

1 EXECUTIVE COMMITTEE MEETING - A CHAIRMAN'S MARK ENTITLED,  
2 EXTENSION OF HIGHWAY TRUST FUND PROVISIONS, AN S. 1548,  
3 VOLUMETRIC ETHANOL EXCISE TAX CREDIT ACT OF 2003 (VEETC);  
4 A CHAIRMAN'S MARK ENTITLED, NATIONAL EMPLOYEE SAVINGS AND  
5 TRUST EQUITY GUARANTEE ACT; AND H.R. 743, THE SOCIAL  
6 SECURITY PROTECTION ACT OF 2003  
7 WEDNESDAY, SEPTEMBER 17, 2003

8 U.S. Senate,  
9 Committee on Finance,  
10 Washington, DC.

11 The meeting was convened, pursuant to notice, at  
12 10:25 a.m., in room SD-215, Dirksen Senate Office  
13 Building, Hon. Charles E. Grassley (chairman of the  
14 committee) presiding.

15 Also present: Senators Nickles, Lott, Snowe, Thomas,  
16 Santorum, Bunning, Baucus, Rockefeller, Breaux, Conrad,  
17 Jeffords, Bingaman, and Lincoln.

18 Also present: Kolan Davis, Republican Staff Director  
19 and Chief Counsel; Jeffrey Forbes, Democratic Staff  
20 Director; and Carla Martin, Chief Clerk.

21 Also present: Pam Olson, Assistant Secretary for Tax  
22 Policy, Department of Treasury; William Sweetnam,  
23 Benefits Tax Counsel, Department of Treasury; George Yin,  
24 Staff Director, Joint Committee on Taxation; Carolyn  
25 Smith, Deputy Staff Director, Joint Committee on

1 Taxation; Mark Prater, Chief Tax Counsel, Committee on  
2 Finance; Dawn Levy, Tax Counsel, Committee on Finance;  
3 Elizabeth Paris, Tax Counsel, Committee on Finance; Diann  
4 Howland, Pension Policy Advisor, Committee on Finance;  
5 and Cynthia Miller, archivist, Committee on Finance.

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1 OPENING STATEMENT OF HON. CHARLES E. GRASSLEY, A U.S.  
2 SENATOR FROM IOWA, CHAIRMAN, COMMITTEE ON FINANCE

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4 Senator Grassley. Senator Baucus and I cannot do  
5 any amendments until there are at least seven of us here,  
6 but we have that prospect. Senator Baucus and I normally  
7 go ahead and start the process, before amendment, to take  
8 advantage of not wasting any more time than we already  
9 have.

10 So I would like to open the meeting today by  
11 expressing disappointment that we are not here to mark up  
12 a six-year highway bill, because Senator Baucus and I  
13 have worked very hard to provide creative financing and  
14 solutions that would bring us to some sort of an  
15 agreement. In other words, enabling us to bridge the  
16 funding gap required to move forward with this very  
17 important piece of legislation.

18 Despite Senator Baucus' and my best efforts, we were  
19 unsuccessful at reaching a consensus with each of the  
20 five committees involved in developing a six-year bill  
21 for our Nation's transportation system. I do not  
22 criticize my colleagues' efforts, but regret that we were  
23 unable to make further progress.

24 As you know, the previous highway bill, which we  
25 referred to as T. 21, expires September 30. The Internal

1 Revenue Code prohibits spending money for highway trust  
2 fund accounts for obligations made after that date. In  
3 fact, Treasury is prohibited from transferring incoming  
4 gas tax revenue into the highway trust fund in the event  
5 that this rule is violated.

6 To ensure that a programmatic shut-down of the  
7 highways does not occur, we are here to mark up a  
8 temporary extension of T. 21. Both Houses of Congress  
9 and their respective committees of jurisdiction have  
10 agreed to extend, without modification, the current  
11 provisions of T. 21 for five months, in other words,  
12 through March 1, 2004.

13 We should remember, however, that temporarily  
14 extending the highway bill only puts a Band-Aid on the  
15 problems of agreeing upon funding for our country's  
16 transportation needs. Reaching a consensus on these  
17 difficult issues will require serious conversations, very  
18 difficult decisions by each of the interested committees.

19 I sincerely hope that each member of the committees  
20 and leaders of the committees will roll up their sleeves  
21 over the next five months and get serious about providing  
22 a long-term solution to our Nation's infrastructure.  
23 Senator Baucus and I will be very much involved in that  
24 process.

25 Now I would like to talk about something I am very

1 excited about. As members of the committee are well  
2 aware, I have worked for many years on the development of  
3 renewable fuels in the marketplace. I also had the  
4 cooperation of a lot of Democrats on the committee and a  
5 lot of Republicans on the committee in that process.

6 Twenty-five years ago, we created an alcohol fuels  
7 tax incentive to promote the use of ethanol. Today, we  
8 have a Chairman's mark that will simplify the excise tax  
9 collections system for all transportation and renewable  
10 fuels. This legislation reforms the Alcohol Fuels Tax  
11 Credit and creates a new Volumetric Ethanol Excise Tax  
12 Credit. In addition to streamlining the Alcohol Fuels  
13 Tax Credit, this legislation creates a new tax credit for  
14 biodiesel.

15 As Chairman of the Finance Committee, along with  
16 Senator Max Baucus, we have crafted new legislation that  
17 accomplishes three major objectives: one, to improve and  
18 simplify the tax collection system for renewable fuels;  
19 two, increase the revenue source for the Highway Trust  
20 Fund; and three, enhance the delivery of renewable fuels  
21 to the marketplace.

22 In simplifying the tax collection system, all user  
23 excise taxes levied on both gasoline and ethanol blended  
24 fuels will be collected at 18.4 cents per gallon, and all  
25 excise taxes levied on diesel and biodiesel blended fuel

1 will be collected at 24.4 cents per gallon. On average,  
2 this legislation will generate over \$2 billion per year  
3 in additional Highway Trust Fund revenue.

4 In addition to bringing money to the Highway Trust  
5 Fund coffers, I would like to take a few moments to  
6 review a few of the other benefits of this legislation.

7 It eliminates the restrictive blend levels of 5.7,  
8 7.7 and 10 percentage points dictated by the Tax Code to  
9 reflect obsolete Clean Air requirements, providing  
10 significant flexibility to oil companies to blend as much  
11 as or as little ethanol or biodiesels to meet their  
12 octane and volume needs.

13 It streamlines the tax collection system to avoid the  
14 potential for fraud while accelerating the refund  
15 mechanism. It provides new market opportunities for  
16 ethanol and biodiesel in off-road uses, E85 and ETBE.  
17 And, of course, it resolves a longstanding issue with  
18 regard to the Highway Trust Fund.

19 I feel strongly about this legislation because it  
20 simplifies the tax infrastructure and fuel delivery  
21 impediments that have been problematic throughout the  
22 history of the renewable fuels industry.

23 I want to thank my fellow members of the Finance  
24 Committee who were original co-sponsors of this  
25 legislation prior to today's mark-up. That would be

1 Senators Baucus, Frist, Daschle, Thomas, Jeffords,  
2 Conrad, and Lincoln. I encourage others to join us in  
3 enacting this legislation.

4 I am going to not make my statement on the pension  
5 legislation that is on the agenda. I am going to put  
6 that in the record.

7 [The prepared statement of Senator Grassley appears  
8 in the appendix.]

9 The Chairman. I would ask Senator Baucus now to  
10 make his opening comments. Go ahead.

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1 OPENING STATEMENT OF HON. MAX BAUCUS, A U.S. SENATOR FROM  
2 MONTANA

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4 Senator Baucus. Thank you, Mr. Chairman. We have  
5 several matters to deal with today, and I am not going to  
6 take much time here. I think we all know what they are.

7 Just a reminder on the highway bill. It is very  
8 regrettable, in my judgment, that the Congress will not  
9 be reauthorizing the highway bill. That is, not another  
10 six-year program.

11 The current program, as we all know, expires at the  
12 end of this month. We must extend it, otherwise  
13 contractors, State Highway Departments, all those  
14 concerned with building highways will have to stop, and  
15 also will not know how to plan for the future.

16 Six years ago, we were able to dramatically improve  
17 the program because we added about a 40 percent increase,  
18 on average, for each State compared to the previous six  
19 years.

20 That was accomplished essentially because we  
21 transferred the 4.3 cents from the general Highway Trust  
22 Fund, enable the so-called donor States to catch up a  
23 little bit and even out some of the problems that  
24 existed.

25 Regrettably, this year, even though Senator Grassley

1 and I have come up with a way to pay for close to that  
2 amount, a bonding proposal, and also changing the rules  
3 so that the mass transit dollars that go to mass transit,  
4 that is, gasoline taxes collected for the highways, make  
5 sure that the Highway Fund truly gets all the dollars  
6 that are due to it from the federal gasoline tax. As we  
7 all know, some of it goes to mass transit, even though  
8 mass transit does not contribute.

9 I know that causes a concern for some of my friends  
10 who are more concerned about mass transit. But Senator  
11 Grassley and I had a proposal to provide even more  
12 dollars for mass transit than they otherwise would get  
13 under the current program. But that is neither here nor  
14 there.

15 We are, however, in this extension, solving the  
16 problem of 2.5 cents and the 5.2 cents, two separate  
17 amounts, that essentially the Highway Trust Fund is  
18 subsidizing and paying for the gasohol program. That is  
19 wrong.

20 The highway program should not be facing that burden,  
21 rather, the general fund should. That change is made in  
22 this bill. Other than that, it is pretty much a  
23 straightforward five-month extension.

24 I would prefer a little longer extension, but I think  
25 the leadership preferred only five months. Hopefully,

1 that is going to be a big incentive to encourage the  
2 incentive to reenact six years next year. That is not a  
3 very long period of time.

4 The other provisions here are the Social Security  
5 amendments, which are needed. A lot of change is needed  
6 to make the program work better. The pension legislation  
7 is clearly important in the wake of Enron, and even  
8 somewhat in the wake of the head of the New York Stock  
9 Exchanges apparently extremely large compensation  
10 package, which raises, I think, some eyebrows.

11 It should raise eyebrows in the sense that the New  
12 York Stock Exchange is supposed to be the management that  
13 is overseeing member firms. It is pretty hard when  
14 member firms agree to that kind of compensation to the  
15 head of the New York Stock Exchange. It just does not  
16 sound good. It does not look right.

17 I would hope that that could be corrected in an  
18 appropriate way. But I also hope that the pension  
19 legislation we are passing here also passes because it  
20 will correct some of the abuses that we saw during the  
21 Enron matter. That is, where people who had pension  
22 benefits had to stay in the company stock, could not get  
23 out of the company stock.

24 We have provisions in this bill so they can get out  
25 after a couple, three years if they so choose, but they

1 can stay in the company if they want. In addition, the  
2 Bingaman amendment on investment advice, I think it is a  
3 good idea. Those are just some of the basics of the  
4 bill.

5 And I commend you, Mr. Chairman, for all your help.  
6 A lot of the members of the committee have worked hard  
7 with us to modify this package and these various bills to  
8 get them into good shape.

9 I wish some of the other business that we left  
10 unfinished last year could get passed this year. This is  
11 one of them, pensions. But we will have to do the best  
12 we can on the others.

13 Thank you, Mr. Chairman. I would ask that my whole  
14 statement be included in the record.

15 [The prepared statement of Senator Baucus appears in  
16 the appendix.]

17 The Chairman. Senator Jeffords, if you wanted to  
18 make an opening comment, it is our normal procedure to do  
19 that. But if I could ask people to put their opening  
20 statements in the record, I would appreciate it.

21 Senator Jeffords?

22 Senator Jeffords. That is what I ask to do, is to  
23 put mine in the record. I want to commend you for moving  
24 forward in this very important aspect of our financing of  
25 the highway programs, and I look forward to working with

1 you. I would ask unanimous consent that my statement be  
2 made a part of the record.

3 The Chairman. All right.

4 [The prepared statement of Senator Jeffords appears  
5 in the appendix.]

6 Senator Baucus. Mr. Chairman?

7 The Chairman. Senator Baucus?

8 Senator Baucus. Mr. Chairman, I have a colloquy  
9 that I would like to read into the record on behalf of  
10 Senator Hatch, who is necessarily absent today, if that  
11 is appropriate.

12 The Chairman. Why do you not proceed?

13 Senator Baucus. Senator Hatch filed an amendment on  
14 which he wanted to engage, Mr. Chairman, with you in  
15 discussion. As you know, you, Senator Hatch, and several  
16 other Senators have joined me in introducing a bill  
17 earlier this year to correct a serious loophole in the  
18 federal excise tax that is assessed on arrows.

19 In 1997, Congress simplified the Archery Excise Tax,  
20 but in so doing inadvertently created a loophole that  
21 allows importers of arrows to avoid paying the 12.4  
22 percent excise tax paid by domestic manufacturers.

23 This situation has been devastating to the domestic  
24 archery industry and many U.S. jobs have already been  
25 lost. The amount of imported arrows has increased from

1 \$1 million in 1998 to over \$12 million in 2002, and 2003  
2 is on track to be an even higher amount.

3 We are very much at risk of losing our entire  
4 domestic arrow industry and many more jobs if we cannot  
5 close this loophole this year. I might say that I  
6 personally, Mr. Chairman, agree with Senator Hatch, that  
7 we simply must get this done in 2003.

8 This pension bill may not be the best legislative  
9 vehicle for this provision, but I am wondering if the  
10 Chairman could commit to me and to the Senator from Utah  
11 that the Finance Committee will close this loophole  
12 before we adjourn this year.

13 The Chairman. First of all, I want to thank you.  
14 Senator Hatch is in the hospital today, so he cannot be  
15 with us. It is very important that this be brought to  
16 the committee's attention.

17 It is not the first time it has been brought to my  
18 attention. In fact, this was included by this committee  
19 in the Jobs and Growth bill in May, but was unfortunately  
20 removed in conference.

21 The House has also passed at least one bill this year  
22 including this measure. I share your frustration that  
23 this correction has not been enacted. As you requested,  
24 I can assure you, as well as Senator Hatch, that this  
25 provision is on my "must pass" list for 2003, and I will

1 do everything I can to get it in a bill that will end up  
2 on the President's desk and soon as possible.

3 Senator Bunning?

4 Senator Bunning. Mr. Chairman, I would like to also  
5 put my opening statement in the record. But I want to  
6 touch on something that you had said.

7 The Chairman. Please proceed.

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1 OPENING STATEMENT OF HON. JIM BUNNING, A U.S. SENATOR  
2 FROM KENTUCKY

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4 Senator Bunning. Thank you. I wholeheartedly  
5 support our highway programs and want to see a new six-  
6 year authorization as much as any Senator. But I believe  
7 a five-month extension is ill-conceived and unfair to the  
8 States and employees who depend on highway contracts.

9 Having served in the State government, I am familiar  
10 with State planning needs. I have heard many times from  
11 State officials, highway contractors, and their employees  
12 that they need stability and predictability so they can  
13 plan for the coming years. A five-month extension gives  
14 neither.

15 When this extension expires, when it expires in  
16 February, many States and their legislatures will be in  
17 session, including Kentucky's. We will be right in the  
18 middle of crafting a new budget in Kentucky for  
19 transportation programs. They are second to none as far  
20 as the State budget, except only to education.

21 Only extending the highway programs until the end of  
22 February will lead, not only to confusion for the States,  
23 it may also lead to furloughs and lay-offs of employees  
24 who depend on transportation construction projects.

25 I think that is an irresponsible position for us to



1 take, to put State and other people in the State of the  
2 Commonwealth into that position. We should pass at least  
3 a minimum extension of two years and give Congress plenty  
4 of time to write a full New Year six-year program. No  
5 endeavor as large as that bill can be completed in a  
6 short time, as we know, because we are not going to get  
7 it done this year.

8 The political calendar next year does not lend itself  
9 to completing a six-year reauthorization before the year  
10 2005. We all want to see that bill done, but we must  
11 face reality and we must do longer than a six-year  
12 program.

13 Now, I have a very big difficulty with that because I  
14 also am for, very much, the ethanol and biodiesel  
15 portions. Now, I am not going to get a chance to vote  
16 one way or the other, because both of the things are  
17 included in the same vote.

18 I do not think that is fair. I think they should be  
19 separated. Because I am for the biodiesel, I am for the  
20 ethanol and all the other things, but I am certainly not  
21 for the six-months' extension.

22 Senator Nickles. Five month extension.

23 [The prepared statement of Senator Bunning appears in  
24 the appendix.]

25 The Chairman. We would like to move for the passage

1 of this legislation. But I was told that Senator Nickles  
2 may want to make a statement about some aspect of it that  
3 he occasionally disagrees with me on.

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1 OPENING STATEMENT OF HON. DON NICKLES, A U.S. SENATOR  
2 FROM OKLAHOMA

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4 Senator Nickles. You probably do not want my  
5 statement, Mr. Chairman.

6 The Chairman. I do not. [Laughter].

7 Senator Nickles. I thought you were asking for it.

8 The Chairman. Well, I thought I made a mistake.  
9 [Laughter].

10 Senator Nickles. I know where the votes are. I  
11 think Senator Bunning is making some good points. One  
12 could easily predict that, if we do the five months'  
13 extension, which is where this train is rolling, that we  
14 will be back here in the last week of February doing  
15 another extension. I guess I could say I will predict  
16 that.

17 One can be assured though, if we did more than five  
18 months, if we do a two-year extension, we will not get  
19 the program done until the end of two years. There is  
20 some chance. I know the authorizers want to finish this  
21 bill. This is the toughest thing we do as far as the  
22 budget is concerned.

23 There are a lot of people that do not believe in  
24 budgets when it comes to highway bills. Having the two  
25 go simultaneously, it is going to be a real big

1 challenge. It is possible, I guess, by doing it at the  
2 end of February. Maybe we can get it completed before we  
3 complete the budget. We will give that a chance. My  
4 guess is that it will not be successful, but we can give  
5 it a chance.

6 The two-year extension Senator Bunning suggested  
7 would give some certainty, and frankly would probably  
8 save taxpayers some money in the process. One other  
9 comment.

10 It is my reservation, only, Mr. Chairman. I know  
11 where the votes are as far as the 5.2 cents is concerned.  
12 It is a general revenue payment to highways. We have not  
13 done that in the past. Highways have always been  
14 directly connected to receipts generated from highway  
15 funds. This is a general revenue transfer to make up the  
16 difference, the ethanol subsidy difference.

17 I was, Mr. Chairman, wondering, because that is about  
18 a \$1.5 billion, \$1.6 billion, \$1.7 billion, I believe,  
19 per year. I was looking at the scoring, and I do not see  
20 any money like that. I have not quite figured that out.  
21 Mark was telling me that basically we already give the  
22 credits, but the credits apply against income taxes and  
23 not just against excise taxes. Is that correct?

24 Ms. Paris. The scoring, as reflected in the Joint  
25 Tax score sheet of JCX-76, merely reflects the revenue

1       raisers or the money that would be saved because of the  
2       fraud portion, the concern of the reduced rate ethanol,  
3       the amount of the transfer.

4               The difference between 18.4 and the 13.2 is money  
5       that we do not currently collect. So, it is my  
6       understanding that that is the estimate of what we think  
7       is out there. Those are the estimates from CBO.

8               Senator Nickles. But correct me if I am wrong,  
9       Elizabeth. The net essence of it is, the 5.2 cents, now  
10       general revenue is going to be making up that difference,  
11       credited to the Highway Fund. Because 18-some cents is  
12       not collected on ethanol, general revenue makes up the  
13       difference, and that will be a total of about \$1.5 or  
14       \$1.6 billion per year to make up this gap, this  
15       difference.

16              Ms. Paris. Senator, the 18.4 cents has never been  
17       collected on any of the gasohol products. They have  
18       always only collected 13.2, so the money has never been  
19       paid into the general fund.

20              What this proposal does, is there is no exception for  
21       any type of fuel. It pays full rate. It pays the 18.4  
22       cents. And if they can prove that they actually put a  
23       gallon of ethanol in, then they can file for a refund or  
24       an excise tax credit.

25              Senator Nickles. All right. So they get a tax

1 credit, and then the tax credit equivalent would be about  
2 \$1.5 billion per year, or \$1.6 billion.

3 Ms. Paris. I think Ms. Levy wants to answer the CBO  
4 question.

5 Ms. Levy. Yes, that is what the tax could be.  
6 Essentially, because you have a unified budget, right now  
7 the Highway Trust Fund subsidizes the ethanol tax credit.  
8 The way that we are changing it here, is that now the  
9 general fund will subsidize the ethanol tax credit.

10 Senator Nickles. I understand.

11 Ms. Levy. So money now will be lost to the general  
12 fund and gained to the Highway Trust Fund, but no actual  
13 transfer takes place.

14 Senator Nickles. I understand. Thank you.

15 Thank you, Mr. Chairman.

16 The Chairman. Thank you. I would then like to move  
17 S. 1548 and not have the usual walk-through that we have.

18 So, those in favor of that motion, would you please  
19 say aye?

20 [A chorus of ayes]

21 The Chairman. Opposed, say no.

22 [No response]

23 The Chairman. The ayes have it. The bill is  
24 reported.

25 I would like to turn now to the second business item,

1 the Pension Reform bill, also known as the acronym  
2 NESTEG. I am going to wait three or four minutes while  
3 people leave the room.

4 [Pause]

5 The Chairman. This mark will be an original bill.  
6 It is patterned after the Pension Reform bill, which was  
7 voted out of committee last year. Since the Finance  
8 Committee has already considered the bulk of this  
9 legislation, and I believe staff are very familiar with  
10 the Chairman's mark, I would like to also forego a walk-  
11 through.

12 Before we get into the substance of the pension bill,  
13 I would like to make members aware of a jurisdictional  
14 accommodation this committee is making to another  
15 committee. The Finance Committee shares jurisdiction of  
16 ERISA with the Health, Education and Labor Pension  
17 Committee.

18 That committee chair, Senator Gregg, requested that  
19 Finance forego marking up some provisions of this bill.  
20 This request was made despite precedent of this committee  
21 on this bill last year and in some previous years.

22 I have accommodated Chairman Gregg on his request in  
23 the modification of the Chairman's mark. I ask unanimous  
24 consent that copies of an exchange of letters between  
25 Senator Gregg and Senator Baucus and me be placed in the

1 record, without objection.

2 [The letters appear in the appendix.]

3 The Chairman. I note that the staff before us  
4 includes pension staff for the Finance Committee. Diann  
5 Howland is here representing Republican staff. We have  
6 very able representation through Judy Miller of the  
7 Democratic staff.

8 They are joined by George Yin, Chief of Staff of  
9 Joint Tax; Pam Olson, Assistant Secretary of Tax Policy,  
10 Treasury Department; and we also have Carolyn Smith with  
11 Mr. Yin. We have Mr. Bill Sweetnam, Benefits Tax  
12 Counsel. We thank you for joining us.

13 Last night, staff met and worked out some amendments  
14 and incorporated them in the modification of the mark. I  
15 would ask Mr. Yin if he would describe the modifications  
16 in the Chairman's mark.

17 Mr. Yin. Thank you, Mr. Chairman.

18 I think the easiest thing perhaps would be for you to  
19 look at the revenue table, JCX-80-03. I will describe  
20 for you the portions of this table which are in the  
21 modification.

22 The first modification relates to Title 1, the  
23 Diversification of Pension Plan Assets, and would simply  
24 add a transitional rule to the provisions that are  
25 included there.



1           The second modification is to Title 4, which is what  
2 I am referring to. Where it is on the table, it is  
3 referred to as "Other Provisions Relating to Pensions,"  
4 and that is on page 1 of that revenue table. In  
5 particular, it relates to Item 19 in that section. It  
6 would add Item 19, which allows after-tax contributions  
7 to be rolled over into a tax sheltered annuity.

8           The third modification is in Title 8, which is on the  
9 third page of the revenue table. It is the first item.  
10 It is in the section called "Other Provisions" on page 3  
11 of the revenue table, what I referred to as Title 8.

12           What this would do, would be to modify the Chairman's  
13 mark and provide that this exclusion for educational  
14 benefits does not apply for employment tax purposes and  
15 limits the amount excluded to \$1,000, and also limits  
16 this provision for two years, through 2005.

17           The fourth modification is to the 30-year provision,  
18 which on this table is Item 16 at the very top of page 2.  
19 What that modification to the Chairman's mark would do,  
20 would be to delay the effective date of the provision  
21 requiring certain freezing of benefit improvements in the  
22 case of certain plans whose assets are less than 50  
23 percent of current liabilities. The delayed effective  
24 date would not take place until January of 2007.

25           The next set of modifications, as the Chairman

1 indicated, are simply deletions relating to the exchange  
2 of letters with the Health, Education, Labor and Pension  
3 Committee.

4 The next modification. Here, virtually all of the  
5 rest of the modifications are listed beginning on page 3  
6 of the revenue table, beginning with Item 2 and Title 8.  
7 Again, I am calling "Other Provisions" Title 8.

8 The second item there would exclude from gross income  
9 certain loan repayments provided by the National Health  
10 Service Corps loan repayment program.

11 The third modification on there is number three,  
12 which would increase the threshold below which the Form  
13 5500 EZ does not have to be filed from \$100,000 to  
14 \$250,000 of plan assets.

15 Item 4 there would remove the 10 percent early  
16 withdrawal tax for distributions from a government-  
17 defined benefit plan to a qualified safety employee who  
18 separates from service after age 50.

19 Item 5 on that same list is part of the modification.  
20 Under current law, contributions not in excess of 6  
21 percent of compensation to employees covered by a  
22 deferred contribution plan are disregarded for purposes  
23 of the excise tax and excess contributions.

24 What this proposal would do would be to similarly  
25 provide the overall limit on employer deductions for

1 contributions to combinations of defined benefit and  
2 defined contribution plans to similarly be provided so  
3 long as the contribution did not exceed 6 percent of  
4 compensation.

5 Item number 6 relates to transfers of excess pension  
6 plan assets to multi-employer retiree health plans.  
7 Under current law, certain transfers of excess assets of  
8 defined benefit plans are permitted to be transferred and  
9 used to fund retiree health benefits.

10 What this proposal would do, would be to permit that  
11 to take place for defined benefit plans described in  
12 Section 404(c), or to a continuation of spin-off thereof  
13 that primarily covers employees in the building and  
14 construction industry.

15 Number 7. Number 7 contains a series of proposals  
16 that are designed to improve retirement account  
17 portability. For example, one of the proposals, as you  
18 know, under current law IRA owners or spouses are  
19 permitted to have tax-free roll-overs of certain  
20 retirement plan benefits to an IRA.

21 What this proposal would do, would be to provide a  
22 similar roll-over opportunity by non-spouse beneficiaries  
23 of those qualified plans and to require that the  
24 distributions from the IRA would be subject to the same  
25 distribution limits that would otherwise apply.

1           The Chairman.    Is that the last modification?

2           Mr. Yin.    I am sorry.    Just a couple more.    Number 8  
3   relates to fiduciary rules for plan sponsors.    What this  
4   would allow, is it would allow plan sponsors to designate  
5   qualified investment advisors to provide investment  
6   advice to participants.    If certain conditions are  
7   satisfied, the employer or other plan fiduciary will not  
8   be liable for the investment advice provided by the  
9   investment advisor.

10          Number 9.

11          Senator Nickles.    Could I ask a question, Mr.  
12   Chairman?

13          The Chairman.    Yes.

14          Senator Nickles.    Is that the same proposal that is  
15   called the Banner proposal?

16          Mr. Yin.    No, I do not believe so.

17          Senator Nickles.    What is it?

18          Mr. Yin.    What this proposal does, is it relieves  
19   the plan sponsor of potential fiduciary responsibilities  
20   if the plan sponsor provides or permits the type of  
21   investment advice under certain conditions.    So, it would  
22   essentially relieve the sponsor of fiduciary liabilities  
23   in that situation.

24          Senator Nickles.    They could have an investment  
25   advisor give counsel to employees.

1           Mr. Yin.     Right.   And there are conditions on what  
2     kind of investment advisor and the kinds of information  
3     the investment advisor has to provide the beneficiaries  
4     and so forth.

5           The Chairman.   Are there any other questions?

6           [No response]

7           The Chairman.   Well, then I would move the  
8     modification of the Chairman's mark.   Without objection,  
9     the Chairman's mark is modified.

10          There were 34 amendments that were filed to this  
11     bill.   Several non-controversial low-cost amendments were  
12     included in this modification just described.   My  
13     understanding is that we will have one amendment at this  
14     point.   I know Senator Rockefeller was going to offer an  
15     amendment.   I have just been told that he was not going  
16     to.   I should have done that before I offered my  
17     modification.   I thought we did not have any other  
18     questions.

19          If members have questions on the modification or the  
20     mark that is before us, now would be the time to ask  
21     those questions.

22          Is there any objection to my leaving the mark  
23     modified?

24          [No response]

25          The Chairman.   Would you proceed, Senator Conrad?

1           Senator Conrad.    I thank the Chairman.  I did not  
2    want to interfere with his modification of the mark.

3           The concern that I have has been expressed to me by  
4    many institutions, business, labor, and others, about the  
5    yield curve suggestion from Treasury that is embodied in  
6    the mark.

7           I have drafted an amendment, along with Senator  
8    Kerry, that would replace the yield curve with a four-  
9    year average of the rate on high-quality, long-term  
10   corporate bonds, less 25 basis points, for funding  
11   purposes.

12          I have had a large number of companies, a large  
13   number of labor organizations, a large number of other  
14   institutions tell me they believe that is a superior  
15   methodology than what Treasury has proposed, that what  
16   Treasury has proposed is overly complex and will increase  
17   volatility of pension funding liabilities because it  
18   takes into account so many fluctuating factors.

19          So if I could, Mr. Chairman, might I quiz the staff  
20   about this?

21          The Chairman.    Yes.  Then when you are done, I had a  
22   series of questions to clarify a lot of things for  
23   members of the committee on the yield curve that I would  
24   ask Mr. Sweetnam.  But you go ahead with your questions,  
25   first.

1           Senator Conrad.   All right.   I thank the Chairman.

2           Can you tell us, Mr. Sweetnam, what is the basis for  
3 Treasury's recommendations?   Why is it such a complicated  
4 scheme?   Why was something more simple, as what I have  
5 proposed in this amendment with Senator Kerry, not  
6 adopted?

7           Mr. Sweetnam.   Well, generally, Senator Conrad, this  
8 is really a standard financial way of determining a  
9 present value of liabilities.   Use of a yield curve is  
10 something that is used in almost every other financial  
11 transaction when you are discounting back future  
12 liabilities.

13          For example, it is really dealing with the time  
14 structure of the liability.   For example, when you go in  
15 and you go for a car loan, if you go for a car loan for  
16 three years, you pay a different interest rate than a car  
17 loan that is five years.   It is the same thing with a CD.  
18 There are different interest rates, depending on the  
19 length of the CD.   So, this is a standard financial  
20 method of doing this.

21          On the complexity side, really, what we do when we do  
22 a determination of the pension liabilities, is we look  
23 at, what are the pension benefits that are going to be  
24 paid out over a number of years?   For each year, we go  
25 back and we discount that payment back to the current

1 year.

2 Now, currently what they use is one discount rate,  
3 whether that is for a payment that is made in year 2 or  
4 in year 32. What our proposal does, is it says that  
5 there are a bunch of different interest rates that the  
6 current market sets for different lengths of liabilities.

7 So what a yield curve does, is it says, a high-  
8 quality corporate bond that is coming due in year two has  
9 a current interest rate of X; a high-quality bond that is  
10 coming due in year three has a different interest rate,  
11 all the way through.

12 Then, so what the plan actuary will do when he is  
13 calculating the present value, is rather than using one  
14 interest rate, what they will do would be to use the  
15 interest rate that corresponds to the spot on the yield  
16 curve.

17 It really can be done quite easily using a computer  
18 program. Actuaries will have to change their computer  
19 programs in order to reflect this yield curve. But all  
20 they would be doing would be, rather than using one  
21 interest rate for every present value of every liability,  
22 they would go and they would use a different interest  
23 rate that corresponds on that yield curve.

24 So, it is one step more complex than the current law,  
25 but currently everything is done by computers. It is



1 really just going to be a look-up function on the  
2 computer to determine what that yield curve rate is. So,  
3 I am not taken by complexity.

4 Senator Conrad. We are counting on the computers.

5 Mr. Sweetnam. Yes.

6 Senator Conrad. Let me ask you this. A number of  
7 organizations, largely business organizations, have come  
8 to me and said, look, we think it would be far superior  
9 to have something like we have provided in the amendment  
10 that I have filed.

11 That is, to replace the yield curve with a four-year  
12 average of the rate on high-quality, long-term corporate  
13 bonds, less 25 basis points, for funding purposes. They  
14 have said to us that would mean less volatility. It  
15 would be much simpler. Why not that approach? Did you  
16 consider that?

17 Mr. Sweetnam. As we developed our methodology, we  
18 did look at all the various rates, whether to use a  
19 static rate or to use a series of rates like we  
20 determined.

21 One of the things that we were looking for was  
22 accuracy. Accuracy, if you were using a static rate--and  
23 that would be, for example, in your proposal--you would  
24 be looking at a 20-year bond index and discounting it  
25 back by certain percentage points.

1           What would happen, would be that you would have  
2           inaccuracy, an under-valued determination of liabilities  
3           that were coming due soon, and you would have over-valued  
4           liabilities coming due later.

5           So I think one of the things that people are  
6           concerned about is, is this going to stop people from  
7           wanting to start new plans? Well, what this would do  
8           would be, if you were going to start a new plan, so you  
9           know that your liabilities are way out here, what you are  
10          doing is you are over-valuing those liabilities for a new  
11          plan.

12          On the volatility issue, the funding is volatile  
13          right now. I think one of the things that people are  
14          saying is, when we use the deficit reduction  
15          contribution, which is something that this committee is  
16          concerned about, what you see, is we have seen in the  
17          last 10 years no contribution, and now wildly shifting.  
18          That is volatility. That is volatility under our current  
19          system.

20          I think when people talk about volatility, I think  
21          what they are trying to say is predictability, because  
22          people would want to be able to predict what their  
23          pension contributions would be.

24          Senator Conrad. Contributions. Exactly.

25          Mr. Sweetnam. Part and parcel to our yield curve

1 proposal, the Treasury and the administration is looking  
2 at revising the funding rules, because currently we have  
3 a crazy quilt of funding rules.

4 For example, the deficit reduction contribution that  
5 throws in. We have many different values of liability.  
6 So, what we are saying is, in addition to doing a yield  
7 curve, we have said to members of Congress--in fact,  
8 Under Secretary Peter Fisher was here at the Senate just  
9 the other day reiterating the administration's desire to  
10 come back to Congress with a more fundamental change in  
11 those funding rules.

12 In those fundamental changes in the funding rules----  
13 Senator Conrad. May I just interrupt you there and  
14 say, if it is one thing I have heard repeatedly, is that  
15 the way we approach funding of pensions really makes very  
16 little sense. When things are good, we restrict  
17 companies on how much they can put into their pension  
18 funds in a way that is very restrictive. Then when  
19 things go bad, we then compel companies to make  
20 contributions that, in many cases, they are not prepared  
21 to make, which jeopardizes the whole enterprise.

22 I cannot tell you the number of companies and labor  
23 organizations and other institutions with pension funds  
24 who have come to me and said, this whole scheme makes  
25 very little sense.

1           Mr. Sweetnam.    We agree with you, Senator.  That is  
2    why we are doing a complete look at overhauling the  
3    funding rules.  They really have been built in over years  
4    and years, and layers upon layers of changes.  When you  
5    step back now, in 2003, and you say, would I have  
6    designed this pension funding system this way, you are  
7    right.  No, we would not have designed this pension  
8    system this way.

9           Senator Conrad.   Well, I appreciate that.

10          One final question, if I might, to the Chairman.  One  
11    of the critiques of the yield curve that these  
12    enterprises have had in coming to this member, and I  
13    think they have talked to other members as well, they say  
14    the yield curve will increase volatility of pension  
15    funding liabilities because it takes into account so many  
16    fluctuating factors.

17          They have said to me the following.  Interest rates.  
18    You have already indicated, you are talking about many  
19    different interest rate calculations.  Two, the  
20    demographics of a given employer's workforce.  That is,  
21    as I understand it, what you are proposing here also has  
22    that element.

23          Third, the probability that rates on bonds of  
24    different durations would move independent of one  
25    another, that all of these things going together is going

1 to increase volatility. What is your reaction to that  
2 critique?

3 Mr. Sweetnam. Well, I think one thing that people  
4 are trying to do, what companies like about the current  
5 system is the smoothing of interest rates.

6 Senator Conrad. Smoothing.

7 Mr. Sweetnam. But what we would say, is that the  
8 smoothing of the interest rates masks the underlying  
9 financial volatility of the underlying obligation.

10 Senator Conrad. Let me just stop you on that point,  
11 if I can, because it really goes very much to the heart  
12 of the matter. You are exactly right. What companies  
13 and labor organizations and other institutions, large  
14 institutions with pension obligations have said to me, is  
15 precisely that. They like the smoothing element of doing  
16 this in the more typical way.

17 What you are doing, even though I think it is very  
18 well motivated, I think you have got a rationale for what  
19 you are doing, is going to increase volatility and reduce  
20 predictability in a way that is hurtful. What is your  
21 answer to that?

22 Mr. Sweetnam. Well, I think that if a company is  
23 concerned about volatility, a company can immunize itself  
24 and its investments against volatility. If you were very  
25 much worried about changes in the interest rates so a

1 decline in the interest rate will mean a larger  
2 liability, if you set those sorts of obligations and  
3 immunize them with a financial instrument where the value  
4 increases as the interest rate goes down, so, for  
5 example, you decide you are going to have a bond, a  
6 portion of your assets in bonds, then what you are doing  
7 is you are taking some financial changes which will  
8 minimize that volatility.

9 So what you are doing, is you are looking at the  
10 underlying assets in the plan and you are using your  
11 investment in the plan to cut down on the volatility on  
12 the liability side.

13 Senator Conrad. I will conclude on this note, and I  
14 thank the Chairman very much for his patience. What you  
15 are asking or expecting the companies to do, is to make  
16 an adjustment in their investment portfolios to react to  
17 the volatility introduced by this methodology that you  
18 are proposing.

19 What they are saying to me is, wait a minute. You  
20 guys are just introducing additional levels of complexity  
21 here that are unnecessary. They are unnecessary.

22 Mr. Sweetnam. I do not think that what we are doing  
23 is we are telling employers and companies how to invest  
24 their funds. What we are saying is, if volatility risk  
25 is something that they are concerned about and volatility

1 is something that is a concern under the current system,  
2 and it does not go away just by using a long-term  
3 corporate bond rate, if you are concerned about  
4 volatility, there are ways to reduce that risk on  
5 volatility.

6 But an employer could decide that they did not want  
7 to invest in that. That is fine. All we are saying is,  
8 if you have liabilities that are coming due in the next  
9 5, to 6, to 10 years, that you value them as other  
10 liabilities that are coming due, that you do not value  
11 them as a 20-year liability.

12 Senator Conrad. I understand that.

13 Let me just say, in conclusion, this. I think you  
14 are very well motivated. I think there is an academic  
15 rationale for what you are doing. I am just hearing from  
16 an awful lot of companies and an awful lot of other  
17 organizations that we are creating a complexity here that  
18 is unnecessary.

19 I am going to withhold on offering my amendment, Mr.  
20 Chairman. I think that more analysis needs to be done.  
21 I would reserve the right to offer it on the floor. But  
22 I would ask the Chairman and the Ranking Member if their  
23 staffs would work with me so that we better understand  
24 the options before we get to the floor.

25 The Chairman. Of course. Of course we will.

1           Senator Baucus.    Yes.  You have my commitment.

2           Sure.

3           The Chairman.    Just remember that Senator Baucus and  
4           I, I think in our compromise, have taken some of the  
5           stuff into consideration that you have asked.  Number  
6           one, three years instead of two years without payment.  
7           Then we have a five-year, and I think we changed to some  
8           extent the five-year phase-in.

9           Senator Conrad.   And I appreciate that.  I think  
10          those who are out there who are faced with these very  
11          difficult situations appreciate it as well.

12          The Chairman.    I think that we can, in good faith,  
13          say we will work with you.  On the other hand, Senator  
14          Baucus and I have been working on this for several months  
15          as well, too, if you would just keep that in the back of  
16          your mind as well.  We did not find this an easy thing to  
17          do.

18          In fact, probably I would have been more cautious  
19          two, three months ago on a lot of public statements I  
20          have made compared to where we are in this legislation.  
21          But after looking at it over a period of time, I feel  
22          more confident now in what we are doing.  But, yes, we  
23          will work with you.

24          With that, then, I will not take time.

25          Senator Baucus.    If I might just add, Mr. Chairman.



1           The Chairman.    Yes.

2           Senator Baucus.    I think one of the key points here,  
3           is this provision does two things.  One, when it is  
4           phased in, it is a much more accurate measure of  
5           liability.  That is key.  The current system is not very  
6           accurate in measuring applicable liability.

7           Second, as the Chairman said, this is being phased  
8           in.  First of all, the first three years, it is the  
9           quality corporate rate, and then you have got it phased  
10          in in five after that, which gives companies time to  
11          adjust, and so forth.  But it is more accurate.  I do not  
12          think it is as complex as it is made out to be.

13          Other issues such as volatility and unfairness with  
14          pension payment plans exist independent of this issue  
15          that we are talking about, and I think we should continue  
16          to push Treasury to make some recommendations to address  
17          those issues which are separate from this question of how  
18          you compensate it.

19          Mr. Sweetnam.    We would be apply to work with your  
20          staffs, and we have been.

21          Senator Baucus.    Thank you.

22          Senator Conrad.    Might I just ask, Mr. Chairman?

23          The Chairman.    Yes.

24          Senator Conrad.    Would you ask Mr. Fisher if he  
25          would come up and visit with me about this?  I have a

1 number of questions.

2 Mr. Sweetnam. I think we have a short period of  
3 time, because I believe he is going to be leaving  
4 Treasury in the next week or two.

5 Senator Conrad. Or his designee, whoever.

6 Mr. Sweetnam. Yes. We will get someone to come and  
7 visit with you, Senator.

8 The Chairman. I think now we are only going to have  
9 one amendment, since Senator Conrad said he was not going  
10 to offer his. Senator Conrad asked most of the questions  
11 I was going to ask.

12 But I wanted you to comment, Mr. Sweetnam, on just  
13 two points, and maybe do it shortly so we can move on.  
14 But how would you respond to opponents who say the yield  
15 curve is an untested concept?

16 Mr. Sweetnam. Well, Senator, this is a concept that  
17 is used all the time in general financial transactions.  
18 Really, this is Finance 101. Any finance guy would be  
19 able to know how to use a yield curve. Yield curves are  
20 currently published now, so it is something that is  
21 currently out there in the financial world.

22 It is just something that we have never really used  
23 in the pension world. I think what we are trying to do  
24 is bring the pension world up to where the rest of the  
25 finance community is.

1           The Chairman.   All right.   Then the last point I  
2 would ask you to address is, would the yield curve result  
3 in pension plans moving their investments out of the  
4 stock market?

5           Mr. Sweetnam.   As I said before, I think that it  
6 really depends on what the company's toleration of risk  
7 is with regard to the ups and downs in the interest rate  
8 market.

9           What you might want to do, if you were very much  
10 worried about risk and volatility with short-term  
11 obligations or short-term payments, payments that would  
12 be made in the next five years, you might want to have  
13 more of your investments in bonds.   But that would be  
14 prudent.   There is no direct requirement in our proposal  
15 that you change those investments.

16          The Chairman.   Senator Nickles had a question.

17          Senator Nickles.   Mr. Chairman, just maybe a little  
18 clarification.   I am remembering from my private sector  
19 days spending a little time with actuaries.   I was the  
20 fiduciary of a pension plan.   I thought the actuaries  
21 were doing that.

22          I mean, they were asking for a schedule of all  
23 employees, their ages, what their estimated retirement  
24 benefits would be, and they would end up churning out  
25 figures based on an interest rate assumption of the

1 minimum and maximum contribution. A company could put in  
2 the minimum amount or the maximum amount. Frankly, if  
3 you had a lower interest rate you would be making a  
4 greater contribution.

5 But I thought that was part of their computation, was  
6 taking into account the ages, the retirement dates, and  
7 so on. Granted, if you had an elderly workforce, your  
8 contribution would be much higher because of the demands  
9 that are there. I thought it was done anyway.

10 Mr. Sweetnam. The only change would be, Senator,  
11 that your actuary, when they were doing the discounting  
12 back, using all those factors, they would use only one  
13 interest rate.

14 Senator Nickles. And now you would have variable  
15 interest rates, basically.

16 Mr. Sweetnam. Right.

17 Senator Nickles. Based on age.

18 Mr. Sweetnam. Right.

19 Senator Nickles. Age to retirement.

20 Mr. Sweetnam. Yes.

21 Senator Nickles. All right. Thank you, Mr.  
22 Chairman.

23 Senator Breaux. Mr. Chairman?

24 The Chairman. Senator Baucus? I mean, Senator  
25 Breaux?

1           Senator Breaux.    Do I get to sit there if I am  
2   Baucus?  [Laughter].

3           The Chairman.    I will let you work it out with him.  
4   [Laughter].

5           Senator Breaux.    I just wanted to ask the staff a  
6   question on the pension advice.  I take it that Senator  
7   Bingaman's provision on the pension advice is in the mark  
8   or in the amendments to the mark.  Can anybody clarify  
9   that?

10          Ms. Smith.    Yes, that is in the modification to the  
11   mark.

12          Senator Breaux.    And of course the House has, I take  
13   it, the Baynor provisions on that issue in their bill?

14          Ms. Smith.    Yes.

15          Senator Breaux.    The answer is yes?

16          Ms. Smith.    Yes, Senator.

17          Senator Breaux.    I think this is obviously something  
18   we are going to have to work on.  I think we have  
19   slightly different approaches.  I think there are  
20   probably ways to make it work, and we are going to be  
21   looking forward to trying to get that done.  Thank you.

22          The Chairman.    Yes.  We are going to take just a  
23   very short recess, if both Republican and Democrat  
24   members of the committee would join us in the conference  
25   room behind here just for a short period of time.  We

1 have had people on both sides ask to discuss an issue  
2 that remains, privately.

3 [Whereupon, at 11:22 a.m. the meeting was recessed.]  
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1 AFTER RECESS

2 [12:00 p.m.]

3 The Chairman. We will have, now, Senator Bingaman  
4 offer his amendment. We will ask Mark Prater of our  
5 staff, and Mr. Yin, to explain for the record the  
6 amendment, as will be modified.

7 Senator Bingaman?

8 Senator Bingaman. Thank you very much, Mr.  
9 Chairman.

10 The amendment that I am offering is one that would  
11 make a provision that corporate-owned life insurance  
12 policies would still, of course, be permitted where there  
13 actually was some connection between the employee whose  
14 life was being insured and the employer, some connection  
15 in the way of some service that the employee would be  
16 providing to the employer.

17 I think, as we all know, the whole idea of insurance  
18 and the whole idea of giving tax benefits to encourage  
19 people to buy life insurance is premised on the notion  
20 that, when a person dies, that person's family is at a  
21 financial disadvantage, or in some cases that person's  
22 company is at a financial disadvantage by virtue of that  
23 person dying. We want to protect that.

24 What my amendment would do, is to say that if the  
25 insured dies and he or she has not been an employee, and

1 has not been providing service to that corporation for a  
2 year preceding their death, then the corporation would go  
3 ahead and pay tax on the death benefit.

4 Now, we have got exceptions in the amendment. One  
5 exception would be for any proceeds of the policy that go  
6 to the family of the decedent. Those clearly would be  
7 tax-free.

8 Second, would be excluding any business continuation  
9 policies. So, we would allow tax-free treatment for  
10 anything where the death benefit is used to buy back an  
11 ownership or an equity interest that the decedent's  
12 family has in the business.

13 Now, Senator Santorum had suggested, in an amendment  
14 that he filed, that we ought to, in fact, grandfather in  
15 existing policies and not make this change as to any  
16 existing policies.

17 So, I am proposing to modify my amendment to include  
18 that suggestion. We discussed the possibility of also  
19 making clear that there is a "key man" exception that  
20 would also be included as a modification to the amendment  
21 so that individuals who continue to be of value to the  
22 corporation are able to be insured and the proceeds of  
23 policies on their lives would not be subjected to tax.

24 So I think that pretty much covers it. I know there  
25 is also discussion as to how some of the revenue from



1 this change in law would be used, and I am agreeable to  
2 that as well, Mr. Chairman.

3 The Chairman. All right. I would like to ask the  
4 Senator from New Mexico then if he would modify his own  
5 amendment to include the proceeds to be used for Section  
6 809 and Section 815.

7 Senator Bingaman. I am glad to make that  
8 modification, Mr. Chairman. I understand that part of  
9 the proceeds would be used for that purpose. I do not  
10 think it would consume them all, but I am glad to make  
11 that modification.

12 The Chairman. All right. First of all, the Senator  
13 from New Mexico's amendment is modified.

14 The Senator from North Dakota?

15 Senator Conrad. Mr. Chairman, we had also  
16 discussed, as Senator Bingaman has outlined here, dealing  
17 with the 809/815 issue Senator Nickles raised in our  
18 discussion.

19 In addition to that, I am told that the committee  
20 would entertain a part of an amendment that Senator  
21 Bunning and I have offered that deals with the five-year  
22 rules and would provide a temporary suspension which  
23 would require life and non-life companies to be part of  
24 the same consolidated group for a minimum of five years  
25 before they can enjoy the consolidated return, or the

1 losses of the non-life could be used to offset the life  
2 insurance taxable income.

3 Our understanding is that this would be based on the  
4 score, what is available in terms of dealing with that,  
5 in terms of how long that suspension would be in force.

6 The Chairman. Within the amount of money that is  
7 available?

8 Senator Conrad. That is our understanding.

9 The Chairman. We would accept his amendment, with  
10 the length of it being based on the amount of money that  
11 is available.

12 Senator Baucus. If I might add, this was included  
13 in the last version of 809, which we appropriately passed  
14 in this committee.

15 Senator Conrad. I thank the Ranking Member.

16 The Chairman. Since Senator Bunning is involved  
17 with this amendment, Senator Bunning?

18 Senator Bunning. I just would like to second what  
19 Senator Conrad has said, with the understanding that  
20 staff be able to include, as much as possible in the  
21 dollars that are left over, to do this amendment that we  
22 have jointly put through before. Hopefully, we will be  
23 able to tag this along with the 809 and the 815.

24 The Chairman. Mr. Yin, did you have a comment on  
25 what Senator Conrad had brought up?

1           Mr. Yin.    Thank you, Mr. Chairman.  Yes, we had two  
2 questions.  One, is I wanted to clarify with Senator  
3 Bunning and Senator Conrad, does the proposal include  
4 repealing the 35 percent rule, as well as the two five-  
5 year rules?

6           Senator Bunning.  Yes, to the extent possible.

7           Mr. Yin.  All right.  Then the second question is, I  
8 do not know how the estimate is going to work out, but  
9 assuming that there is not enough money raised from  
10 Senator Bingaman's amendment to fully pay for both the  
11 809 and 815 amendment, as well as Senator Bunning's and  
12 Senator Conrad's amendment, is there any guidance you  
13 want to provide as to how we are to divide the proceeds?

14          Senator Bunning.  Well, my suggestion is, since we  
15 agreed on 809 and 815, that 809 be first and 815 second.  
16 That was agreed upon in the discussion in there.  I think  
17 that is only fair.

18          Senator Baucus.  Mr. Chairman?

19          The Chairman.  Senator Baucus?

20          Senator Baucus.  Mr. Chairman, a rough solution  
21 would be a two-thirds/one-third split.  Two-thirds 809,  
22 one-third 815.

23          Mr. Yin.  And what about the life/non-life?

24          Senator Baucus.  One-third.  [Laughter].

25          Senator Conrad.  We like this.  We like this.

1 Senator Baucus. One-half.

2 The Chairman. Without objection, then.

3 Senator Bingaman. Mr. Chairman, could I just make  
4 clear?

5 The Chairman. Senator Bingaman?

6 Senator Bingaman. The proposal is that this would  
7 apply from this day forward so that we would not have  
8 additional policies written after today.

9 The Chairman. That is in a description of your  
10 amendment.

11 Senator Bingaman. Right.

12 The Chairman. Yes.

13 Senator Nickles. Mr. Chairman?

14 The Chairman. Senator Nickles?

15 Senator Nickles. Mr. Chairman, I just want to thank  
16 you for your help, and all of our colleagues', Senator  
17 Conrad and others, on 809 and 815. That is long overdue.  
18 It needs to be done. I think this committee, Joint Tax,  
19 and the administration have agreed upon it. It is just a  
20 question of getting it done. So, thank you for your  
21 cooperation.

22 The Chairman. All right.

23 Senator Baucus. Mr. Chairman?

24 The Chairman. Senator Baucus?

25 Senator Baucus. Mr. Chairman, I think this is a

1 good solution to a very difficult question. There have  
2 been a lot of comments about the use of COLIs. I think  
3 many feel that the policy has been abused, or at least  
4 some of the practices are questionable. But yet I think  
5 it is only fair not to change the law retroactively. I  
6 very firmly believe that is not good policy. Companies  
7 sold policies, issued policies and whatnot based on  
8 current law, and I think they should be able to rely on  
9 that.

10 So, I thank the Senator from New Mexico for agreeing  
11 that this change should be prospective, and prospective  
12 only. I also think the addition of the "key man"  
13 exception is helpful. This is the way legislation is  
14 made. We are all 21 different Senators here, we have  
15 different points of view, but we all work together to  
16 find a single solution. I think we are on the verge of  
17 finding one.

18 Also, adding 809 to 815 is critical. But I hope,  
19 now, we can finally get this legislation passed. That  
20 is, the pension bill passed in the Senate, in conference,  
21 and enacted into law.

22 Senator Breaux. Mr. Chairman?

23 Senator Conrad. Mr. Chairman?

24 The Chairman. Senator Breaux, first.

25 Senator Breaux. Just very briefly, Mr. Chairman. I

1 think, congratulations to you and Senator Baucus, and  
2 really to all the members of the committee, for working  
3 this out. I can think of a thousand things that could  
4 have prevented it from being worked out the way it was.

5 I think the cooperation everybody showed was  
6 particularly important and, I would say, a good day's  
7 work, particularly on your birthday. We all wish you  
8 happy birthday as well.

9 The Chairman. Thank you. I appreciate that.

10 Senator Conrad?

11 Senator Conrad. Mr. Chairman, I, too, would like to  
12 wish you a happy birthday. [Laughter]. And a present to  
13 follow.

14 The Chairman. Thank you.

15 Senator Conrad. Mr. Chairman, I want to just  
16 mention, with respect to the five-year rule, which was  
17 the subject of Senator Bunning's and my amendment, this  
18 has been recommended by the Joint Tax Committee on their  
19 simplification of the Tax Code. They said it should be  
20 repealed completely.

21 This also was passed in 1999, which was part of  
22 bigger legislation that was vetoed. 809 and 815 we  
23 previously passed in the committee, passed on the floor  
24 of the Senate.

25 So, I think these are things that have been hanging

1 out there that really need to be addressed and I thank  
2 colleagues for working together to put together a package  
3 here.

4 There are aspects of it that are troubling. I must  
5 say, on COLI, I am very concerned about the unintended  
6 consequences. We still do not have a GAO report that is  
7 coming to us that will help us better understand the  
8 elements. But in the interest of putting together a  
9 package that has some important elements, I think we can  
10 support this package.

11 The Chairman. All right. Senator Nickles, then  
12 Senator Santorum. Then we will move to the adoption of  
13 the Bingaman amendment.

14 Senator Nickles. Mr. Chairman, just a couple of  
15 points. One, Senator Lott had serious concerns about  
16 doing something on COLI. He wanted me, I think, to share  
17 that. Now, we made exceptions. We changed the  
18 amendment.

19 I appreciate Senator Bingaman's willingness to, one,  
20 grandfather existing policies, and two, expansion of the  
21 "key man" exemption. Maybe that will clarify some of the  
22 concerns and angst that a lot of people have on it.  
23 Also, Senator Bingaman's amendment does not preclude any  
24 policy where policies are used to purchase back stock or  
25 provide ownership transitions, and so on. So, some

1 people are not aware of some of those changes.

2       There may be, as Senator Conrad mentioned, some  
3 unintended consequences that we have yet to see that we  
4 may well hear about in the not-too-distant future. But I  
5 wanted to share Senator Lott's concern because I think it  
6 was strongly felt. Also, again, thanks for your  
7 assistance on the "key man." The "key man" definition  
8 has yet to be worked out by staff and by Treasury, and we  
9 will work with all parties to make that workable.

10       The Chairman. Senator Santorum?

11       Senator Santorum. Thank you, Mr. Chairman. Happy  
12 birthday.

13       Let me just say that I share Senator Conrad's and  
14 Senator Lott's concerns about the unintended consequences  
15 of what we are doing here today and its impact on  
16 benefits for employees.

17       I have additional concern about the effective date  
18 being today's date. I think that is going to have an  
19 immediate effect that could be very confusing and  
20 disruptive. I understand that is the way we do a lot of  
21 tax bills. I understand that.

22       But I think the effective date being today, I think  
23 there is a lot of uncertainty of what is going to happen  
24 in this provision. There are a lot of changes to be made  
25 to this provision.



1           This is a relatively new thing that we are talking  
2 about. Having the effective date today, I think, could  
3 have a very disruptive effect and have even further  
4 unintended consequences.

5           I would hope that you would consider at least moving  
6 that effective date to some future time as opposed to  
7 having what would be an immediate disruption to the  
8 marketplace, potentially having unintended consequences.  
9 Because there are a lot of things. We do not have "key  
10 man" defined, we do not have a lot of definitions here.  
11 I do not think it would be a helpful thing to do, to move  
12 forward on that front.

13           The Chairman. All right. Those in favor of Senator  
14 Bingaman's amendment, say aye.

15           [A chorus of ayes]

16           The Chairman. Those opposed, say no.

17           [A chorus of nays]

18           The Chairman. The ayes seem to have it. The ayes  
19 do have it. The amendment is adopted.

20           Very quickly, Senator Santorum has a short amendment  
21 at this point. We would like to do that. It is my  
22 understanding you have a modification to it, too. So, we  
23 will take up your amendment, as modified.

24           Senator Santorum. Thank you, Mr. Chairman.

25           Mr. Chairman, this is something that I had talked

1 about. I forget what bill it was that we had a  
2 discussion about this amendment. You said if I would put  
3 it off until the pension bill coming up. It has to do  
4 with black lung benefits.

5 The Chairman. All right. Now that you have  
6 described it, the amendment is accepted.

7 Senator Santorum. Thank you.

8 The Chairman. Those in favor of the passage of this  
9 legislation, say aye.

10 [A chorus of ayes]

11 The Chairman. Opposed, say no.

12 [No response]

13 The Chairman. The ayes have it. The bill is  
14 adopted. Do not go, please. We have one more bill.

15 But on this bill, I ask that the staff have unanimous  
16 consent to make conforming and technical corrections in  
17 any way necessary.

18 The Social Security bill now is before us. I want to  
19 ask unanimous consent to adopt the Social Security bill  
20 that is on the schedule right now while we have a quorum,  
21 subject to amendment. Those in favor of adopting the  
22 Social Security amendment say aye.

23 [A chorus of ayes]

24 The Chairman. Those opposed, say no.

25 [A chorus of nays]

1           The Chairman.    The ayes seem to have it.  The ayes  
2 do have it.  The Social Security amendment is adopted.

3           Are there any amendments?  Now, we have to have at  
4 least seven people stay, please.

5           Senator Bunning?

6           Senator Bunning.  I have a very simple amendment  
7 that would require a GAO study.  Oh, it was accepted.  
8 Thank you very much.  You already accepted it.

9           The Chairman.  All right.  There are no other  
10 amendments.  Senator Bunning, we adopted a modification  
11 to that.

12          Senator Bunning.  A modification?

13          Senator Baucus.  No, it is adopted.

14          The Chairman.  That you approved of.  Yes, it is  
15 adopted.

16          Senator Bunning.  Thank you.

17          The Chairman.  The meeting is adjourned.

18          [Whereupon, at 12:16 p.m. the meeting was concluded.]

19

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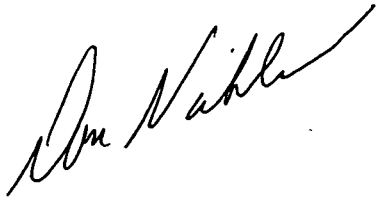
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**HON. DON NICKLES  
REMARKS ON H.R. 743  
SENATE FINANCE COMMITTEE MARK-UP  
SEPTEMBER 17, 2003**

Mr. Chairman, I want to thank you for holding a mark up on H.R. 743, but I would like to address concerns I have related to Title III of the bill.

I want to commend the Chairman for including a request for a GAO study, however I believe GAO should study the value of the fee withholding system itself not the possibility of extending the fee withholding system to the Supplemental Security Income program. Why SSA has become a collection agency for any organization is beyond my comprehension but I would hope that while evaluating a possible expansion, GAO would take into consideration whether the system itself is a valuable manner in which to spend SSA's resources.

Nevertheless, if we are going to allow SSA to continue as a collection agency, I believe both attorney and non-attorney representatives should be treated equitably through extending the fee withholding system to qualified non-attorney representatives whose payments are not withheld by SSA. I understand that the non-attorney representative community has agreed with Finance Committee staff to meet stringent proficiency requirements.

Furthermore, I strongly believe if fees are being withheld, we should insist on an appropriate fee processing assessment that offsets the cost to the Social Security trust fund. I am apprehensive about Section 301 that imposes a cap of \$75 on user fees that attorney's pay to the Social Security Administration (SSA). These fees were imposed to cover the cost SSA incurs by withholding from beneficiary checks any payments owed to the attorney's for their services. However, the user fee often falls short of covering the processing cost.

SSA's cost accounting system conducted a study to determine the cost to SSA of withholding these fees. In FY 2000, the task of processing attorney fee payments cost just over \$40 million. According to SSA, the cost of collecting fees for attorneys is 7.7% of the total fee payments to attorneys, well above the 6.3% currently being collected. If anything, we should either allow SSA to increase the user fee to whatever it costs SSA or it should remain at the current 6.3% without a cap. Increasing the user fees above the \$75 cap in this bill does not reduce the amount sent to the beneficiary but is taken from the attorney's payments withheld by SSA.

I thank the Chairman and Ranking Member, and again, I appreciate their hard work and attention to these matters.

**Statement in Support of Highway Extension and Ethanol Provisions**

*Senator Olympia J. Snowe*

**September 17<sup>th</sup>, 2003**

**Thank you, Mr. Chairman, for scheduling action on the highway bill extension and ethanol provisions.**

**While I am disappointed that Congress will not be able to agree to a 6-year highway reauthorization by the end of the month, I think we can all agree that it is better to do it right rather than to just do it quick.**

**Under Chairman Grassley's package, the current September 30<sup>th</sup> expiration date of Highway Trust Fund spending authority is extended for five months, through February 29<sup>th</sup>, 2004. I believe that a five-month extension is a responsible step, given the wide disagreement over how to raise the necessary funding for a meaningful 6-year successor to the Transportation Equity Act for the 21<sup>st</sup> Century (TEA-21). At the same time, it is critically important to our state DOTs that we enact a six-year bill as soon as possible, and this extension will force Congress to deal with this issue before the bulk of the Fiscal Year 2005 budget process next spring.**

**I also support Chairman Grassley's proposal to "hold harmless" the Highway Trust Fund (HTF) for the use of alcohol-blended fuels known as ethanol. As part of federal policy to promote the use of ethanol as a substitute for gasoline, ethanol has been exempt from 5.3 cents of the 18.3 cents per gallon gas tax. In addition, 2.5 cents of the tax on ethanol based fuels has been deposited directly into the U.S. Treasury's general funds for deficit reduction purposes. I am pleased that the Chairman's package provides a credit to the HTF for the 5.3 cents per gallon ethanol exemption, as well as redirecting the 2.5 cents per gallon deficit reduction tax on ethanol**

**to the HTF – a move that will raise HTF revenues by \$2.2 billion annually. As we develop a new highway bill, we will require an optimal level of funding. While I am a supporter of alternative fuels, like ethanol, I believe that we shouldn't promote ethanol usage to the detriment of the funding streams that allow us to build and maintain roads and infrastructure in this country.**

**And our transportation funding needs are great. If we want to start improving – let alone maintaining – the current system of highways, bridges, and transit properties in this country, overall federal surface transportation spending must reach at least \$75 billion by FY 2009, according to last year's Department of Transportation's Conditions and Performance report.**

**Thank you, Mr. Chairman, for scheduling action on this stopgap measure. I look forward to working with you and my colleagues on the Committee on a comprehensive 6-year surface transportation bill between now and next February.**



**Statement of Senator Jim Jeffords, I-Vt  
Senate Committee on Finance  
Extension of TEA-21**

**September 17, 2003**

Until recently, I held out hope that this Committee would mark up legislation to provide revenues for a good six-year highway and transit reauthorization bill. Despite considerable efforts by Chairman Grassley and Ranking member Baucus, we have yet to find funding in amounts commensurate with the nation's transportation needs. The action we are about to take this morning - passage of a short term revenue extension - is only second best. I'm sure my colleagues agree that our nation would be best served by a full, six-year renewal of the surface transportation program.

I will support the proposal before us today as the most prudent course of action given the circumstances. Its duration, five months, provides time to resolve our long term funding challenge. Its new ethanol and bio-diesel revenue measures will contribute significantly to our efforts to meet that challenge.

We on the Environment and Public Works Committee will soon mark up a companion to this measure, authorizing the highway and safety program for the next five months. Working with Chairman Inhofe, my goal over those five months will be to bring a well funded six-year bill to the Senate floor. I look forward to continued cooperation with the Finance Committee to achieve this goal.

JUDD GREGG, NEW HAMPSHIRE, CHAIRMAN

BILL FRIST, TENNESSEE  
MICHAEL B. ENZI, WYOMING  
LAMAR ALEXANDER, TENNESSEE  
CHRISTOPHER S. BOND, MISSOURI  
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HILLARY RODHAM CLINTON, NEW YORK

# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

SHARON R. SODERSTROM, MAJORITY STAFF DIRECTOR  
J. MICHAEL MYERS, MINORITY STAFF DIRECTOR AND CHIEF COUNSEL

<http://labor.senate.gov>

September 16, 2003

The Honorable Charles Grassley  
Chairman  
Senate Finance Committee  
United States Senate  
Washington, DC 20510

The Honorable Max Baucus  
Ranking Member  
Senate Finance Committee  
United States Senate  
Washington, DC 20510

Dear Senators Grassley and Baucus:

It has come to my attention that several provisions within the National Employee Savings and Trust Equity Guarantee Act, made public today in the form of a Chairman's mark and scheduled for markup this week, encroach upon the jurisdiction of the Health, Education, Labor, and Pensions Committee.

As you know, the HELP Committee has principal jurisdiction over the Employee Retirement Income Security Act. Certain provisions of ERISA are also reflected in the Internal Revenue Code within the jurisdiction of the Senate Finance Committee. This overlapping jurisdiction over pensions of the HELP and Finance Committees has brought about numerous Senate struggles over pension legislation in the past, including but not limited to, TEFRA in 1982, the Retirement Equity Act in 1984, DEFRA in 1986, the omnibus reconciliation bill in 1987, the GATT legislation in 1994, the Small Business Jobs Protection Act in 1997 and in the Economic Growth and Tax Relief Reconciliation Act of 2001.

In order to avoid unnecessary conflict and confusion, and to preserve the integrity of the committee process, I request that you remove from the Chairman's mark specific sections that fall exclusively within the jurisdiction of the HELP Committee. After careful review of the legislative text recently made available, I believe the following draft provisions are outside the purview of the Senate Finance Committee. I request that they be deleted before the Executive Session scheduled for Wednesday, September 17, 2003:

- Sec. 302. Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
- Sec. 303. Liability for breach of fiduciary duty.
- Sec. 304. Increase in maximum bond amount.
- Sec. 305. Provisions relating to whistleblower actions involving pension plans.
- Sec. 306. Increase in penalties for coercive interference with exercise of ERISA



Senator Charles Grassley

Senator Max Baucus

September 16, 2003

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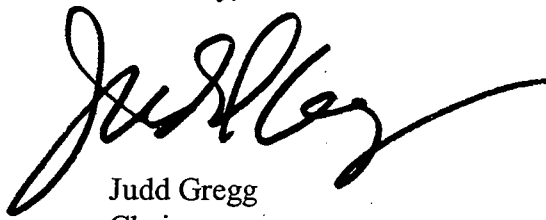
- Sec. 404. Technical Corrections to SAVER Act.
- Sec. 410. Benefits suspension notice.
- Sec. 413. Automatic rollovers of certain mandatory distributions.
- Sec. 421. Study regarding fees charged by individual account plans.

I further request that you rule as out of order any amendments that deal with sections of ERISA within the exclusive jurisdiction of the HELP Committee.

Several other provisions dealing with notices to individuals have historically been reserved for the HELP Committee, but have been altered in the latest draft to confuse the jurisdictional lines. I urge you to reconsider these decisions in order to avoid creating additional confusion for regulators, plan sponsors, and plan participants and beneficiaries.

As you know, I take very seriously the jurisdiction of the Health, Education, Labor, and Pensions Committee on which I serve as chair and will feel compelled to take every action necessary to preserve it. I thank you for your cooperation in this matter.

Sincerely,

A handwritten signature in black ink, appearing to read "Judd Gregg", with a long, sweeping horizontal line extending to the right.

Judd Gregg  
Chairman

CHARLES E. GRASSLEY, IOWA, CHAIRMAN

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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

6  
September 15, 2003

The Honorable Judd Gregg  
Chairman  
Health, Education, Labor, and Pensions Committee  
United States Senate  
Washington, DC 20510

Dear Senator Gregg:

Thank you for your letter regarding the Finance Committee's proposed markup of the National Employee Savings and Trust Equity Guarantee Act scheduled for Executive Session on Wednesday, September 17, 2003. It is true that the overlapping jurisdiction over pensions of our respective Committees has created numerous struggles involving pension legislation in the past. While the HELP Committee and Finance Committee have concurrent jurisdiction over the Employee Retirement Income Security Act, the Finance Committee retains jurisdiction over all provisions contained in the Internal Revenue Code of 1986, as amended, including those involving ERISA.

In order to avoid unnecessary conflict and confusion, we would agree to accommodate your request to remove certain provisions from inclusion in the Chairman's mark, provided that you write us prior to the mark up of your intention to meet the following agreed-upon conditions. First, the HELP Committee would acknowledge the policy importance and significance of the provisions at issue and agree to address each item when the HELP Committee considers its pension reform legislation in the near future. Second, the HELP Committee would agree to work with the Finance Committee on these measures when the Finance and HELP Committees' pension reform bills are merged for consideration on the Senate Floor. Set forth below is a list of draft provisions that the Finance Committee would defer for HELP Committee consideration based your written agreement to these stated conditions.

- Inapplicability of relief from fiduciary liability during suspension of ability of participant or beneficiary to direct investments.
- Liability for breach of fiduciary duty.
- Increase in maximum bond amount.
- Provisions relating to whistleblower actions involving pension plans.
- Increase in penalties for coercive interference with exercise of ERISA rights.
- Technical Corrections to SAVER Act.
- Benefits suspension notice.

Letter to Senators Gregg and Kennedy

September 15, 2003

Page 2

- Automatic rollovers of certain mandatory distributions.
- Study regarding fees charged by individual account plans.

In that vein, we will also ask Members of the Finance Committee to withhold amendments related to these provisions or other non-tax ERISA issues that appear to be within the exclusive jurisdiction of the HELP Committee. We look forward to your response to this letter and look forward to working with you to ensure the successful passage of pension reform legislation.

Sincerely,



Charles E. Grassley



Max Baucus

cc: The Honorable Edward M. Kennedy

JUDD GREGG, NEW HAMPSHIRE, CHAIRMAN

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MICHAEL B. ENZI, WYOMING  
LAMAR ALEXANDER, TENNESSEE  
CHRISTOPHER S. BOND, MISSOURI  
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# United States Senate

COMMITTEE ON HEALTH, EDUCATION,  
LABOR, AND PENSIONS

WASHINGTON, DC 20510-6300

September 16, 2003

The Honorable Charles Grassley  
Chairman  
Senate Finance Committee  
United States Senate  
Washington, DC 20510

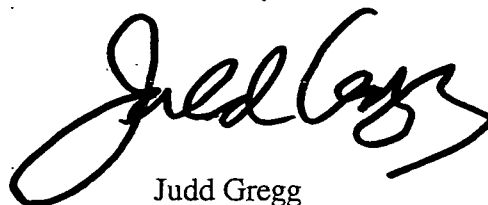
The Honorable Max Baucus  
Ranking Member  
Senate Finance Committee  
United States Senate  
Washington, DC 20510

Dear Senators Grassley and Baucus:

Thank you for your prompt reply to my letter of this date regarding the exclusive jurisdiction of the Health, Education, Labor, and Pensions Committee over certain portions of the Employee Retirement Income Security Act. In your response, you have offered to respect the jurisdiction of the HELP Committee and remove certain disputed sections of a bill you have scheduled for consideration in executive session if I give you assurance that a bill addressing these same policy concerns will be brought before the HELP Committee. I fully intend to bring a defined contribution pension bill before the HELP Committee. This intent is based upon the assumption that the Ranking Member and members of the HELP Committee remain committed to the substance of such reforms and cooperate in an orderly process. Further, it has been my sincere and express desire that any bills in this subject area that our two committees report would be combined before consideration on the floor of the Senate.

Let me be clear that it is not my intention to merge the separate and distinct defined contribution and defined benefit issues in one piece of legislation. I feel strongly that the need for action to replace the 30-year Treasury benchmark is much too great, and the interests of the millions of pension plan participants and beneficiaries are too important, to risk allowing the legislative process to get bogged down under the weight of so many disparate subjects. Therefore, I expect that the HELP Committee will not act on defined contribution until the discount rate issue is resolved this year.

Sincerely,



Judd Gregg  
Chairman

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# United States Senate

COMMITTEE ON FINANCE

WASHINGTON, DC 20510-6200

KOLAN DAVIS, STAFF DIRECTOR AND CHIEF COUNSEL  
JEFF FORBES, DEMOCRATIC STAFF DIRECTOR

September 17, 2003

The Honorable Judd Gregg  
Chairman  
Health, Education, Labor, and Pensions Committee  
United States Senate  
Washington, DC 20510

Dear Senator Gregg:

Thank you for your prompt reply to our letter regarding the Finance Committee's proposed markup of the National Employee Savings and Trust Equity Guarantee Act scheduled for Executive Session this morning. Although we are glad to know that you intend to bring a defined contribution bill before the HELP Committee, we regret that your commitment is premised upon resolution of the discount rate issue and separate treatment of defined benefit plan issues.

Although your letter does not provide us with the exact assurances we sought from you regarding treatment of the disputed sections of our pension bill, we will withhold from including them in the mark up today as a courtesy to you. Please know, however, that we remain firmly committed to the policy objectives of those provisions and will pursue them vigorously in the event they remain unaddressed by the HELP Committee pursuant to our original understanding.

Sincerely,



Charles E. Grassley



Max Baucus

cc: The Honorable Edward M. Kennedy



## DEPARTMENT OF THE TREASURY

WASHINGTON, D.C.  
September 16, 2003

SECRETARY OF THE TREASURY

The Honorable Charles E. Grassley  
Chairman  
Committee on Finance  
United States Senate  
Washington, DC 20510

The Honorable Max Baucus  
Ranking Member  
Committee on Finance  
United States Senate  
Washington, DC 20510

Dear Chairman Grassley and Senator Baucus:

The Administration appreciates your efforts in drafting important pension security legislation to be considered by the Committee on Finance on Wednesday, September 17, 2003. We look forward to continuing to work with you to help ensure the retirement security of millions of working Americans and retirees.

In particular, we want to express the Administration's support for replacing the 30-year Treasury bond rate in order to achieve greater accuracy in discounting pension liabilities.

We agree that current practice is not sustainable because its results do not accurately reflect the true size of existing liabilities. The goal of your proposal to phase in to a yield curve based on long-term corporate bond rates broadly mirrors the Administration's proposal. It is an appropriate solution to the current problem that will lead to strengthened funding of retirement plans for America's workers and retirees.

We believe that it is important to act promptly to enact a permanent replacement for the current discounting method and look forward to working with Congress to enact such a provision in a timely manner to establish a sound basis for comprehensive pension funding reforms. We look forward to working with Congress on other important provisions to strengthen pensions for American workers and retirees.

Sincerely,

A handwritten signature in black ink that reads "John W. Snow". The signature is written in a cursive, flowing style.

John W. Snow