It gives the administration just the opportunity to evaluate their own formulas and make similar kinds of reviews of them. It does not guarantee anything; it just assures that the current language that has worked in many situations in the past will have the opportunity to work at this time. And, of course, as my colleagues well know, physicians are declining to take additional Medicare patients; they are declining to even convert patients. And if, in fact, physicians do begin to participate, either fewer physicians or the current physicians at a lower level of participation, it will affect access to hospitals for our senior citizens and access to office care.

So it is a very important matter for our big medical centers as well as for our smaller hospitals and for our physicians; in other words, for seniors' access to health care, that we pass this bill this evening. And in addition, of course, it does extend unemployment compensation benefits after December 31, and that alone should be cause for the support of my colleagues. It also makes a more rational extension of TANF and therefore will allow the States to go forward and get their quarterly allocation to maintain a consistent program over the next quarter.

Again, this House passed a TANF reform bill many, many months ago, and if the other body had acted, we would not be in the situation we are in this evening. I urge support of this limited but important legislation.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Tennessee (Mr. TANNER).

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

Mr. TANNER. Mr. Speaker, I support H.R. 5063 with regard to unemployment extension and the TANF measures, and I agree that we need to address the problem facing our Nation's physicians. But there are other health care providers who are in just as dire straits, hospitals, home health, nursing homes and others.

We have in Tennessee, particularly in the rural areas now, hospitals operating in the red, laying off nurses; we have elderly citizens that cannot get home health care services. What we are trying to do when asking for Members to vote against the previous question is to allow us to bring up a bill, H.R. 5729, that includes the package of provider reimbursements or provider help that the Republicans passed in H.R. 4954 earlier this year and is within the budget. This seems to me to be imminently reasonable and fair to all of the providers across the board. It recognizes that we have a serious problem in the country.

Should we be able to defeat the previous question, we would then be able to insert into this procedure the House-passed bill, H.R. 4954, with the provider package for all health care providers.

I would urge as we debate this that we do that and point out that we in no way are trying to jeopardize the passage of the provisions with regard to unemployment and TANF that are in here and that are necessary, nor the physicians, but to recognize that people other than physicians in the health care delivery industry in this country are in just as dire straits, and it seems to me to be an imminently reasonable thing for us to do.

Mrs. JOHNSON of Connecticut. Mr. Speaker, will the gentleman yield?

Mr. TANNER. I yield to the gentlewoman from Connecticut.

Mrs. JOHNSON of Connecticut. Mr. Speaker, if we followed the course of action that the gentleman is suggesting, and no one would like to do that more than I; I think we have to address all of these issues; that is what we did in the payer package and that is what we have to do in the beginning of January. But if we follow the course of action the gentleman is suggesting, the Senate simply will not go along and then we will leave this place with nothing done.

The physicians uniquely suffered a 5 percent cut last year, and if there is anything we can do to enable the administration to follow ordinary administrative procedures to prevent an additional cut, we should do it. We do not know this will work, but we do know, because we have been trying, that the Senate will not agree to a package and we have not been able to negotiate that package.

So if we follow the gentleman's proposal that we come back with his package to recommit, they will just not accept it, and we will be nowhere. That is

what has happened ever since July. Since July, we are nowhere, even though we did our part. We passed a payer package. If they had sent anything over, if they had sent the merest dribble over, we would be able to negotiate a package. I am sorry to have taken the gentleman's time.

Mr. LINDER. Mr. Speaker, I am pleased to yield 2 minutes to the gentleman from Iowa (Mr. GANSKE).

Mr. GANSKE. Mr. Speaker, in Iowa, the pediatricians, the obstetricians, the family practitioners rank 47th, 48th and 50th in terms of reimbursement for Medicare. With the cuts in physician payments, many of them are making decisions not to accept any new Medicare patients, and many are actually making decisions to drop out of Medicare.

This comes about because there was a faulty formula for a couple of years, and what we are dealing with now is the opportunity to at least allow the administration to look at this. This does not mean that other providers will not be taken care of in a package. But we tried to put together a balanced package earlier in the year when we were dealing with prescription drugs, and we just did not get it done in the other body in order to go to a conference to work it out.

Just because we cannot do everything, as has already been stated, does not mean we should not do something or at least allow the administration the opportunity to do that. This is not unique to Iowa. We are seeing this in many, many other places around the country. This is a result of a flawed formula, and it would be my plea to my colleagues on both sides of the aisle to allow this minimal provision to simply prevent a lawsuit from occurring from a disaffected other provider group.

I would make an argument that if the administration would do something on this, that it would actually be to the benefit of the other provider groups early next year, because it actually removes one of the players from the table and, I think, then increases the bounty on that table for the other providers. This is a rather unique situation and I would ask my colleagues to support the rule and also the bill.

Finally, since this will be the last time I speak on this floor, I just want to thank my colleagues from both sides of the aisle. I have made a lot of friendships here in the House and I will treasure them forever.

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Texas (Mr. STENHOLM).

Mr. STENHOLM. Mr. Speaker, I want to make it very clear that I support the bill before us today, but I urge opposition to the previous question for the reasons of which the gentleman from Tennessee amplified on a moment ago.

The frustration that many of us have felt over the last 6 months, as the gentlewoman spoke of a moment ago about the Senate, the time is limited

now in which this body can blame the other body for not acting. Unfortunately, the bill before us is not going to get acted on either and yet we are going to set up one last time in which we are going to have the blame game in which we can point to somebody else for us not doing our work.

If the previous question is voted down, then we can take care of nursing homes, hospitals, home health care, and other health care providers exactly like the majority side said we should do it that was included within the budget this year. Nothing changes regarding what was passed in the House if we vote down the previous question.

□ 1800

All of the good things in this bill, all of the other things are in. It has just as good a chance of passing as the simplified, watered-down bill we have tonight.

It is unfortunate we have gotten ourselves into this position; but we have, for all the reasons, many of which were very successful politically. But that does not help the rural hospitals in my district. That does not help the one-third of the nursing homes in the State of Texas that are now in bankruptcy, and another one-fourth that are hanging on bankruptcy if we do not act, and act sooner, not later.

Excuses and finger-pointing are not going to get the job done. All we encourage is a vote against the previous question so we can send the package to the Senate, to the other body, that will do exactly what the majority wanted to do and a lot of folks on this side of the aisle also wanted to get done.

But Members should not deceive themselves that they are going to accomplish this with a finger-pointing exercise today. I encourage a vote against the previous question, allow the Tanner amendment to then come immediately back with everything, and then let us see whose fault it might be.

Ms. SLAUGHTER. Mr. Speaker, I yield 2 minutes to the gentleman from Washington (Mr. McDERMOTT).

Mr. McDERMOTT. Mr. Speaker, I thank the gentlewoman from New York for yielding time to me.

Mr. Speaker, it is really nice that we can end this session with one more act from the Republican economic follies. I mean, this is the craziest piece of legislation I have ever seen, and this rule is an amazingly stupid rule.

They bring a bill out here for equity for the veterans, right? Oh, well, now we are here, let us throw a little something on for the doctors. While we are here, let us throw a little something on for unemployment.

We had extended hearings on this issue. Our committee went over and over again and heard about all the problems. Like heck we did; there were no hearings. They come out here with Band-Aids again, and everybody on this floor knows this bill is going to die. This is nonsense. It is not going to go over to the Senate and be accepted.

But as my dear friend, the gentleman from Texas, said, they want to play the blame game.

Now, unemployment is a serious issue. What they are doing in this bill is not going to fix the unemployment problem. I will give chapter and verse when we get on the substance. But the fact that they will not allow us to put any kind of amendments up here is the reason why this bill is no good, and it is what they have been doing for a whole year.

They have known that the doctors were being taken around the corner and beaten up for 5 percent. They have known that for 9 months. They are not smart enough to put together something with the other side to get it through. Now here they are at the last day and saying, well, Thanksgiving is coming, Christmas is coming, send them another package; but they are not putting any stamps on it. It is never going to get through this place.

That has got to stop. These are issues that affect Democrats and Republicans; it is not partisan. Doctors, rural hospitals are Democrat and they are Republican. As long as they try and fix the problem by coming out here and slapping one, two, three Band-Aids on to fix what they should have done, it will not work.

The unemployment bill was badly written in the first place, and we begged them to come and do something about it. What do they do? Extend it for another 5 weeks. They say, well, another 5 weeks. The long-term unemployment in this country is going up dramatically. We ought to vote this rule down and write a decent one.

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

Mr. Speaker, I would like to say that is one of the gentleman's more interesting bits of prose. I suppose there is a kernel of thought lurking in it, but I did not detect it.

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

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. DEFAZIO).

Mr. DEFAZIO. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, the Republican leadership has taken care of their colleagues in the Congress. There is going to be a tidy COLA made available to Members of Congress that will far exceed 6 months' worth of unemployment benefits for most Americans. In this bill, all they could find room for was a 5-week extension.

I have to admit, coming from the State of Oregon, with the second-highest unemployment rate in the Nation, with 2,500 people a week exhausting their benefits, that that is better than nothing. Those families now know that through Christmas and the holidays they will not be totally cut off. However, it creates an incredible amount of uncertainty for those families come the end of January.

We cannot do better than that? We can give ourselves a COLA for 12 months that far exceeds any benefits they can ever expect under unemployment, but somehow we cannot give them the certainty of another 26 weeks? I do not understand that. I really do not understand that position in this House. Why are we so stingy when it comes to working people, and so generous when it comes to insurance companies and the pharmaceutical industry? It might have something to do with who funds our campaigns.

This provision of this bill is essential, but it is nowhere near enough. Congress will be immediately confronted upon returning in early January with the issue of further extending unemployment benefits and, hopefully, adopting an effective economic stimulus package.

We simply need to put America back to work. We have a trade policy that is exporting jobs, and we are being told that trickle-down will help stimulate the economy and put people back to work; but my people are tired of being trickled on. They need Federal investment. We need something that puts them back to work.

We are holding back money from the Highway Trust Fund. That will put people back to work. We cannot get a bill passed to deal with the forest fire projects which could put people back to work in the woods. We do not have time for that, but we do have time for some other special shenanigans around here.

Mr. Speaker, I will support the legislation; but I bemoan the fact that Congress sees fit to take care of itself first, its contributors second, and the working people of America last in a very, very, very cursory way that is only temporary.

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

Ms. SLAUGHTER. Mr. Speaker, I yield 3 minutes to the gentleman from Oregon (Mr. Wu).

Mr. WU. Mr. Speaker, I thank the gentlewoman for yielding time to me.

Mr. Speaker, thousands and thousands of Oregonians who have worked hard, played by the rules, frequently gotten a good education, and worked hard all their lives are currently without work. Many of them will be losing their unemployment benefits on December 28.

The legislation before us is hardly a perfect piece of legislation, but it will get a lot of folks over the hump until we can come back to this piece of legislation in the new congressional session. I hope that we will be able to do that.

I have legislation before this Chamber, H.R. 5731, which would not only extend the unemployment assistance benefit program, it would also extend the period of time in which any individual could receive assistance. I think that is a very necessary step to take at this point.

There are two kinds of folks, at least, who are hurting out there. I have seen

so many of their faces as I have gone around communities in Oregon and in my town hall meetings. They are people who have exhausted their benefits, their 26 weeks' worth; and they are folks who, without an extension of this program, would not receive any assistance whatsoever. We need to help both groups, and I hope that we are able to come back in the new Congress and address the needs of both groups.

However, tiding one group over through the holidays I believe is a necessary step. I do intend to support the legislation.

Ms. SLAUGHTER. Mr. Speaker, I yield 1½ minutes to the gentleman from Arkansas (Mr. BERRY).

Mr. BERRY. Mr. Speaker, I thank the gentlewoman for yielding time to me, and I thank her for her leadership in this matter.

Mr. Speaker, I agree, we should fix the physician fee schedule. We tried to fix it. We offered a pretty good one in the bill that was passed in this body earlier this year.

I can tell the Members this, this bill does not go far enough. Rural hospitals, nursing homes, long-term care facilities, and home health agencies are all in trouble in rural America. Our rural health infrastructure is crumbling. We suffer from a lack of nurses, doctors, skilled medical professionals.

We are losing the ability to provide health care to Medicare recipients because the reimbursement rates are so low, not only to the doctors but to the hospitals and the other providers. Rural hospitals in my district are struggling to keep their doors open and at the same time provide health care to our people.

It is time that we face this problem, deal with it in a responsible way, and stop playing the games that are being played like we are doing here tonight. We just passed a bill yesterday that reduces the amount of money that is spent on road construction, which does not make any sense at all. If there is one thing we know that helps the economy, it is constructing highways. It gives us not only immediate jobs, but long-term benefits. We are playing all these games with the American people.

I hope that the people that are supporting this today have to go and face these people that do not have any health care 2 years from now.

Ms. SLAUGHTER. Mr. Speaker, I yield myself the balance of my time.

Mr. Speaker, if the previous question is defeated, and we will call a vote on that, I am going to offer an amendment to the rule. Unlike the language in the bill which indemnifies the administration if it chooses to adjust Medicare physician payments, my amendment both protects beneficiaries from the harmful effects of physicians dropping out of the program, and guarantees a payment increase for the physicians.

Other Medicare providers, including hospitals, home health agencies, and nursing homes also provide essential care to seniors and the disabled. The

amendment ensures that all these providers have the resources needed to continue caring for the beneficiaries. This is a bipartisan initiative which includes the House Republican provider package from earlier this year.

Mr. Speaker, I urge a "no" vote on the previous question so that we can offer this important amendment, and ask unanimous consent that the text of the amendment be printed in the RECORD immediately before the vote on the previous question.

The SPEAKER pro tempore (Mr. GUTKNECHT). Is there objection to the request of the gentlewoman from New York?

There was no objection.

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

Mr. Speaker, I will agree that this is not the best we can do, but it is the best we can do at this hour. I would agree that it is perhaps true that the other body may not take it up and pass it, just like they have not passed other things we have passed. This bill going over there unpassed will have lots of company, but it is trying to do the right thing. It is trying to help with unemployment, it is trying to help with TANF, and it is trying to help with reimbursement. It is worth our consideration.

I urge this body to pass the previous question, to pass the rule, and I will support the underlying legislation.

Mrs. CHRISTENSEN. Mr. Speaker, although I have many problems with this bill, including the limited extension of unemployment, as well as the lack of relief for all providers of Medicare, I rise to support the rule and the underlying bill because this short extension is better than nothing, and it is likely all we can get right now.

I also support the bill and the rule because it addresses another very important issue affecting health care for countless Americans. It does what I have always thought was possible anyway, which is to clarify the authority of the Administrator of Center for Medicare and Medicaid Services to reverse the cuts, and hopefully revise the way provider payments for physicians are determined.

This is not a perfect solution, because Congress should have reversed the cut once and for all, but it may also help set a precedent for issues such as this in the future.

There were many measures I hoped would be passed and issues addressed in a lame duck session this year, and reversing the cuts in Medicare provider payments was one of the important ones. Health care providers have borne 4 cuts over the past 10 years and another cut is expected within two years. This is in addition to the fact that the payment schedule, which barely allows doctors to keep their office open, was erroneously determined. This administration and CMS are forcing good doctors and other providers out of practice and denying quality health care to increasing numbers of Americans.

We have a lot more work to do to fix this broken health care system in this country, but because we are leaving to go back home tonight, we cannot do it now.

I hope my friends in the majority will commit themselves to doing more than this band aid fix when we return next year.

The text of the amendment previously referred to by Ms. SLAUGHTER is as follows:

At the end of the resolution, add the following:

Sec. \_\_\_\_ Notwithstanding any other provision of this resolution, the first amendment printed in the report of the Committee on Rules shall be modified by adding the text of H.R. 5729.

Mr. LINDER. 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 SPEAKER pro tempore. The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the noes appeared to have it.

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

The yeas and nays were ordered.

The SPEAKER pro tempore. Pursuant to clause 9 of rule XX, the Chair will reduce to 5 minutes the minimum time for electronic voting, if ordered, on the question of adoption of the resolution.

The vote was taken by electronic device, and there were—yeas 207, nays 198, not voting 26, as follows:

[Roll No. 479]

YEAS—207

Aderholt	Foley	Lewis (CA)
Akin	Forbes	Lewis (KY)
Army	Fossella	Linder
Bachus	Frelinghuysen	LoBiondo
Baker	Galleghy	Lucas (OK)
Ballenger	Ganske	Manzullo
Barr	Gekas	McCrery
Bartlett	Gibbons	McHugh
Barton	Gilchrest	McInnis
Bass	Gillmor	McKeon
Bereuter	Gilman	Mica
Biggert	Goode	Miller, Dan
Bilirakis	Goodlatte	Miller, Gary
Blunt	Goss	Miller, Jeff
Boehler	Graham	Moran (KS)
Boehner	Granger	Morella
Bonilla	Graves	Myrick
Bono	Green (WI)	Ney
Boozman	Greenwood	Northup
Brady (TX)	Gutknecht	Norwood
Brown (SC)	Hansen	Nussle
Bryant	Hart	Osborne
Burr	Hastings (WA)	Ose
Burton	Hayes	Otter
Buyer	Hayworth	Oxley
Calvert	Hefley	Paul
Camp	Herger	Pence
Cannon	Hilleary	Peterson (PA)
Cantor	Hobson	Petri
Capito	Hoekstra	Pickering
Castle	Horn	Pitts
Chabot	Hostettler	Platts
Chambliss	Hulshof	Pombo
Coble	Hunter	Portman
Collins	Hyde	Pryce (OH)
Cox	Isakson	Putnam
Crane	Issa	Quinn
Crenshaw	Istook	Radanovich
Cubin	Jenkins	Ramstad
Culberson	Johnson (CT)	Regula
Cunningham	Johnson (IL)	Rehberg
Davis, Jo Ann	Johnson, Sam	Reynolds
Davis, Tom	Jones (NC)	Riley
Deal	Keller	Rogers (KY)
DeLay	Kelly	Rogers (MI)
DeMint	Kennedy (MN)	Rohrabacher
Dreier	Kerns	Ros-Lehtinen
Duncan	King (NY)	Royce
Dunn	Kingston	Ryan (WI)
Ehlers	Kirk	Ryun (KS)
Emerson	Knollenberg	Saxton
English	Kolbe	Schaffer
Everett	LaHood	Schrock
Ferguson	Latham	Sessions
Flake	LaTourette	Shadegg
Fletcher	Leach	Shaw

Shays	Sununu
Sherwood	Sweeney
Shimkus	Tancredo
Shuster	Tauzin
Simmons	Taylor (NC)
Simpson	Terry
Skeen	Thomas
Smith (MI)	Thornberry
Smith (NJ)	Thune
Smith (TX)	Tiberi
Souder	Upton
Stearns	Vitter
Sullivan	Walden

NAYS—198

Abercrombie	Harman
Ackerman	Hastings (FL)
Allen	Hill
Andrews	Hilliard
Baca	Hinche
Baird	Hinojosa
Baldwin	Hoeffel
Barrett	Holden
Becerra	Holt
Bentsen	Honda
Berkley	Hoyer
Berman	Inslee
Berry	Israel
Bishop	Jackson (IL)
Blumenauer	Jackson-Lee
Bonior	(TX)
Borski	Jefferson
Boswell	John
Boucher	Johnson, E. B.
Brady (PA)	Jones (OH)
Brown (FL)	Kanjorski
Brown (OH)	Kaptur
Capps	Kennedy (RI)
Capuano	Kildee
Cardin	Kilpatrick
Carson (IN)	Kind (WI)
Carson (OK)	Kucinich
Clay	LaFalce
Clayton	Lampson
Clement	Langevin
Clyburn	Lantos
Conyers	Larsen (WA)
Costello	Larson (CT)
Coyne	Lee
Cramer	Levin
Crowley	Lofgren
Cummings	Lowey
Davis (CA)	Lucas (KY)
Davis (FL)	Luther
Davis (IL)	Lynch
DeFazio	Maloney (CT)
DeGette	Maloney (NY)
DeLahunt	Markey
DeLauro	Mascara
Deutsch	Matheson
Dicks	Matsui
Dingell	McCarthy (MO)
Doggett	McCarthy (NY)
Dooley	McCollum
Doyle	McDermott
Edwards	McGovern
Engel	McIntyre
Eshoo	McNulty
Etheridge	Meehan
Evans	Meek (FL)
Farr	Meeke (NY)
Fattah	Menendez
Filner	Menlender
Ford	McDonald
Frank	Miller, George
Frost	Mollohan
Gephardt	Moore
Gonzalez	Moran (VA)
Gordon	Murtha
Green (TX)	Nadler
Gutierrez	Napolitano
Hall (TX)	Neal

NOT VOTING—26

Baldacci	Doolittle	Nethercutt
Barcia	Ehrlich	Oberstar
Blagojevich	Crucci	Roukema
Boyd	Hooley	Sensenbrenner
Callahan	Houghton	Stump
Combest	Kleccka	Tiaht
Condit	Lewis (GA)	Toomey
Cooksey	Lipinski	Weldon (PA)
Diaz-Balart	McKinney	

Walsh	Walsh
Wamp	Wamp
Watkins (OK)	Watkins (OK)
Watts (OK)	Watts (OK)
Weldon (FL)	Weldon (FL)
Weller	Weller
Whitfield	Whitfield
Wicker	Wicker
Wilson (NM)	Wilson (NM)
Wilson (SC)	Wilson (SC)
Wolf	Wolf
Young (AK)	Young (AK)
Young (FL)	Young (FL)

and DELAHUNT changed their vote from “yea” to “nay.”

Mr. NUSSLE changed his vote from “nay” to “yea.”

So the previous question was ordered.

The result of the vote was announced as above recorded.

The SPEAKER pro tempore (Mr. ISAKSON). The question is on the resolution.

The question was taken; and the Speaker pro tempore announced that the ayes appeared to have it.

RECORDED VOTE

Ms. SLAUGHTER. Mr. Speaker, I demand a recorded vote.

A recorded vote was ordered.

The SPEAKER pro tempore. This will be a 5-minute vote.

The vote was taken by electronic device, and there were—ayes 245, noes 137, not voting 49, as follows:

[Roll No. 480]

AYES—245

Aderholt	Everett	Lewis (CA)
Akin	Ferguson	Lewis (KY)
Andrews	Flake	Linder
Baca	Fletcher	LoBiondo
Bachus	Foley	Lucas (KY)
Ballenger	Forbes	Lucas (OK)
Barr	Fossella	Manzullo
Bartlett	Frelinghuysen	Matheson
Barton	Frost	McCarthy (NY)
Bass	Galleghy	McCrery
Bereuter	Ganske	McHugh
Berkley	Gekas	McIntyre
Berry	Gibbons	McKeon
Biggert	Gilchrest	Menendez
Bilirakis	Gilman	Mica
Bishop	Gonzalez	Miller, Dan
Blunt	Goode	Miller, Jeff
Boehler	Gordon	Moore
Boehner	Goss	Moran (KS)
Bonilla	Graham	Morella
Bono	Granger	Myrick
Boozman	Graves	Nethercutt
Brady (TX)	Green (WI)	Ney
Brown (FL)	Greenwood	Northup
Brown (SC)	Gutknecht	Ortiz
Bryant	Hall (TX)	Osborne
Burr	Hart	Ose
Burton	Hastings (WA)	Oxley
Buyer	Hayes	Pastor
Calvert	Hayworth	Paul
Camp	Hefley	Pence
Cannon	Hill	Peterson (PA)
Cantor	Hilleary	Petri
Capito	Hobson	Phelps
Castle	Hoekstra	Pickering
Chabot	Holden	Pitts
Chambliss	Holt	Platts
Coble	Horn	Pombo
Collins	Hoyer	Pomeroy
Cox	Hulshof	Portman
Crane	Hunter	Pryce (OH)
Crenshaw	Hyde	Putnam
Cubin	Isakson	Quinn
Culberson	Israel	Rahall
Cunningham	Issa	Ramstad
Davis, Jo Ann	Istook	Regula
Davis, Tom	Jackson-Lee	Rehberg
Deal	(TX)	Reyes
DeFazio	Jefferson	Reynolds
DeLay	Jenkins	Riley
DeMint	John	Rodriguez
Dicks	Johnson (CT)	Rogers (KY)
Dingell	Johnson (IL)	Rogers (MI)
Dooley	Johnson, Sam	Rohrabacher
Dreier	Jones (NC)	Ros-Lehtinen
Duncan	Kelly	Ross
Dunn	Kennedy (MN)	Rothman
Ehlers	Kerns	Royce
Edwards	King (NY)	Ryun (KS)
Ehlers	Kingston	Saxton
Emerson	Kirk	Schaffer
English	Knollenberg	Schrock
Everett	Kolbe	Sessions
Ferguson	LaHood	Shadegg
Flake	Latham	Shaw
Fletcher	LaTourette	Shays
	Leach	Sherwood



Sec. 353. Definition of congressional intelligence committees in National Security Act of 1947.

**TITLE IV—CENTRAL INTELLIGENCE AGENCY**

Sec. 401. Two-year extension of Central Intelligence Agency Voluntary Separation Pay Act.

Sec. 402. Implementation of compensation reform plan.

**TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES**

Sec. 501. Use of funds for counterdrug and counterterrorism activities for Colombia.

Sec. 502. Protection of operational files of the National Reconnaissance Office.

Sec. 503. Eligibility of employees in Intelligence Senior Level positions for Presidential Rank Awards.

**TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES.**

Sec. 601. Establishment of Commission.

Sec. 602. Purposes.

Sec. 603. Composition of Commission.

Sec. 604. Functions of Commission.

Sec. 605. Powers of Commission.

Sec. 606. Nonapplicability of Federal Advisory Committee Act.

Sec. 607. Staff of Commission.

Sec. 608. Compensation and travel expenses.

Sec. 609. Security clearances for Commission members and staff.

Sec. 610. Reports of Commission; termination.

Sec. 611. Funding.

**TITLE VII—INFORMATION SHARING**

Sec. 701. Short title.

Sec. 702. Findings and sense of Congress.

Sec. 703. Facilitating homeland security information sharing procedures.

Sec. 704. Report.

Sec. 705. Authorization of appropriations.

Sec. 706. Coordination provision.

**TITLE VIII—REPORTING REQUIREMENTS**

**Subtitle A—Overdue Reports**

Sec. 801. Deadline for submittal of various overdue reports.

**Subtitle B—Submittal of Reports to Intelligence Committees**

Sec. 811. Dates for submittal of various annual and semiannual reports to the congressional intelligence committees.

**Subtitle C—Recurring Annual Reports**

Sec. 821. Annual report on threat of attack on the United States using weapons of mass destruction.

Sec. 822. Annual report on covert leases.

Sec. 823. Annual report on improvement of financial statements of certain elements of the intelligence community for auditing purposes.

Sec. 824. Annual report on activities of Federal Bureau of Investigation personnel outside the United States.

Sec. 825. Annual reports of inspectors general of the intelligence community on proposed resources and activities of their offices.

Sec. 826. Annual report on counterdrug intelligence matters.

Sec. 827. Annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets.

**Subtitle D—Other Reports**

Sec. 831. Report on effect of country-release restrictions on allied intelligence-sharing relationships.

Sec. 832. Evaluation of policies and procedures of Department of State on protection of classified information at department headquarters.

**Subtitle E—Repeal of Certain Report Requirements**

Sec. 841. Repeal of certain report requirements.

**TITLE IX—COUNTERINTELLIGENCE ACTIVITIES**

Sec. 901. Short title; purpose.

Sec. 902. National Counterintelligence Executive.

Sec. 903. National Counterintelligence Policy Board.

Sec. 904. Office of the National Counterintelligence Executive.

**TITLE X—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY**

Sec. 1001. Findings.

Sec. 1002. National Commission for the Review of the Research and Development Programs of the United States Intelligence Community.

Sec. 1003. Powers of Commission.

Sec. 1004. Staff of Commission.

Sec. 1005. Compensation and travel expenses.

Sec. 1006. Treatment of information relating to national security.

Sec. 1007. Final report; termination.

Sec. 1008. Assessments of final report.

Sec. 1009. Inapplicability of certain administrative provisions.

Sec. 1010. Funding.

Sec. 1011. Definitions.

**TITLE I—INTELLIGENCE ACTIVITIES**

**SEC. 101. AUTHORIZATION OF APPROPRIATIONS.**

Funds are hereby authorized to be appropriated for fiscal year 2003 for the conduct of the intelligence and intelligence-related activities of the following elements of the United States Government:

(1) The Central Intelligence Agency.

(2) The Department of Defense.

(3) The Defense Intelligence Agency.

(4) The National Security Agency.

(5) The Department of the Army, the Department of the Navy, and the Department of the Air Force.

(6) The Department of State.

(7) The Department of the Treasury.

(8) The Department of Energy.

(9) The Federal Bureau of Investigation.

(10) The National Reconnaissance Office.

(11) The National Imagery and Mapping Agency.

(12) The Coast Guard.

**SEC. 102. CLASSIFIED SCHEDULE OF AUTHORIZATIONS.**

(a) SPECIFICATIONS OF AMOUNTS AND PERSONNEL CEILINGS.—The amounts authorized to be appropriated under section 101, and the authorized personnel ceilings as of September 30, 2003, for the conduct of the intelligence and intelligence-related activities of the elements listed in such section, are those specified in the classified Schedule of Authorizations prepared to accompany the conference report on H.R. 4628 of the One Hundred Seventh Congress.

(b) AVAILABILITY OF CLASSIFIED SCHEDULE OF AUTHORIZATIONS.—The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The President shall provide for suitable distribution of the Schedule, or of appropriate portions of the Schedule, within the executive branch.

**SEC. 103. PERSONNEL CEILING ADJUSTMENTS.**

(a) AUTHORITY FOR ADJUSTMENTS.—With the approval of the Director of the Office of Management and Budget, the Director of Central Intelligence may authorize employment of civilian personnel in excess of the number authorized for fiscal year 2003 under section 102 when the Director of Central Intelligence determines that such action is necessary to the performance of important intelligence functions, except that the number of personnel employed in excess of the

number authorized under such section may not, for any element of the intelligence community, exceed 2 percent of the number of civilian personnel authorized under such section for such element.

(b) NOTICE TO INTELLIGENCE COMMITTEES.—The Director of Central Intelligence shall notify promptly the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate whenever the Director exercises the authority granted by this section.

**SEC. 104. INTELLIGENCE COMMUNITY MANAGEMENT ACCOUNT.**

(a) AUTHORIZATION OF APPROPRIATIONS.—There is authorized to be appropriated for the Intelligence Community Management Account of the Director of Central Intelligence for fiscal year 2003 the sum of \$158,254,000. Within such amount, funds identified in the classified Schedule of Authorizations referred to in section 102(a) for advanced research and development shall remain available until September 30, 2004.

(b) AUTHORIZED PERSONNEL LEVELS.—The elements within the Intelligence Community Management Account of the Director of Central Intelligence are authorized 322 full-time personnel as of September 30, 2003. Personnel serving in such elements may be permanent employees of the Intelligence Community Management Account or personnel detailed from other elements of the United States Government.

(c) CLASSIFIED AUTHORIZATIONS.—

(1) AUTHORIZATION OF APPROPRIATIONS.—In addition to amounts authorized to be appropriated for the Intelligence Community Management Account by subsection (a), there are also authorized to be appropriated for the Intelligence Community Management Account for fiscal year 2003 such additional amounts as are specified in the classified Schedule of Authorizations referred to in section 102(a). Such additional amounts for research and development shall remain available until September 30, 2004.

(2) AUTHORIZATION OF PERSONNEL.—In addition to the personnel authorized by subsection (b) for elements of the Intelligence Community Management Account as of September 30, 2003, there are hereby authorized such additional personnel for such elements as of that date as are specified in the classified Schedule of Authorizations.

(d) REIMBURSEMENT.—Except as provided in section 113 of the National Security Act of 1947 (50 U.S.C. 404h), during fiscal year 2003 any officer or employee of the United States or a member of the Armed Forces who is detailed to the staff of the Intelligence Community Management Account from another element of the United States Government shall be detailed on a reimbursable basis, except that any such officer, employee, or member may be detailed on a non-reimbursable basis for a period of less than one year for the performance of temporary functions as required by the Director of Central Intelligence.

(e) NATIONAL DRUG INTELLIGENCE CENTER.—

(1) IN GENERAL.—Of the amount authorized to be appropriated in subsection (a), \$34,100,000 shall be available for the National Drug Intelligence Center. Within such amount, funds provided for research, development, testing, and evaluation purposes shall remain available until September 30, 2004, and funds provided for procurement purposes shall remain available until September 30, 2005.

(2) TRANSFER OF FUNDS.—The Director of Central Intelligence shall transfer to the Attorney General funds available for the National Drug Intelligence Center under paragraph (1). The Attorney General shall utilize funds so transferred for the activities of the National Drug Intelligence Center.

(3) LIMITATION.—Amounts available for the National Drug Intelligence Center may not be used in contravention of the provisions of section 103(d)(1) of the National Security Act of 1947 (50 U.S.C. 403-3(d)(1)).

(4) **AUTHORITY.**—Notwithstanding any other provision of law, the Attorney General shall retain full authority over the operations of the National Drug Intelligence Center.

**SEC. 105. AUTHORIZATION OF EMERGENCY SUPPLEMENTAL APPROPRIATIONS FOR FISCAL YEAR 2002.**

(a) **AUTHORIZATION.**—Amounts authorized to be appropriated for fiscal year 2002 under section 101 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107-108) for the conduct of the intelligence activities of elements of the United States Government listed in such section are hereby increased, with respect to any such authorized amount, by the amount by which appropriations pursuant to such authorization were increased by the following:

(1) The Emergency Supplemental Act, 2002 (contained in division B of Public Law 107-117), including section 304 of such Act (115 Stat. 2300).

(2) The 2002 Supplemental Appropriations Act for Further Recovery From and Response To Terrorist Attacks on the United States (Public Law 107-206), for such amounts as are designated by Congress as an emergency requirement pursuant to section 251(b)(2)(A) of the Balanced Budget and Emergency Deficit Control Act of 1985 (2 U.S.C. 901(b)(2)(A)).

(b) **RATIFICATION.**—For purposes of section 504 of the National Security Act of 1947 (50 U.S.C. 414), any obligation or expenditure of those amounts deemed to have been specifically authorized by the Acts referred to in subsection (a) is hereby ratified and confirmed.

**SEC. 106. ADDITIONAL AUTHORIZATIONS OF APPROPRIATIONS FOR INTELLIGENCE FOR THE WAR ON TERRORISM.**

(a) **IN GENERAL.**—Subject to subsection (b), the amounts requested in the letter dated July 3, 2002, of the President to the Speaker of the House of Representatives, related to the Defense Emergency Response Fund and that are designated for the incremental costs of intelligence and intelligence-related activities for the war on terrorism are authorized.

(b) **LIMITATIONS.**—The amounts referred to in subsection (a)—

(1) are authorized only for activities directly related to identifying, responding to, or protecting against acts or threatened acts of terrorism;

(2) are not authorized to correct programmatic or fiscal deficiencies in major acquisition programs which will not achieve initial operational capabilities within two years of the date of the enactment of this Act; and

(3) are not available until the end of the 10-day period that begins on the date written notice is provided to the Select Committee on Intelligence and the Committee on Appropriations of the Senate and the Permanent Select Committee on Intelligence and the Committee on Appropriations of the House of Representatives.

**SEC. 107. SPECIFIC AUTHORIZATION OF FUNDS FOR INTELLIGENCE OR INTELLIGENCE-RELATED ACTIVITIES FOR WHICH FISCAL YEAR 2003 APPROPRIATIONS EXCEED AMOUNTS AUTHORIZED.**

Funds appropriated for an intelligence or intelligence-related activity for fiscal year 2003 in excess of the amount specified for such activity in the classified Schedule of Authorizations prepared to accompany this Act shall be deemed to be specifically authorized by Congress for purposes of section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)).

**SEC. 108. INCORPORATION OF REPORTING REQUIREMENTS.**

(a) **IN GENERAL.**—Each requirement to submit a report to the congressional intelligence committees that is included in the joint explanatory statement to accompany the conference report on the bill H.R. 4628 of the One Hundred Seventh Congress, or in the classified annex to this Act, is hereby incorporated into this Act, and is hereby made a requirement in law.

(b) **CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.**—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 109. PREPARATION AND SUBMITTAL OF REPORTS, REVIEWS, STUDIES, AND PLANS RELATING TO INTELLIGENCE ACTIVITIES OF DEPARTMENT OF DEFENSE OR DEPARTMENT OF ENERGY.**

(a) **CONSULTATION IN PREPARATION.**—(1) The Director of Central Intelligence shall ensure that any report, review, study, or plan required to be prepared or conducted by a provision of this Act, including a provision of the classified Schedule of Authorizations referred to in section 102(a) or the classified annex to this Act, that involves the intelligence or intelligence-related activities of the Department of Defense or the Department of Energy is prepared or conducted in consultation with the Secretary of Defense or the Secretary of Energy, as appropriate.

(2) The Secretary of Defense or the Secretary of Energy may carry out any consultation required by this subsection through an official of the Department of Defense or the Department of Energy, as the case may be, designated by such Secretary for that purpose.

(b) **SUBMITTAL.**—Any report, review, study, or plan referred to in subsection (a) shall be submitted, in addition to any other committee of Congress specified for submittal in the provision concerned, to the following committees of Congress:

(1) The Committees on Armed Services and Appropriations and the Select Committee on Intelligence of the Senate.

(2) The Committees on Armed Services and Appropriations and the Permanent Select Committee on Intelligence of the House of Representatives.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

**SEC. 201. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated for the Central Intelligence Agency Retirement and Disability Fund for fiscal year 2003 the sum of \$222,500,000.

**TITLE III—GENERAL PROVISIONS**

**Subtitle A—Recurring General Provisions**

**SEC. 301. INCREASE IN EMPLOYEE COMPENSATION AND BENEFITS AUTHORIZED BY LAW.**

Appropriations authorized by this Act for salary, pay, retirement, and other benefits for Federal employees may be increased by such additional or supplemental amounts as may be necessary for increases in such compensation or benefits authorized by law.

**SEC. 302. RESTRICTION ON CONDUCT OF INTELLIGENCE ACTIVITIES.**

The authorization of appropriations by this Act shall not be deemed to constitute authority for the conduct of any intelligence activity which is not otherwise authorized by the Constitution or the laws of the United States.

**SEC. 303. SENSE OF CONGRESS ON INTELLIGENCE COMMUNITY CONTRACTING.**

It is the sense of Congress that the Director of Central Intelligence should continue to direct that elements of the intelligence community, whenever compatible with the national security interests of the United States and consistent with operational and security concerns related to the conduct of intelligence activities, and where fiscally sound, should competitively award contracts in a manner that maximizes the procurement of products properly designated as having been made in the United States.

**Subtitle B—Intelligence**

**SEC. 311. SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE.**

(a) **IN GENERAL.**—Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.) is amended by adding at the end the following new section:

“SPECIFICITY OF NATIONAL FOREIGN INTELLIGENCE PROGRAM BUDGET AMOUNTS FOR COUNTERTERRORISM, COUNTERPROLIFERATION, COUNTERNARCOTICS, AND COUNTERINTELLIGENCE

“SEC. 506. (a) **IN GENERAL.**—The budget justification materials submitted to Congress in support of the budget of the President for a fiscal year that is submitted to Congress under section 1105(a) of title 31, United States Code, shall set forth separately the aggregate amount requested for that fiscal year for the National Foreign Intelligence Program for each of the following:

“(1) Counterterrorism.

“(2) Counterproliferation.

“(3) Counternarcotics.

“(4) Counterintelligence.

“(b) **ELECTION OF CLASSIFIED OR UNCLASSIFIED FORM.**—Amounts set forth under subsection (a) may be set forth in unclassified form or classified form, at the election of the Director of Central Intelligence.”

(b) **CLERICAL AMENDMENT.**—The table of sections for that Act is amended by inserting after the item relating to section 505 the following new item:

“Sec. 506. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence.”

**SEC. 312. PROHIBITION ON COMPLIANCE WITH REQUESTS FOR INFORMATION SUBMITTED BY FOREIGN GOVERNMENTS.**

Section 552(a)(3) of title 5, United States Code, is amended—

(1) in subparagraph (A) by inserting “and except as provided in subparagraph (E),” after “of this subsection,”; and

(2) by adding at the end the following:

“(E) An agency, or part of an agency, that is an element of the intelligence community (as that term is defined in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4))) shall not make any record available under this paragraph to—

“(i) any government entity, other than a State, territory, commonwealth, or district of the United States, or any subdivision thereof; or

“(ii) a representative of a government entity described in clause (i).”

**SEC. 313. NATIONAL VIRTUAL TRANSLATION CENTER.**

(a) **ESTABLISHMENT.**—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the intelligence community an element with the function of connecting the elements of the intelligence community engaged in the acquisition, storage, translation, or analysis of voice or data in digital form.

(b) **DESIGNATION.**—The element established under subsection (a) shall be known as the National Virtual Translation Center.

(c) **ADMINISTRATIVE MATTERS.**—(1) The Director shall retain direct supervision and control over the element established under subsection (a).

(2) The element established under subsection (a) shall connect elements of the intelligence community utilizing the most current available information technology that is applicable to the function of the element.

(d) **DEADLINE FOR ESTABLISHMENT.**—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

#### Subtitle C—Personnel

### SEC. 321. STANDARDS AND QUALIFICATIONS FOR THE PERFORMANCE OF INTELLIGENCE ACTIVITIES.

Section 104 of the National Security Act of 1947 (50 U.S.C. 403-4) is amended—

(1) by redesignating subsection (g) as subsection (h); and

(2) by inserting after subsection (f) the following new subsection (g):

“(g) **STANDARDS AND QUALIFICATIONS FOR PERFORMANCE OF INTELLIGENCE ACTIVITIES.**—The Director, acting as the head of the intelligence community, shall, in consultation with the heads of effected agencies, develop standards and qualifications for persons engaged in the performance of intelligence activities within the intelligence community.”.

### SEC. 322. MODIFICATION OF EXCEPTED AGENCY VOLUNTARY LEAVE TRANSFER AUTHORITY.

(a) **IN GENERAL.**—Section 6339 of title 5, United States Code, is amended—

(1) by striking subsection (b);

(2) by redesignating subsection (c) as subsection (b); and

(3) by inserting after subsection (b) (as so redesignated by paragraph (2)) the following:

“(c)(1) Notwithstanding any provision of subsection (b), the head of an excepted agency may, at his sole discretion, by regulation establish a program under which an individual employed in or under such excepted agency may participate in a leave transfer program established under the provisions of this subchapter outside of this section, including provisions permitting the transfer of annual leave accrued or accumulated by such employee to, or permitting such employee to receive transferred leave from, an employee of any other agency (including another excepted agency having a program under this subsection).

“(2) To the extent practicable and consistent with the protection of intelligence sources and methods, any program established under paragraph (1) shall be consistent with the provisions of this subchapter outside of this section and with any regulations issued by the Office of Personnel Management implementing this subchapter.”.

(b) **CONFORMING AMENDMENTS.**—Section 6339 of this title is amended—

(1) in paragraph (2) of subsection (b) (as so redesignated by subsection (a)(2)), by striking “under this section” and inserting “under this subsection”; and

(2) in subsection (d), by striking “of Personnel Management”.

### SEC. 323. SENSE OF CONGRESS ON DIVERSITY IN THE WORKFORCE OF INTELLIGENCE COMMUNITY AGENCIES.

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

(1) The United States is engaged in a war against terrorism that requires the active participation of the intelligence community.

(2) Certain intelligence agencies, among them the Federal Bureau of Investigation and the Central Intelligence Agency, have announced that they will be hiring several hundred new agents to help conduct the war on terrorism.

(3) Former Directors of the Federal Bureau of Investigation, the Central Intelligence Agency, the National Security Agency, and the Defense Intelligence Agency have stated that a more diverse intelligence community would be better equipped to gather and analyze information on diverse communities.

(4) The Central Intelligence Agency and the National Security Agency were authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1987.

(5) The Defense Intelligence Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 1988.

(6) The National Imagery and Mapping Agency was authorized to establish an undergraduate training program for the purpose of recruiting and training minority operatives in 2000.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that—

(1) the Director of the Federal Bureau of Investigation (with respect to the intelligence and intelligence-related activities of the Bureau), the Director of Central Intelligence, the Director of the National Security Agency, and the Director of the Defense Intelligence Agency should make the creation of a more diverse workforce a priority in hiring decisions; and

(2) the Director of Central Intelligence, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, and the Director of the National Imagery and Mapping Agency should increase their minority recruitment efforts through the undergraduate training program provided for under law.

### SEC. 324. ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES IN THE INTELLIGENCE COMMUNITY.

Section 114 of the National Security Act of 1947 (50 U.S.C. 404i) is amended—

(1) by redesignating subsection (c) as subsection (d); and

(2) by inserting after subsection (b) the following new subsection:

“(c) **ANNUAL REPORT ON HIRING AND RETENTION OF MINORITY EMPLOYEES.**—(1) The Director of Central Intelligence shall, on an annual basis, submit to Congress a report on the employment of covered persons within each element of the intelligence community for the preceding fiscal year.

“(2) Each such report shall include disaggregated data by category of covered person from each element of the intelligence community on the following:

“(A) Of all individuals employed in the element during the fiscal year involved, the aggregate percentage of such individuals who are covered persons.

“(B) Of all individuals employed in the element during the fiscal year involved at the levels referred to in clauses (i) and (ii), the percentage of covered persons employed at such levels:

“(i) Positions at levels 1 through 15 of the General Schedule.

“(ii) Positions at levels above GS-15.

“(C) Of all individuals hired by the element involved during the fiscal year involved, the percentage of such individuals who are covered persons.

“(3) Each such report shall be submitted in unclassified form, but may contain a classified annex.

“(4) Nothing in this subsection shall be construed as providing for the substitution of any similar report required under another provision of law.

“(5) In this subsection, the term ‘covered persons’ means—

“(A) racial and ethnic minorities;

“(B) women; and

“(C) individuals with disabilities.”.

### SEC. 325. REPORT ON ESTABLISHMENT OF A CIVILIAN LINGUIST RESERVE CORPS.

(a) **REPORT.**—The Secretary of Defense, acting through the Director of the National Security Education Program, shall prepare a report on the feasibility of establishing a Civilian Linguist Reserve Corps comprised of individuals with advanced levels of proficiency in foreign languages who are United States citizens who would be available upon a call of the President to perform such service or duties with respect to such foreign languages in the Federal Government as the President may specify. In preparing the report, the Secretary shall consult with such organizations having expertise in training in foreign

languages as the Secretary determines appropriate.

(b) **MATTERS CONSIDERED.**—

(1) **IN GENERAL.**—In conducting the study, the Secretary shall develop a proposal for the structure and operations of the Civilian Linguist Reserve Corps. The proposal shall establish requirements for performance of duties and levels of proficiency in foreign languages of the members of the Civilian Linguist Reserve Corps, including maintenance of language skills and specific training required for performance of duties as a linguist of the Federal Government, and shall include recommendations on such other matters as the Secretary determines appropriate.

(2) **CONSIDERATION OF USE OF DEFENSE LANGUAGE INSTITUTE AND LANGUAGE REGISTRIES.**—In developing the proposal under paragraph (1), the Secretary shall consider the appropriateness of using—

(A) the Defense Language Institute to conduct testing for language skills proficiency and performance, and to provide language refresher courses; and

(B) foreign language skill registries of the Department of Defense or of other agencies or departments of the United States to identify individuals with sufficient proficiency in foreign languages.

(3) **CONSIDERATION OF THE MODEL OF THE RESERVE COMPONENTS OF THE ARMED FORCES.**—In developing the proposal under paragraph (1), the Secretary shall consider the provisions of title 10, United States Code, establishing and governing service in the Reserve Components of the Armed Forces, as a model for the Civilian Linguist Reserve Corps.

(c) **COMPLETION OF REPORT.**—Not later than 6 months after the date of the enactment of this Act, the Secretary shall submit to Congress the report prepared under subsection (a).

(d) **AUTHORIZATION OF APPROPRIATIONS.**—There is authorized to be appropriated to the Secretary of Defense \$300,000 to carry out this section.

#### Subtitle D—Education

### SEC. 331. SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY.

(a) **PROGRAM AUTHORIZED.**—The National Security Act of 1947 is amended—

(1) by redesignating title X as title XI;

(2) by redesignating section 1001 as section 1101; and

(3) by inserting after title IX the following new title X:

“**TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE**

“**SCHOLARSHIPS AND WORK-STUDY FOR PURSUIT OF GRADUATE DEGREES IN SCIENCE AND TECHNOLOGY**

“**SEC. 1001. (a) PROGRAM AUTHORIZED.**—The Director of Central Intelligence may carry out a program to provide scholarships and work-study for individuals who are pursuing graduate degrees in fields of study in science and technology that are identified by the Director as appropriate to meet the future needs of the intelligence community for qualified scientists and engineers.

“(b) **ADMINISTRATION.**—If the Director carries out the program under subsection (a), the Director shall administer the program through the Assistant Director of Central Intelligence for Administration.

“(c) **IDENTIFICATION OF FIELDS OF STUDY.**—If the Director carries out the program under subsection (a), the Director shall identify fields of study under subsection (a) in consultation with the other heads of the elements of the intelligence community.

“(d) **ELIGIBILITY FOR PARTICIPATION.**—An individual eligible to participate in the program is any individual who—

“(1) either—

“(A) is an employee of the intelligence community; or

“(B) meets criteria for eligibility for employment in the intelligence community that are established by the Director;

“(2) is accepted in a graduate degree program in a field of study in science or technology identified under subsection (a); and

“(3) is eligible for a security clearance at the level of Secret or above.

“(e) REGULATIONS.—If the Director carries out the program under subsection (a), the Director shall prescribe regulations for purposes of the administration of this section.”

(b) CLERICAL AMENDMENT.—The table of sections of the National Security Act of 1947 is amended by striking the items relating to title X and section 1001 and inserting the following new items:

“TITLE X—EDUCATION IN SUPPORT OF NATIONAL INTELLIGENCE

“Sec. 1001. Scholarships and work-study for pursuit of graduate degrees in science and technology.

“TITLE XI—OTHER PROVISIONS

“Sec. 1101. Applicability to United States intelligence activities of Federal laws implementing international treaties and agreements.”

**SEC. 332. COOPERATIVE RELATIONSHIP BETWEEN THE NATIONAL SECURITY EDUCATION PROGRAM AND THE FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.**

Section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended by adding at the end the following new subsection:

“(h) USE OF AWARDS TO ATTEND THE FOREIGN LANGUAGE CENTER OF THE DEFENSE LANGUAGE INSTITUTE.—(1) The Secretary shall provide for the admission of award recipients to the Foreign Language Center of the Defense Language Institute (hereinafter in this subsection referred to as the ‘Center’). An award recipient may apply a portion of the applicable scholarship or fellowship award for instruction at the Center on a space-available basis as a Department of Defense sponsored program to defray the additive instructional costs.

“(2) Except as the Secretary determines necessary, an award recipient who receives instruction at the Center shall be subject to the same regulations with respect to attendance, discipline, discharge, and dismissal as apply to other persons attending the Center.

“(3) In this subsection, the term ‘award recipient’ means an undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) who—

“(A) is in good standing;

“(B) has completed all academic study in a foreign country, as provided for under the scholarship or fellowship; and

“(C) would benefit from instruction provided at the Center.”

**SEC. 333. ESTABLISHMENT OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE WITHIN THE NATIONAL SECURITY EDUCATION PROGRAM.**

(a) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—

(1) EXPANSION OF GRANT PROGRAM AUTHORITY.—Subsection (a)(1) of section 802 of the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1902) is amended—

(A) by striking “and” at the end of subparagraph (B)(ii);

(B) by striking the period at the end of subparagraph (C) and inserting “; and”; and

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

“(D) awarding grants to institutions of higher education to carry out activities under the National Flagship Language Initiative (described in subsection (i)).”

(2) PROVISIONS OF NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—Such section, as amended by

section 332, is further amended by adding at the end the following new subsection:

“(i) NATIONAL FLAGSHIP LANGUAGE INITIATIVE.—(1) Under the National Flagship Language Initiative, institutions of higher education shall establish, operate, or improve activities designed to train students in programs in a range of disciplines to achieve advanced levels of proficiency in those foreign languages that the Secretary identifies as being the most critical in the interests of the national security of the United States.

“(2) An undergraduate student who has been awarded a scholarship under subsection (a)(1)(A) or a graduate student who has been awarded a fellowship under subsection (a)(1)(B) may participate in the activities carried out under the National Flagship Language Initiative.

“(3) An institution of higher education that receives a grant pursuant to subsection (a)(1)(D) shall give special consideration to applicants who are employees of the Federal Government.

“(4) For purposes of this subsection, the Foreign Language Center of the Defense Language Institute and any other educational institution that provides training in foreign languages operated by the Department of Defense or an agency in the intelligence community is deemed to be an institution of higher education, and may carry out the types of activities permitted under the National Flagship Language Initiative.”

(3) INAPPLICABILITY OF FUNDING ALLOCATION RULES.—Subsection (a)(2) of such section is amended by adding at the end the following flush sentences:

“The funding allocation under this paragraph shall not apply to grants under paragraph (1)(D) for the National Flagship Language Initiative described in subsection (i). For the authorization of appropriations for the National Flagship Language Initiative, see section 811.”

(4) BOARD REQUIREMENT.—Section 803(d)(4) of such Act (50 U.S.C. 1903(d)(4)) is amended—

(A) by striking “and” at the end of subparagraph (C);

(B) by striking the period at the end of subparagraph (D) and inserting “; and”; and

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

“(E) which foreign languages are critical to the national security interests of the United States for purposes of section 802(a)(1)(D) (relating to grants for the National Flagship Language Initiative).”

(b) FUNDING.—The David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.) is amended by adding at the end the following new section:

**“SEC. 811. ADDITIONAL ANNUAL AUTHORIZATION OF APPROPRIATIONS.**

“(a) IN GENERAL.—In addition to amounts that may be made available to the Secretary under the Fund for a fiscal year, there is authorized to be appropriated to the Secretary for each fiscal year, beginning with fiscal year 2003, \$10,000,000, to carry out the grant program for the National Flagship Language Initiative under section 802(a)(1)(D).

“(b) AVAILABILITY OF APPROPRIATED FUNDS.—Amounts appropriated pursuant to the authorization of appropriations under subsection (a) shall remain available until expended.”

(c) EFFECTIVE DATE.—The amendments made by this section shall take effect on the date the Secretary of Defense submits the report required under section 334 of this Act and notifies the appropriate committees of Congress (as defined in subsection (c) of that section) that the programs carried out under the David L. Boren National Security Education Act of 1991 are being managed in a fiscally and programmatically sound manner.

(d) CONSTRUCTION.—Nothing in this section shall be construed as affecting any program or

project carried out under the David L. Boren National Security Education Act of 1991 as in effect on the date that precedes the date of the enactment of this Act.

**SEC. 334. REPORT ON THE NATIONAL SECURITY EDUCATION PROGRAM.**

(a) IN GENERAL.—Not later than 180 days after the date of the enactment of this Act, the Secretary of Defense shall submit to the appropriate committees of Congress a report on the matters described in subsection (b) with respect to the David L. Boren National Security Education Act of 1991 (50 U.S.C. 1901 et seq.).

(b) COVERED MATTERS.—The matters described in this subsection are as follows:

(1) EFFECTIVENESS OF PROGRAM.—An evaluation of the National Security Education Program, including an assessment of the effectiveness of the program in meeting its goals and an assessment of the administrative costs of the program in relation to the amounts of scholarships, fellowships, and grants awarded.

(2) CONVERSION OF FUNDING.—An assessment of the advisability of converting funding of the National Security Education Program from funding through the National Security Education Trust Fund under section 804 of that Act (50 U.S.C. 1904) to funding through appropriations.

(3) RECOMMENDATIONS.—On any matter covered by paragraph (1) or (2), such recommendations for legislation with respect to such matter as the Secretary considers appropriate.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Select Committee on Intelligence and the Committees on Armed Services and Appropriations of the Senate; and

(2) the Permanent Select Committee on Intelligence and the Committees on Armed Services and Appropriations of the House of Representatives.

**Subtitle E—Terrorism**

**SEC. 341. FOREIGN TERRORIST ASSET TRACKING CENTER.**

(a) ESTABLISHMENT.—The Director of Central Intelligence, acting as the head of the intelligence community, shall establish in the Central Intelligence Agency an element responsible for conducting all-source intelligence analysis of information relating to the financial capabilities, practices, and activities of individuals, groups, and nations associated with international terrorism in their activities relating to international terrorism.

(b) DESIGNATION.—The element established under subsection (a) shall be known as the Foreign Terrorist Asset Tracking Center.

(c) DEADLINE FOR ESTABLISHMENT.—The element required by subsection (a) shall be established as soon as practicable after the date of the enactment of this Act, but not later than 90 days after that date.

**SEC. 342. SEMIANNUAL REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST ASSETS (FITA).**

(a) SEMIANNUAL REPORT.—

(1) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by adding at the end the following new section:

**“SEMIANNUAL REPORT ON FINANCIAL INTELLIGENCE ON TERRORIST ASSETS**

“SEC. 118. (a) SEMIANNUAL REPORT.—On a semiannual basis, the Secretary of the Treasury (acting through the head of the Office of Intelligence Support) shall submit a report to the appropriate congressional committees that fully informs the committees concerning operations against terrorist financial networks. Each such report shall include with respect to the preceding six-month period—

“(1) the total number of asset seizures, designations, and other actions against individuals or entities found to have engaged in financial support of terrorism;

“(2) the total number of applications for asset seizure and designations of individuals or entities suspected of having engaged in financial support of terrorist activities that were granted, modified, or denied;

“(3) the total number of physical searches of offices, residences, or financial records of individuals or entities suspected of having engaged in financial support for terrorist activity; and

“(4) whether the financial intelligence information seized in these cases has been shared on a full and timely basis with the all departments, agencies, and other entities of the United States Government involved in intelligence activities participating in the Foreign Terrorist Asset Tracking Center.

“(b) IMMEDIATE NOTIFICATION FOR EMERGENCY DESIGNATION.—In the case of a designation of an individual or entity, or the assets of an individual or entity, as having been found to have engaged in terrorist activities, the Secretary of the Treasury shall report such designation within 24 hours of such a designation to the appropriate congressional committees.

“(c) SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—In the case of the reports required to be submitted under subsection (a) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507.

“(d) APPROPRIATE CONGRESSIONAL COMMITTEES DEFINED.—In this section, the term ‘appropriate congressional committees’ means the following:

“(1) The Permanent Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Financial Services of the House of Representatives.

“(2) The Select Committee on Intelligence, the Committee on Appropriations, and the Committee on Banking, Housing, and Urban Affairs of the Senate.”

(2) CLERICAL AMENDMENT.—The table of contents contained in the first section of such Act is amended by inserting after the item relating to section 117 the following new item:

“Sec. 118. Semiannual report on financial intelligence on terrorist assets.”

(b) CONFORMING AMENDMENT.—Section 501(f) of the National Security Act of 1947 (50 U.S.C. 413(f)) is amended by inserting before the period the following: “, and includes financial intelligence activities”.

#### SEC. 343. TERRORIST IDENTIFICATION CLASSIFICATION SYSTEM.

(a) REQUIREMENT.—(1) The Director of Central Intelligence, acting as head of the Intelligence Community, shall—

(A) establish and maintain a list of individuals who are known or suspected international terrorists, and of organizations that are known or suspected international terrorist organizations; and

(B) ensure that pertinent information on the list is shared with the departments, agencies, and organizations described by subsection (c).

(2) The list under paragraph (1), and the mechanisms for sharing information on the list, shall be known as the “Terrorist Identification Classification System”.

(b) ADMINISTRATION.—(1) The Director shall prescribe requirements for the inclusion of an individual or organization on the list required by subsection (a), and for the deletion or omission from the list of an individual or organization currently on the list.

(2) The Director shall ensure that the information utilized to determine the inclusion, or deletion or omission, of an individual or organization on or from the list is derived from all-source intelligence.

(3) The Director shall ensure that the list is maintained in accordance with existing law and regulations governing the collection, storage, and dissemination of intelligence concerning United States persons.

(c) INFORMATION SHARING.—Subject to section 103(c)(6) of the National Security Act of 1947 (50

U.S.C. 403–3(c)(6)), relating to the protection of intelligence sources and methods, the Director shall provide for the sharing of the list, and information on the list, with such departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations as the Director considers appropriate.

(d) REPORTING AND CERTIFICATION.—(1) The Director shall review on an annual basis the information provided by various departments and agencies for purposes of the list under subsection (a) in order to determine whether or not the information so provided is derived from the widest possible range of intelligence available to such departments and agencies.

(2) The Director shall, as a result of each review under paragraph (1), certify whether or not the elements of the intelligence community responsible for the collection of intelligence related to the list have provided information for purposes of the list that is derived from the widest possible range of intelligence available to such department and agencies.

(e) REPORT ON CRITERIA FOR INFORMATION SHARING.—(1) Not later than March 1, 2003, the Director shall submit to the congressional intelligence committees a report describing the criteria used to determine which types of information on the list required by subsection (a) are to be shared, and which types of information are not to be shared, with various departments and agencies of the Federal Government, State and local government agencies, and entities of foreign governments and international organizations.

(2) The report shall include a description of the circumstances in which the Director has determined that sharing information on the list with the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c) would be inappropriate due to the concerns addressed by section 103(c)(6) of the National Security Act of 1947, relating to the protection of sources and methods, and any instance in which the sharing of information on the list has been inappropriate in light of such concerns.

(f) SYSTEM ADMINISTRATION REQUIREMENTS.—(1) The Director shall, to the maximum extent practicable, ensure the interoperability of the Terrorist Identification Classification System with relevant information systems of the departments and agencies of the Federal Government, and of State and local governments, described by subsection (c).

(2) The Director shall ensure that the System utilizes technologies that are effective in aiding the identification of individuals in the field.

(g) REPORT ON STATUS OF SYSTEM.—(1) Not later than one year after the date of the enactment of this Act, the Director shall, in consultation with the Director of Homeland Security, submit to the congressional intelligence committees a report on the status of the Terrorist Identification Classification System. The report shall contain a certification on the following:

(A) Whether the System contains the intelligence information necessary to facilitate the contribution of the System to the domestic security of the United States.

(B) Whether the departments and agencies having access to the System have access in a manner that permits such departments and agencies to carry out appropriately their domestic security responsibilities.

(C) Whether the System is operating in a manner that maximizes its contribution to the domestic security of the United States.

(D) If a certification under subparagraph (A), (B), or (C) is in the negative, the modifications or enhancements of the System necessary to ensure a future certification in the positive.

(2) The report shall be submitted in unclassified form, but may include a classified annex.

(h) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

#### Subtitle F—Other Matters

#### SEC. 351. ADDITIONAL ONE-YEAR SUSPENSION OF REORGANIZATION OF DIPLOMATIC TELECOMMUNICATIONS SERVICE PROGRAM OFFICE.

Section 311 of the Intelligence Authorization Act for Fiscal Year 2002 (Public Law 107–108; 22 U.S.C. 7301 note; 115 Stat. 1401) is amended—

(1) in the heading, by striking “ONE-YEAR” and inserting “TWO-YEAR”; and

(2) in the text, by striking “October 1, 2002” and inserting “October 1, 2003”.

#### SEC. 352. STANDARDIZED TRANSLITERATION OF NAMES INTO THE ROMAN ALPHABET.

(a) METHOD OF TRANSLITERATION REQUIRED.—Not later than 180 days after the date of the enactment of this Act, the Director of Central Intelligence shall provide for a standardized method for transliterating into the Roman alphabet personal and place names originally rendered in any language that uses an alphabet other than the Roman alphabet.

(b) USE BY INTELLIGENCE COMMUNITY.—The Director shall ensure the use of the method established under subsection (a) in—

(1) all communications among the elements of the intelligence community; and

(2) all intelligence products of the intelligence community.

#### SEC. 353. DEFINITION OF CONGRESSIONAL INTELLIGENCE COMMITTEES IN NATIONAL SECURITY ACT OF 1947.

(a) IN GENERAL.—Section 3 of the National Security Act of 1947 (50 U.S.C. 401a) is amended by adding at the end the following new paragraph:

“(7) The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.”

(b) CONFORMING AMENDMENTS.—(1) That Act is further amended by striking “Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives” and inserting “congressional intelligence committees” in each of the following provisions:

(A) Section 104(d)(4) (50 U.S.C. 403–4(d)(4)).

(B) Section 603(a) (50 U.S.C. 423(a)).

(2) That Act is further amended by striking “Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate” and inserting “congressional intelligence committees” in each of the following provisions:

(A) Section 301(j) (50 U.S.C. 409a(j)).

(B) Section 801(b)(2) (50 U.S.C. 435(b)(2)).

(C) Section 903 (50 U.S.C. 441b).

(3) That Act is further amended by striking “intelligence committees” and inserting “congressional intelligence committees” each place it appears in each of the following provisions:

(A) Section 501 (50 U.S.C. 413).

(B) Section 502 (50 U.S.C. 413a).

(C) Section 503 (50 U.S.C. 413b).

(D) Section 504(d)(2) (50 U.S.C. 414(d)(2)).

(4) Section 104(d)(5) of that Act (50 U.S.C. 403–4(d)(5)) is amended by striking “Select Committee on Intelligence of the Senate and to the Permanent Select Committee on Intelligence of the House of Representatives” and inserting “congressional intelligence committees”.

(5) Section 105C(a)(3)(C) of that Act (50 U.S.C. 403–5c(a)(3)(C)) is amended—

(A) by striking clauses (i) and (ii) and inserting the following new clause (i):

“(i) The congressional intelligence committees.”; and

(B) by redesignating clauses (iii), (iv), (v), and (vi) as clauses (ii), (iii), (iv), and (v), respectively.

(6) Section 114 of that Act (50 U.S.C. 404i), as amended by section 324, is amended by striking subsection (d), as so redesignated, and inserting the following new subsection (d):

“(d) CONGRESSIONAL LEADERSHIP DEFINED.—In this section, the term ‘congressional leadership’ means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate.”.

(7) Section 501(a) of that Act (50 U.S.C. 413(a)), as amended by paragraph (3) of this subsection, is further amended—

(A) by striking paragraph (2); and

(B) by redesignating paragraph (3) as paragraph (2).

(8) Section 503(c)(4) of that Act (50 U.S.C. 413b(c)(4)) is amended by striking “intelligence committee” and inserting “congressional intelligence committee”.

(9) Section 602(c) of that Act (50 U.S.C. 422(c)) is amended by striking “the Select Committee on Intelligence of the Senate or to the Permanent Select Committee on Intelligence of the House of Representatives” and inserting “either congressional intelligence committee”.

(10) Section 701(c)(3) of that Act (50 U.S.C. 431(c)(3)) is amended by striking “intelligence committees of the Congress” and inserting “congressional intelligence committees”.

#### TITLE IV—CENTRAL INTELLIGENCE AGENCY

##### SEC. 401. TWO-YEAR EXTENSION OF CENTRAL INTELLIGENCE AGENCY VOLUNTARY SEPARATION PAY ACT.

Section 2 of the Central Intelligence Agency Voluntary Separation Pay Act (50 U.S.C. 403-4 note) is amended—

(1) in subsection (f), by striking “September 30, 2003” and inserting “September 30, 2005”; and

(2) in subsection (i), by striking “or 2003” and inserting “2003, 2004, or 2005”.

##### SEC. 402. IMPLEMENTATION OF COMPENSATION REFORM PLAN.

(a) DELAY ON IMPLEMENTATION ON COMPENSATION REFORM PLAN.—(1) The Director of Central Intelligence may not implement before the implementation date (described in paragraph (2)) a plan for the compensation of employees of the Central Intelligence Agency that differs from the plan in effect on October 1, 2002.

(2) The implementation date referred to in paragraph (1) is February 1, 2004, or the date on which the Director submits to the congressional intelligence committees a report on the pilot project conducted under subsection (b), whichever is later.

(3) It is the sense of Congress that an employee performance evaluation mechanism with evaluation training for managers and employees of the Central Intelligence Agency should be phased in before the implementation of any new compensation plan.

(b) PILOT PROJECT.—(1) The Director shall conduct a pilot project to test the efficacy and fairness of a plan for the compensation of employees of the Central Intelligence Agency that differs from the plan in effect on October 1, 2002, within any one component of the Central Intelligence Agency selected by the Director, other than a component for which a pilot project on employee compensation has been previously conducted.

(2) The pilot project under paragraph (1) shall be conducted for a period of at least 1 year.

(3) Not later than the date that is 45 days after the completion of the pilot project under paragraph (1), the Director shall submit to the congressional intelligence committees a report that contains an evaluation of the project and such recommendations as the Director considers appropriate for the modification of the plans for the compensation of employees throughout the Agency which are in effect on such date.

(c) SENSE OF CONGRESS ON IMPLEMENTATION OF COMPENSATION REFORM PLAN FOR THE NA-

TIONAL SECURITY AGENCY.—It is the sense of Congress that—

(1) the Director of the National Security Agency should not implement before February 1, 2004, a plan for the compensation of employees of the National Security Agency that differs from the plan in effect on October 1, 2002; and

(2) an employee performance evaluation mechanism with evaluation training for managers and employees of the National Security Agency should be phased in before the implementation of any new compensation plan.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives.

#### TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

##### SEC. 501. USE OF FUNDS FOR COUNTERDRUG AND COUNTERTERRORISM ACTIVITIES FOR COLOMBIA.

(a) AUTHORITY.—Funds designated for intelligence or intelligence-related purposes for assistance to the Government of Colombia for counterdrug activities for fiscal years 2002 and 2003, and any unobligated funds available to any element of the intelligence community for such activities for a prior fiscal year, shall be available to support a unified campaign against narcotics trafficking and against activities by organizations designated as terrorist organizations (such as the Revolutionary Armed Forces of Colombia (FARC), the National Liberation Army (ELN), and the United Self-Defense Forces of Colombia (AUC)), and to take actions to protect human health and welfare in emergency circumstances, including undertaking rescue operations.

(b) REQUIREMENT FOR CERTIFICATION.—(1) The authorities provided in subsection (a) shall not be exercised until the Secretary of Defense certifies to the Congress that the provisions of paragraph (2) have been complied with.

(2) In order to ensure the effectiveness of United States support for such a unified campaign, prior to the exercise of the authority contained in subsection (a), the Secretary of State shall report to the appropriate committees of Congress that the newly elected President of Colombia has—

(A) committed, in writing, to establish comprehensive policies to combat illicit drug cultivation, manufacturing, and trafficking (particularly with respect to providing economic opportunities that offer viable alternatives to illicit crops) and to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations;

(B) committed, in writing, to implement significant budgetary and personnel reforms of the Colombian Armed Forces; and

(C) committed, in writing, to support substantial additional Colombian financial and other resources to implement such policies and reforms, particularly to meet the country's previous commitments under “Plan Colombia”.

In this paragraph, the term “appropriate committees of Congress” means the Permanent Select Committee on Intelligence and the Committees on Appropriations and Armed Services of the House of Representatives and the Select Committee on Intelligence and the Committees on Appropriations and Armed Services of the Senate.

(c) TERMINATION OF AUTHORITY.—The authority provided in subsection (a) shall cease to be effective if the Secretary of Defense has credible evidence that the Colombian Armed Forces are not conducting vigorous operations to restore government authority and respect for human rights in areas under the effective control of paramilitary and guerrilla organizations.

(d) APPLICATION OF CERTAIN PROVISIONS OF LAW.—Sections 556, 567, and 568 of Public Law

107-115, section 8093 of the Department of Defense Appropriations Act, 2002, and the numerical limitations on the number of United States military personnel and United States individual civilian contractors in section 3204(b)(1) of Public Law 106-246 shall be applicable to funds made available pursuant to the authority contained in subsection (a).

(e) LIMITATION ON PARTICIPATION OF UNITED STATES PERSONNEL.—No United States Armed Forces personnel or United States civilian contractor employed by the United States will participate in any combat operation in connection with assistance made available under this section, except for the purpose of acting in self-defense or rescuing any United States citizen to include United States Armed Forces personnel, United States civilian employees, and civilian contractors employed by the United States.

##### SEC. 502. PROTECTION OF OPERATIONAL FILES OF THE NATIONAL RECONNAISSANCE OFFICE.

(a) IN GENERAL.—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 105C (50 U.S.C. 403-5c) the following new section:

###### “PROTECTION OF OPERATIONAL FILES OF THE NATIONAL RECONNAISSANCE OFFICE

“SEC. 105D. (a) EXEMPTION OF CERTAIN OPERATIONAL FILES FROM SEARCH, REVIEW, PUBLICATION, OR DISCLOSURE.—(1) The Director of the National Reconnaissance Office, with the coordination of the Director of Central Intelligence, may exempt operational files of the National Reconnaissance Office from the provisions of section 552 of title 5, United States Code, which require publication, disclosure, search, or review in connection therewith.

“(2)(A) Subject to subparagraph (B), for the purposes of this section, the term ‘operational files’ means files of the National Reconnaissance Office (hereafter in this section referred to as ‘NRO’) that document the means by which foreign intelligence or counterintelligence is collected through scientific and technical systems.

“(B) Files which are the sole repository of disseminated intelligence are not operational files.

“(3) Notwithstanding paragraph (1), exempted operational files shall continue to be subject to search and review for information concerning—

“(A) United States citizens or aliens lawfully admitted for permanent residence who have requested information on themselves pursuant to the provisions of section 552 or 552a of title 5, United States Code;

“(B) any special activity the existence of which is not exempt from disclosure under the provisions of section 552 of title 5, United States Code; or

“(C) the specific subject matter of an investigation by any of the following for any impropriety, or violation of law, Executive order, or Presidential directive, in the conduct of an intelligence activity:

“(i) The Permanent Select Committee on Intelligence of the House of Representatives.

“(ii) The Select Committee on Intelligence of the Senate.

“(iii) The Intelligence Oversight Board.

“(iv) The Department of Justice.

“(v) The Office of General Counsel of NRO.

“(vi) The Office of the Director of NRO.

“(4)(A) Files that are not exempted under paragraph (1) which contain information derived or disseminated from exempted operational files shall be subject to search and review.

“(B) The inclusion of information from exempted operational files in files that are not exempted under paragraph (1) shall not affect the exemption under paragraph (1) of the originating operational files from search, review, publication, or disclosure.

“(C) The declassification of some of the information contained in exempted operational files shall not affect the status of the operational file as being exempt from search, review, publication, or disclosure.

“(D) Records from exempted operational files which have been disseminated to and referenced in files that are not exempted under paragraph (1) and which have been returned to exempted operational files for sole retention shall be subject to search and review.

“(5) The provisions of paragraph (1) may not be superseded except by a provision of law which is enacted after the date of the enactment of this section, and which specifically cites and repeals or modifies its provisions.

“(6)(A) Except as provided in subparagraph (B), whenever any person who has requested agency records under section 552 of title 5, United States Code, alleges that NRO has withheld records improperly because of failure to comply with any provision of this section, judicial review shall be available under the terms set forth in section 552(a)(4)(B) of title 5, United States Code.

“(B) Judicial review shall not be available in the manner provided for under subparagraph (A) as follows:

“(i) In any case in which information specifically authorized under criteria established by an Executive order to be kept secret in the interests of national defense or foreign relations is filed with, or produced for, the court by NRO, such information shall be examined *ex parte*, in camera by the court.

“(ii) The court shall, to the fullest extent practicable, determine the issues of fact based on sworn written submissions of the parties.

“(iii) When a complainant alleges that requested records are improperly withheld because of improper placement solely in exempted operational files, the complainant shall support such allegation with a sworn written submission based upon personal knowledge or otherwise admissible evidence.

“(iv)(I) When a complainant alleges that requested records were improperly withheld because of improper exemption of operational files, NRO shall meet its burden under section 552(a)(4)(B) of title 5, United States Code, by demonstrating to the court by sworn written submission that exempted operational files likely to contain responsible records currently perform the functions set forth in paragraph (2).

“(II) The court may not order NRO to review the content of any exempted operational file or files in order to make the demonstration required under subclause (I), unless the complainant disputes NRO’s showing with a sworn written submission based on personal knowledge or otherwise admissible evidence.

“(v) In proceedings under clauses (iii) and (iv), the parties may not obtain discovery pursuant to rules 26 through 36 of the Federal Rules of Civil Procedure, except that requests for admissions may be made pursuant to rules 26 and 36.

“(vi) If the court finds under this paragraph that NRO has improperly withheld requested records because of failure to comply with any provision of this subsection, the court shall order NRO to search and review the appropriate exempted operational file or files for the requested records and make such records, or portions thereof, available in accordance with the provisions of section 552 of title 5, United States Code, and such order shall be the exclusive remedy for failure to comply with this subsection.

“(vii) If at any time following the filing of a complaint pursuant to this paragraph NRO agrees to search the appropriate exempted operational file or files for the requested records, the court shall dismiss the claim based upon such complaint.

“(viii) Any information filed with, or produced for the court pursuant to clauses (i) and (iv) shall be coordinated with the Director of Central Intelligence prior to submission to the court.

“(b) DECENNIAL REVIEW OF EXEMPTED OPERATIONAL FILES.—(1) Not less than once every 10 years, the Director of the National Reconnaissance Office and the Director of Central Intel-

ligence shall review the exemptions in force under subsection (a)(1) to determine whether such exemptions may be removed from the category of exempted files or any portion thereof. The Director of Central Intelligence must approve any determination to remove such exemptions.

“(2) The review required by paragraph (1) shall include consideration of the historical value or other public interest in the subject matter of the particular category of files or portions thereof and the potential for declassifying a significant part of the information contained therein.

“(3) A complainant that alleges that NRO has improperly withheld records because of failure to comply with this subsection may seek judicial review in the district court of the United States of the district in which any of the parties reside, or in the District of Columbia. In such a proceeding, the court’s review shall be limited to determining the following:

“(A) Whether NRO has conducted the review required by paragraph (1) before the expiration of the 10-year period beginning on the date of the enactment of this section or before the expiration of the 10-year period beginning on the date of the most recent review.

“(B) Whether NRO, in fact, considered the criteria set forth in paragraph (2) in conducting the required review.”

(b) CLERICAL AMENDMENT.—The table of sections for that Act is amended by inserting after the item relating to section 105C the following new item:

“Sec. 105D. Protection of operational files of the National Reconnaissance Office.”

**SEC. 503. ELIGIBILITY OF EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS FOR PRESIDENTIAL RANK AWARDS.**

Section 1607 of title 10, United States Code, is amended by adding at the end the following new subsection:

“(c) AWARD OF RANK TO EMPLOYEES IN INTELLIGENCE SENIOR LEVEL POSITIONS.—The President, based on the recommendations of the Secretary of Defense, may award a rank referred to in section 4507a of title 5 to employees in Intelligence Senior Level positions designated under subsection (a). The award of such rank shall be made in a manner consistent with the provisions of that section.”

**TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS UPON THE UNITED STATES**

**SEC. 601. ESTABLISHMENT OF COMMISSION.**

There is established in the legislative branch the National Commission on Terrorist Attacks Upon the United States (in this title referred to as the “Commission”).

**SEC. 602. PURPOSES.**

The purposes of the Commission are to—

(1) examine and report upon the facts and causes relating to the terrorist attacks of September 11, 2001, occurring at the World Trade Center in New York, New York, in Somerset County, Pennsylvania, and at the Pentagon in Virginia;

(2) ascertain, evaluate, and report on the evidence developed by all relevant governmental agencies regarding the facts and circumstances surrounding the attacks;

(3) build upon the investigations of other entities, and avoid unnecessary duplication, by reviewing the findings, conclusions, and recommendations of—

(A) the Joint Inquiry of the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives regarding the terrorist attacks of September 11, 2001, (hereinafter in this title referred to as the “Joint Inquiry”); and

(B) other executive branch, congressional, or independent commission investigations into the terrorist attacks of September 11, 2001, other terrorist attacks, and terrorism generally;

(4) make a full and complete accounting of the circumstances surrounding the attacks, and the extent of the United States’ preparedness for, and immediate response to, the attacks; and

(5) investigate and report to the President and Congress on its findings, conclusions, and recommendations for corrective measures that can be taken to prevent acts of terrorism.

**SEC. 603. COMPOSITION OF COMMISSION.**

(a) MEMBERS.—The Commission shall be composed of 10 members, of whom—

(1) 1 member shall be appointed by the President, who shall serve as chairman of the Commission;

(2) 1 member shall be appointed by the leader of the Senate (majority or minority leader, as the case may be) of the Democratic Party, in consultation with the leader of the House of Representatives (majority or minority leader, as the case may be) of the Democratic Party, who shall serve as vice chairman of the Commission;

(3) 2 members shall be appointed by the senior member of the Senate leadership of the Democratic Party;

(4) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Republican Party;

(5) 2 members shall be appointed by the senior member of the Senate leadership of the Republican Party; and

(6) 2 members shall be appointed by the senior member of the leadership of the House of Representatives of the Democratic Party.

(b) QUALIFICATIONS; INITIAL MEETING.—

(1) POLITICAL PARTY AFFILIATION.—Not more than 5 members of the Commission shall be from the same political party.

(2) NONGOVERNMENTAL APPOINTEES.—An individual appointed to the Commission may not be an officer or employee of the Federal Government or any State or local government.

(3) OTHER QUALIFICATIONS.—It is the sense of Congress that individuals appointed to the Commission should be prominent United States citizens, with national recognition and significant depth of experience in such professions as governmental service, law enforcement, the armed services, law, public administration, intelligence gathering, commerce (including aviation matters), and foreign affairs.

(4) DEADLINE FOR APPOINTMENT.—All members of the Commission shall be appointed on or before December 15, 2002.

(5) INITIAL MEETING.—The Commission shall meet and begin the operations of the Commission as soon as practicable.

(c) QUORUM; VACANCIES.—After its initial meeting, the Commission shall meet upon the call of the chairman or a majority of its members. Six members of the Commission shall constitute a quorum. Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

**SEC. 604. FUNCTIONS OF COMMISSION.**

(a) IN GENERAL.—The functions of the Commission are to—

(1) conduct an investigation that—

(A) investigates relevant facts and circumstances relating to the terrorist attacks of September 11, 2001, including any relevant legislation, Executive Order, regulation, plan, policy, practice, or procedure; and

(B) may include relevant facts and circumstances relating to—

(i) intelligence agencies;

(ii) law enforcement agencies;

(iii) diplomacy;

(iv) immigration, nonimmigrant visas, and border control;

(v) the flow of assets to terrorist organizations;

(vi) commercial aviation;

(vii) the role of congressional oversight and resource allocation; and

(viii) other areas of the public and private sectors determined relevant by the Commission for its inquiry;

(2) identify, review, and evaluate the lessons learned from the terrorist attacks of September 11, 2001, regarding the structure, coordination, management policies, and procedures of the Federal Government, and, if appropriate, State and local governments and nongovernmental entities, relative to detecting, preventing, and responding to such terrorist attacks; and

(3) submit to the President and Congress such reports as are required by this title containing such findings, conclusions, and recommendations as the Commission shall determine, including proposing organization, coordination, planning, management arrangements, procedures, rules, and regulations.

(b) **RELATIONSHIP TO INTELLIGENCE COMMITTEES' INQUIRY.**—When investigating facts and circumstances relating to the intelligence community, the Commission shall—

(1) first review the information compiled by, and the findings, conclusions, and recommendations of, the Joint Inquiry; and

(2) after that review pursue any appropriate area of inquiry if the Commission determines that—

(A) the Joint Inquiry had not investigated that area;

(B) the Joint Inquiry's investigation of that area had not been complete; or

(C) new information not reviewed by the Joint Inquiry had become available with respect to that area.

#### **SEC. 605. POWERS OF COMMISSION.**

(a) **IN GENERAL.**—

(1) **HEARINGS AND EVIDENCE.**—The Commission or, on the authority of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, administer such oaths; and

(B) subject to paragraph (2)(A), require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member may determine advisable.

(2) **SUBPOENAS.**—

(A) **ISSUANCE.**—

(i) **IN GENERAL.**—A subpoena may be issued under this subsection only—

(I) by the agreement of the chairman and the vice chairman; or

(II) by the affirmative vote of 6 members of the Commission.

(ii) **SIGNATURE.**—Subject to clause (i), subpoenas issued under this subsection may be issued under the signature of the chairman or any member designated by a majority of the Commission, and may be served by any person designated by the chairman or by a member designated by a majority of the Commission.

(B) **ENFORCEMENT.**—

(i) **IN GENERAL.**—In the case of contumacy or failure to obey a subpoena issued under subsection (a), the United States district court for the judicial district in which the subpoenaed person resides, is served, or may be found, or where the subpoena is returnable, may issue an order requiring such person to appear at any designated place to testify or to produce documentary or other evidence. Any failure to obey the order of the court may be punished by the court as a contempt of that court.

(ii) **ADDITIONAL ENFORCEMENT.**—In the case of any failure of any witness to comply with any subpoena or to testify when summoned under authority of this section, the Commission may, by majority vote, certify a statement of fact constituting such failure to the appropriate United States attorney, who may bring the matter before the grand jury for its action, under the same statutory authority and procedures as if the United States attorney had received a certification under sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192 through 194).

(b) **CONTRACTING.**—The Commission may, to such extent and in such amounts as are provided in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) **INFORMATION FROM FEDERAL AGENCIES.**—

(1) **IN GENERAL.**—The Commission is authorized to secure directly from any executive department, bureau, agency, board, commission, office, independent establishment, or instrumentality of the Government, information, suggestions, estimates, and statistics for the purposes of this title. Each department, bureau, agency, board, commission, office, independent establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request made by the chairman, the chairman of any subcommittee created by a majority of the Commission, or any member designated by a majority of the Commission.

(2) **RECEIPT, HANDLING, STORAGE, AND DISSEMINATION.**—Information shall only be received, handled, stored, and disseminated by members of the Commission and its staff consistent with all applicable statutes, regulations, and Executive Orders.

(d) **ASSISTANCE FROM FEDERAL AGENCIES.**—

(1) **GENERAL SERVICES ADMINISTRATION.**—The Administrator of General Services shall provide to the Commission on a reimbursable basis administrative support and other services for the performance of the Commission's functions.

(2) **OTHER DEPARTMENTS AND AGENCIES.**—In addition to the assistance prescribed in paragraph (1), departments and agencies of the United States may provide to the Commission such services, funds, facilities, staff, and other support services as they may determine advisable and as may be authorized by law.

(e) **GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services or property.

(f) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as departments and agencies of the United States.

#### **SEC. 606. NONAPPLICABILITY OF FEDERAL ADVISORY COMMITTEE ACT.**

(a) **IN GENERAL.**—The Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the Commission.

(b) **PUBLIC MEETINGS AND RELEASE OF PUBLIC VERSIONS OF REPORTS.**—The Commission shall—

(1) hold public hearings and meetings to the extent appropriate; and

(2) release public versions of the reports required under section 610 (a) and (b).

(c) **PUBLIC HEARINGS.**—Any public hearings of the Commission shall be conducted in a manner consistent with the protection of information provided to or developed for or by the Commission as required by any applicable statute, regulation, or Executive Order.

#### **SEC. 607. STAFF OF COMMISSION.**

(a) **IN GENERAL.**—

(1) **APPOINTMENT AND COMPENSATION.**—The chairman, in consultation with vice chairman, in accordance with rules agreed upon by the Commission, may appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its functions, without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable for a position at level V of the Executive Schedule under section 5316 of title 5, United States Code.

(2) **PERSONNEL AS FEDERAL EMPLOYEES.**—

(A) **IN GENERAL.**—The executive director and any personnel of the Commission who are em-

ployees shall be employees under section 2105 of title 5, United States Code, for purposes of chapters 63, 81, 83, 84, 85, 87, 89, and 90 of that title.

(B) **MEMBERS OF COMMISSION.**—Subparagraph (A) shall not be construed to apply to members of the Commission.

(b) **DETAILEES.**—Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(c) **CONSULTANT SERVICES.**—The Commission is authorized to procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code.

#### **SEC. 608. COMPENSATION AND TRAVEL EXPENSES.**

(a) **COMPENSATION.**—Each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission.

(b) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission shall be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703(b) of title 5, United States Code.

#### **SEC. 609. SECURITY CLEARANCES FOR COMMISSION MEMBERS AND STAFF.**

The appropriate Federal agencies or departments shall cooperate with the Commission in expeditiously providing to the Commission members and staff appropriate security clearances to the extent possible pursuant to existing procedures and requirements, except that no person shall be provided with access to classified information under this title without the appropriate security clearances.

#### **SEC. 610. REPORTS OF COMMISSION; TERMINATION.**

(a) **INTERIM REPORTS.**—The Commission may submit to the President and Congress interim reports containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(b) **FINAL REPORT.**—Not later than 18 months after the date of the enactment of this Act, the Commission shall submit to the President and Congress a final report containing such findings, conclusions, and recommendations for corrective measures as have been agreed to by a majority of Commission members.

(c) **TERMINATION.**—

(1) **IN GENERAL.**—The Commission, and all the authorities of this title, shall terminate 60 days after the date on which the final report is submitted under subsection (b).

(2) **ADMINISTRATIVE ACTIVITIES BEFORE TERMINATION.**—The Commission may use the 60-day period referred to in paragraph (1) for the purpose of concluding its activities, including providing testimony to committees of Congress concerning its reports and disseminating the final report.

#### **SEC. 611. FUNDING.**

(a) **TRANSFER FROM THE NATIONAL FOREIGN INTELLIGENCE PROGRAM.**—Of the amounts authorized to be appropriated by this Act and made available in public law 107-248 (Department of Defense Appropriations Act, 2003) for the National Foreign Intelligence Program, not to exceed \$3,000,000 shall be available for transfer to the Commission for purposes of the activities of the Commission under this title.

(b) **DURATION OF AVAILABILITY.**—Amounts made available to the Commission under subsection (a) shall remain available until the termination of the Commission.

#### **TITLE VII—INFORMATION SHARING**

##### **SEC. 701. SHORT TITLE.**

This title may be cited as the “Homeland Security Information Sharing Act”.

##### **SEC. 702. FINDINGS AND SENSE OF CONGRESS.**

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

(1) The Federal Government is required by the Constitution to provide for the common defense, which includes defense against terrorist attacks.

(2) The Federal Government relies on State and local personnel to protect against terrorist attacks.

(3) The Federal Government collects, creates, manages, and protects classified and sensitive but unclassified information to enhance homeland security.

(4) Some homeland security information is needed by the State and local personnel to prevent and prepare for terrorist attacks.

(5) The needs of State and local personnel to have access to relevant homeland security information to combat terrorism must be reconciled with the need to preserve the protected status of such information and to protect the sources and methods used to acquire such information.

(6) Granting security clearances to certain State and local personnel is one way to facilitate the sharing of information regarding specific terrorist threats among Federal, State, and local levels of government.

(7) Methods exist to declassify, redact, or otherwise adapt classified information so it may be shared with State and local personnel without the need for granting additional security clearances.

(8) State and local personnel have capabilities and opportunities to gather information on suspicious activities and terrorist threats not possessed by Federal agencies.

(9) The Federal Government and State and local governments and agencies in other jurisdictions may benefit from such information.

(10) Federal, State, and local governments and intelligence, law enforcement, and other emergency preparation and response agencies must act in partnership to maximize the benefits of information gathering and analysis to prevent and respond to terrorist attacks.

(11) Information systems, including the National Law Enforcement Telecommunications System and the Terrorist Threat Warning System, have been established for rapid sharing of classified and sensitive but unclassified information among Federal, State, and local entities.

(12) Increased efforts to share homeland security information should avoid duplicating existing information systems.

(b) **SENSE OF CONGRESS.**—It is the sense of Congress that Federal, State, and local entities should share homeland security information to the maximum extent practicable, with special emphasis on hard-to-reach urban and rural communities.

##### **SEC. 703. FACILITATING HOMELAND SECURITY INFORMATION SHARING PROCEDURES.**

(a) **PROCEDURES FOR DETERMINING EXTENT OF SHARING OF HOMELAND SECURITY INFORMATION.**—(1) The President shall prescribe and implement procedures under which relevant Federal agencies determine—

(A) whether, how, and to what extent homeland security information may be shared with appropriate State and local personnel, and with which such personnel it may be shared;

(B) how to identify and safeguard homeland security information that is sensitive but unclassified; and

(C) to the extent such information is in classified form, whether, how, and to what extent to remove classified information, as appropriate, and with which such personnel it may be shared after such information is removed.

(2) The President shall ensure that such procedures apply to all agencies of the Federal Government.

(3) Such procedures shall not change the substantive requirements for the classification and safeguarding of classified information.

(4) Such procedures shall not change the requirements and authorities to protect sources and methods.

(b) **PROCEDURES FOR SHARING OF HOMELAND SECURITY INFORMATION.**—(1) Under procedures prescribed by the President, all appropriate agencies, including the intelligence community, shall, through information sharing systems, share homeland security information with appropriate State and local personnel to the extent such information may be shared, as determined in accordance with subsection (a), together with assessments of the credibility of such information.

(2) Each information sharing system through which information is shared under paragraph (1) shall—

(A) have the capability to transmit unclassified or classified information, though the procedures and recipients for each capability may differ;

(B) have the capability to restrict delivery of information to specified subgroups by geographic location, type of organization, position of a recipient within an organization, or a recipient's need to know such information;

(C) be configured to allow the efficient and effective sharing of information; and

(D) be accessible to appropriate State and local personnel.

(3) The procedures prescribed under paragraph (1) shall establish conditions on the use of information shared under paragraph (1)—

(A) to limit the dissemination of such information to ensure that such information is not used for an unauthorized purpose;

(B) to ensure the security and confidentiality of such information;

(C) to protect the constitutional and statutory rights of any individuals who are subjects of such information; and

(D) to provide data integrity through the timely removal and destruction of obsolete or erroneous names and information.

(4) The procedures prescribed under paragraph (1) shall ensure, to the greatest extent practicable, that the information sharing system through which information is shared under such paragraph include existing information sharing systems, including, but not limited to, the National Law Enforcement Telecommunications System, the Regional Information Sharing System, and the Terrorist Threat Warning System of the Federal Bureau of Investigation.

(5) Each appropriate Federal agency, as determined by the President, shall have access to each information sharing system through which information is shared under paragraph (1), and shall therefore have access to all information, as appropriate, shared under such paragraph.

(6) The procedures prescribed under paragraph (1) shall ensure that appropriate State and local personnel are authorized to use such information sharing systems—

(A) to access information shared with such personnel; and

(B) to share, with others who have access to such information sharing systems, the homeland security information of their own jurisdictions, which shall be marked appropriately as pertaining to potential terrorist activity.

(7) Under procedures prescribed jointly by the Director of Central Intelligence and the Attorney General, each appropriate Federal agency, as determined by the President, shall review and assess the information shared under paragraph (6) and integrate such information with existing intelligence.

(c) **SHARING OF CLASSIFIED INFORMATION AND SENSITIVE BUT UNCLASSIFIED INFORMATION WITH STATE AND LOCAL PERSONNEL.**—(1) The President shall prescribe procedures under

which Federal agencies may, to the extent the President considers necessary, share with appropriate State and local personnel homeland security information that remains classified or otherwise protected after the determinations prescribed under the procedures set forth in subsection (a).

(2) It is the sense of Congress that such procedures may include one or more of the following means:

(A) Carrying out security clearance investigations with respect to appropriate State and local personnel.

(B) With respect to information that is sensitive but unclassified, entering into nondisclosure agreements with appropriate State and local personnel.

(C) Increased use of information-sharing partnerships that include appropriate State and local personnel, such as the Joint Terrorism Task Forces of the Federal Bureau of Investigation, the Anti-Terrorism Task Forces of the Department of Justice, and regional Terrorism Early Warning Groups.

(d) **RESPONSIBLE OFFICIALS.**—For each affected Federal agency, the head of such agency shall designate an official to administer this title with respect to such agency.

(e) **FEDERAL CONTROL OF INFORMATION.**—Under procedures prescribed under this section, information obtained by a State or local government from a Federal agency under this section shall remain under the control of the Federal agency, and a State or local law authorizing or requiring such a government to disclose information shall not apply to such information.

(f) **DEFINITIONS.**—As used in this section:

(1) The term “homeland security information” means any information (other than information that includes individually identifiable information collected solely for statistical purposes) possessed by a Federal, State, or local agency that—

(A) relates to the threat of terrorist activity;

(B) relates to the ability to prevent, interdict, or disrupt terrorist activity;

(C) would improve the identification or investigation of a suspected terrorist or terrorist organization; or

(D) would improve the response to a terrorist act.

(2) The term “intelligence community” has the meaning given such term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

(3) The term “State and local personnel” means any of the following persons involved in prevention, preparation, or response for terrorist attacks:

(A) State Governors, mayors, and other locally elected officials.

(B) State and local law enforcement personnel and firefighters.

(C) Public health and medical professionals.

(D) Regional, State, and local emergency management agency personnel, including State adjutant generals.

(E) Other appropriate emergency response agency personnel.

(F) Employees of private sector entities that affect critical infrastructure, cyber, economic, or public health security, as designated by the Federal Government in procedures developed pursuant to this section.

(4) The term “State” includes the District of Columbia and any commonwealth, territory, or possession of the United States.

##### **SEC. 704. REPORT.**

(a) **REPORT REQUIRED.**—Not later than 12 months after the date of the enactment of this Act, the President shall submit to the congressional committees specified in subsection (b) a report on the implementation of section 703. The report shall include any recommendations for additional measures or appropriation requests, beyond the requirements of section 703, to increase the effectiveness of sharing of information between and among Federal, State, and local entities.

(b) SPECIFIED CONGRESSIONAL COMMITTEES.—The congressional committees referred to in subsection (a) are the following committees:

(1) The Permanent Select Committee on Intelligence and the Committee on the Judiciary of the House of Representatives.

(2) The Select Committee on Intelligence and the Committee on the Judiciary of the Senate.

**SEC. 705. AUTHORIZATION OF APPROPRIATIONS.**

There is authorized to be appropriated such sums as may be necessary to carry out section 703.

**SEC. 706. COORDINATION PROVISION.**

(a) PRIOR ENACTMENT.—If this Act is enacted before the Homeland Security Act of 2002, then upon the date of the enactment of the Homeland Security Act of 2002, this title shall be deemed for all purposes not to have taken effect and shall cease to be in effect.

(b) SUBSEQUENT ENACTMENT.—If the Homeland Security Act of 2002 is enacted before this Act, then this title shall not take effect.

**TITLE VIII—REPORTING REQUIREMENTS**

**Subtitle A—Overdue Reports**

**SEC. 801. DEADLINE FOR SUBMITTAL OF VARIOUS OVERDUE REPORTS.**

(a) DEADLINE.—The reports described in subsection (c) shall be submitted to Congress not later than 180 days after the date of the enactment of this Act.

(b) NONCOMPLIANCE.—(1) If all the reports described in subsection (c) are not submitted to Congress by the date specified in subsection (a), amounts available to be obligated or expended after that date to carry out the functions or duties of the Office of the Director of Central Intelligence shall be reduced by  $\frac{1}{3}$ .

(2) The reduction applicable under paragraph (1) shall not apply if the Director of Central Intelligence certifies to Congress by the date referred to in subsection (a) that all reports referred to in subsection (c) have been submitted to Congress.

(c) REPORTS DESCRIBED.—The reports referred to in subsection (a) are reports mandated by law for which the Director of Central Intelligence has sole or primary responsibility to prepare, coordinate, and submit to Congress which, as of the date of the enactment of this Act, have not been submitted to Congress.

**Subtitle B—Submittal of Reports to Intelligence Committees**

**SEC. 811. DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES.**

(a) IN GENERAL.—(1) Title V of the National Security Act of 1947 (50 U.S.C. 413 et seq.), as amended by section 311 of this Act, is further amended by adding at the end the following new section:

“DATES FOR SUBMITTAL OF VARIOUS ANNUAL AND SEMI-ANNUAL REPORTS TO THE CONGRESSIONAL INTELLIGENCE COMMITTEES

“SEC. 507. (a) ANNUAL REPORTS.—(1) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(A):

“(A) The annual evaluation of the performance and responsiveness of certain elements of the intelligence community required by section 105(d).

“(B) The annual report on intelligence required by section 109.

“(C) The annual report on intelligence community cooperation with Federal law enforcement agencies required by section 114(a)(2).

“(D) The annual report on the protection of the identities of covert agents required by section 603.

“(E) The annual report of the Inspectors General of the intelligence community on proposed resources and activities of their offices required by section 8H(g) of the Inspector General Act of 1978.

“(F) The annual report on commercial activities as security for intelligence collection required by section 437(c) of title 10, United States Code.

“(G) The annual report on expenditures for postemployment assistance for terminated intelligence employees required by section 1611(e)(2) of title 10, United States Code.

“(H) The annual update on foreign industrial espionage required by section 809(b) of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359; 50 U.S.C. App. 2170b(b)).

“(I) The annual report on coordination of counterintelligence matters with the Federal Bureau of Investigation required by section 811(c)(6) of the Counterintelligence and Security Enhancements Act of 1994 (50 U.S.C. 402a(c)(6)).

“(J) The annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets required by section 827 of the Intelligence Authorization Act for Fiscal Year 2003.

“(K) The annual report on certifications for immunity in interdiction of aircraft engaged in illicit drug trafficking required by section 1012(c)(2) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291-4(c)(2)).

“(L) The annual report on exceptions to consumer disclosure requirements for national security investigations under section 604(b)(4)(E) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)(E)).

“(M) The annual report on activities under the David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102-183; 50 U.S.C. 1901 et seq.) required by section 806(a) of that Act (50 U.S.C. 1906(a)).

“(N) The annual report on hiring and retention of minority employees in the intelligence community required by section 114(c).

“(2) The date for the submittal to the congressional intelligence committees of the following annual reports shall be the date each year provided in subsection (c)(1)(B):

“(A) The annual report on the safety and security of Russian nuclear facilities and nuclear military forces required by section 114(b).

“(B) The annual report on the threat of attack on the United States from weapons of mass destruction required by section 114(d).

“(C) The annual report on covert leases required by section 114(e).

“(D) The annual report on improvements of the financial statements of the intelligence community for auditing purposes required by section 114A.

“(E) The annual report on activities of personnel of the Federal Bureau of Investigation outside the United States required by section 540C(c)(2) of title 28, United States Code.

“(F) The annual report on intelligence activities of the People's Republic of China required by section 308(c) of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105-107; 50 U.S.C. 402a note).

“(G) The annual report on counterdrug intelligence matters required by section 826 of the Intelligence Authorization Act for Fiscal Year 2003.

“(b) SEMI-ANNUAL REPORTS.—The dates for the submittal to the congressional intelligence committees of the following semiannual reports shall be the dates each year provided in subsection (c)(2):

“(1) The periodic reports on intelligence provided to the United Nations required by section 112(b).

“(2) The semiannual reports on the Office of the Inspector General of the Central Intelligence Agency required by section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403g(d)(1)).

“(3) The semiannual reports on decisions not to prosecute certain violations of law under the Classified Information Procedures Act (18 U.S.C. App.) as required by section 13 of that Act.

“(4) The semiannual reports on the acquisition of technology relating to weapons of mass destruction and advanced conventional munitions required by section 721(b) of the Combating Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104-293; 50 U.S.C. 2366(b)).

“(5) The semiannual reports on the activities of the Diplomatic Telecommunications Service Program Office (DTS-PO) required by section 322(a)(6)(D)(ii) of the Intelligence Authorization Act for Fiscal Year 2001 (22 U.S.C. 7302(a)(6)(D)(ii)).

“(6) The semiannual reports on the disclosure of information and consumer reports to the Federal Bureau of Investigation for counterintelligence purposes required by section 624(h)(2) of the Fair Credit Reporting Act (15 U.S.C. 1681u(h)(2)).

“(7) The semiannual provision of information on requests for financial information for foreign counterintelligence purposes required by section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)).

“(8) The semiannual report on financial intelligence on terrorist assets required by section 118.

“(c) SUBMITTAL DATES FOR REPORTS.—(1)(A) Except as provided in subsection (d), each annual report listed in subsection (a)(1) shall be submitted not later than February 1.

“(B) Except as provided in subsection (d), each annual report listed in subsection (a)(2) shall be submitted not later than December 1.

“(2) Except as provided in subsection (d), each semiannual report listed in subsection (b) shall be submitted not later than February 1 and August 1.

“(d) POSTPONEMENT OF SUBMITTAL.—(1) Subject to paragraph (3), the date for the submittal of—

“(A) an annual report listed in subsection (a)(1) may be postponed until March 1;

“(B) an annual report listed in subsection (a)(2) may be postponed until January 1; and

“(C) a semiannual report listed in subsection (b) may be postponed until March 1 or September 1, as the case may be,

if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

“(2)(A) Notwithstanding any other provision of law and subject to paragraph (3), the date for the submittal to the congressional intelligence committees of any report described in subparagraph (B) may be postponed by not more than 30 days from the date otherwise specified in the provision of law for the submittal of such report if the official required to submit such report submits to the congressional intelligence committees a written notification of such postponement.

“(B) A report described in this subparagraph is any report on intelligence or intelligence-related activities of the United States Government that is submitted under a provision of law requiring the submittal of only a single report.

“(3)(A) The date for the submittal of a report whose submittal is postponed under paragraph (1) or (2) may be postponed beyond the time provided for the submittal of such report under such paragraph if the official required to submit such report submits to the congressional intelligence committees a written certification that preparation and submittal of such report at such time will impede the work of officers or employees of the intelligence community in a manner that will be detrimental to the national security of the United States.

“(B) A certification with respect to a report under subparagraph (A) shall include a proposed submittal date for such report, and such report shall be submitted not later than that date.”

(2) The table of sections for the National Security Act of 1947, as amended by section 311 of this Act, is further amended by inserting after the item relating to section 506 the following new item:

"Sec. 507. Dates for submittal of various annual and semiannual reports to the congressional intelligence committees."

(b) CONFORMING AMENDMENTS TO EXISTING REPORTING REQUIREMENTS.—

(1) NATIONAL SECURITY ACT OF 1947.—(A) Subsection (d) of section 105 of the National Security Act of 1947 (50 U.S.C. 403-5) is amended to read as follows:

"(d) ANNUAL EVALUATION OF PERFORMANCE AND RESPONSIVENESS OF CERTAIN ELEMENTS OF INTELLIGENCE COMMUNITY.—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the evaluation described in paragraph (3).

"(2) The Director shall submit each year to the Committee on Foreign Intelligence of the National Security Council, and to the Committees on Armed Services and Appropriations of the Senate and House of Representatives, the evaluation described in paragraph (3).

"(3) An evaluation described in this paragraph is an evaluation of the performance and responsiveness of the National Security Agency, the National Reconnaissance Office, and the National Imagery and Mapping Agency in meeting their respective national missions.

"(4) The Director shall submit each evaluation under this subsection in consultation with the Secretary of Defense and the Chairman of the Joint Chiefs of Staff."

(B) Section 109 of that Act (50 U.S.C. 404d) is amended—

(i) in subsection (a), by striking paragraph (1) and inserting the following new paragraph (1):

"(1)(A) Not later each year than the date provided in section 507, the President shall submit to the congressional intelligence committees a report on the requirements of the United States for intelligence and the activities of the intelligence community.

"(B) Not later than January 31 each year, and included with the budget of the President for the next fiscal year under section 1105(a) of title 31, United States Code, the President shall submit to the appropriate congressional committees the report described in subparagraph (A).";

(ii) in subsection (c), as amended by section 803(a) of the Intelligence Renewal and Reform Act of 1996 (title VIII of Public Law 104-293; 110 Stat. 3475)—

(I) in paragraph (1), by striking "The Select Committee on Intelligence, the Committee on Appropriations," and inserting "The Committee on Appropriations"; and

(II) in paragraph (2), by striking "The Permanent Select Committee on Intelligence, the Committee on Appropriations," and inserting "The Committee on Appropriations"; and

(iii) by striking subsection (c), as added by section 304(a) of the Intelligence Authorization Act for Fiscal Year 1994 (Public Law 103-178; 107 Stat. 2034).

(C) Section 112(b) of that Act (50 U.S.C. 404g(b)) is amended by adding at the end the following new paragraph:

"(3) In the case of periodic reports required to be submitted under the first sentence of paragraph (1) to the congressional intelligence committees, the submittal dates for such reports shall be as provided in section 507."

(D) Section 114 of that Act (50 U.S.C. 404i) is amended—

(i) in subsection (a)—

(I) in paragraph (1), by striking "the congressional intelligence committees and";

(II) by redesignating paragraphs (2) and (3) as paragraphs (3) and (4), respectively; and

(III) by inserting after paragraph (1) the following new paragraph (2):

"(2) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees the report required to be submitted under paragraph (1) during the preceding year."; and

(ii) in subsection (b)(1), by striking "on an annual basis" and all that follows through "leadership" and inserting "submit to the congressional leadership on an annual basis, and to the congressional intelligence committees on the date each year provided in section 507."

(E) Section 603 of that Act (50 U.S.C. 423) is amended—

(i) in subsection (a), by adding at the end the following new sentence: "The date for the submittal of the report shall be the date provided in section 507."; and

(ii) in subsection (b), by striking the second sentence.

(2) CENTRAL INTELLIGENCE AGENCY ACT OF 1949.—Section 17(d)(1) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403q(d)(1)) is amended in the second sentence by striking "Within thirty days of receipt of such reports," and inserting "Not later than the dates each year provided for the transmittal of such reports in section 507 of the National Security Act of 1947,".

(3) CLASSIFIED INFORMATION PROCEDURES ACT.—Section 13 of the Classified Information Procedures Act (18 U.S.C. App.) is amended—

(A) by redesignating subsection (b) as subsection (c); and

(B) by inserting after subsection (a) the following new subsection (b):

"(b) In the case of the semiannual reports (whether oral or written) required to be submitted under subsection (a) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947."

(4) TITLE 10, UNITED STATES CODE.—(A) Section 437 of title 10, United States Code, is amended—

(i) in subsection (c), by striking "Not later than" and all that follows through "of Congress" and inserting "Not later each year than the date provided in section 507 of the National Security Act of 1947, the Secretary shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))"; and

(ii) by striking subsection (d).

(B) Section 1611(e) of that title is amended—

(i) in paragraph (1), by striking "paragraph (2)" and inserting "paragraph (3)";

(ii) by redesignating paragraph (2) as paragraph (3); and

(iii) by inserting after paragraph (1) the following new paragraph (2):

"(2) In the case of a report required to be submitted under paragraph (1) to the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives, the date for the submittal of such report shall be as provided in section 507 of the National Security Act of 1947."

(5) INTELLIGENCE AUTHORIZATION ACTS.—(A) Section 809 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359; 108 Stat. 3454; 50 U.S.C. App. 2170b) is amended by striking subsection (b) and inserting the following new subsection (b):

"(b) ANNUAL UPDATE.—

"(1) SUBMITTAL TO CONGRESSIONAL INTELLIGENCE COMMITTEES.—Not later each year than the date provided in section 507 of the National Security Act of 1947, the President shall submit to the congressional intelligence committees a report updating the information referred to in subsection (a)(1)(D).

"(2) SUBMITTAL TO CONGRESSIONAL LEADERSHIP.—Not later than April 14 each year, the President shall submit to the congressional leadership a report updating the information referred to in subsection (a)(1)(D).

"(3) DEFINITIONS.—In this subsection:

"(A) CONGRESSIONAL INTELLIGENCE COMMITTEES.—The term 'congressional intelligence committees' has the meaning given that term in sec-

tion 3 of the National Security Act of 1947 (50 U.S.C. 401a).

"(B) CONGRESSIONAL LEADERSHIP.—The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate."

(B) Paragraph (6) of section 811(c) of that Act (50 U.S.C. 402a(c)) is amended to read as follows:

"(6)(A) Not later each year than the date provided in section 507 of the National Security Act of 1947, the Director of the Federal Bureau of Investigation shall submit to the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a)) a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

"(B) Not later than February 1 each year, the Director shall, in accordance with applicable security procedures, submit to the Committees on the Judiciary of the Senate and House of Representatives a report with respect to compliance with paragraphs (1) and (2) during the previous calendar year.

"(C) The Director of the Federal Bureau of Investigation shall submit each report under this paragraph in consultation with the Director of Central Intelligence and the Secretary of Defense."

(C) Section 721 of the Combatting Proliferation of Weapons of Mass Destruction Act of 1996 (title VII of Public Law 104-293; 110 Stat. 3474; 50 U.S.C. 2366) is amended—

(i) in subsection (a), by striking "Not later than" and all that follows through "the Director" and inserting "The Director";

(ii) by redesignating subsection (b) as subsection (c);

(iii) by inserting after subsection (a) the following new subsection (b):

"(b) SUBMITTAL DATES.—(1) The report required by subsection (a) shall be submitted each year to the congressional intelligence committees and the congressional leadership on a semiannual basis on the dates provided in section 507 of the National Security Act of 1947.

"(2) In this subsection:

"(A) The term 'congressional intelligence committees' has the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).

"(B) The term 'congressional leadership' means the Speaker and the minority leader of the House of Representatives and the majority leader and the minority leader of the Senate."; and

(iv) in subsection (c), as so redesignated, by striking "The reports" and inserting "Each report".

(D) Section 308 of the Intelligence Authorization Act for Fiscal Year 1998 (Public Law 105-107; 111 Stat. 2253; 50 U.S.C. 402a note) is amended—

(i) in subsection (a)—

(I) by striking "Not later than" and all that follows through "the Director of Central Intelligence" and inserting "The Director of Central Intelligence"; and

(II) by inserting "on an annual basis" after "to Congress"; and

(ii) by adding at the end the following new subsection (c):

"(c) SUBMITTAL DATE OF REPORT TO LEADERSHIP OF CONGRESSIONAL INTELLIGENCE COMMITTEES.—The date each year for the submittal to the Chairman and Ranking Member of the Permanent Select Committee on Intelligence of the House of Representatives and the Chairman and Vice Chairman of the Select Committee on Intelligence of the Senate of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947."

(E) Section 322(a)(6)(D) of the Intelligence Authorization Act for Fiscal Year 2001 (Public Law 106-567; 114 Stat. 2844; 22 U.S.C. 7302(a)(6)(D)) is amended—

(i) in clause (i), by striking "Beginning on" and inserting "Except as provided in clause (ii), beginning on";

(ii) by redesignating clause (ii) as clause (iii);  
(iii) by inserting after clause (i) the following new clause (ii):

“(ii) **SUBMITTAL DATE OF REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.**—In the case of reports required to be submitted under clause (i) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal dates for such reports shall be as provided in section 507 of that Act.”; and

(iv) in clause (iii), as so redesignated, by striking “report” and inserting “reports”.

(6) **PUBLIC LAW 103-337.**—Section 1012(c) of the National Defense Authorization Act for Fiscal Year 1995 (22 U.S.C. 2291-4(c)) is amended—

(A) in paragraph (1), by striking “Not later than” and inserting “Except as provided in paragraph (2), not later than”;

(B) by redesignating paragraph (2) as paragraph (3); and

(C) by inserting after paragraph (1) the following new paragraph (2):

“(2) In the case of a report required to be submitted under paragraph (1) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.”.

(7) **DAVID L. BOREN NATIONAL SECURITY EDUCATION ACT OF 1991.**—The David L. Boren National Security Education Act of 1991 (title VIII of Public Law 102-183; 50 U.S.C. 1901 et seq.) is amended—

(A) in section 806(a) (50 U.S.C. 1906(a))—

(i) by inserting “(1)” before “The Secretary”;

(ii) in paragraph (1), as so designated, by striking “the Congress” and inserting “the congressional intelligence committees”;

(iii) by designating the second sentence as paragraph (2) and by aligning such paragraph with the paragraph added by clause (v);

(iv) in paragraph (2), as so designated, by inserting “submitted to the President” after “The report”; and

(v) by adding at the end the following new paragraph (3):

“(3) The report submitted to the congressional intelligence committees shall be submitted on the date provided in section 507 of the National Security Act of 1947.”; and

(B) in section 808 (50 U.S.C. 1908), by adding at the end the following new paragraph (5):

“(5) The term ‘congressional intelligence committees’ means—

“(A) the Select Committee on Intelligence of the Senate; and

“(B) the Permanent Select Committee on Intelligence of the House of Representatives.”.

(8) **FAIR CREDIT REPORTING ACT.**—(A) Section 604(b)(4) of the Fair Credit Reporting Act (15 U.S.C. 1681b(b)(4)) is amended—

(i) in subparagraph (D), by striking “Not later than” and inserting “Except as provided in subparagraph (E), not later than”;

(ii) by redesignating subparagraph (E) as subparagraph (F); and

(iii) by inserting after subparagraph (D) the following new subparagraph (E):

“(E) **REPORTS TO CONGRESSIONAL INTELLIGENCE COMMITTEES.**—In the case of a report to be submitted under subparagraph (D) to the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)), the submittal date for such report shall be as provided in section 507 of that Act.”.

(B) Section 625(h) of that Act (15 U.S.C. 1681u(h)) is amended—

(i) by inserting “(1)” before “On a semi-annual basis.”; and

(ii) by adding at the end the following new paragraph:

“(2) In the case of the semiannual reports required to be submitted under paragraph (1) to the Permanent Select Committee on Intelligence of the House of Representatives and the Select Committee on Intelligence of the Senate, the

submittal dates for such reports shall be as provided in section 507 of the National Security Act of 1947.”.

(9) **RIGHT TO FINANCIAL PRIVACY ACT OF 1978.**—Section 1114(a)(5)(C) of the Right to Financial Privacy Act of 1978 (12 U.S.C. 3414(a)(5)(C)) is amended by striking “On a semiannual” and all that follows through “the Senate” and inserting “On the dates provided in section 507 of the National Security Act of 1947, the Attorney General shall fully inform the congressional intelligence committees (as defined in section 3 of that Act (50 U.S.C. 401a))”.

#### **Subtitle C—Recurring Annual Reports**

#### **SEC. 821. ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.**

Section 114 of the National Security Act of 1947, as amended by section 353(b)(6) of this Act, is further amended—

(1) by redesignating subsection (d) as subsection (e); and

(2) by inserting after subsection (c) the following new subsection (d):

“(d) **ANNUAL REPORT ON THREAT OF ATTACK ON THE UNITED STATES USING WEAPONS OF MASS DESTRUCTION.**—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional committees specified in paragraph (3) a report assessing the following:

“(A) The current threat of attack on the United States using ballistic missiles or cruise missiles.

“(B) The current threat of attack on the United States using a chemical, biological, or nuclear weapon delivered by a system other than a ballistic missile or cruise missile.

“(2) Each report under paragraph (1) shall be a national intelligence estimate, or have the formality of a national intelligence estimate.

“(3) The congressional committees referred to in paragraph (1) are the following:

“(A) The congressional intelligence committees.

“(B) The Committees on Foreign Relations and Armed Services of the Senate.

“(C) The Committees on International Relations and Armed Services of the House of Representatives.”.

#### **SEC. 822. ANNUAL REPORT ON COVERT LEASES.**

Section 114 of the National Security Act of 1947, as amended by section 821 of this Act, is further amended—

(1) by redesignating subsection (e) as subsection (f); and

(2) by inserting after subsection (d) the following new subsection (e):

“(e) **ANNUAL REPORT ON COVERT LEASES.**—(1) Not later each year than the date provided in section 507, the Director shall submit to the congressional intelligence committees a report on each covert lease of an element of the intelligence community that is in force as of the end of the preceding year.

“(2) Each report under paragraph (1) shall include the following:

“(A) A list of each lease described by that paragraph.

“(B) For each lease—

“(i) the cost of such lease;

“(ii) the duration of such lease;

“(iii) the purpose of such lease; and

“(iv) the directorate or office that controls such lease.”.

#### **SEC. 823. ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS OF CERTAIN ELEMENTS OF THE INTELLIGENCE COMMUNITY FOR AUDITING PURPOSES.**

(a) **IN GENERAL.**—Title I of the National Security Act of 1947 (50 U.S.C. 402 et seq.) is amended by inserting after section 114 the following new section:

“**ANNUAL REPORT ON IMPROVEMENT OF FINANCIAL STATEMENTS FOR AUDITING PURPOSES**

“**SEC. 114A.** Not later each year than the date provided in section 507, the Director of Central

Intelligence, the Director of the National Security Agency, the Director of the Defense Intelligence Agency, and the Director of the National Imagery and Mapping Agency shall each submit to the congressional intelligence committees a report describing the activities being undertaken by such official to ensure that the financial statements of such agency can be audited in accordance with applicable law and requirements of the Office of Management and Budget.”.

(b) **CLERICAL AMENDMENT.**—The table of sections for the National Security Act of 1947 is amended by inserting after the item relating to section 114 the following new item:

“**Sec. 114A.** Annual report on improvement of financial statements for auditing purposes.”.

#### **SEC. 824. ANNUAL REPORT ON ACTIVITIES OF FEDERAL BUREAU OF INVESTIGATION PERSONNEL OUTSIDE THE UNITED STATES.**

(a) **ANNUAL REPORT.**—Chapter 33 of title 28, United States Code, is amended by adding at the end the following new section:

#### **“§ 540C. Annual report on activities of Federal Bureau of Investigation personnel outside the United States**

“(a) The Director of the Federal Bureau of Investigation shall submit to the appropriate committees of Congress each year a report on the activities of personnel of the Federal Bureau of Investigation outside the United States.

“(b) The report under subsection (a) shall include the following:

“(1) For the year preceding the year in which the report is required to be submitted—

“(A) the number of personnel of the Bureau posted or detailed outside the United States during the year;

“(B) a description of the coordination of the investigations, asset handling, liaison, and operational activities of the Bureau during the year with other elements of the intelligence community; and

“(C) a description of the extent to which information derived from activities described in subparagraph (B) was shared with other elements of the intelligence community.

“(2) For the year in which the report is required to be submitted—

“(A) a description of the plans, if any, of the Director—

“(i) to modify the number of personnel of the Bureau posted or detailed outside the United States; or

“(ii) to modify the scope of the activities of personnel of the Bureau posted or detailed outside the United States; and

“(B) a description of the manner and extent to which information derived from activities of the Bureau described in paragraph (1)(B) during the year will be shared with other elements of the intelligence community.

“(c) The date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947.

“(d) In this section, the term ‘appropriate committees of Congress’ means—

“(1) the Committees on the Judiciary of the Senate and House of Representatives; and

“(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).”.

(b) **CLERICAL AMENDMENT.**—The table of sections at the beginning of chapter 33 of that title is amended by inserting after the item relating to section 540B the following new item:

“**540C.** Annual report on activities of Federal Bureau of Investigation personnel outside the United States.”.

#### **SEC. 825. ANNUAL REPORTS OF INSPECTORS GENERAL OF THE INTELLIGENCE COMMUNITY ON PROPOSED RESOURCES AND ACTIVITIES OF THEIR OFFICES.**

Section 8H of the Inspector General Act of 1978 (5 U.S.C. App.) is amended—

(1) in subsection (f), by striking “this section” and inserting “subsections (a) through (e)”;

(2) by redesignating subsection (g) as subsection (h); and

(3) by inserting after subsection (f) the following new subsection (g):

“(g)(1) The Inspector General of the Defense Intelligence Agency, the National Imagery and Mapping Agency, the National Reconnaissance Office, and the National Security Agency shall each submit to the congressional intelligence committees each year a report that sets forth the following:

“(A) The personnel and funds requested by such Inspector General for the fiscal year beginning in such year for the activities of the office of such Inspector General in such fiscal year.

“(B) The plan of such Inspector General for such activities, including the programs and activities scheduled for review by the office of such Inspector General during such fiscal year.

“(C) An assessment of the current ability of such Inspector General to hire and retain qualified personnel for the office of such Inspector General.

“(D) Any matters that such Inspector General considers appropriate regarding the independence and effectiveness of the office of such Inspector General.

“(2) The submittal date for a report under paragraph (1) each year shall be the date provided in section 507 of the National Security Act of 1947.

“(3) In this subsection, the term ‘congressional intelligence committees’ shall have the meaning given that term in section 3 of the National Security Act of 1947 (50 U.S.C. 401a).”

**SEC. 826. ANNUAL REPORT ON COUNTERDRUG INTELLIGENCE MATTERS.**

(a) ANNUAL REPORT.—The Counterdrug Intelligence Coordinating Group shall submit to the appropriate committees of Congress each year a report on current counterdrug intelligence matters. The report shall include the recommendations of the Counterdrug Intelligence Coordinating Group on the appropriate number of permanent staff, and of detailed personnel, for the staff of the Counterdrug Intelligence Executive Secretariat.

(b) SUBMITTAL DATE.—The date of the submittal each year of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 811 of this Act.

(c) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Committees on Appropriations of the Senate and House of Representatives; and

(2) the congressional intelligence committees (as defined in section 3 of the National Security Act of 1947 (50 U.S.C. 401a)).

**SEC. 827. ANNUAL REPORT ON FOREIGN COMPANIES INVOLVED IN THE PROLIFERATION OF WEAPONS OF MASS DESTRUCTION THAT RAISE FUNDS IN THE UNITED STATES CAPITAL MARKETS.**

(a) ANNUAL REPORT REQUIRED.—The Director of Central Intelligence shall submit to the appropriate committees of Congress on an annual basis a report setting forth each foreign company described in subsection (b) that raised or attempted to raise funds in the United States capital markets during the preceding year.

(b) COVERED FOREIGN COMPANIES.—A foreign company described in this subsection is any foreign company determined by the Director to be engaged or involved in the proliferation of weapons of mass destruction (including nuclear, biological, or chemical weapons) or the means to deliver such weapons.

(c) SUBMITTAL DATE.—The date each year for the submittal of the report required by subsection (a) shall be the date provided in section 507 of the National Security Act of 1947, as added by section 811 of this Act.

(d) FORM OF REPORTS.—Each report under subsection (a) shall be submitted in unclassified form, but may include a classified annex.

(e) APPROPRIATE COMMITTEES OF CONGRESS DEFINED.—In this section, the term “appropriate committees of Congress” means—

(1) the Select Committee on Intelligence of the Senate and the Permanent Select Committee on Intelligence of the House of Representatives;

(2) the Committees on Armed Services, Banking, Housing, and Urban Affairs, Governmental Affairs, and Foreign Relations of the Senate; and

(3) the Committees on Armed Services, Financial Services, Government Reform, and International Relations of the House of Representatives.

**Subtitle D—Other Reports**

**SEC. 831. REPORT ON EFFECT OF COUNTRY-RELEASE RESTRICTIONS ON ALLIED INTELLIGENCE-SHARING RELATIONSHIPS.**

(a) REPORT.—Not later than 90 days after the date of the enactment of this Act, the Director of Central Intelligence shall, in consultation with the Secretary of Defense, submit to the congressional intelligence committees a report containing an assessment of the effect of the use of “NOFORN” classifications, and of other country-release policies, procedures, and classification restrictions, on intelligence-sharing relationships and coordinated intelligence operations and military operations between the United States and its allies. The report shall include an assessment of the effect of the use of such classifications, and of such policies, procedures, and restrictions, on counterterrorism operations in Afghanistan and elsewhere.

(b) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committee” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**SEC. 832. EVALUATION OF POLICIES AND PROCEDURES OF DEPARTMENT OF STATE ON PROTECTION OF CLASSIFIED INFORMATION AT DEPARTMENT HEADQUARTERS.**

(a) EVALUATION REQUIRED.—Not later than December 31 of 2002, 2003, and 2004, the Inspector General of the Department of State shall conduct an evaluation of the policies and procedures of the Department on the protection of classified information at the Headquarters of the Department, including compliance with the directives of the Director of Central Intelligence (DCIDs) regarding the storage and handling of Sensitive Compartmented Information (SCI) material.

(b) ANNUAL REPORT.—Except as provided in subsection (c), not later than February 1 of 2003, 2004, and 2005, the Inspector General shall submit to the following committees a report on the evaluation conducted under subsection (a) during the preceding year:

(1) The congressional intelligence committees.

(2) The Committee on Foreign Relations of the Senate and the Committee on International Relations of the House of Representatives.

(c) EXCEPTION.—The date each year for the submittal of a report under subsection (b) may be postponed in accordance with section 507(d) of the National Security Act of 1947, as added by section 811 of this Act.

(d) CONGRESSIONAL INTELLIGENCE COMMITTEES DEFINED.—In this section, the term “congressional intelligence committees” means—

(1) the Select Committee on Intelligence of the Senate; and

(2) the Permanent Select Committee on Intelligence of the House of Representatives.

**Subtitle E—Repeal of Certain Report Requirements**

**SEC. 841. REPEAL OF CERTAIN REPORT REQUIREMENTS.**

(a) ANNUAL REPORT ON THE DETAIL OF INTELLIGENCE COMMUNITY PERSONNEL.—Section 113 of

the National Security Act of 1947 (50 U.S.C. 404h) is amended by striking subsection (c).

(b) ANNUAL REPORT ON EXERCISE OF NATIONAL SECURITY AGENCY VOLUNTARY SEPARATION PAY AUTHORITY.—Section 301(j) of the National Security Act of 1947 (50 U.S.C. 409a(j)), as amended by section 353(b)(2)(A) of this Act, is further amended—

(1) by striking “REPORTING REQUIREMENTS.—” and all that follows through “The Director may” and inserting “NOTIFICATION OF EXERCISE OF AUTHORITY.—The Director may”; and

(2) by striking paragraph (2).

(c) ANNUAL REPORT ON TRANSFERS OF AMOUNTS FOR ACQUISITION OF LAND BY THE CENTRAL INTELLIGENCE AGENCY.—Section 5(c)(2) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403f(c)(2)) is amended by striking “an annual report on the transfers of sums described in paragraph (1).” and inserting “a report on the transfer of sums described in paragraph (1) each time that authority is exercised.”

(d) ANNUAL REPORT ON USE OF CIA PERSONNEL AS SPECIAL POLICEMEN.—Section 15(a) of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403o(a)) is amended by striking paragraph (5).

(e) ANNUAL AUDIT OF THE CENTRAL SERVICES PROGRAM OF THE CENTRAL INTELLIGENCE AGENCY.—Section 21 of the Central Intelligence Agency Act of 1949 (50 U.S.C. 403u) is amended—

(1) by striking subsection (g); and

(2) by redesignating subsection (h) as subsection (g).

(f) ANNUAL REPORT ON SPECIAL POLICE AUTHORITY FOR THE NATIONAL SECURITY AGENCY.—Section 11(a)(5) of the National Security Agency Act of 1959 (50 U.S.C. 402 note) is amended by inserting “through 2004” after “Not later than July 1 each year”.

**TITLE IX—COUNTERINTELLIGENCE ACTIVITIES**

**SEC. 901. SHORT TITLE; PURPOSE.**

(a) SHORT TITLE.—This title may be cited as the “Counterintelligence Enhancement Act of 2002”.

(b) PURPOSE.—The purpose of this title is to facilitate the enhancement of the counterintelligence activities of the United States Government by—

(1) enabling the counterintelligence community of the United States Government to fulfill better its mission of identifying, assessing, prioritizing, and countering the intelligence threats to the United States;

(2) ensuring that the counterintelligence community of the United States Government acts in an efficient and effective manner; and

(3) providing for the integration of all the counterintelligence activities of the United States Government.

**SEC. 902. NATIONAL COUNTERINTELLIGENCE EXECUTIVE.**

(a) ESTABLISHMENT.—(1) There shall be a National Counterintelligence Executive, who shall be appointed by the President.

(2) It is the sense of Congress that the President should seek the views of the Attorney General, Secretary of Defense, and Director of Central Intelligence in selecting an individual for appointment as the Executive.

(b) MISSION.—The mission of the National Counterintelligence Executive shall be to serve as the head of national counterintelligence for the United States Government.

(c) DUTIES.—Subject to the direction and control of the President, the duties of the National Counterintelligence Executive are as follows:

(1) To carry out the mission referred to in subsection (b).

(2) To act as chairperson of the National Counterintelligence Policy Board under section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VIII of Public Law 103-359; 50 U.S.C. 402a), as amended by section 903 of this Act.

(3) To act as head of the Office of the National Counterintelligence Executive under section 904.

(4) To participate as an observer on such boards, committees, and entities of the executive branch as the President considers appropriate for the discharge of the mission and functions of the Executive and the Office of the National Counterintelligence Executive under section 904.

**SEC. 903. NATIONAL COUNTERINTELLIGENCE POLICY BOARD.**

(a) **CHAIRPERSON.**—Section 811 of the Counterintelligence and Security Enhancements Act of 1994 (title VII of Public Law 103-359; 50 U.S.C. 402a), as amended by section 811(b)(5)(B) of this Act, is further amended—

(1) by striking subsection (b);

(2) by redesignating subsection (c) as subsection (e); and

(3) by inserting after subsection (a) the following new subsection (b):

“(b) **CHAIRPERSON.**—The National Counterintelligence Executive under section 902 of the Counterintelligence Enhancement Act of 2002 shall serve as the chairperson of the Board.”.

(b) **MEMBERSHIP.**—That section is further amended by inserting after subsection (b), as amended by subsection (a)(3) of this section, the following new subsection (c):

“(c) **MEMBERSHIP.**—The membership of the National Counterintelligence Policy Board shall consist of the following:

“(1) The National Counterintelligence Executive.

“(2) Senior personnel of departments and elements of the United States Government, appointed by the head of the department or element concerned, as follows:

“(A) The Department of Justice, including the Federal Bureau of Investigation.

“(B) The Department of Defense, including the Joint Chiefs of Staff.

“(C) The Department of State.

“(D) The Department of Energy.

“(E) The Central Intelligence Agency.

“(F) Any other department, agency, or element of the United States Government specified by the President.”.

(c) **FUNCTIONS AND DISCHARGE OF FUNCTIONS.**—That section is further amended by inserting after subsection (c), as amended by subsection (b) of this section, the following new subsection:

“(d) **FUNCTIONS AND DISCHARGE OF FUNCTIONS.**—(1) The Board shall—

“(A) serve as the principal mechanism for—

“(i) developing policies and procedures for the approval of the President to govern the conduct of counterintelligence activities; and

“(ii) upon the direction of the President, resolving conflicts that arise between elements of the Government conducting such activities; and

“(B) act as an interagency working group to—

“(i) ensure the discussion and review of matters relating to the implementation of the Counterintelligence Enhancement Act of 2002; and

“(ii) provide advice to the National Counterintelligence Executive on priorities in the implementation of the National Counterintelligence Strategy produced by the Office of the National Counterintelligence Executive under section 904(e)(2) of that Act.

“(2) The Board may, for purposes of carrying out its functions under this section, establish such interagency boards and working groups as the Board considers appropriate.”.

**SEC. 904. OFFICE OF THE NATIONAL COUNTERINTELLIGENCE EXECUTIVE.**

(a) **ESTABLISHMENT.**—There shall be an Office of the National Counterintelligence Executive.

(b) **HEAD OF OFFICE.**—The National Counterintelligence Executive shall be the head of the Office of the National Counterintelligence Executive.

(c) **LOCATION OF OFFICE.**—The Office of the National Counterintelligence Executive shall be

located in the Office of the Director of Central Intelligence.

(d) **GENERAL COUNSEL.**—(1) There shall be in the Office of the National Counterintelligence Executive a general counsel who shall serve as principal legal advisor to the National Counterintelligence Executive.

(2) The general counsel shall—

(A) provide legal advice and counsel to the Executive on matters relating to functions of the Office;

(B) ensure that the Office complies with all applicable laws, regulations, Executive orders, and guidelines; and

(C) carry out such other duties as the Executive may specify.

(e) **FUNCTIONS.**—Subject to the direction and control of the National Counterintelligence Executive, the functions of the Office of the National Counterintelligence Executive shall be as follows:

(1) **NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT.**—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, to produce on an annual basis a strategic planning assessment of the counterintelligence requirements of the United States to be known as the National Threat Identification and Prioritization Assessment.

(2) **NATIONAL COUNTERINTELLIGENCE STRATEGY.**—Subject to subsection (f), in consultation with appropriate department and agencies of the United States Government, and private sector entities, and based on the most current National Threat Identification and Prioritization Assessment under paragraph (1), to produce on an annual basis a strategy for the counterintelligence programs and activities of the United States Government to be known as the National Counterintelligence Strategy.

(3) **IMPLEMENTATION OF NATIONAL COUNTERINTELLIGENCE STRATEGY.**—To evaluate on an ongoing basis the implementation of the National Counterintelligence Strategy and to submit to the President periodic reports on such evaluation, including a discussion of any shortfalls in the implementation of the Strategy and recommendations for remedies for such shortfalls.

(4) **NATIONAL COUNTERINTELLIGENCE STRATEGIC ANALYSES.**—As directed by the Director of Central Intelligence and in consultation with appropriate elements of the departments and agencies of the United States Government, to oversee and coordinate the production of strategic analyses of counterintelligence matters, including the production of counterintelligence damage assessments and assessments of lessons learned from counterintelligence activities.

(5) **NATIONAL COUNTERINTELLIGENCE PROGRAM BUDGET.**—In consultation with the Director of Central Intelligence—

(A) to coordinate the development of budgets and resource allocation plans for the counterintelligence programs and activities of the Department of Defense, the Federal Bureau of Investigation, the Central Intelligence Agency, and other appropriate elements of the United States Government;

(B) to ensure that the budgets and resource allocation plans developed under subparagraph (A) address the objectives and priorities for counterintelligence under the National Counterintelligence Strategy; and

(C) to submit to the National Security Council periodic reports on the activities undertaken by the Office under subparagraphs (A) and (B).

(6) **NATIONAL COUNTERINTELLIGENCE COLLECTION AND TARGETING COORDINATION.**—To develop priorities for counterintelligence investigations and operations, and for collection of counterintelligence, for purposes of the National Counterintelligence Strategy, except that the Office may not—

(A) carry out any counterintelligence investigations or operations; or

(B) establish its own contacts, or carry out its own activities, with foreign intelligence services.

(7) **NATIONAL COUNTERINTELLIGENCE OUTREACH, WATCH, AND WARNING.**—

(A) **COUNTERINTELLIGENCE VULNERABILITY SURVEYS.**—To carry out and coordinate surveys of the vulnerability of the United States Government, and the private sector, to intelligence threats in order to identify the areas, programs, and activities that require protection from such threats.

(B) **OUTREACH.**—To carry out and coordinate outreach programs and activities on counterintelligence to other elements of the United States Government, and the private sector, and to coordinate the dissemination to the public of warnings on intelligence threats to the United States.

(C) **RESEARCH AND DEVELOPMENT.**—To ensure that research and development programs and activities of the United States Government, and the private sector, direct attention to the needs of the counterintelligence community for technologies, products, and services.

(D) **TRAINING AND PROFESSIONAL DEVELOPMENT.**—To develop policies and standards for training and professional development of individuals engaged in counterintelligence activities and to manage the conduct of joint training exercises for such personnel.

(f) **ADDITIONAL REQUIREMENTS REGARDING NATIONAL THREAT IDENTIFICATION AND PRIORITIZATION ASSESSMENT AND NATIONAL COUNTERINTELLIGENCE STRATEGY.**—(1) A National Threat Identification and Prioritization Assessment under subsection (e)(1), and any modification of such assessment, shall not go into effect until approved by the President.

(2) A National Counterintelligence Strategy under subsection (e)(2), and any modification of such strategy, shall not go into effect until approved by the President.

(3) The National Counterintelligence Executive shall submit to the congressional intelligence committees each National Threat Identification and Prioritization Assessment, or modification thereof, and each National Counterintelligence Strategy, or modification thereof, approved under this section.

(4) In this subsection, the term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(g) **PERSONNEL.**—(1) Personnel of the Office of the National Counterintelligence Executive may consist of personnel employed by the Office or personnel on detail from any other department, agency, or element of the Federal Government. Any such detail may be on a reimbursable or nonreimbursable basis, at the election of the head of the agency detailing such personnel.

(2) Notwithstanding section 104(d) or any other provision of law limiting the period of the detail of personnel on a nonreimbursable basis, the detail of an officer or employee of United States or a member of the Armed Forces under paragraph (1) on a nonreimbursable basis may be for any period in excess of one year that the National Counterintelligence Executive and the head of the department, agency, or element concerned consider appropriate.

(3) The employment of personnel by the Office, including the appointment, compensation and benefits, management, and separation of such personnel, shall be governed by the provisions of law on such matters with respect to the personnel of the Central Intelligence Agency, except that, for purposes of the applicability of such provisions of law to personnel of the Office, the National Counterintelligence Executive shall be treated as the head of the Office.

(4) Positions in the Office shall be excepted service positions for purposes of title 5, United States Code.

(h) **SUPPORT.**—(1) The Attorney General, Secretary of Defense, and Director of Central Intelligence may each provide the Office of the National Counterintelligence Executive such support as may be necessary to permit the Office to carry out its functions under this section.

(2) Subject to any terms and conditions specified by the Director of Central Intelligence, the Director may provide administrative and contract support to the Office as if the Office were an element of the Central Intelligence Agency.

(3) Support provided under this subsection may be provided on a reimbursable or non-reimbursable basis, at the election of the official providing such support.

(i) **AVAILABILITY OF FUNDS FOR REIMBURSEMENT.**—The National Counterintelligence Executive may, from amounts available for the Office, transfer to a department or agency detailing personnel under subsection (g), or providing support under subsection (h), on a reimbursable basis amounts appropriate to reimburse such department or agency for the detail of such personnel or the provision of such support, as the case may be.

(j) **CONTRACTS.**—(1) Subject to paragraph (2), the National Counterintelligence Executive may enter into any contract, lease, cooperative agreement, or other transaction that the Executive considers appropriate to carry out the functions of the Office of the National Counterintelligence Executive under this section.

(2) The authority under paragraph (1) to enter into contracts, leases, cooperative agreements, and other transactions shall be subject to any terms, conditions, and limitations applicable to the Central Intelligence Agency under law with respect to similar contracts, leases, cooperative agreements, and other transactions.

(k) **TREATMENT OF ACTIVITIES UNDER CERTAIN ADMINISTRATIVE LAWS.**—The files of the Office shall be treated as operational files of the Central Intelligence Agency for purposes of section 701 of the National Security Act of 1947 (50 U.S.C. 431) to the extent such files meet criteria under subsection (b) of that section for treatment of files as operational files of an element of the Agency.

(l) **OVERSIGHT BY CONGRESS.**—The location of the Office of the National Counterintelligence Executive within the Office of the Director of Central Intelligence shall not be construed as affecting access by Congress, or any committee of Congress, to—

(1) any information, document, record, or paper in the possession of the Office; or

(2) any personnel of the Office.

(m) **CONSTRUCTION.**—Nothing in this section shall be construed as affecting the authority of the Director of Central Intelligence, the Secretary of Defense, the Secretary of State, the Attorney General, or the Director of the Federal Bureau of Investigation as provided or specified under the National Security Act of 1947 or under other provisions of law.

#### **TITLE X—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY**

##### **SEC. 1001. FINDINGS.**

Congress makes the following findings:

(1) Research and development efforts under the purview of the intelligence community are vitally important to the national security of the United States.

(2) The intelligence community must operate in a dynamic, highly-challenging environment, characterized by rapid technological growth, against a growing number of hostile, technically-sophisticated threats. Research and development programs under the purview of the intelligence community are critical to ensuring that intelligence agencies, and their personnel, are provided with important technological capabilities to detect, characterize, assess, and ultimately counter the full range of threats to the national security of the United States.

(3) There is a need to review the full range of current research and development programs under the purview of the intelligence community, evaluate such programs against the scientific and technological fields judged to be of most importance, and articulate program and resource priorities for future research and development activities to ensure a unified and coherent research and development program across the entire intelligence community.

##### **SEC. 1002. NATIONAL COMMISSION FOR THE REVIEW OF THE RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY.**

(a) **ESTABLISHMENT.**—There is established a commission to be known as the “National Commission for the Review of the Research and Development Programs of the United States Intelligence Community” (in this title referred to as the “Commission”).

(b) **COMPOSITION.**—The Commission shall be composed of 12 members, as follows:

(1) The Deputy Director of Central Intelligence for Community Management.

(2) A senior intelligence official of the Office of the Secretary of Defense, as designated by the Secretary of Defense.

(3) Three members appointed by the majority leader of the Senate, in consultation with the Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and two from private life.

(4) Two members appointed by the minority leader of the Senate, in consultation with the Vice Chairman of the Select Committee on Intelligence of the Senate, one from Members of the Senate and one from private life.

(5) Three members appointed by the Speaker of the House of Representatives, in consultation with the Chairman of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and two from private life.

(6) Two members appointed by the minority leader of the House of Representatives, in consultation with the ranking member of the Permanent Select Committee on Intelligence of the House of Representatives, one from Members of the House of Representatives and one from private life.

(c) **MEMBERSHIP.**—(1) The individuals appointed from private life as members of the Commission shall be individuals who are nationally recognized for expertise, knowledge, or experience in—

(A) research and development programs;

(B) technology discovery and insertion;

(C) use of intelligence information by national policymakers and military leaders; or

(D) the implementation, funding, or oversight of the national security policies of the United States.

(2) An official who appoints members of the Commission may not appoint an individual as a member of the Commission if, in the judgment of the official, such individual possesses any personal or financial interest in the discharge of any of the duties of the Commission.

(3) All members of the Commission appointed from private life shall possess an appropriate security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(d) **CO-CHAIRS.**—(1) The Commission shall have two co-chairs, selected from among the members of the Commission.

(2) One co-chair of the Commission shall be a member of the Democratic Party, and one co-chair shall be a member of the Republican Party.

(3) The individuals who serve as the co-chairs of the Commission shall be jointly agreed upon by the President, the majority leader of the Senate, the minority leader of the Senate, the Speaker of the House of Representatives, and the minority leader of the House of Representatives.

(e) **APPOINTMENT; INITIAL MEETING.**—(1) Members of the Commission shall be appointed not later than 45 days after the date of the enactment of this Act.

(2) The Commission shall hold its initial meeting on the date that is 60 days after the date of the enactment of this Act.

(f) **MEETINGS; QUORUM; VACANCIES.**—(1) After its initial meeting, the Commission shall meet upon the call of the co-chairs of the Commission.

(2) Six members of the Commission shall constitute a quorum for purposes of conducting business, except that two members of the Commission shall constitute a quorum for purposes of receiving testimony.

(3) Any vacancy in the Commission shall not affect its powers, but shall be filled in the same manner in which the original appointment was made.

(4) If vacancies in the Commission occur on any day after 45 days after the date of the enactment of this Act, a quorum shall consist of a majority of the members of the Commission as of such day.

(g) **ACTIONS OF COMMISSION.**—(1) The Commission shall act by resolution agreed to by a majority of the members of the Commission voting and present.

(2) The Commission may establish panels composed of less than the full membership of the Commission for purposes of carrying out the duties of the Commission under this title. The actions of any such panel shall be subject to the review and control of the Commission. Any findings and determinations made by such a panel shall not be considered the findings and determinations of the Commission unless approved by the Commission.

(3) Any member, agent, or staff of the Commission may, if authorized by the co-chairs of the Commission, take any action which the Commission is authorized to take pursuant to this title.

(h) **DUTIES.**—The duties of the Commission shall be—

(1) to conduct, until not later than the date on which the Commission submits the report under section 1007(a), the review described in subsection (i); and

(2) to submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report on the results of the review.

(i) **REVIEW.**—The Commission shall review the status of research and development programs and activities within the intelligence community, including—

(1) an assessment of the advisability of modifying the scope of research and development for purposes of such programs and activities;

(2) a review of the particular individual research and development activities under such programs;

(3) an evaluation of the current allocation of resources for research and development, including whether the allocation of such resources for that purpose should be modified;

(4) an identification of the scientific and technological fields judged to be of most importance to the intelligence community;

(5) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of other departments and agencies of the Federal Government; and

(6) an evaluation of the relationship between the research and development programs and activities of the intelligence community and the research and development programs and activities of the private sector.

##### **SEC. 1003. POWERS OF COMMISSION.**

(a) **IN GENERAL.**—(1) The Commission or, on the authorization of the Commission, any subcommittee or member thereof, may, for the purpose of carrying out the provisions of this title—

(A) hold such hearings and sit and act at such times and places, take such testimony, receive such evidence, and administer such oaths; and

(B) require, by subpoena or otherwise, the attendance and testimony of such witnesses and the production of such books, records, correspondence, memoranda, papers, and documents, as the Commission or such designated subcommittee or designated member considers necessary.

(2) Subpoenas may be issued under subparagraph (1)(B) under the signature of the co-chairs of the Commission, and may be served by any person designated by such co-chairs.

(3) The provisions of sections 102 through 104 of the Revised Statutes of the United States (2 U.S.C. 192–194) shall apply in the case of any failure of a witness to comply with any subpoena or to testify when summoned under authority of this section.

(b) **CONTRACTING.**—The Commission may, to such extent and in such amounts as are provided in advance in appropriation Acts, enter into contracts to enable the Commission to discharge its duties under this title.

(c) **INFORMATION FROM FEDERAL AGENCIES.**—The Commission may secure directly from any executive department, agency, bureau, board, commission, office, independent establishment, or instrumentality of the Government information, suggestions, estimates, and statistics for the purposes of this title. Each such department, agency, bureau, board, commission, office, establishment, or instrumentality shall, to the extent authorized by law, furnish such information, suggestions, estimates, and statistics directly to the Commission, upon request of the co-chairs of the Commission. The Commission shall handle and protect all classified information provided to it under this section in accordance with applicable statutes and regulations.

(d) **ASSISTANCE FROM FEDERAL AGENCIES.**—(1) The Director of Central Intelligence shall provide to the Commission, on a nonreimbursable basis, such administrative services, funds, staff, facilities, and other support services as are necessary for the performance of the Commission's duties under this title.

(2) The Secretary of Defense may provide the Commission, on a nonreimbursable basis, with such administrative services, staff, and other support services as the Commission may request.

(3) In addition to the assistance set forth in paragraphs (1) and (2), other departments and agencies of the United States may provide the Commission such services, funds, facilities, staff, and other support as such departments and agencies consider advisable and as may be authorized by law.

(4) The Commission shall receive the full and timely cooperation of any official, department, or agency of the United States Government whose assistance is necessary for the fulfillment of the duties of the Commission under this title, including the provision of full and current briefings and analyses.

(e) **PROHIBITION ON WITHHOLDING INFORMATION.**—No department or agency of the Government may withhold information from the Commission on the grounds that providing the information to the Commission would constitute the unauthorized disclosure of classified information or information relating to intelligence sources or methods.

(f) **POSTAL SERVICES.**—The Commission may use the United States mails in the same manner and under the same conditions as the departments and agencies of the United States.

(g) **GIFTS.**—The Commission may accept, use, and dispose of gifts or donations of services or property in carrying out its duties under this title.

#### **SEC. 1004. STAFF OF COMMISSION.**

(a) **IN GENERAL.**—(1) The co-chairs of the Commission, in accordance with rules agreed upon by the Commission, shall appoint and fix the compensation of a staff director and such other personnel as may be necessary to enable the Commission to carry out its duties, without regard to the provisions of title 5, United States

Code, governing appointments in the competitive service, and without regard to the provisions of chapter 51 and subchapter III of chapter 53 of such title relating to classification and General Schedule pay rates, except that no rate of pay fixed under this subsection may exceed the equivalent of that payable to a person occupying a position at level V of the Executive Schedule under section 5316 of such title.

(2) Any Federal Government employee may be detailed to the Commission without reimbursement from the Commission, and such detailee shall retain the rights, status, and privileges of his or her regular employment without interruption.

(3) All staff of the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

(b) **CONSULTANT SERVICES.**—(1) The Commission may procure the services of experts and consultants in accordance with section 3109 of title 5, United States Code, but at rates not to exceed the daily rate paid a person occupying a position at level IV of the Executive Schedule under section 5315 of such title.

(2) All experts and consultants employed by the Commission shall possess a security clearance in accordance with applicable laws and regulations concerning the handling of classified information.

#### **SEC. 1005. COMPENSATION AND TRAVEL EXPENSES.**

(a) **COMPENSATION.**—(1) Except as provided in paragraph (2), each member of the Commission may be compensated at not to exceed the daily equivalent of the annual rate of basic pay in effect for a position at level IV of the Executive Schedule under section 5315 of title 5, United States Code, for each day during which that member is engaged in the actual performance of the duties of the Commission under this title.

(2) Members of the Commission who are officers or employees of the United States or Members of Congress shall receive no additional pay by reason of their service on the Commission.

(b) **TRAVEL EXPENSES.**—While away from their homes or regular places of business in the performance of services for the Commission, members of the Commission may be allowed travel expenses, including per diem in lieu of subsistence, in the same manner as persons employed intermittently in the Government service are allowed expenses under section 5703 of title 5, United States Code.

#### **SEC. 1006. TREATMENT OF INFORMATION RELATING TO NATIONAL SECURITY.**

(a) **IN GENERAL.**—(1) The Director of Central Intelligence shall assume responsibility for the handling and disposition of any information related to the national security of the United States that is received, considered, or used by the Commission under this title.

(2) Any information related to the national security of the United States that is provided to the Commission by a congressional intelligence committee may not be further provided or released without the approval of the chairman of such committee.

(b) **ACCESS AFTER TERMINATION OF COMMISSION.**—Notwithstanding any other provision of law, after the termination of the Commission under section 1007, only the Members and designated staff of the congressional intelligence committees, the Director of Central Intelligence (and the designees of the Director), and such other officials of the executive branch as the President may designate shall have access to information related to the national security of the United States that is received, considered, or used by the Commission.

#### **SEC. 1007. FINAL REPORT; TERMINATION.**

(a) **FINAL REPORT.**—Not later than September 1, 2003, the Commission shall submit to the congressional intelligence committees, the Director of Central Intelligence, and the Secretary of Defense a final report as required by section 1002(h)(2).

(b) **TERMINATION.**—(1) The Commission, and all the authorities of this title, shall terminate at the end of the 120-day period beginning on the date on which the final report under subsection (a) is transmitted to the congressional intelligence committees.

(2) The Commission may use the 120-day period referred to in paragraph (1) for the purposes of concluding its activities, including providing testimony to Congress concerning the final report referred to in that paragraph and disseminating the report.

#### **SEC. 1008. ASSESSMENTS OF FINAL REPORT.**

Not later than 60 days after receipt of the final report under section 1007(a), the Director of Central Intelligence and the Secretary of Defense shall each submit to the congressional intelligence committees an assessment by the Director or the Secretary, as the case may be, of the final report. Each assessment shall include such comments on the findings and recommendations contained in the final report as the Director or Secretary, as the case may be, considers appropriate.

#### **SEC. 1009. INAPPLICABILITY OF CERTAIN ADMINISTRATIVE PROVISIONS.**

(a) **FEDERAL ADVISORY COMMITTEE ACT.**—The provisions of the Federal Advisory Committee Act (5 U.S.C. App.) shall not apply to the activities of the Commission under this title.

(b) **FREEDOM OF INFORMATION ACT.**—The provisions of section 552 of title 5, United States Code (commonly referred to as the Freedom of Information Act), shall not apply to the activities, records, and proceedings of the Commission under this title.

#### **SEC. 1010. FUNDING.**

(a) **TRANSFER FROM THE COMMUNITY MANAGEMENT ACCOUNT.**—Of the amounts authorized to be appropriated by this Act for the Intelligence Technology Innovation Center of the Community Management Account, the Deputy Director of Central Intelligence for Community Management shall transfer to the Director of Central Intelligence \$2,000,000 for purposes of the activities of the Commission under this title.

(b) **AVAILABILITY IN GENERAL.**—The Director of Central Intelligence shall make available to the Commission, from the amount transferred to the Director under subsection (a), such amounts as the Commission may require for purposes of the activities of the Commission under this title.

(c) **DURATION OF AVAILABILITY.**—Amounts made available to the Commission under subsection (b) shall remain available until expended.

#### **SEC. 1011. DEFINITIONS.**

In this title:

(1) **CONGRESSIONAL INTELLIGENCE COMMITTEES.**—The term “congressional intelligence committees” means—

(A) the Select Committee on Intelligence of the Senate; and

(B) the Permanent Select Committee on Intelligence of the House of Representatives.

(2) **INTELLIGENCE COMMUNITY.**—The term “intelligence community” has the meaning given that term in section 3(4) of the National Security Act of 1947 (50 U.S.C. 401a(4)).

And the Senate agree to the same.

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

PORTER J. GOSS,  
DOUG BEREUTER,  
MICHAEL N. CASTLE,  
SHERWOOD BOEHLERT,  
JIM GIBBONS,  
RANDY “DUKE”  
CUNNINGHAM,  
PETE HOEKSTRA,  
RICHARD BURR,  
SAXBY CHAMBLISS,  
TERRY EVERETT,  
NANCY PELOSI,

SANFORD D. BISHOP, Jr.,  
JANE HARMAN,  
TIM ROEMER,  
SILVESTRE REYES,  
LEONARD L. BOSWELL,  
COLLIN C. PETERSON,

From the Committee on Armed Services, for consideration of defense tactical intelligence and related activities:

ROBERT STUMP,  
DUNCAN HUNTER,

*Managers on the Part of the House.*

BOB GRAHAM,  
JAY ROCKEFELLER,  
DIANNE FEINSTEIN,  
RON WYDEN,  
DICK DURBIN,  
JOHN EDWARDS,  
RICHARD SHELBY,  
JON KYL,  
MIKE DEWINE,  
FRED THOMPSON,  
DICK LUGAR,

*Managers on the Part of the Senate.*

#### JOINT EXPLANATORY STATEMENT OF THE COMMITTEE OF CONFERENCE

The managers on the part of the House and the Senate at the conference on the disagreeing votes of the two Houses on the amendment of the Senate to the bill (H.R. 4628), to authorize appropriations for fiscal year 2003 for intelligence and intelligence-related activities of the United States Government, the Community Management Account, and the Central Intelligence Agency Retirement and Disability System, and for other purposes, submit the following joint statement to the House and the Senate in explanation of the effect of the action agreed upon by the managers and recommended in the accompanying conference report:

The Senate amendment struck all of the House bill after the enacting clause and inserted a substitute text.

The House recedes from its disagreement to the amendment of the Senate with an amendment that is a substitute for the House bill and the Senate amendment. The differences between the House bill, the Senate amendment, and the substitute agreed to in conference are noted below, except for clerical corrections, conforming changes made necessary by agreements reached by the conferees, and minor drafting and clarifying changes.

#### THE NATION'S INTELLIGENCE CAPABILITIES—A NEW PERSPECTIVE

The conferees note that, in the wake of the September 11, 2001 terrorist attacks, the fiscal year 2003 budget submitted by the President includes the most substantial increase for programs funded in the National Foreign Intelligence Program in history. This authorization bill supports that investment by focusing on authorizations that enhance programs and information sharing across the various Intelligence Community (IC) agencies. Further, the President's funding increase appears to respond to congressional exhortations to develop a long-term funding program to correct serious IC deficiencies that have developed over the past decade. The conferees recognize that these deficiencies existed prior to September 11 and, indeed, the intelligence committees have been consistently highlighting these shortfalls for the past eight years. Put simply, although the end of the Cold War warranted a reordering of national priorities, the steady decline in intelligence funding since the mid-1990s left the nation with a diminished ability to address emerging threats—such as global terrorism—and the technical challenges of the 21st Century. Further, the IC's lack of a corporate approach to addressing enduring intelligence problems helped to cre-

ate a culture that hindered data collection (especially human intelligence collection), data sharing, and collaborative analysis.

In this budget, the conferees seek to highlight four priority areas that must receive significant, sustained attention beginning immediately if intelligence is to fulfill its role in our national security strategy. Those are: (1) improving information sharing and all-source analysis; (2) improving IC professional training with a major emphasis on developing language skills; (3) ensuring national imagery collection program viability and effectiveness; and (4) correcting enduring systemic problems, deficiencies in human intelligence, and rebuilding a robust research and development program.

The conferees' top priority last year was the revitalization of the NSA. Although this continues to be one of the conferees' priority concerns, the focus this year must be on information sharing and cross-community analysis. The conferees note that the individual intelligence agencies and, moreover, their extremely talented and dedicated people, labor continuously to provide the absolute best intelligence products possible in defense of the nation. These efforts are, however, generally conducted in isolation from one another, and, most disturbingly, existing rules and procedures often restrict information from the community's depth and breadth of analytic talent. Therefore, those individual efforts can usually only piece together fragments of the overall intelligence puzzle. What is critical in the post-9/11 era is having a community that is, to the maximum extent possible, devoid of information sharing restrictions and one that fosters a greater culture focused on collaborative analysis. The conferees have included detailed language on the need for the IC to breakdown information sharing barriers and the need to cease the practice of allowing agencies to routinely restrict "their data" from other agencies, including law enforcement.

In order to maximize the IC's analytic effectiveness and output further, we must ensure that the dedicated professionals of the IC are properly trained and provided the skills necessary for the tasks that are required to fight the global war on terrorism and other emerging threats. For a number of years, the House and Senate Intelligence Committees, separately and jointly, have stated specific concerns about the dearth of language skills throughout the IC. The lack of depth in the so-called "low density" languages was acutely experienced during operations in Afghanistan. The conferees believe this is unacceptable and have put a great deal of emphasis in training efforts, particularly on foreign language training.

With respect to the nation's imagery architecture, the conferees are very concerned about the viability and effectiveness of a future overhead architecture, given the apparent lack of a comprehensive architectural plan for the overhead system of systems, specifically in the area of imagery. For example, the conferees believe the administration is facing a major challenge in addressing technical and funding problems with the Future Imagery Architecture (FIA) program that could force untenable trades between critical future capabilities and legacy systems. In this conference report, the conferees have addressed the known FIA problems as well as the need to develop imagery alternatives if developmental problems exist or persist. The conferees note, however, a continuing pattern by which many individual programs have been justified and provided resources with little or no regard to the entire set of IC collection capabilities, including space-based and airborne. The conferees believe that, although individual systems

may have specific merit, the real measure of merit is in what the overall collective mix brings to bear against the range of threats to U.S. national security. Moreover, the ability to fund all legacy, developmental, and desired systems has a finite limit. Therefore, there is a critical need to review each program in the context of the others, so that viable trades can be made based on substance, and long-term funding of healthy programs can be provided.

Finally, the conferees have focused their attention for a number of years on a number of enduring IC challenges. Once again, the Conferees have addressed in this bill such issues as the need to improve NSA acquisition efforts, the need to improve the depth and breadth of HUMINT, and improving research and development (R&D). With respect to the NSA, the conferees are pleased with the Director's attempts to baseline current capabilities so that future needs can be properly identified and resulting acquisition decisions made. The conferees have provided incentives to complete these later two efforts. In terms of improving HUMINT, the conferees have focused on improving training, providing technical resources to operations, and properly funding analytic efforts. All of these capabilities are supported by R&D efforts. Therefore, the conferees have supported the administration's increases to agencies' basic R&D programs. The conferees note that this funding support is based on the perspective that the IC must continue to renew itself of the ever-changing world. The new perspective on national security is that intelligence is the first line of defense against an illusive and unstructured threat that uses asymmetric means to harm America. It is from that perspective that the conferees have made the decision contained herein.

#### TITLE I—INTELLIGENCE ACTIVITIES

##### *Sec. 101. Authorization of appropriations*

Section 101 of the conference report lists the departments, agencies, and other elements of the United States Government for whose intelligence and intelligence-related activities the Act authorizes appropriations for fiscal year 2003.

##### *Sec. 102. Classified schedule of authorizations*

Section 102 of the conference report makes clear that the details of the amounts authorized to be appropriated for intelligence and intelligence-related activities and applicable personnel ceilings covered under this title for fiscal year 2003 are contained in a classified Schedule of Authorizations. The classified Schedule of Authorizations is incorporated into the Act by this section. The Schedule of Authorizations shall be made available to the Committees on Appropriations of the Senate and House of Representatives and to the President. The classified annex provides details of the Schedule. Section 102 is identical to section 102 of the House bill.

##### *Sec. 103. Personnel Ceiling Adjustments*

Section 103 of the conference report authorizes the Director of Central Intelligence, with the approval of the Director of the Office of Management and Budget, in fiscal year 2003 to authorize employment of civilian personnel in excess of the personnel ceilings applicable to the components of the Intelligence Community under section 102 by an amount not to exceed two percent of the total of the ceilings applicable under section 102. The Director of Central Intelligence may exercise this authority only if necessary to the performance of important intelligence functions. Any exercise of this authority must be reported to the intelligence committees of the Congress.

The managers emphasize that the authority conferred by section 103 is not intended

to permit wholesale increase in personnel strength in any intelligence component. Rather, the section provides the Director of Central Intelligence with flexibility to adjust personnel levels temporarily for contingencies and for overages caused by an imbalance between hiring new employees and attrition of current employees. The managers do not expect the Director of Central Intelligence to allow heads of intelligence components to plan to exceed levels set in the Schedule of Authorizations except for the satisfaction of clearly identified hiring needs that are consistent with the authorization of personnel strengths in this bill. In no case is this authority to be used to provide for positions denied by this bill. Section 103 is identical to section 103 of the House bill and section 103 of the Senate amendment.

*Sec. 104. Intelligence Community Management Account*

Section 104 of the conference report authorizes appropriations for the Intelligence Community Management Account (CMA) of the Director of Central Intelligence (DCI) and sets the personnel end-strength for the Intelligence Community management staff for fiscal year 2003.

Subsection (a) authorizes appropriations of \$158,254,000 for fiscal year 2003 for the activities of the CMA of the DCI.

Subsection (b) authorizes 322 full-time personnel for the Intelligence Community Management Staff for fiscal year 2003 and provides that such personnel may be permanent employees of the Staff or detailed from various elements of the United States government.

Subsection (c) authorizes additional appropriations and personnel for the CMA as specified in the classified Schedule of Authorizations and permits these additional amounts to remain available through September 30, 2004.

Subsection (d) requires that, except as provided in Section 113 of the National Security Act of 1947, personnel from another element of the United States Government be detailed to an element of the CMA on a reimbursable basis, or for temporary situations of less than one year on a non-reimbursable basis.

Subsection (e) authorizes \$34,100,000 of the amount authorized in subsection (a) to be made available for the National Drug Intelligence Center (NDIC). Subsection (e) requires to DCI to transfer these funds to the Department of Justice to be used for NDIC activities under the authority of the Attorney General and subject to section 103(d)(1) of the National Security Act. Subsection (e) is similar to subsection (e) of the House bill.

*Sec. 105. Authorization of emergency supplemental appropriations for fiscal year 2002*

Section 105 is identical to Section 105 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 106. Additional authorizations of appropriations for intelligence for the war on terrorism*

Section 106 is identical to Section 106 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 107. Specific authorization of funds for intelligence or intelligence-related activities for which fiscal year 2003 appropriations exceed amounts authorized*

Section 107 authorizes, solely for the purposes of reprogramming under Section 504(a)(3) of the National Security Act of 1947 (50 U.S.C. 414(a)(3)) those funds appropriated for an intelligence or intelligence-related activity in fiscal year 2003 in excess of the amount specified for such activity in the classified Schedule of Authorizations to accompany this conference report.

*Sec. 108. Incorporation of reporting requirements*

Section 108 is similar to Section 105 of the Senate amendment. The House bill had no similar provision. Section 107 incorporates into the Act each requirement to submit a report contained in the joint explanatory statement to accompany the conference report or in the classified annex to the Act.

*Sec. 109. Preparation and submittal of reports, reviews, studies, and plans relating to intelligence activities of Department of Defense or Department of Energy*

Section 109 is identical to Section 106 of the Senate amendment. The House bill had no similar provision. The House recedes.

**TITLE II—CENTRAL INTELLIGENCE AGENCY RETIREMENT AND DISABILITY SYSTEM**

*Sec. 201. Authorization of appropriations*

Section 201 authorizes appropriations of \$225,500,000 for the Central Intelligence Agency Retirement and Disability Fund.

**TITLE III—GENERAL PROVISIONS**

**Subtitle A—Intelligence Community**

*Sec. 301. Increase in employee compensation and benefits authorized by law*

Section 301 is identical to Section 301 of the Senate amendment and Section 301 of the House bill.

*Sec. 302. Restriction of conduct of intelligence activities*

Section 302 is identical to Section 302 of the Senate amendment and Section 302 of the House bill.

*Sec. 303. Sense of Congress on Intelligence Community contracting*

Section 303 is identical to Section 303 of the Senate amendment. The House bill had no similar provision. The Senate recedes.

**Subtitle B—Intelligence**

*Sec. 311. Specificity of National Foreign Intelligence Program budget amounts for counterterrorism, counterproliferation, counternarcotics, and counterintelligence*

Section 311 is identical to section 304 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 312. Prohibition on compliance with request for information submitted by foreign governments*

Section 312 is identical to Section 307 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 313. National Virtual Translation Center*

Section 313 is identical to Section 311 of the Senate amendment. The House bill had no similar provision. The House recedes.

**Subtitle C—Personnel**

*Sec. 321. Standards and qualifications for the performance of intelligence activities*

Section 321 is similar to Section 308 of the Senate amendment. The House bill had no similar provisions. The House recedes.

*Sec. 322. Modification of accepted agency voluntary leave transfer authority*

Section 322 is similar to Section 305 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 323. Sense of Congress on diversity in the workforce of intelligence community agencies*

Section 323 is identical to Section 312 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 324. Annual report on hiring and retention of minority employees in the intelligence community*

Section 324 is identical to Section 313 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 325. Report on establishment of a civilian linguist reserve corps*

Section 325 is identical 311 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

**Subtitle D—Education**

*Sec. 331. Scholarships and work study for pursuit of graduate degrees in science and technology*

Section 331 is identical to Section 310 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 332. Cooperative relationship between the national security education program and the foreign language center of the defense language institute*

Section 332 is identical to Section 308 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 333. Establishment of a national flagship language initiative within the National Security Education Program*

Section 333 includes Section 309 of the House bill. Section 309 of the Senate amendment also created a national foreign language initiative. The Senate recedes.

*Sec. 334. Report on the National Security Education Program*

Section 334 is similar to the reporting requirement of Section 309 of the Senate amendment. Section 334 requires the Secretary of Defense to submit a report in 180 days after enactment of the program of scholarship, fellowships, and grants under the David L. Boren National Security Education Act of 1991, including an assessment of the effectiveness of the program in meeting its goals and its administrative costs, and the advisability of converting funding of the program from funding through the National Security Education Trust Fund to funding through appropriations.

**Subtitle E—Terrorism**

*Sec. 341. Foreign Terrorist Asset Tracking Center*

Section 341 is identical to Section 312 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 342. Semiannual Report on Financial Intelligence on Terrorist Assets (FITA)*

Section 342 is identical to Section 304 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 343. Terrorist Identification Classification System*

Section 343 is identical to Section 313 of the Senate amendment. The House bill had no similar provision. The House recedes.

**Subtitle F—Other Matters**

*Sec. 351. Additional one-year suspension of reorganization of Diplomatic Telecommunications Service Program Office*

Section 351 is identical to Section 306 of the House bill and similar to Section 316 of the Senate amendment. The Senate recedes.

*Sec. 352. Standardized transliteration of names into the roman alphabet*

Section 352 is similar to Section 307 of the Senate amendment. The House bill had no similar provision. The House recedes with modifications.

*Sec. 353. Definition of congressional intelligence committees in National Security Act of 1947*

Section 353 is similar to Section 303 of the Senate amendment. The House bill had no similar provision. The House recedes with modifications.

TITLE IV—CENTRAL INTELLIGENCE AGENCY

*Sec. 401. Two-year extension of Central Intelligence Agency Voluntary Separation Pay Act*

Section 401 is identical to Section 401 of the House bill and Section 315 of the Senate amendment.

*Sec. 402. Implementation of compensation reform plan*

Section 402 is similar to Section 402 of the House bill. The Senate amendment had no similar provision. Section 402 delays implementation of the Central Intelligence Agency's proposed compensation reform plan until February 1, 2004 or the submission of a report on a compensation pilot project, whichever is later. The Director of Central Intelligence shall conduct the pilot project to assess the efficacy and fairness of a revised personnel compensation plan, and report to the congressional intelligence committees 45 days after completion of the pilot project. Section 402 includes a sense of the Congress that an employee personnel evaluation mechanism with evaluation training for managers and employees of the CIA and the National Security Agency should be phased in first, and then followed by the introduction of a new compensation plans.

TITLE V—DEPARTMENT OF DEFENSE INTELLIGENCE ACTIVITIES

*Sec. 501. Use of funds for counterdrug and counterterrorism activities for Colombia*

Section 501 is similar to Section 501 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 502. Protection of operational files of the National Reconnaissance Office*

Section 502 is identical to Section 502 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

*Sec. 502. Eligibility of employees in intelligence senior level positions for Presidential rank awards.*

Section 503 is identical to Section 503 of the House bill. The Senate amendment had no similar provision. The Senate recedes.

TITLE VI—NATIONAL COMMISSION ON TERRORIST ATTACKS

Title VI is substantially similar to Title VI of the House bill as well as language found in Senate amendment 4694 to H.R. 5005, a bill to establish the Department of Homeland Security

TITLE VII—INFORMATION SHARING

Title VII is similar to Title VII of the House bill and H.R. 4598, the Homeland Security Information Sharing Act, which passed the House on June 26, 2002 in a 422-2 vote. Title VII is also similar to sections 891-894 of H.R. 5710, establishing the Department of Homeland Security, which passed the House on November 13, 2002. Section 706 has been add by the conferees to coordinate the different versions of the Homeland Information Sharing Act, which are found in this bill and in H.R. 5710.

The Senate amendment had no similar provision. The Senate recedes.

TITLE VIII—REPORTING REQUIREMENTS  
Subtitle A—Overdue Reports

*Sec. 801. Deadline for submittal of various overdue reports*

Section 801 is similar to Section 310 of the House bill. Section 801 reduces by one-third the amounts available to be obligated or expended by the Office of the Director of Central Intelligence if certain reports are not submitted to the Congress 180 days after enactment. The reports referred to in this section are reports mandated by law for which the DCI has sole or primary responsi-

bility to prepare or coordinate and submit to Congress, which, as of the date of enactment, have not been submitted to Congress if mandated to be submitted prior to the date of enactment. The fence will not be imposed if the DCI certifies in writing to the intelligence committees that all overdue reports specified in Section 801 are completed. The Senate amendment had no similar provision. The Senate recedes.

Subtitle B—Submittal of Reports to Intelligence Committees

*Sec. 811. Dates for submittal of various annual and semi-annual reports to the congressional intelligence committees*

Section 811 is similar to Section 401 of the Senate amendment. The House bill had no similar provision. The House recedes with modifications.

Subtitle C—Recurring Annual Reports

*Sec. 821. Annual report on threat of attack on the United States using weapons of mass destruction*

Section 821 is identical to Section 412 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 822. Annual report on covert leases*

Section 822 is identical to Section 413 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 823. Annual report on improvement of financial statements of certain elements of the Intelligence Community for auditing purposes*

Section 823 is identical to Section 414 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 824. Annual report on activities of Federal Bureau of Investigation personnel outside the United States*

Section 824 is identical to Section 415 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 825. Annual reports of Inspectors General of the Intelligence Community on proposed resources and activities of their offices*

Section 825 is identical to Section 416 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 826. Annual report on counterdrug intelligence matters*

Section 826 is identical to Section 417 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 827. Annual report on foreign companies involved in the proliferation of weapons of mass destruction that raise funds in the United States capital markets*

Section 827 is identical to Section 314 of the Senate amendment. The House bill had no similar provision. The House recedes.

Subtitle D—Other Reports

*Sec. 831. Report on effect of country-release restrictions on allied intelligence-sharing relationships*

Section 831 is identical to Section 431 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 832. Evaluation of policies and procedures of Department of State on protection of classified information at department headquarters*

Section 832 is identical to Section 432 of the Senate amendment. The House bill had no similar provision. The House recedes.

Subtitle E—Repeal of Certain Report Requirements

*Sec. 841. Repeal of certain report requirements*

Section 841 is substantially similar to Section 441 of the Senate amendment, although the conferees have agreed to repeal certain

additional Intelligence Community reporting requirements. The House bill had no similar provision. The House recedes with modifications.

TITLE IX—COUNTERINTELLIGENCE ACTIVITIES

*Sec. 901. Short title; purpose*

Section 901 is identical to Section 501 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 902. National counterintelligence executive*

Section 902 is identical to Section 502 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 903. National Counterintelligence Policy Board*

Section 903 is identical to Section 503 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 904. Office of the National Counterintelligence Executive*

Section 904 is similar to Section 504 of the Senate amendment. The House bill had no similar provision. The conferees agree to place the Office of the National Counterintelligence Executive within the Office of the Director of Central Intelligence. Further, the provision makes clear that nothing in this section shall be construed as affecting the authority of the Director of Central Intelligence, the Secretary of Defense, the Secretary of State, the Attorney General, or the Director of the FBI as provided or specified under the National Security Act of 1947 or under other provisions of law. The House recedes with modifications.

TITLE X—NATIONAL COMMISSION FOR REVIEW OF RESEARCH AND DEVELOPMENT PROGRAMS OF THE UNITED STATES INTELLIGENCE COMMUNITY

*Sec. 1001. Findings*

Section 1001 is identical to Section 601 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 1002. National Commission for review of research and development programs of the United States Intelligence Community*

Section 1002 is identical to Section 602 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 1003. Powers of Commission*

Section 1003 is identical to Section 603 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 1004. Staff of Commission*

Section 1004 is identical to Section 604 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 1005. Compensation and travel expenses*

Section 1005 is identical to Section 605 of the Senate amendment. The House bill had no similar provision. The House recedes.

*Sec. 1006. Treatment of information relating to national security*

Section 1006 is identical to Section 606 of the Senate amendment. The House bill has no similar provision. The House recedes.

*Sec. 1007. Final report; termination*

Section 1007 is identical to Section 607 of the Senate amendment. The House bill has no similar provision. The House recedes.

*Sec. 1008. Assessments of final report*

Section 1008 is identical to Section 608 of the Senate amendment. The House bill has no similar provision. The House recedes.

*Sec. 1009. Inapplicability of certain administrative provisions*

Section 1009 is identical to Section 609 of the Senate amendment. The House bill has no similar provision. The House recedes.

*Sec. 1010. Funding*

Section 1010 is identical to Section 610 of the Senate amendment. The House bill has no similar provision. The House recesses.

*Sec. 1011. Definitions*

Section 1011 is identical to Section 611 of the Senate amendment. The House bill had no similar provision. The House recesses.

## ITEMS NOT INCLUDED

Section 305 of the Senate amendment contained a provision to clarify Section 504 of the National Security Act of 1947 with respect to the reprogramming of funds from one intelligence activity to another. The House bill had no similar provisions. The Senate recesses.

Section 306 of the Senate amendment required disclosure to Congress of information regarding pending criminal investigations and prosecutions that is currently subject to statutory and other disclosure prohibitions, such as grand jury matters under Rule 6(e) of the Federal Rules of Criminal Procedure,

communications intercepted under Title III domestic wiretap provisions, and other sensitive law enforcement information. The House bill had no similar provisions. The Senate recesses.

From the Permanent Select Committee on Intelligence, for consideration of the House bill and the Senate amendment, and modifications committed to conference:

PORTER J. GOSS,  
DOUG BEREUTER,  
MICHAEL N. CASTLE,  
SHERWOOD BOEHLERT,  
JIM GIBBONS,  
RANDY "DUKE"  
CUNNINGHAM,  
PETE HOEKSTRA,  
RICHARD BURR,  
SAXBY CHAMBLISS,  
TERRY EVERETT,  
NANCY PELOSI,  
SANFORD D. BISHOP, Jr.,  
JANE HARMAN,

TIM ROEMER,  
SILVESTRE REYES,  
LEONARD L. BOSWELL,  
COLLIN C. PETERSON,

From the Committee on Armed Services, for consideration of defense tactical intelligence and related activities:

ROBERT STUMP,  
DUNCAN HUNTER,

*Managers on the Part of the House.*

BOB GRAHAM,  
JAY ROCKEFELLER,  
DIANNE FEINSTEIN,  
RON WYDEN,  
DICK DURBIN,  
JOHN EDWARDS,  
RICHARD SHELBY,  
JON KYL,  
MIKE DEWINE,  
FRED THOMPSON,  
DICK LUGAR,

*Managers on the Part of the Senate.*