

1 EXECUTIVE COMMITTEE MEETING TO COMPLETE THE MARK-UP OF  
2 THE COMMUNITY RENEWAL AND NEW MARKETS ACT OF 2000; AND  
3 H.R. 4844, THE RAILROAD RETIREMENT AND SURVIVORS'  
4 IMPROVEMENT ACT OF 2000.

5 THURSDAY, SEPTEMBER 28, 2000

6 U.S. Senate,  
7 Committee on Finance,  
8 Washington, DC.

9 The meeting was convened, pursuant to notice, at  
10 10:40 a.m., in room SD-215, Dirksen Senate Office  
11 Building, Hon. William V. Roth, Jr., (chairman of the  
12 committee) presiding.

13 Also present: Senators Grassley, Murkowski, Nickles,  
14 Gramm, Jeffords, Mack, Thompson, Craig, Moynihan, Baucus,  
15 Rockefeller, Breaux, Conrad, Graham, Bryan, Kerrey, and  
16 Robb.

17 Also present: Franklin G. Polk, Staff Director and  
18 Chief Counsel; David Podoff, Minority Staff Director and  
19 Chief Economist; Jon Talisman, Acting Assistant  
20 Secretary, Treasury Department; Lindy Paull, Chief of  
21 Staff, Joint Committee on Taxation; Bill Sweetnam,  
22 Pension Tax Counsel, Alexander Vachon, Chief Social  
23 Security Analyst; Grant Aldonas, Chief International  
24 Trade Counsel; and Jennifer Baxendell, Health Analyst.

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1 OPENING STATEMENT OF HON. WILLIAM V. ROTH, JR., A U.S.  
2 SENATOR FROM DELAWARE, CHAIRMAN, COMMITTEE ON FINANCE

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4 The Chairman. The committee will please come to  
5 order.

6 Today we will take up the Community Renewal  
7 legislation. A very substantial majority of the  
8 committee favored reporting the Chairman's mark.

9 As you know, my purpose in calling for this mark-up  
10 was to establish a committee position so that we could  
11 join discussions with the House and the President on the  
12 subject of Community Renewal. It was also my hope to  
13 report the bill for possible floor consideration.

14 Unfortunately, as the Senate session reached its  
15 final stages, any effort to move legislation in regular  
16 order becomes vulnerable to those members wishing to  
17 exercise their rights under Senate rules, and committee  
18 members can frustrate expeditious action with numerous  
19 amendments and motions.

20 So I think it is time to move on. I will introduce  
21 the Chairman's mark as a bill and ask those who suppose  
22 it to co-sponsor it. I will exercise my right under Rule  
23 14 to object to its referral so that the bill is placed  
24 on the Senate calendar just as if it were reported.

25 Senator Moynihan. Mr. Chairman?

1           The Chairman.    Yes.

2           Senator Moynihan.   May I just accept that what you  
3 have done, and the circumstances, is the best we can hope  
4 for. There was not any practical prospect of our bill  
5 being taken up on the floor. What we wish to do is to  
6 state the view of this committee when the final  
7 negotiations take place over that 1,300-page bill that is  
8 heading our way.

9           The Chairman.    For that reason, I would say, Pat, I  
10 would hope as many as possible would co-sponsor this  
11 bill.

12           The committee will now turn to the mark-up of H.R.  
13 4844, the Railroad Retirement and Survivors' Improvement  
14 Act. This bill would improve benefits under the Railroad  
15 Retirement System and modernize its financing. The  
16 Railroad Retirement program is a wholly unique pension  
17 system.

18           Created in Congress in 1935, Railroad Retirement is,  
19 in effect, a multi-employer pension system located in the  
20 Federal Government covering over one million rail  
21 employees, retirees, and their families.

22           H.R. 4844 passed the House by an overwhelming vote of  
23 391 to 25. Senator Moynihan and I have received letter  
24 signed by 78 Senators, Republicans and Democrats, in  
25 support of this mark-up.

1 I call up H.R. 4844, the Comprehensive Retirement  
2 Security and Pension Reform Act, with a modification. I  
3 now turn to my distinguished Ranking Member and good  
4 friend, Pat Moynihan, for any comments he may care to  
5 make.

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1 OPENING STATEMENT OF THE HON. DANIEL PATRICK MOYNIHAN, A  
2 U.S. SENATOR FROM NEW YORK

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4 Senator Moynihan. I am happy we have reached this  
5 moment and I hope we proceed with expedition. This  
6 provides earlier vesting and a lower minimum retirement  
7 age for retirees, for railroad laborers, and improved  
8 benefits for widows and widowers of railroad retirees,  
9 and reduce taxes, or pension contributions, as they are  
10 called for rail companies.

11 I can see why we have heard from 73 Senators.

12 The Chairman. Seventy-eight.

13 Senator Moynihan. Seventy-eight.

14 The Chairman. Thank you, Pat.

15 I know a number want to comment. I would ask that  
16 they be kept to two or three minutes.

17 Senator Gramm. Mr. Chairman?

18 The Chairman. Senator Gramm.

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1 OPENING STATEMENT OF HON. PHIL GRAMM, A U.S. SENATOR FROM  
2 TEXAS

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4 Senator Gramm. First of all, I think the movement  
5 to invest the trust fund of Railroad Retirement is a  
6 positive move, and I want to congratulate the authors of  
7 the bill for deciding that it makes eminently good sense  
8 to take the resources of the trust fund and to create  
9 wealth through investment so that the power of compound  
10 interest, which Einstein called the most powerful force  
11 in the universe, can be brought to bear in helping to pay  
12 benefits so that you can pay benefits not just by the  
13 taxes on the company and not just by the taxes paid by  
14 the worker, but where you can actually put the capital  
15 they have to work so that it can help fund those  
16 benefits. To that point, I am a strong supporter of what  
17 we are doing here.

18 Senator Breaux. Would the Senator yield?

19 Senator Gramm. I would be happy to.

20 Senator Breaux. Would something like that work for  
21 Social Security, too?

22 Senator Gramm. I think it certainly would work for  
23 Social Security. [Laughter]. Now, here are the three  
24 items, at an absolute minimum, that I think need to be  
25 changed. And I understand the politics of this issue; my

1 phone is ringing off the wall today. Here are the three  
2 issues.

3 First of all, I am sure everybody on this committee,  
4 since it is our jurisdiction, is aware that this is the  
5 year that we begin to phase up retirement for Social  
6 Security from 65 to 67, so all over America we are  
7 beginning, on a monthly basis, to raise the retirement  
8 age for working Americans.

9 Senator Kerrey. We are not moving the retirement  
10 age of Social Security, we are moving the eligibility  
11 age.

12 Senator Gramm. That is right. We are moving the  
13 age at which you get full benefits, which is what I will  
14 be talking about in this bill.

15 Now, we are doing that as part of the bill that was  
16 passed in 1983 that saved Social Security. We are doing  
17 that because we have 3.3 workers per retiree in Social  
18 Security and we are heading toward 2 workers per retiree.

19 Now, notice how different that is with what we are  
20 proposing in this bill. We now have one railroad worker  
21 for every three retirees in the Railroad Retirement  
22 System. We have already hit a level in this program that  
23 we perhaps might never hit, unless there are further  
24 demographic changes in Social Security.

25 By ERISA standards, this program today has a \$40

1 billion unfunded liability. I have that statement here  
2 if anybody wants to look at it in terms of the report  
3 under ERISA.

4 So the point is, when we are raising the retirement  
5 age for Social Security from 65 to 67, when we have got a  
6 \$40 billion unfunded liability in the Railroad Retirement  
7 program, how in the world can we justify lowering the  
8 retirement age from 62 to 60? It baffles me as to why  
9 this would be the case.

10 I had the head of a railroad yesterday tell me that  
11 this was part of some political deal that was put  
12 together by the unions and by the railroads. I just  
13 simply would say this: I do not know how in the world you  
14 can justify saying to the people who are in Social  
15 Security, we are raising the age at which you get full  
16 benefits to 67, but for people who work for railroads,  
17 even though their system is in far greater peril than  
18 Social Security, we are lowering their retirement age.

19 I would urge my colleagues, and I will have an  
20 amendment, to strike that provision and simply leave the  
21 retirement age where it is.

22 The second problem I have, is that we are sort of  
23 putting the cart before the horse. I am in favor of  
24 doing the investments, but what we ought to do is set up  
25 a structure where we make the investments and then in the



1 future, as the rate of return is earned on the  
2 investment, at that point we ought to lower the payments  
3 the workers are making and lower the taxes that companies  
4 are making, but we ought not to do that before you ever  
5 earned any money.

6 So the second amendment I will offer is simply an  
7 amendment that says, keep the bill as it is, invest the  
8 money, but lower taxes and lower the amount the worker is  
9 paying in as a rate of return is earned rather than doing  
10 it on the hope that a rate of return may be earned when,  
11 in fact, it may not be.

12 The final amendment which I hope will be adopted as  
13 well, is an amendment that simply makes it clear that the  
14 workers own these investments and that the board has a  
15 fiduciary responsibility to the investor, and that they  
16 are subject to the same kind of restraints that any  
17 fiduciary responsibility is subject to.

18 That is, they cannot decide that they want to go out  
19 and take this money and do some social good with it at  
20 the expense of the worker, and that, in fact, if it can  
21 be shown that they have operated on the basis of  
22 promoting anybody's well-being other than the people who  
23 paid into the program, just as would be true of TIAA CREF  
24 or any retirement program, then they would be subject to  
25 penalty.

1           So those are the three changes. One, while we are  
2 raising the retirement age in Social Security do not be  
3 cutting it for Railroad Retirement, when Railroad  
4 Retirement is in far worse shape than Social Security.

5           Number two, let us make the investments but let us  
6 not cut taxes and raise benefits until we actually get a  
7 rate of return. Let us just set up an automatic  
8 mechanism that does it as the money is available.

9           Number three, let us be sure that this board operates  
10 in the best interests of the worker and that they  
11 understand that if they think it is a great idea to go  
12 out and invest in some part of the American economy as a  
13 social project, that they can do it with their own money  
14 but they cannot do it with the board's money, and that we  
15 just want to get politics out of these investments.

16           So I hope members will look at these three amendments  
17 when we begin the amendment phase. I will offer them. I  
18 will not belabor it; I think the points are simple.

19           I really hope that we can do something about this  
20 retirement age thing. I think it is a terrible precedent  
21 and it is just absolutely unfair and indefensible.

22           Senator Nickles.    Mr. Chairman?

23           The Chairman.    Yes.    Senator Nickles?

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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. Mr. Chairman, I would just like to  
5 make a couple of comments. They may be similar to some  
6 of those that Senator Gramm mentioned, maybe somewhat a  
7 little different.

8 I have great respect for a lot of people who have  
9 been working on this bill, but I find the bill to be  
10 quite deficient for a lot of different reasons. I used  
11 to be a fiduciary and trustee of a pension plan, Mr.  
12 Chairman. This pension plan has lots of problems. And  
13 staff, if I misspeak in any statement I make, please  
14 correct me.

15 I do not think this bill makes the retirement system  
16 better for railroad retirees, I think it complicates it.  
17 I think it makes a mistake and I think it moves it in the  
18 wrong direction.

19 A couple of points. The Railroad Retirement has paid  
20 out more in benefits every year for 40 years than it  
21 takes in in taxes. That is a problem. You cannot do  
22 that. In the private sector, you cannot do that.

23 The Railroad Retirement is a little different than  
24 the private sector, but it is not fiscally sound when you  
25 are paying out more in benefits every year than you take

1 in in taxes.

2 In looking at the shortfall to be funded, the  
3 payments in taxes from the company should be closer to 26  
4 percent and it is now 21 percent; this bill takes it to  
5 18 percent.

6 If you are fiduciary of a pension plan and you are  
7 not funding it and you reduce the contributions, you are  
8 in trouble. You have to make at least minimum  
9 contributions per year.

10 The amount going right now into the fund is 21  
11 percent, but actuarially it should be 26 percent to pay the  
12 benefits. This bill reduces it to 18 percent. Is that  
13 factually correct? I mean, correct me if I am wrong. I  
14 do not want to misstate a thing.

15 Mr. Vachon. It does reduce the payroll tax.

16 Senator Nickles. Just tell me if I am wrong. Does  
17 it reduce the tax and the contribution by the railroad  
18 companies from 21 percent to 18 percent?

19 Mr. Vachon. Yes.

20 Senator Nickles. And the benefits are going up.

21 Mr. Vachon. Yes.

22 Senator Nickles. It reduces the retirement age, it  
23 increases the survivor benefits, far exceeding what we do  
24 in Social Security, far exceeding what most private  
25 sector pensions do.

1 Mr. Vachon. Well, sir, the pension plan is a  
2 combination of two plans, a Social Security-type plan and  
3 a multi-employer plan.

4 Senator Nickles. I know that. Am I right?

5 Mr. Vachon. It is apples and oranges, sir.

6 The Chairman. Could I ask the distinguished Leader  
7 to proceed with his statement, then we will ask Mr.  
8 Sweetnam to describe the proposal.

9 Senator Nickles. Well, Mr. Chairman, I made my  
10 point. I think the Railroad Retirement System is in deep  
11 trouble, it is under-funded right now, it is paying out a  
12 lot more in benefits than it receives in taxes, and so to  
13 fix the problem they say, let us reduce the taxes and let  
14 us increase the benefits. I do not think that is  
15 financial solvent, I do not think it is sound, I think it  
16 is irresponsible.

17 I also have a problem with transferring \$15 billion  
18 of the so-called funds and say, well, we are going to  
19 transfer that to a private entity. Are we going to do  
20 that for every other trust fund that supposedly has  
21 money, most of which do not have money, they have IOUs?  
22 We have got a lot of trust funds out there, so think  
23 about what we are starting on that path. I have  
24 reservations about that.

25 When you have a fund that, according to the

1 actuaries, already has a \$40 billion unfunded liability,  
2 to be cutting contributions and increasing benefits, to  
3 me, is not sound.

4 I know that there are a lot of votes to pass this and  
5 everybody has signed on, but I do not know that people  
6 have looked at it. The administration has concerns about  
7 it as well. This thing could cause a sequester, the \$15  
8 billion.

9 I just think that, as the bill is presently drafted,  
10 unfortunately I cannot support it and I think it needs to  
11 be amended. If we get into the amendment phase, I will  
12 offer a few amendments to try and at least improve it.  
13 Thank you, Mr. Chairman.

14 The Chairman. If there are no more comments, I will  
15 call upon Mr. Sweetnam to briefly describe the  
16 legislation.

17 Mr. Sweetnam. Mr. Chairman, I will describe the  
18 modification, the amendment to the Chairman's mark. The  
19 modification simply clarifies that the members of the  
20 Railroad Retirement board would be considered fiduciaries  
21 for purposes of appointing the trustees of the Railroad  
22 Retirement Investment Trust Board.

23 Senator Nickles. They would be considered  
24 fiduciaries?

25 Mr. Sweetnam. With regard to their appointment of

1 the trustees of the Investment Trust. Under the  
2 Chairman's mark, the trustees of the Investment Trust  
3 would be considered fiduciaries and the legislation lays  
4 out a number of the fiduciary requirements, which sort of  
5 mirror the requirements that are currently in ERISA.

6 So, for example, you would have to invest for the  
7 exclusive benefit of participants, maximization of  
8 returns. So we would follow the exact same fiduciary  
9 requirements. The trustees of the Investment Trust would  
10 follow the same fiduciary that we currently have as a  
11 fiduciary under ERISA.

12 The Chairman. Are there any amendments to the  
13 modified Chairman's mark? Senator Gramm?

14 Senator Gramm. Mr. Chairman, let me call up  
15 Amendment Number 18, which is Gramm Amendment 3. This is  
16 a very simple amendment; I discussed it earlier. Let me  
17 just review, very briefly, what it does.

18 We are in the process, as I said earlier, of raising  
19 the retirement age, the age at which you get full  
20 benefits under Social Security from 65 to 67. This was  
21 adopted in 1983 and it is beginning to phase in this  
22 year.

23 We are doing that because we have 3.3 workers per  
24 retiree and we are moving because of the actuarial make-  
25 up of our population and the retirement of the baby boom

1 to a situation where we are going to have 2 workers per  
2 retiree.

3 In the Railroad Retirement program, with an unfunded  
4 liability in their actuary report, their 21st actuarial  
5 valuation, of \$40 billion. So, per worker, the Social  
6 Security is a model of financial stability as compared to  
7 the Railroad Retirement.

8 Yet, while we are raising the retirement age under  
9 Social Security to try to promote solvency in the system,  
10 this bill would lower the retirement age under Railroad  
11 Retirement from 62 to 60.

12 It seems to me, Mr. Chairman, that on fairness  
13 grounds, that that is totally unjustifiable. On logical  
14 grounds, I think it assaults the logic of anybody in  
15 thinking that, with three workers per retiree already,  
16 that we want to add to the number of retirees and reduce  
17 the number of workers.

18 So I think this cannot be justified. I think it is  
19 patently unfair. I want to urge members of the committee  
20 to strike this provision which would leave the bill  
21 otherwise intact, except it would not lower the  
22 retirement age from 62 to 60.

23 The Chairman. Are there any comments on the  
24 amendment?

25 Senator Nickles. Mr. Chairman?



1 The Chairman. Yes, Senator Nickles?

2 Senator Nickles. Mr. Chairman, in the entire  
3 private sector, very few private sector firms have  
4 retirement ages at age 60. The retirement age, if I  
5 remember, was increased in the Railroad Retirement in  
6 1983 because the Railroad Retirement fund was going  
7 broke. So they raised it from 60 to age 62, is that  
8 correct? Did I pick the right year?

9 Mr. Vachon. They did not raise retirement age, they  
10 actuarially reduced the benefit. The retirement age  
11 remained at age 60.

12 Senator Nickles. So they still allowed railroad  
13 retirees to take full retirement at age 60, but reduced  
14 the benefit because the fund was in trouble, and this was  
15 in 1983?

16 Mr. Vachon. Correct.

17 Senator Nickles. And so now we are going to say  
18 that they would get 100 percent retirement or increased  
19 benefit at age 60, when most private sector firms have  
20 full retirement at age 65. Is that correct?

21 Mr. Sweetnam. Senator, I think the difference there  
22 between the private sector plan and what is happening  
23 here, is that a private sector plan will have a normal  
24 retirement age, usually at age 65, and then if someone  
25 retires earlier than age 65 the benefit will be actuarially

1 reduced.

2       However, many plans will provide an early retirement  
3 subsidy which will say that the amount that you get  
4 after, let us say, age 60 and you have had a certain  
5 amount of service, will not be actually reduced, it may  
6 be the equivalent of the age 65 benefit, or some  
7 difference between the two.

8       Another thing that some plans will do, is if you do  
9 retire early and you start commencing your Social  
10 Security or you actually retire before you commence  
11 Social Security, many of the old-style, traditional  
12 retirement plans will provide an extra benefit for the  
13 period of time when you could be receiving reduced Social  
14 Security but you do not. Sometimes these are known as  
15 Social Security pop-up benefits or Social Security  
16 supplement benefits.

17       I believe what this proposal is trying to do, is to  
18 sort of recognized that element that Tier 2 benefits will  
19 be increased during that period of time to reflect that  
20 actuarial increase.

21       Senator Nickles. Thank you very much. In other  
22 words, most plans do have a reduction in benefit starting  
23 at age 62. If they go to 60, very few plans have full  
24 benefits at age 60.

25       Mr. Sweetnam. That is correct.

1 Senator Nickles. Thank you.

2 Mr. Chairman, I wish it was not necessary. I just  
3 think it is wrong to be having a big increase in  
4 benefits, which this is doing, 100 percent full  
5 retirement, age 60, when you have a fund that has an  
6 unfunded actuarial liability of \$40 billion and we are  
7 cutting the taxes going into the fund at the same time.

8 If things do not work out with investment as some  
9 people hope, there is going to be a heck of a payroll tax  
10 to be paid a few years down the road. It could be as  
11 much as 27 percent under this bill, if my facts are  
12 correct. I think it is irresponsible. You mentioned  
13 putting fiduciary responsibilities to the fiduciaries,  
14 similar to ERISA.

15 In a private sector plan, if you make these kinds of  
16 benefit changes and cut the contributions, I think you  
17 would have some fiduciary responsibilities or  
18 liabilities. I just do not think it is fiscally  
19 responsible. So, I would urge support of Senator Gramm's  
20 amendment.

21 The Chairman. Senator Graham?

22 Senator Graham. Who bears the risk under this plan?  
23 Assume that the prophecies of Senators Nickles and Gramm  
24 come to pass and the plan is in even deeper financial  
25 problems, who bears that risk?

1 Mr. Vachon. This places the responsibility on the  
2 railroad companies. For the first time, they would be  
3 responsible for the solvency of the program.

4 Senator Graham. And if the railroad companies, as  
5 many have done, go into bankruptcy, then who stands  
6 behind it?

7 Mr. Vachon. I assume that individuals may call upon  
8 the Congress, as in any circumstance.

9 Senator Graham. Are we setting up another--I hate  
10 to say it--coal miner situation where we are behind a  
11 stack of somewhat uncertain cards?

12 Mr. Vachon. Well, Congress will have the  
13 opportunity, of course, to review on an annual basis this  
14 program, but the predictions of any increase in taxes in  
15 order to support this program at least 25 years out.

16 So this is a transition from a fully pay-as-you-go  
17 system, which is what we have today, to a partially  
18 prefunded system. And Congress will obviously want to  
19 watch over the next five years as to how that transition  
20 works. If it is not working, Congress has the option to  
21 come in and, in a very early way, change the terms of the  
22 financing.

23 Senator Graham. The second question is, we have  
24 heard the argument against moving the date from 62 to 60.  
25 What is the argument in favor of moving the date from 62

1 to 60?

2 Mr. Vachon. This actually restores the type of  
3 benefit that railroad employees enjoyed before 1984.  
4 Again, one would have to look across the diversity of  
5 pension plans to attempt a comparable assessment of that  
6 benefit, but that was, I think, the underlying rationale  
7 for this change.

8 Right, now, Railroad Retirement is fully solvent to  
9 75 years under intermediate assumptions. The system,  
10 based upon those kinds of valuations, can essentially  
11 afford this restoration of benefit that was done at a  
12 time when the financing was less certain.

13 In combination, employers and employees, Tier 1 and  
14 Tier 2, pay an almost 34 percent payroll tax, so that  
15 benefit follows from the ability to pay that benefit at  
16 this time.

17 Senator Graham. Do you say this system is solvent  
18 for 75 years under the conditions of this bill?

19 Mr. Vachon. According to the Railroad Board  
20 actuaries, yes.

21 Senator Nickles. Mr. Chairman, I think Senator  
22 Graham asked a very key question and I do not think the  
23 answer was very clear from staff. He asked the question,  
24 is government ultimately liable for these benefits, and  
25 the answer is yes, is it not? Are these benefits not

1 guaranteed by statute?

2 Mr. Vachon. Under current law, that is absolutely  
3 true.

4 Senator Nickles. All right. That was the question  
5 that Senator Graham asked, and the answer is yes.

6 Mr. Vachon. But this bill makes a change. This  
7 bill places greater responsibility on the railroad  
8 companies for future solvency. That is who is  
9 responsible for the taxes.

10 Senator Nickles. Well, to further ask his question,  
11 the Federal Government still is liable for these  
12 benefits. These are benefits that are in federal statute  
13 and the Federal Government is liable to pay these  
14 benefits, is that not correct?

15 Mr. Vachon. The Federal Government could be asked  
16 to step in if there was a problem, yes.

17 Senator Nickles. No, that is not what I asked.

18 Mr. Vachon. Yes. The short answer is yes.

19 Senator Nickles. Thank you.

20 Senator Craig. Mr. Chairman?

21 The Chairman. Yes. The Senator from Idaho. Yes.

22 Senator Craig. The Senator from Texas's amendment  
23 sounds very logical to me. If you shape it into the old  
24 system, we are talking about more than just the old  
25 system, we are talking about a reformed system.

1           Could I have staff walk us through the changes in the  
2 structure of the system and the way it would operate that  
3 might offset, or is intended to offset, this change in  
4 benefit?

5           I mean, that has got to be critical. Changing  
6 benefit, adding more benefit to the same system when we  
7 have cut it back years ago, does not make a lot of sense.  
8 It changes the relationship or the solvency, there is not  
9 question about it.

10           But we are looking at a new approach, a new  
11 investment approach, a substantial change in the way this  
12 is to be operated. I believe, from my reading of the  
13 history, that was the justification for adjusting  
14 benefits. Could we hear about those changes that would  
15 justify that adjustment?

16           Mr. Vachon. The current system is solvent for 75  
17 years, unlike Social Security which is only solvent until  
18 2030.

19           Senator Craig. At least by the projections of the  
20 fiduciaries, is that what you are suggesting?

21           Mr. Vachon. By the Railroad Retirement Board  
22 actuaries, for actual.

23           Senator Craig. But what changes have been made in  
24 this bill that would change the current structure of the  
25 retirement system that would, therefore, justify an

1 enhancement of benefits?

2 Mr. Vachon. The enhancement of benefits is really  
3 justified by the ability to pay those benefits, like in  
4 any pension system. This bill would make two changes  
5 that would support the overall financing of the system,  
6 and one would be the creation of the new Investment  
7 Trust.

8 Right now, the trust earns about 3 percent real  
9 because it is invested in U.S. Treasury securities.  
10 Under this kind of proposal, the investment trust would  
11 earn, at least historically, on average, upwards of 10  
12 percent annually. So, obviously you are enjoying a  
13 substantially improved rate of return. I mean, this is  
14 what all other multi-employer pension plans do for that  
15 reason.

16 It would probably be considered highly conservative,  
17 if not very responsible, to only invest in treasuries in  
18 a private pension plan because of the low rate of return,  
19 although it is a riskless rate of return, of course.  
20 That has been, perhaps, at least the rationale.

21 Senator Conrad. Mr. Chairman?

22 The Chairman. The Senator from North Dakota.

23 Senator Conrad. Mr. Chairman, as I understand it,  
24 the original rationale back pre-1985 for a shorter  
25 retirement age for rail workers was because this is a job



1 that is especially physically difficult and dangerous.  
2 There was a rationale why retirement age was lower for  
3 rail workers than many other kinds of plans because of  
4 the danger and difficulty of the work, is that not the  
5 case?

6 Mr. Vachon. I think there is a comparison here to  
7 law enforcement, for example, which may have mandatory  
8 retirement and pensions as early as age 50 for exactly  
9 those kinds of reasons.

10 Senator Conrad. In this case, as I recall it, and I  
11 used to be a tax commissioner and that is how I was  
12 involved in the issue, the very long hours when they are  
13 on runs and the rest contributed to an agreement between  
14 the employer at the time and the employees at the time  
15 that 60 was an appropriate retirement age.

16 Then that had to be increased, or the benefits had to  
17 be altered because of the inability to cover the  
18 benefits, because the rail systems around the country  
19 were undergoing dramatic downsizing. We have seen  
20 substantial consolidation, is that not the case in the  
21 rail industry?

22 Mr. Vachon. Yes.

23 Senator Conrad. So the result is, you are left with  
24 a circumstance in which you have many fewer current  
25 employees supporting the retirees, is that not the case?

1           Mr. Vachon.    In recent years the rail employment has  
2           stabilized, but certainly over the last 20 years that has  
3           happened.

4           Senator Conrad.   So you have, as I understand it, a  
5           circumstance in which you have more retirees than you  
6           have active workers.

7           Mr. Vachon.    Yes.

8           Senator Conrad.   And if I could just try to  
9           understand a little better, the cost that has been put on  
10          this that has been referred to, \$15 billion the first  
11          year, the reason for that scoring, as I understand it, is  
12          because there are a transfer of funds here from the  
13          public sector to this new entity.  Is that not the case?

14          Mr. Vachon.    That is correct.

15          Senator Conrad.   And I further understand that the  
16          cost estimates of this bill start to go down as we go out  
17          in years, is that true, that we start to see savings in  
18          the year 2004?

19          Mr. Vachon.    CBO acknowledges that this is sort of  
20          unprecedented to score this, but, in fact, because of the  
21          enhanced rate of returns, the net cost is substantially  
22          less than \$15 billion over a 10-year period.

23          Senator Conrad.   And that 10-year cost is \$13.6  
24          billion, is that correct?

25          Mr. Vachon.    That is correct.

1           Senator Conrad.    So substantially less than the \$15  
2 billion.   The real cost of the \$15 billion is the  
3 transfer of funds.   So if we are opposed to that, we are  
4 opposed to the whole idea of moving this out of a federal  
5 responsibility off to this new entity.

6           I would just say to my colleagues, that is a  
7 fundamental question for us: does it make sense to have  
8 this transfer occur?   I personally believe it does.   I  
9 also believe it makes sense to allow them to broaden  
10 their investment spectrum and be able to seek a higher  
11 rate of return.

12           I think there are people on both sides of the aisle  
13 who believe that is going to be a necessity in all  
14 retirement plans if we are going to deal with this  
15 demographic time bomb of the baby boom generation.

16           Senator Breaux.    Can I ask a question just on what  
17 he said?   What is the estimated rate of return under the  
18 new scenario of investment?

19           Mr. Vachon.    I believe it is 9 percent, but I would  
20 need to double-check.   The actuary is here.   I could ask  
21 him if that is important.

22           Senator Breaux.    Can somebody maybe give us a  
23 number?

24           Mr. Vachon.    I am sorry, it is 8 percent.

25           Senator Gramm.    Eight percent of real?

1 Mr. Vachon. Nominal. So substantially less real.

2 Senator Gramm. Mr. Chairman?

3 The Chairman. Yes. I would just like to ask one  
4 question. Under the federal pension plan, at what age  
5 can an employee retire, after how many years' service?

6 Mr. Vachon. Under the CRS system it was 55,  
7 actually.

8 The Chairman. Fifty-five, with 30 years' service.

9 Mr. Vachon. Yes.

10 Senator Gramm. Mr. Chairman?

11 The Chairman. I will recognize you, then I would  
12 like to proceed with the vote.

13 Senator Gramm. I just want to sum up.

14 Mr. Chairman, first of all, the \$15.6 billion budget  
15 scoring does not count the \$11 billion of debt service  
16 cost. So, I mean, we are not quite getting an accurate  
17 picture here. If they are for \$15 billion, I am for  
18 taking the \$15 billion hit and letting them set up the  
19 investment. I think that is a good idea.

20 The rate of return they are talking about, in my  
21 mind, I have never heard anybody use the real rate of  
22 return that is being implied here. The Social Security  
23 Administration does not use it.

24 Anybody who has worked on investment-based Social  
25 Security or something knows that the rate of return they

1 are talking about here is substantially higher than  
2 anybody has ever used in that debate.

3 But here is the point. In 1983, Social Security was  
4 going broke, Railroad Retirement was going broke, and we  
5 instituted a series of reforms. One of those reforms was  
6 ramping up the full benefit age for retirement under  
7 Social Security from 65 to 67; one of those reforms was  
8 ramping it up in Railroad Retirement from 60 to 62.

9 Now, what if I came here today and said, hey, we have  
10 got a big surplus. Everything is just great. Let us  
11 lower the retirement age for Social Security back to  
12 where it was in 1983. People would say, have you gone  
13 crazy? Have you forgotten the baby boom generation? I  
14 assume such a proposal would be defeated, and it should  
15 be. I would vote against it.

16 The point is, on the same day, in the same bill, we  
17 did the same thing on Railroad Retirement, but from 60 to  
18 62. Now, under circumstances that are exactly the same  
19 for both programs, we are continuing to raise retirement  
20 age for Social Security but we are rolling it back for  
21 Railroad Retirement.

22 Let me also say that these tax increases that are  
23 automatic if we do not get an 8 percent rate of return,  
24 they are capped. They are capped under the law. The  
25 benefits are the law of the land. They are going to be

1 paid out unless we pass a law. We are doing all this  
2 betting on the come. Nobody has ever made an investment,  
3 nobody has ever earned any rate of return, we are doing  
4 all that in advance.

5 All I am saying is, at the very moment that we are  
6 raising the retirement age for Social Security we should  
7 not be rolling it back for Railroad Retirement. It is  
8 totally unfair and illogical, and I think we dramatically  
9 strengthen the system and we protect its retirees if we  
10 do not do this. That is the basis of the amendment and I  
11 hope people will vote for it. I know it is hard, but it  
12 is the right thing to do.

13 The Chairman. I believe there is no further debate  
14 on this.

15 Senator Conrad. Mr. Chairman, might I just say one  
16 thing? That is, that I know the Senator from Texas keeps  
17 saying we have raised the retirement age. I do not think  
18 that is the message that should go out from here because  
19 we have not raised the retirement age. What has been  
20 done by a previous Congress is to raise the age at which  
21 you qualify for full benefits.

22 Senator Gramm. And that is what is being done here,  
23 it is being rolled back to 60. So my words may be wrong,  
24 but the principle is right.

25 Senator Conrad. I just think it is important that

1 that message get out. I do not think the Senator would  
2 want to be misconstrued. I know what he is intending to  
3 communicate, and that is exactly accurate, but I do not  
4 think we want to send the message out that people cannot  
5 retire at the age they retire at now.

6 The Chairman. Thirty seconds.

7 Senator Baucus. Thirty seconds. Yes.

8 I also think it is not a fair characterization to  
9 equate Social Security with Railroad Retirement. They  
10 are just totally separate systems, different  
11 demographics, different solvency, different ratios of  
12 employees paying in to those paying out, and also  
13 different rates of return.

14 I mean, these are not the same systems so it is not  
15 at all fair to focus in on the age difference, because  
16 they are separate systems. Social Security is going to  
17 be insolvent a lot sooner than the Railroad Retirement  
18 System, for example.

19 In addition to that, all the employees, in effect,  
20 have been consulted--this is something they want to do--  
21 through the unions. We have not done that to Social  
22 Security yet.

23 So I just want to point out, this is apples and  
24 oranges when you compare Social Security with Railroad  
25 Retirement, trying to make the point that the age

1 somehow, one, necessarily equates to the age of  
2 retirement--

3 Senator Gramm. They are different. One is 67, one  
4 is 62. I am just saying, do not go to 60.

5 The Chairman. Does the Senator want a roll call  
6 vote?

7 Senator Gramm. I do. Yes, sir.

8 The Chairman. The Clerk will call the roll.

9 Senator Breaux. Can we describe the actual  
10 amendment? We have talked about three different  
11 amendments.

12 Senator Gramm. The amendment would simply strike  
13 the provision that lowers the retirement age, the age at  
14 which you get full benefits, from 60 to 62. This would  
15 leave it at 62, but would change nothing else in the  
16 bill.

17 Senator Conrad. Mr. Chairman, might I just conclude  
18 by saying, I hope people will remember this is totally  
19 different than Social Security: the payroll tax being  
20 paid by employers and employees is 36 percent. It is 36  
21 percent.

22 Senator Gramm. It is going to be higher.

23 The Chairman. The Clerk will call the roll.

24 The Clerk. Mr. Grassley?

25 Senator Grassley. No.



1 The Clerk. Mr. Hatch?  
2 The Chairman. Mr. Hatch, no by proxy.  
3 The Clerk. Mr. Murkowski?  
4 The Chairman. Aye, by proxy.  
5 The Clerk. Mr. Nickles?  
6 Senator Nickles. Aye.  
7 The Clerk. Mr. Gramm, of Texas?  
8 Senator Gramm. Aye.  
9 The Clerk. Mr. Lott?  
10 The Chairman. Aye, by proxy.  
11 The Clerk. Mr. Jeffords?  
12 Senator Jeffords. No.  
13 The Clerk. Mr. Mack?  
14 Senator Mack. Aye.  
15 The Clerk. Mr. Thompson?  
16 Senator Thompson. No.  
17 The Clerk. Mr. Craig?  
18 Senator Craig. No.  
19 The Clerk. Mr. Moynihan?  
20 Senator Moynihan. No.  
21 The Clerk. Mr. Baucus?  
22 Senator Baucus. No.  
23 The Clerk. Mr. Rockefeller?  
24 Senator Rockefeller. No.  
25 The Clerk. Mr. Breaux?

1 Senator Breaux. Aye.

2 The Clerk. Mr. Conrad?

3 Senator Conrad. No.

4 The Clerk. Mr. Graham, of Florida?

5 Senator Graham. Aye.

6 The Clerk. Mr. Bryan?

7 Senator Bryan. No.

8 The Clerk. Mr. Kerrey?

9 Senator Moynihan. Mr. Kerrey votes present.

10 The Clerk. Mr. Robb?

11 Senator Robb. No.

12 The Clerk. Mr. Chairman?

13 The Chairman. No.

14 The Clerk. Mr. Chairman, we have 7 ayes, 11 nays.

15 The Chairman. The amendment is not agreed to.

16 Senator Grassley. Mr. Chairman, could I offer my  
17 amendment?

18 The Chairman. Senator Grassley,

19 Senator Grassley. I want to offer my amendment,  
20 which is to add to this bill the Work Opportunity Act of  
21 2000. This bill is co-sponsored by 77 members of the  
22 Senate. Of this committee, all the Democrats are co-  
23 sponsors; Senators Jeffords, Hatch, Murkowski, Thompson,  
24 and myself are Republican sponsors.

25 I am well aware of the fact that we are working on a

1 very important bill for a large segment of the economy of  
2 the United States, meaning the railroad industry and  
3 their very good workers.

4 The unions and the railroads are a very powerful  
5 voice in Washington, and they have every legitimate right  
6 to be a powerful voice in Washington. I would like to  
7 speak for a few minutes for the less powerful.

8 I would like to speak for families that have special  
9 kids with special health needs, and how Medicaid can help  
10 these children and these families the same way that we  
11 use the Work Incentive Act of 1999, which was sponsored  
12 by Senator Jeffords and which this committee approved  
13 last year, to make it possible for families to continue  
14 to work, stay in the workforce, and be taxpaying  
15 citizens.

16 I think it is wrong for families to have to  
17 impoverish themselves because families love their kids  
18 and want to take care of their kids' health needs. When  
19 families love their kids, they will do whatever is  
20 necessary to take care of their health needs, including  
21 impoverishing themselves if they have to do that to get  
22 the help that they need to do that.

23 So I see this bill as being very much pro-family,  
24 because sometimes these families have to put their kids  
25 up for adoption or put them in out-of-home placement to

1 qualify.

2 I consider it very pro-work, because when you do not  
3 make people impoverish themselves to qualify, then they  
4 continue to be taxpaying citizens, you keep the family  
5 together, and you keep our economy working the way it  
6 should. Too many families with talents find themselves  
7 in this situation.

8 It is very pro-opportunity, as well. Following on  
9 the Work Incentive Act of 1999, this is the second half  
10 of what we should have done last year to give everybody  
11 an opportunity to work. So when people are not  
12 impoverished, not only are the families helped, but our  
13 economy is helped.

14 It is pro-State's rights, for the simple reason that  
15 we have a State option, as we did in the Work Incentive  
16 Act. I had the pleasure, when I held a hearing on this  
17 before the Budget Committee, that Governor Huckabee, a  
18 very conservative Republican governor of Arkansas, came  
19 in and testified not only for himself but the National  
20 Governors Conference, that this was a very, very good  
21 program that would give us an opportunity to move  
22 forward.

23 So I see it as something that is very, very good and  
24 I would hope that a bill that has the support of 77  
25 members of the Congress, which is the Family Opportunity

1 Act, teamed up with a Railroad Retirement bill that has  
2 more than 75 members of the Senate signing on in support  
3 of moving the bill, and my being one of those, would be a  
4 very good combination to help people, a retirement system  
5 that is very good and to help families with special needs  
6 children.

7 So I want to add that to this bill to do this.  
8 Remember that it has a State option. So far, only seven  
9 States have bought in to the Work Incentive Act. So a  
10 judgment by some fiscal people that 50 percent of the  
11 States will buy into this in the first year is absolutely  
12 wrong.

13 So when anybody talks about the impact of this  
14 legislation budget-wise, do not bring up to me that 50  
15 percent of the States are going to buy in. But it is a  
16 State option.

17 Second, it has as part of it that the Medicaid buy-in  
18 would be based upon the ability to pay so that people  
19 that have incomes where they can pay premiums would pay  
20 the premium, and it is meant to be a supplement to  
21 private insurance because obviously any families that  
22 could keep their private insurance would keep their  
23 private insurance because they need that for the rest of  
24 their family, kids as well. So this would be a  
25 supplement to the private health insurance.

1 I will stop there, Mr. Chairman, and respond to  
2 questions or whatever I can do to help this process  
3 along.

4 Senator Breaux. Mr. Chairman?

5 The Chairman. Senator Breaux?

6 Senator Breaux. Mr. Chairman, I am in support of  
7 the effort by Senator Grassley. I mean, what we are  
8 dealing with is a situation that there is almost  
9 unanimity in support of this concept.

10 We are basically simply saying that parents with  
11 severely disabled children who want to go to work should  
12 be encouraged to go to work. There are a large number of  
13 people in the country today who have severely disabled  
14 children and if they go to work they lose Medicaid, or if  
15 they accept a raise or a promotion they lose their  
16 Medicaid insurance for their severely disabled children.

17 So what Senator Grassley is saying, is that is not  
18 what this country should be all about, that we should be  
19 encouraging work and we should be encouraging people to  
20 do better financially.

21 But when they are in that category where, to take the  
22 job or take the raise would eliminate the health  
23 insurance for a severely disabled child, that we ought to  
24 take some action in that regard by allowing them to  
25 continue to stay in the State Medicaid program, to buy-in

1 in that insurance package.

2 I do not think there is a lot of disagreement with  
3 that concept. The argument here today is that this is a  
4 railroad bill and this does not fit. Well, tell that to  
5 a parent back home that we did not take care of the  
6 situation because, technically, it did not fit. They are  
7 not going to like that response very well.

8 The point I make, is that while it is a railroad  
9 bill, it is probably the last train out of the station.

10 Senator Gramm. It is already heavily loaded.

11 Senator Breaux. So I am saying, very pragmatically  
12 and very practically, that it is being offered here  
13 because there is not going to be another vehicle. So, we  
14 all support the concept, practically, and we are going to  
15 defeat this on a technicality? That is not good politics  
16 and it is not good public policy. We should accept this.

17 Senator Craig. Mr. Chairman?

18 The Chairman. Senator Craig?

19 Senator Craig. Mr. Chairman, I was willing to vote  
20 against the last amendment because we are looking at a  
21 new concept and new program in Railroad Retirement. I  
22 plan to be around here a few more years. I may have to  
23 eat those words or vote differently in the future to  
24 secure that.

25 I also believe that, in working with Senator

1 Grassley, I have got a little bit of credibility in this  
2 area. We have worked very closely together over the last  
3 few years to reform the foster care program, and I have  
4 worked closely with him with children who are in real  
5 need.

6 In doing that, what you are suggesting here today is  
7 a substantial adjustment, \$3.9 billion over 5 years, or  
8 \$11.3 billion over 10 years, in Medicare. At a time  
9 certainly when the Senator from Louisiana has led on  
10 reform, this is something you deal with inside a reform  
11 package, you do not tag it onto.

12 Senator Breaux. This is not in Medicare, this is  
13 Medicaid.

14 Senator Craig. I understand. I understand that.  
15 But I am talking about concepts of reform to meet needs.  
16 It is a budget hit, a very large budget hit. I am not  
17 going to suggest that this ought to be a test of whether  
18 you are for or against kids with needs. Wrong time,  
19 wrong place. We are all that way.

20 I have stood in front of those mothers in my State, I  
21 have worked with them, and I will continue to work with  
22 them. I am not suggesting we ought not reform Medicare  
23 to meet needs, or reform Medicaid to meet the necessary  
24 needs. But I do not think we can do it here. I do not  
25 think we should be doing it here. I think it adds a



1 whole new dimension to this legislation.

2 I am going to have to oppose my colleague. At a time  
3 when we are trying to sort out our very real budget needs  
4 and establish priorities, this is one that establishes a  
5 substantially important one, but not in the context of  
6 overall reform, as I think we have to look at.

7 The Chairman. Senator Nickles?

8 Senator Nickles. Mr. Chairman, I would just like to  
9 ask staff, I heard some conflicting statements on how  
10 much this would cost, and also on who would be eligible.  
11 I have one note I think I received on the amendment that  
12 said the cost was \$500 million over 5 years; somebody  
13 else handed me a note and said CBO scores it at \$11  
14 billion over 10.

15 Mr. Vachon. That is correct.

16 Senator Nickles. The \$11 billion over 10 years, is  
17 that a correct or accurate score?

18 Mr. Vachon. The staff person handling this is here.

19 Senator Nickles. All right. If she could give us  
20 an answer, that would be great.

21 Ms. Baxendell. Yes. The accurate CBO score is \$11  
22 billion over 10 years, \$3.9 billion over 5.

23 Senator Nickles. \$3.9 billion over 5. Then also,  
24 as far as income eligibility, this increases the number  
25 of people who would be eligible to continue receiving

1 Medicaid.

2 And I want to compliment my colleague from Iowa  
3 because I have great respect for him and know he is  
4 working and trying to help families that have kids that  
5 have significant disabilities, so I do not disagree with  
6 the goal, but I am concerned about the cost.

7 This expands eligibility. How much money could a  
8 family of three make and still be eligible to receive  
9 Medicaid?

10 Ms. Baxendell. A family could still receive  
11 subsidized coverage under Medicaid up to 600 percent of  
12 poverty, 600 percent and above it would have to be fully  
13 funded by the family. At 100 percent of poverty for a  
14 typical family of three, the average Medicaid family, is  
15 \$14,000 a year, so 600 percent of that would be roughly  
16 \$8,400 a year for a family of three, sir.

17 Senator Nickles. I think that is going too far. I  
18 think that is too expensive. All right.

19 Senator Grassley. Well, how would the Senator from  
20 Oklahoma feel if we went the same direction we went last  
21 year to satisfy him on the Work Incentive Act of a cap of  
22 \$7,500; as long as it is the same we agreed with you last  
23 year, would that be satisfactory for this year? If that  
24 is satisfactory with you, I will change it.

25 Senator Gramm. It is sure better than the one you

1. have got now.

2. Senator Nickles. Well, I am not sure. I am not  
3. trying to take issue with my colleague, I am just  
4. concerned about cost. If you see something in front of  
5. you that says it costs \$500 million and you get----

6. Senator Grassley. Would you let me speak about cost  
7. a minute?

8. Senator Nickles. Sure.

9. Senator Grassley. Because I think there is  
10. something bigger here that we, as members of the Senate,  
11. need to be concerned about other than just the figures we  
12. are dealing with. There is a certain point of  
13. intellectual honesty or intellectual operation of the  
14. people that are involved in figuring these out.

15. I was told for six months by CBO, going back to the  
16. spring, that they would never have time this year to cost  
17. this out. Then it just happens that, as of Monday this  
18. week, this bill was all set to be included in the  
19. Commerce Committee of the House of Representatives'  
20. reconciliation package.

21. All of a sudden, a half hour before that was done, we  
22. got a figure from CBO of these costs. We asked to sit  
23. down and discuss it with them, they did not have time to  
24. discuss it.

25. I called Dr. Crippen up yesterday and said, how

1 intellectually honest are your estimates if you do not  
2 want to sit down and talk about them and defend them?  
3 He got us together with the people to talk about it. At  
4 the end of the discussion, they said, forget about us  
5 figuring this before the mark-ups are over.

6 Now, are we guesstimating what things cost in the  
7 Congress to kill a bill or are we intellectually honest  
8 as we approach the guesstimates of what things are going  
9 to cost? That is what is wrong with this process.

10 As far as the bill is concerned, we will sit down  
11 with them and work out the differences and work through  
12 it, but we will end up the same place we did that you did  
13 when you were involved in the process on the Work  
14 Incentive Act: when we started out with CBO two years ago  
15 it was \$48 billion, when we finally passed the bill it  
16 was a \$1 billion figure for 5 years.

17 Senator Gramm. Mr. Chairman?

18 The Chairman. Senator Gramm?

19 Senator Gramm. Mr. Chairman, first of all, the  
20 budget provides \$150 million for this, so you are going  
21 to have a lot of figuring to do to ever get down to that  
22 budget figure. Second, the idea that the CBO would  
23 suddenly come up with a number when you are getting ready  
24 to make it law, does not shock me. Finally, the fact  
25 that it costs a heck of a lot of money when you are

1 giving it to people that make \$8,400 a year should hardly  
2 come as a shock either.

3 Now, it seems to me that what we are doing here, is  
4 we have let this surplus burn a hole in our pocket and  
5 cut out the lights in our minds. What in the world are  
6 we doing talking about a brand-new program for \$11.3  
7 billion, providing subsidies to people making \$8,400 a  
8 year? Now, I know the political jingoism of, we are  
9 helping children, sick children. But \$8,400 a year? I  
10 understand.

11 My views are hopelessly out of fashion in a Congress  
12 that just can spend any amount on anything. I have never  
13 witnessed anything like it, ever. But I think this is  
14 just completely out of bounds and is a crazy idea, unless  
15 you just want the government to take over and run and  
16 fund the entire health care system. So I am adamantly  
17 opposed to this, Mr. Chairman.

18 Senator Moynihan. We have a vote, Mr. Chairman.

19 Senator Gramm. \$11.3 billion in adding new benefits  
20 for rich people? I do not get it.

21 The Chairman. Senator Jeffords.

22 Senator Jeffords. I do not want to pick on CBO, but  
23 I just go back to the situation where we are talking  
24 about a family who has a child who is disabled, and they  
25 are faced with options. One option, is to give the child

1 up, to go to a State home or another family to live with,  
2 or whatever. The costs of that, are those considered by  
3 CBO? I doubt it.

4 Then you are faced with a situation where they can  
5 quit their job in order to be eligible. Is the impact of  
6 that increase in cost considered when they figure these  
7 things? No, they are not.

8 So CBO comes up with these figures, I do not know  
9 how, but all I know is that I do not want to have a  
10 situation where we force people to either go into poverty  
11 to be able to have their child taken care of or to be  
12 able to take care of that child themselves.

13 I cannot believe their figures are accurate; I do not  
14 think they ever take into consideration all of these  
15 costs. But I think that this is a humane situation that  
16 I cannot perceive that we should fail to take care of.

17 Senator Moynihan. I think we will, first, go to the  
18 Senator from North Dakota, then to you, sir.

19 Senator Conrad. It is interesting, the priorities  
20 around here. Not too long ago, there was a lot of  
21 passion about eliminating the estate tax, and it seemed  
22 we had tens of billions of dollars to do that, a scheme  
23 that goes right to the very wealthiest people for the  
24 next 10 years--there is not a single estate they  
25 eliminated from taxation in the first 10 years--and they

1 just cut the rates on the wealthiest estates, first. I  
2 did not hear any crocodile tears about that, \$105 billion  
3 in that proposal, 10 times what this one is, and this is  
4 to take care of sick kids.

5 I will tell you, go out there and meet with the  
6 mothers of these children and meet with the parents who  
7 have got something that, for the grace of God, any one of  
8 us could have happen. You think about the trials,  
9 tribulations, and the difficulties of those families.

10 People have got tens of billions of dollars to  
11 eliminate their estate tax and it costs \$105 billion, but  
12 we cannot take care of sick kids here for \$11 billion? I  
13 think that is a question of priorities. That is a  
14 question of family values.

15 The Chairman. Are there any further comments?

16 Senator Grassley. I will just say a couple of  
17 concluding things. First of all, for my friend from  
18 Texas, you have to assume that families are not going to  
19 take care of the health needs of their kids and they do  
20 not love them, and that they will not impoverish  
21 themselves to get the same benefit that this legislation  
22 would let them get if they kept on working.

23 It does not take into consideration what you said,  
24 that there is a lot of people on SSI today, costing the  
25 Treasury \$250 million that will be saved that is not even

1     costed, and I guess under the rules cannot be costed, by  
2     CBO.

3             Also, some of the principles that we used in welfare  
4     reform, and we Republicans brag about our welfare reform,  
5     and I think legitimately so, but that was to get people  
6     out of a condition of where there wasn't any incentive to  
7     work. Here we have got people that are working. We  
8     ought to keep them off of SSI and keep them working.

9             Then the other thing, is the cost. When we get CBO,  
10     and they ought to be forced to sit down and talk to us  
11     and talk this through if they are intellectually honest,  
12     we will get this cost down the same way we got the costs  
13     of \$48 billion down to \$1 billion for the 1998 Act.

14             We will also show the faceless bureaucrats that they  
15     are not going to be the decision makers, we in the U.S.  
16     Senate are going to decide.

17             Senator Murkowski. May I ask a question? This is  
18     about 600 percent of poverty, is that right?

19             Senator Grassley. Yes. We are going to reduce that  
20     to 450 percent of poverty, or \$7,500, to satisfy Senator  
21     Nickles from Oklahoma, because that is exactly what we  
22     did on the Work Incentive Act last year.

23             Senator Murkowski. Well, how do we come up with just  
24     an arbitrary 600 percent of poverty as opposed to 400  
25     percent? I mean, there is a judgment call here somewhere



1 based on some structural average.

2 Senator Grassley. Yes. Your question is very  
3 legitimate. It is based upon the costs that we have for  
4 specific families that have been studied for kids with  
5 special health care needs. We are talking about very  
6 costly health care. Very costly health care.

7 Senator Breaux. Would the Senator from Alaska yield  
8 also?

9 Senator Murkowski. Sure.

10 Senator Breaux. I think we ought to bear in mind  
11 that it is also a match program, with the State Medicaid  
12 offices making a contribution. Their ability to  
13 contribute is going to determine how much they get, which  
14 will determine the level which it will go up to.

15 Senator Grassley. Yes.

16 Senator Breaux. My State of Louisiana could come  
17 nowhere near \$8,400. If they could get it up to 30 with  
18 their match, they would be very lucky. So the level is  
19 going to be actually determined by the ability of the  
20 State to put up their share of the cost of this program.  
21 In most States, it will not come close to \$8,400 because  
22 the money will not be there.

23 Senator Murkowski. Then the implication is that  
24 poorer States are going to have a difficult time  
25 participating, but the rich States will not.

1           Senator Grassley.   The governor of Arkansas spoke in  
2 favor of this at our hearing.

3           The Chairman.    I would like to proceed to a vote, if  
4 we could.

5           Senator Murkowski.  Well, what assurance do we have  
6 that you can get this cost down?

7           Senator Grassley.  I have committed myself to the  
8 fact that we will get this cost down if we can get it,  
9 and my satisfaction in doing that is based upon the  
10 process we went through with the Work Incentive Act of  
11 1999.  It cost us \$48 billion in the first estimate, and  
12 by the time we passed it it was \$1 billion for 5 years.

13          The Chairman.    I think we have debated this long  
14 enough.

15          Let me start out by saying, I am very sympathetic as  
16 to what my distinguished colleague from Iowa is seeking  
17 to do.  I was one of the four who played a key role in  
18 getting the legislation enacted called Ticket to Work.  
19 Senator Jeffords and I, with Senator Kennedy and one  
20 other, worked very hard to get that legislation.  This is  
21 a logical follow-on.

22          But, unfortunately, I think the legislation needs  
23 further work to be effective and I would hope that we  
24 could postpone this from today, because I assure my good  
25 friend from Iowa that I intend to work in good faith on

1 developing sound legislation in the future.

2 But I have to point out, as Chairman, that we are  
3 dealing with a railroad pension program and this  
4 legislation deals with health, so it is not germane and  
5 the Chair, regretfully, has to rule it out of order.

6 Senator Grassley. I would appeal the ruling of the  
7 Chair. I move to waive the ruling of the Chair.

8 The Chairman. We ask the for yeas and nays. The  
9 Clerk will call the roll.

10 The Clerk. Mr. Grassley?

11 Senator Grassley. Aye.

12 The Clerk. Mr. Hatch?

13 The Chairman. No proxies allowed.

14 The Clerk. Mr. Murkowski?

15 Senator Murkowski. No.

16 The Clerk. Mr. Nickles?

17 Senator Nickles. No.

18 The Clerk. Mr. Gramm, of Texas?

19 Senator Gramm. No.

20 The Clerk. Mr. Lott?

21 [No response]

22 The Clerk. Mr. Jeffords?

23 Senator Jeffords. Aye.

24 The Clerk. Mr. Mack?

25 Senator Mack. No.

1           The Clerk.    Mr. Thompson?  
2           Senator Thompson.   No.  
3           The Clerk.    Mr. Craig?  
4           Senator Craig.    No.  
5           The Clerk.    Mr. Moynihan?  
6           Senator Moynihan.   No.  
7           The Clerk.    Mr. Baucus?  
8           Senator Baucus.    No.  
9           The Clerk.    Mr. Rockefeller?  
10          Senator Rockefeller.   No.  
11          The Clerk.    Mr. Breaux?  
12          Senator Breaux.    Aye  
13          The Clerk.    Mr. Conrad?  
14          Senator Conrad.    Aye.  
15          The Clerk.    Mr. Graham, of Florida?  
16          Senator Graham.    Aye.  
17          The Clerk.    Mr. Bryan?  
18          Senator Bryan.    Aye.  
19          The Clerk.    Mr. Kerrey?  
20          [No response]  
21          The Clerk.    Mr. Robb?  
22          Senator Robb.    Aye.  
23          The Clerk.    Mr. Chairman?  
24          The Chairman.    No.  
25          The Clerk.    Mr. Chairman, there are 7 ayes, 10 nays.

1           The Chairman.   Two-thirds of those present are  
2 needed to waive the ruling.  The ruling stands.

3           Senator Gramm.   Mr. Chairman?

4           The Chairman.   Yes.  The Senator from Texas.

5           Senator Gramm.   Mr. Chairman, I want to call up  
6 Amendment Number 16, Gramm Amendment 1.  I will be very  
7 brief, because I know people want to go to lunch.

8           This is a very simple amendment.  It says, take the  
9 \$15 billion out of the Treasury, invest it, earn a rate  
10 of return and use that rate of return to pay benefits and  
11 to benefit the workers, and to provide relief for their  
12 employers as we earn a rate of return.

13           The bill lowers the taxes paid by the railroads and  
14 by the railroad workers before any investment is ever  
15 made, before any rate of return is ever earned, and all  
16 this amendment simply does is make it prospective so that  
17 we set up a certification system so that, as the  
18 investments are made and as returns are earned, then and  
19 only then do we lower taxes paid by the railroad, then  
20 and only then do we lower taxes paid by the workers, so  
21 that we are sure each year that we are on a solid footing  
22 before we reduce taxes on the railroad and reduce taxes  
23 on the workers.

24           This does not change anything in terms of the program  
25 except for saying you do not reduce taxes until you have

1 heard something that will replace that money. I think it  
2 is a safe and sound amendment and I hope my colleagues  
3 will adopt it.

4 The Chairman. Would you summarize the amendment for  
5 the committee?

6 Senator Gramm. Basically, under the bill as it is  
7 now written, we take the \$15 billion and we invest it,  
8 and based on what we expect in an 8 percent rate of  
9 return, we go ahead and lower taxes on the railroads and  
10 on the workers.

11 What this would do is take the money, invest it, and  
12 then each year, based on what we have earned, then we  
13 lower the taxes by that amount. That way we do better,  
14 they get more relief. If we do not do so well they do  
15 not get as much, but we do not start spending the rate of  
16 return and lowering taxes until we have actually gotten  
17 it. I think it is a reasonable proposal. It improves  
18 the whole bill, in my opinion.

19 The Chairman. Are there any comments?

20 Senator Baucus. Mr. Chairman?

21 The Chairman. The Senator from Montana.

22 Senator Baucus. Mr. Chairman, no other private  
23 pension fund operates like this. Really, it is very  
24 unfair to beneficiaries. Take a 59-year-old. He would  
25 not know whether he could retire at age 60, 62, or

1 whatnot, and could not plan. It is a switch that could  
2 go on and off and retirees, widows, would not know what  
3 their benefits would be, retirees would not know what  
4 year they could retire. It is just playing havoc with  
5 people's lives.

6 Senator Gramm. Well, they would never be less than  
7 what they are now. All we would do is give the bonus  
8 based on what we earned, and we would know in advance.  
9 The problem is, we get a big IOU since we have set in law  
10 what these things are, and we are going to have people  
11 running up here next year, if they do not earn 8 percent,  
12 demanding we fill up this hole. I am just saying, do not  
13 pay it out until you have earned it, but pay it out when  
14 you do earn it.

15 Senator Baucus. No other plan operates that way. I  
16 just do not think it would work.

17 The Chairman. Senator Moynihan?

18 Senator Moynihan. May I just note that there are  
19 several matters we have had before us. You have brought  
20 before us the exact wording of the House bill. If we  
21 pass it without amendment, it goes to the President and  
22 will become law. If not, I do not know what happens.

23 The Chairman. If there is no further comment, do  
24 you want a roll call vote?

25 Senator Gramm. Well, if we pass it by a voice vote,

1 I would take it. [Laughter].  
2 The Chairman. You want a roll call vote.  
3 [Laughter]. The Clerk will call the roll.  
4 The Clerk. Mr. Grassley?  
5 Senator Grassley. No.  
6 The Clerk. Mr. Hatch?  
7 The Chairman. No, by proxy.  
8 The Clerk. Mr. Murkowski?  
9 Senator Murkowski. Aye.  
10 The Clerk. Mr. Nickles?  
11 Senator Nickles. Aye.  
12 The Clerk. Mr. Gramm, of Texas?  
13 Senator Gramm. Aye.  
14 The Clerk. Mr. Lott?  
15 The Chairman. No, by proxy.  
16 The Clerk. Mr. Jeffords?  
17 The Chairman. No, by proxy.  
18 The Clerk. Mr. Mack?  
19 Senator Mack. Aye.  
20 The Clerk. Mr. Thompson?  
21 The Chairman. No, by proxy.  
22 The Clerk. Mr. Craig?  
23 Senator Craig. No.  
24 The Clerk. Mr. Moynihan?  
25 Senator Moynihan. No.



1 The Clerk. Mr. Baucus?  
2 Senator Baucus. No.  
3 The Clerk. Mr. Rockefeller?  
4 Senator Rockefeller. No.  
5 The Clerk. Mr. Breaux?  
6 Senator Breaux. No.  
7 The Clerk. Mr. Conrad?  
8 Senator Conrad. No.  
9 The Clerk. Mr. Graham, of Florida?  
10 Senator Moynihan. No.  
11 The Clerk. Mr. Bryan?  
12 Senator Bryan. No.  
13 The Clerk. Mr. Kerrey?  
14 Senator Moynihan. Mr. Kerrey, once again, votes  
15 present, by proxy. [Laughter].  
16 The Clerk. Mr. Robb?  
17 Senator Robb. No.  
18 The Clerk. Mr. Chairman?  
19 The Chairman. No.  
20 The Clerk. Mr. Chairman, there are 4 ayes, 15 nays.  
21 The Chairman. The amendment is not agreed to.  
22 Senator Nickles. Mr. Chairman?  
23 The Chairman. Yes, the Senator from Oklahoma.  
24 Senator Nickles. Mr. Chairman, I have a couple of  
25 amendments. This amendment is in your stack of

1 amendments, my Number 7 amendment. It basically says we  
2 should repeal Tier 1 taxes and benefits. Tier 1 are  
3 supposed to be the equivalent of Social Security.

4 I heard my friend and colleague Senator Conrad say,  
5 well, wait a minute, we are basically doing Senator  
6 Gramm's amendment, and this is different from Social  
7 Security.

8 But basically, from everything I have heard people  
9 say, Tier 1 is supposed to be equivalent to Social  
10 Security. But it is not, because in Social Security you  
11 cannot receive benefits at age 60. In Social Security,  
12 the survivor benefit is not 100 percent.

13 So people do not misunderstand me, I want the  
14 railroads and the unions to be able to negotiate whatever  
15 benefits they want, period. I want them to have a  
16 private sector system.

17 They do not have that right now. So what this  
18 amendment would do would be to repeal Tier 1 and  
19 basically have the railroad companies and their employees  
20 pay Social Security taxes and receive Social Security  
21 benefits.

22 Too many people have been saying, well, wait a  
23 minute, Tier 1 is the same thing as Social Security, and  
24 I do not think it is because I do not know that survivor  
25 benefits are 100 percent in Social Security, and

1 certainly you cannot receive full retirement at age 60 in  
2 Social Security.

3 So let us separate Tier 1. Let us eliminate Tier 1  
4 and have Social Security benefits, have all railroad  
5 employees for the railroads receive Social Security just  
6 like every other American, then they can have whatever  
7 benefits they want in Tier 2 that should be paid for by  
8 the companies and by the employees.

9 So my first amendment, Mr. Chairman, would just be to  
10 repeal Tier 1 taxes and benefits and replace that with  
11 Social Security.

12 The Chairman. Any comments on the amendment?

13 Senator Baucus. Mr. Chairman?

14 The Chairman. The Senator from Montana.

15 Senator Baucus. Mr. Chairman, I wonder if Mr.  
16 Vachon could explain the effect of this amendment, and  
17 explain the degree to which it would increase in  
18 complexity for a retiree.

19 Mr. Vachon. Well, apparently this amendment would  
20 abolish the Railroad Retirement System and create a whole  
21 new system. In that system, I gather, rail employees  
22 would join Social Security and then the rail industry  
23 would create a new pension plan, a private pension plan.

24 Senator Nickles. That would be the Tier 2.

25 Mr. Vachon. So, in effect, it would abolish the

1 current system.

2 Senator Nickles. Well, it would abolish Tier 1.  
3 There would still be Tier 2, which would be just like  
4 every other pension system in America, in addition to  
5 Social Security. So what this amendment would do, it  
6 would eliminate Tier 1 and replace it with Social  
7 Security.

8 Senator Conrad made a point. He said, well, we are  
9 not dealing with Social Security. But, in effect, we are  
10 because Tier 1 is set up, Mr. Chairman, with identical  
11 taxes and supposedly identical benefits to Social  
12 Security.

13 But it is not identical benefits, as just evidenced  
14 by the changes that this committee is trying to make. So  
15 I am saying, let the companies and the unions negotiate  
16 their Tier 2s and let them be liable for it.

17 That is my next amendment, is that the company and  
18 the employees will be liable for their Tier 2 benefits.  
19 But to make a change increasing retirement benefits to  
20 100 percent at age 60, which is not available in almost  
21 any other pension plan in America, is not available for  
22 Social Security recipients, Tier 1 is the equivalent of  
23 Social Security.

24 But we did not do that for Social Security, so my  
25 point is, let us just do this. I have heard people say,

1 let us move the Railroad Retirement System toward the  
2 private sector. That is exactly what I want to do. This  
3 government involvement, having this committee writing  
4 benefits, expanding benefits and cutting taxes, is not  
5 fiscally sound.

6 So my point is, let us move it closer to a private  
7 sector system. All private sector systems that I am  
8 aware of have a Social Security benefit paid for separate  
9 from their pension plans, and they have a pension plan.  
10 So I say, let us replace Tier 1 with Social Security.  
11 That is this amendment.

12 The Chairman. I consulted with the Ranking Member.  
13 We are losing our quorum that is necessary to report out  
14 the legislation. I would like to report it out, subject  
15 to any amendments adopted. Those in favor, signify by  
16 saying aye.

17 [A chorus of ayes]

18 The Chairman. Opposed, nay.

19 Senator Nickles. No.

20 Senator Gramm. Are we voting on final passage?

21 The Chairman. Subject to amendment, yes.

22 The ayes have it. The legislation is reported  
23 favorably.

24 Senator Moynihan. The ayes do have it.

25 The Chairman. It will be reported with any

1 amendments that are adopted.

2 Senator Gramm. Well, I am not here. I vote "not  
3 here." [Laughter].

4 The Chairman. I would ask that the staff may make  
5 technical corrections.

6 Senator Moynihan. Of course.

7 The Chairman. Now we turn to your amendment,

8 Senator Nickles. Are you ready for a vote?

9 Senator Nickles. I am, Mr. Chairman. The essence  
10 of this amendment is to replace Tier 1, which we have  
11 always heard is the equivalent to Social Security, just  
12 replace it with Social Security, move it towards the  
13 private sector.

14 Everybody else in America has Social Security and I  
15 think it would help, frankly, to restore some of the  
16 sensibility of this plan and make it easier so the  
17 companies and the employees can come up with a more  
18 rational Tier 2. But I think it would be smart to  
19 replace Tier 1 with Social Security.

20 The Chairman. Is a voice vote adequate?

21 Senator Nickles. Yes, that would be all right.

22 The Chairman. Those in favor of the Nickles  
23 amendment, signify by saying aye.

24 [A chorus of ayes]

25 The Chairman. Those opposed, nay.

1 [A chorus of nays]

2 The Chairman. The nays have it. The amendment is  
3 not agreed to.

4 Senator Nickles?

5 Senator Nickles. Mr. Chairman, I have another  
6 amendment. This kind of goes to the heart of what one of  
7 our colleagues was raising, what happens if these  
8 benefits are not there? I said, the government is  
9 liable.

10 This amendment basically says, upon adoption of the  
11 bill, Railroad Retirement beneficiaries are no longer  
12 entitled to benefits, but shall get benefits only to the  
13 extent that funds exist in the Railroad Retirement  
14 Investment Trust, and that the Railroad Retirement  
15 Investment Trust shall pay all benefits directly to  
16 beneficiaries.

17 In other words, these benefits will not be a federal  
18 entitlement, they will be paid for only and solely out of  
19 the Retirement Investment Trust fund, so the taxpayers  
20 will not be liable to pay these benefits. I would hope  
21 you would agree to the amendment.

22 The Chairman. Any comment on the amendment?

23 [No response]

24 The Chairman. If not, would a voice vote be  
25 adequate?

1           Senator Nickles. I would like a roll call. This is  
2 a good amendment. I think, for everybody that says they  
3 want to move towards privatization, this is saying, hey,  
4 the Federal Government is not going to be writing the  
5 checks.

6           I might mention, Mr. Chairman, under this bill that  
7 we have, if the investment funds do we well there is a  
8 very significant tax cut for the companies and a very  
9 significant tax cut for the employees.

10          As a matter of fact, the employees' tax liability  
11 goes to zero if they invest very well. Well, wait a  
12 minute. What about the government's liability? There  
13 are \$40 billion of unfunded, vested liability already.

14          I do not think the Federal Government should be, oh,  
15 we are cutting the taxes for the employers and the  
16 employees, but if for some reason we screw up, the  
17 government is still liable, at the same time, we are  
18 cutting taxes for both the company and for the employees.

19          This would just say, no, the benefits are going to  
20 come out of this trust fund. Just like every other  
21 pension fund in America, those funds have to come out of  
22 the trust fund, they do not come from the taxpayer. This  
23 is just to guarantee that they would not be coming  
24 directly out of the taxpayers.

25          The Chairman. The yeas and nays have been requested



1 on the Nickles amendment. The Clerk will call the roll.  
2 The Clerk. Mr. Grassley?  
3 Senator Grassley. No.  
4 The Clerk. Mr. Hatch?  
5 The Chairman. No, by proxy.  
6 The Clerk. Mr. Murkowski?  
7 The Chairman. Aye, by proxy.  
8 The Clerk. Mr. Nickles?  
9 Senator Nickles. Aye.  
10 The Clerk. Mr. Gramm, of Texas?  
11 Senator Gramm. Aye.  
12 The Clerk. Mr. Lott?  
13 The Chairman. No, by proxy.  
14 The Clerk. Mr. Jeffords?  
15 The Chairman. No, by proxy.  
16 The Clerk. Mr. Mack?  
17 The Chairman. Aye, by proxy.  
18 The Clerk. Mr. Thompson?  
19 The Chairman. Aye, by proxy.  
20 The Clerk. Mr. Craig?  
21 Senator Craig. No.  
22 The Clerk. Mr. Moynihan?  
23 Senator Moynihan. No.  
24 The Clerk. Mr. Baucus?  
25 Senator Baucus. No.

1 The Clerk. Mr. Rockefeller?

2 Senator Rockefeller. No.

3 The Clerk. Mr. Breaux?

4 Senator Breaux. No.

5 The Clerk. Mr. Conrad?

6 Senator Moynihan. No, by proxy.

7 The Clerk. Mr. Graham, of Florida?

8 Senator Moynihan. No, by proxy.

9 The Clerk. Mr. Bryan?

10 Senator Bryan. No.

11 The Clerk. Mr. Kerrey?

12 Senator Moynihan. Once again, present by proxy.

13 [Laughter].

14 The Clerk. Mr. Robb?

15 Senator Robb. No.

16 The Clerk. Mr. Chairman?

17 The Chairman. No.

18 The Clerk. Mr. Chairman, there are 5 ayes, 13 nays.

19 The Chairman. The amendment is not agreed to.

20 We would recognize the Senator from Oklahoma.

21 Senator Nickles. Mr. Chairman, I might ask the

22 staff, at what date is the \$15 billion transfer

23 effective?

24 Mr. Vachon. The next fiscal year, sir.

25 Senator Nickles. In fiscal year 2001?

1 Mr. Vachon. Yes.

2 Senator Nickles. Now, let me just ask a question.  
3 If it is effective 2001, many of us in Congress have  
4 stated that we want to have deficit reduction, we wanted  
5 90 percent of the surplus to be used for deficit  
6 reduction. This \$15 billion, is that scored to come out  
7 of the surplus?

8 Mr. Vachon. Under the current convention, yes, sir.

9 Senator Nickles. So it would be. So if the  
10 calculations were correct and we had a surplus that 90  
11 percent goes to deficit reduction, that would leave about  
12 \$28 billion of surplus to be available for tax cuts  
13 and/or other outlays.

14 This would qualify in that "Other Outlays" category,  
15 is that correct? So this \$15 billion out of the \$28  
16 billion that we have remaining to decide on in the  
17 balance between tax cuts and spending, this is \$15  
18 billion in outlays that will go on the spending side, is  
19 that correct?

20 Mr. Vachon. You mean, the \$28 billion of the \$76  
21 billion total surplus?

22 Senator Nickles. Yes. We have \$28 billion left to  
23 spend or cut taxes, under most scoring. It could be \$28  
24 billion or \$29 billion. This \$15 billion in outlays  
25 would be scored as an outlay for next fiscal year, so

1 from the available pot of money that we use for Medicare  
2 adjustments that this committee is going to be working on  
3 next week--and Mr. Chairman, we need to get that  
4 completed by Tuesday of next week, I might inform my  
5 colleagues--Medicare adjustments, changes in  
6 appropriation bills, and tax cuts all have to come within  
7 that \$28 billion. If this bill goes forward and is  
8 passed with this effective date, \$15 billion would come  
9 out of the surplus for next year?

10 Mr. Vachon. Yes.

11 Senator Nickles. Thank you.

12 Mr. Chairman, I have an amendment to move that \$15  
13 billion transfer to the year 2002.

14 The Chairman. Please proceed.

15 Senator Nickles. If you want to just accept it. I  
16 do not think it is consistent with those of us, in a  
17 bipartisan way, that said we want to use the majority of  
18 the surplus to pay down the debt.

19 This is taking \$15 billion away from that and I do  
20 not think that makes it possible for us to complete other  
21 things that we want to do, including Medicare adjustments  
22 and other spending and tax adjustments for the remainder  
23 of the year.

24 The Chairman. I would say to my distinguished  
25 colleague that I would be willing to accept this

1 amendment.

2 Senator Moynihan. Mr. Chairman, this means that we  
3 will not have an unnecessary obstacle when we get to  
4 Medicare adjustments.

5 Senator Gramm. Mr. Chairman, I will be brief.

6 Mr. Chairman, before we start feeling self-righteous  
7 about this, we spent the \$15 billion. We are just  
8 putting it off until the next fiscal year. So it is true  
9 that by moving it we get to keep this fig leaf of the \$28  
10 billion, but the truth is we have spent half of it here  
11 today. I am happy with you accepting the amendment.

12 The Chairman. I want to clarify, we are talking  
13 about moving the investment dates to 2002, not all dates.

14 Senator Moynihan. Yes, the investment dates.

15 Senator Bryan. Mr. Chairman, I have an amendment.

16 Senator Nickles. Wait a minute. We have not quite  
17 disposed of this one yet. I think there is some  
18 discussion.

19 The way I verbally presented it, was postponing the  
20 \$15 billion transfer for one year, and the Chairman is  
21 correct in asking me, are we also talking about delaying  
22 the benefits, increases, and delaying the tax cuts also  
23 for one year. I think you should delay all at the same  
24 time. Frankly, if you do not, you are cutting taxes,  
25 increasing benefits, and you already have an insolvent

1 fund.

2 The Chairman. Well, then I think the amendment  
3 cannot be accepted.

4 Senator Nickles. I was afraid you were going to say  
5 that.

6 Senator Gramm. Mr. Chairman?

7 Senator Craig. Mr. Chairman?

8 The Chairman. Senator Craig?

9 Senator Craig. Mr. Chairman, we have a 75-year  
10 extended life under the current. I agree with what  
11 Senator Nickles is trying to do. We have got to be true  
12 to our figures here, there is no question about it. We  
13 also know that there is an opportunity, while this  
14 economy is still very strong, that those figures may move  
15 some.

16 Is there a chance, based on what the Senator wants to  
17 do and what I think we are all inclined to want to do to  
18 be fair to our numbers and responsible? Is there an  
19 opportunity to do this in any installment, if there are  
20 additional monies that come in, to the current figures  
21 based on the 90/10 concept so that it is not just an  
22 either/or, but if there are other, additional monies that  
23 show up and new revenue projections, that we could look  
24 at that as part of the installment?

25 Senator Moynihan. We could certainly ask that.

1 But, Mr. Chairman, I would like to offer the amendment  
2 that, as we first understood it from our distinguished  
3 Majority Whip, that we postpone the date of the transfer  
4 by one year.

5 Senator Gramm. Mr. Chairman?

6 The Chairman. Yes?

7 Senator Gramm. Mr. Chairman, I do not see how you  
8 can do that because we are claiming that we are cutting  
9 taxes and raising benefits because of the return we are  
10 getting from the investment. But if you are not making  
11 the investment, I do not see how you do that.

12 I mean, what you are doing then is spending some of  
13 the \$15 billion or the government is going to eat this  
14 deficit. I just do not see, technically, how you do  
15 this. You have either got to reject Senator Nickles'  
16 amendment or you have got to delay the thing for a year,  
17 it seems to me.

18 The Chairman. You offer yours as a substitute?

19 Senator Moynihan. As a substitute.

20 Senator Nickles. Mr. Chairman?

21 The Chairman. Yes, sir.

22 Senator Nickles. Mr. Chairman, I want to, before my  
23 friend from Texas leaves, maybe have staff clarify  
24 something. In a way I almost hate to do this, but we did  
25 not have a hearing on this bill, and that bothers me.

1 The House did not have a hearing on this bill. I think  
2 this is grossly inappropriate, to be greatly expanding  
3 benefits and cutting taxes.

4 I also think the precedent that we are setting by  
5 transferring money, the so-called trust fund, is going to  
6 cause problems. I can tell you, we have got a lot of  
7 trust funds. A lot of trust funds pretend that they have  
8 a lot of money, but in reality they do not.

9 Just a couple of things on this particular trust  
10 fund. I made an opening comment that every year for 40  
11 years of this trust fund the benefits have exceeded the  
12 payroll taxes going in. Staff did not say that was  
13 incorrect.

14 Where did the balance of the trust fund come from?  
15 This pension benefit, unlike any other pension benefit,  
16 100 percent of the tax revenue from the retirement  
17 benefits goes into this fund. So, it is a little money  
18 game, it is just a paper entry.

19 So theoretically, 100 percent. That does not go into  
20 Nickles' machine pension fund. We pay taxes but our  
21 taxes are not rebated back to our trust fund. Nobody  
22 else's trust fund, nobody else's pension fund in America  
23 gets this. But yet, we do that. That is where this  
24 money came from, it came from interest and taxes  
25 collected on the so-called benefits.



1           So for people to say, wait a minute, that is the  
2 company's money, that is the employees' money in this  
3 trust fund, is not correct. Did I misstate that, staff?  
4 I almost hate to ask you because you will give me a long  
5 answer and eventually say no.

6           Mr. Vachon. About \$200 million a year comes from  
7 general revenues on income taxes on Tier 2 benefits,  
8 about 2 percent of revenues into the system.

9           Senator Gramm. Most all of this trust fund is a  
10 result of taxes coming in from the benefits and from  
11 interest on the trust fund, is that correct?

12          Mr. Vachon. Money comes in from a variety of  
13 sources not attributable to the trust fund.

14          Senator Gramm. But since more money is going out  
15 than coming in on the net cash flow, I think it is  
16 correct. So my point being, people should not walk away  
17 saying, well, they paid their money. That is their money  
18 and now we are going to set it aside and let them invest  
19 it. We are doing this without a hearing. We did not  
20 have a hearing in the House or the Senate, and I do not  
21 think people have considered the ramifications of it. I  
22 think it is a policy mistake.

23          I will withdraw my amendment for the time being. If  
24 the Senator from New York wants to postpone the transfer  
25 date for a year I do not object to that, except I think

1 it is very fiscally irresponsible to have a fund that is  
2 \$40 billion with unfunded vested liability to be  
3 increasing benefits and cutting taxes, or money going  
4 into the fund. I think it is grossly irresponsible.

5 Some people will say, well, you are against the  
6 railroad unions. No, I think this is grossly, fiscally  
7 irresponsible and I do not think that is good for the  
8 railroad companies, nor is it good for the employees.

9 Senator Moynihan. Mr. Chairman, I would like to  
10 withdraw my amendment as well.

11 The Chairman. The substitute is withdrawn, and the  
12 basic amendment is withdrawn.

13 I now recognize the Senator from Nevada.

14 Senator Bryan. I thank the Chair. Mr. Chairman, as  
15 members of this committee know, last week we approved the  
16 FSC legislation, the Foreign Sales Corporation Act. That  
17 legislation provides a tax benefit to certain industries  
18 that export products around the world and, I understand,  
19 in the broad context that we're involved in a trade  
20 dispute with some of our trading partners, and I have  
21 supported the underlying provision.

22 One of the industries that would get a tax benefit is  
23 the pharmaceutical industry. The amendment that I have,  
24 and which I have tried with some measure of frustration  
25 to offer, would simply say that the tax benefits under

1 this Foreign Sales Corporation Act would be denied to  
2 American pharmaceutical companies which charge American  
3 consumers 100 percent or more than they charge consumers  
4 in other countries for the identical medication.

5 Now, these are real issues. Let me just invite my  
6 colleagues' attention to three very commonly prescribed  
7 medications: Provacid, which is used to treat ulcers, is  
8 282 percent more expensive in the United States than in  
9 Great Britain; Claritin, which is used to treat  
10 allergies, is 308 percent more expensive when purchased  
11 by American patients than when purchased by Australian  
12 patients; and Prozac, which can help millions of  
13 Americans suffering from depression, is priced beyond the  
14 reach of many Americans because it is priced at 177  
15 percent more than the identical product sold by the  
16 American company in Australia.

17 I think that is fundamentally wrong and I sought,  
18 with some measure of frustration, to simply offer an  
19 amendment to get an up or down vote. I tried initially  
20 on the legislation itself. Deferring, Mr. Chairman, to  
21 your request, I did not do so at that time. That is one  
22 effort.

23 I have tried to offer it as an amendment to get an up  
24 or down vote on the floor of the Senate, the FSC  
25 legislation having been moved to the floor of the Senate.

1 At this point, I have been denied my right to do so.  
2 That is number two.

3 Number three, I tried earlier today to offer it on  
4 the Community Renewal Act and was told that I cannot do  
5 so. So I must say, I am extremely frustrated. I simply  
6 want an up or down vote.

7 Now I am told by staff, and I want to be fair about  
8 this Mr. Chairman, that if I offered the amendment to  
9 this piece of legislation it will be subject to a point  
10 of order. Now, that places me at a decided disadvantage.

11 The Chairman. Let me say, I would be pleased to let  
12 you have an up or down vote.

13 Senator Bryan. That is all I have asked, Mr.  
14 Chairman. I do appreciate that.

15 So let me go on, if I might, by saying that this  
16 piece of legislation is not price control. It leaves the  
17 choice with the pharmaceutical industry. If they choose  
18 to charge American consumers 100 percent or more than  
19 they charge their European customers, then they would not  
20 be eligible for this benefit. That is their choice.

21 It seems to me there ought to be a sense of  
22 indignation and outrage. These are our constituents.  
23 These are the people who have elected us to represent and  
24 advocate their cause. Many of these people, Mr.  
25 Chairman, are not those who are individuals who have

1 access to the levers of power in our society, they are  
2 the elderly, people on fixed incomes.

3 Let me invite your attention to a story that appeared  
4 last night on NBC. An elderly couple, both need  
5 prescription drugs for high cholesterol and high blood  
6 pressure. They do not have prescription drug coverage  
7 and they simply cannot afford it.

8 The story went on to say, and I believe there is  
9 independent evidence of this, that since 1992 the average  
10 cost of prescription drugs has gone from \$28.50 to nearly  
11 \$42.30.

12 Mr. Chairman, we may not have all of the answers as  
13 to how we deal with this issue, but it strikes me that it  
14 is fundamentally unfair, indefensible, that we allow a  
15 pharmaceutical industry to take advantage of a tax  
16 benefit in which the American taxpayers are subsidizing  
17 industry that treats its own citizens in such an unfair  
18 fashion.

19 So my amendment would simply say, 100 percent or  
20 more, they do not get the benefit. If they do not charge  
21 that kind of outrageous differential, then they would be  
22 able to get the benefit.

23 I would like to ask for a roll call vote.

24 The Chairman. Let me make a comment. First of all,  
25 I want to say publicly that the distinguished Senator

1 from Nevada has been very fair and open-minded as we have  
2 proceeded, and I thank him for his courtesy.

3 Senator Bryan. Thank you very much, Mr. Chairman.

4 The Chairman. I want to make it clear that I share  
5 his concern regarding the disparity between drug prices  
6 here in the United States and those in Europe and Canada.  
7 It is essential that we do what we can to make sure that  
8 the American people are not paying more for their  
9 prescription drugs than necessary.

10 For that reason, I am very pleased that our  
11 congressional leadership has apparently reached agreement  
12 with the White House to enact Senator Jeffords' Drug  
13 Reimportation bill.

14 I supported this legislation when it came up on the  
15 Senate floor, and I want to reiterate my very strong  
16 support here. This legislation represents a much more  
17 direct approach to solving this problem.

18 Once Senator Jeffords' legislation becomes law,  
19 American consumers will have the ability to purchase  
20 pharmaceuticals, at lower prices, that we know are safe  
21 and effective as those that we currently buy. That is  
22 good news for American working families.

23 With that said, I have to oppose this amendment. I  
24 would note that the administration has concerns, and I  
25 would call upon Jon Talisman for his comment.

1           Mr. Talisman.   Mr. Chairman, thank you.  As Deputy  
2 Secretary Eizenstat spoke at the mark-up on the  
3 replacement of the FSC legislation, he did share concerns  
4 regarding the price disparities, as you did as well.

5           But we are concerned that any amendment to the FSC  
6 legislation at this time would slow down the process and  
7 inhibit our ability to meet the deadlines set by the WTO  
8 of October 1.

9           We need to come into conformity with the WTO decision  
10 in order that trade sanctions not be potentially applied  
11 to our businesses in the United States.  So we at this  
12 time would urge that the amendment not be adopted for  
13 that reason, because of the fact that we are afraid that  
14 it would slow down the process.

15           I just would point out, the concern with an  
16 exclusion, this exclusion was provided to bring our Tax  
17 Code in closer conformity with the European regimes in  
18 order to make it more WTO-compliant, and thus excepting  
19 out a particular type of company from that exclusion  
20 would cause us concern as well.

21           Senator Bryan.  Mr. Chairman, I do not intend to  
22 prolong the discussion, but if I might ask Mr. Talisman a  
23 question.

24           Mr. Talisman, as you know, October 1, we are told, is  
25 the deadline.  Chairman Archer has indicated that he

1 believes that, as long as there is a reasonable progress  
2 being made on the legislation, that none of these  
3 sanctions that we apprehend will occur.

4 My question to you, sir, is do you think we are going  
5 to make the October 1 deadline?

6 Mr. Talisman. We are still hopeful that we will be  
7 able to meet the October 1 deadline, and the  
8 administration is still pursuing that goal.

9 Senator Bryan. Let me, if I may then, briefly  
10 respond to at least two points that have been here.

11 Number one, the apprehension that any amendment would  
12 slow down the process, may I say with great respect to  
13 Mr. Talisman, that argument is not very persuasive. We  
14 have already accepted the distinguished Senator of Iowa's  
15 amendment. That will require a conference with the  
16 House.

17 Adding one more amendment would in no way impede the  
18 progress. At this point, there is no realistic prospect,  
19 in my judgment, that we are going to be----on the FSC.  
20 This is with respect to FSC. As you will recall, that  
21 was accepted, so that has got to go to the House for  
22 conference. So this amendment would in no way impede.

23 Second, the concern that Mr. Talisman raises, that we  
24 are trying to be more compliant with WTO, to deny a tax  
25 benefit to an American industry eliminates any possible



1 argument that a subsidy is involved, so would strengthen  
2 our argument, not weaken it. Third, we have not uniformly  
3 provided this tax benefit to all industries.

4 Finally, I am pleased to have worked with the  
5 Chairman of our committee with respect to the  
6 reimportation issue. We are in agreement with that, and  
7 I know the Chairman strongly supports that, as do I.

8 But this, I would argue, Mr. Chairman, raises a  
9 philosophical question. Do we provide, as a matter of  
10 policy, approved by the Congress of the United States, a  
11 tax subsidy to an industry which is gouging the American  
12 public?

13 I must say that I do not think a lot of our  
14 constituents fully understand all of the subtleties of  
15 international trade, but they know when they are getting  
16 gouged.

17 It is occurring, and I must say that I would hope to  
18 see more indignation and outrage on the part of the  
19 Congress to this practice. Now we have a chance at least  
20 to say, you are not going to get a tax benefit if you  
21 continue this practice.

22 I thank the Chairman.

23 Senator Moynihan. Mr. Chairman, could I just ask  
24 Mr. Talisman what the administration's position on the  
25 Jeffords amendment is in regard to the trade situation?

1           Mr. Talisman.    Senator Moynihan, I will have to get  
2 back to you with that.  I am not aware of what our  
3 position is.  I am sorry.

4           Senator Moynihan.  Thank you.

5           The Chairman.  I just would like to make one brief  
6 comment with respect to Senator Bryan's amendment,  
7 because I think it does have some flaws that make it  
8 unworkable.

9           First of all, it is important to note that the House  
10 has passed, and the Finance Committee has reported with  
11 dissent, legislation to repeal FSC.  As such, Senator  
12 Bryan's amendment will likely be rendered moot in a  
13 matter of months.

14          Second, and more substantively, I think we have to  
15 ask ourselves what will happen if this amendment, despite  
16 its very serious shortcomings, were to have its intended  
17 effect.  What could happen, is that the drug companies  
18 could begin to abandon foreign markets so that they were  
19 not subject to this amendment.

20          The foreign countries could then produce the  
21 medicines themselves, ignoring the intellectual property  
22 of our own drug companies, and this would be entirely  
23 consistent with WTO rules.

24          Once that happens, Senator Bryan's amendment would be  
25 rendered inoperative, even if the price difference

1 remained, since the drug company would no longer be  
2 operating in the foreign market.

3 More fundamentally, there is no guarantee that, by  
4 threatening to punish the drug companies and by punishing  
5 them, we will be increasing our access to less expensive  
6 pharmaceuticals. For these reasons, I strongly support  
7 Senator Jeffords' legislation.

8 Senator Bryan. I would like a roll call vote.

9 The Chairman. A roll call vote has been requested.

10 The Clerk will call the roll.

11 The Clerk. Mr. Grassley?

12 Senator Grassley. No.

13 The Clerk. Mr. Hatch?

14 The Chairman. No, by proxy.

15 The Clerk. Mr. Murkowski?

16 The Chairman. No, by proxy.

17 The Clerk. Mr. Nickles?

18 The Chairman. No, by proxy.

19 The Clerk. Mr. Gramm, of Texas?

20 The Chairman. No, by proxy.

21 The Clerk. Mr. Lott?

22 The Chairman. No, by proxy.

23 The Clerk. Mr. Jeffords?

24 The Chairman. No, by proxy.

25 The Clerk. Mr. Mack?

1 The Chairman. No, by proxy.  
2 The Clerk. Mr. Thompson?  
3 The Chairman. No, by proxy.  
4 The Clerk. Mr. Craig?  
5 The Chairman. No, by proxy.  
6 The Clerk. Mr. Moynihan?  
7 Senator Moynihan. No.  
8 The Clerk. Mr. Baucus?  
9 Senator Moynihan. No, by proxy.  
10 The Clerk. Mr. Rockefeller?  
11 Senator Rockefeller. No.  
12 The Clerk. Mr. Breaux?  
13 Senator Breaux. No.  
14 The Clerk. Mr. Conrad?  
15 Senator Moynihan. No, by proxy.  
16 The Clerk. Mr. Graham, of Florida?  
17 Senator Moynihan. Aye, by proxy.  
18 The Clerk. Mr. Bryan?  
19 Senator Bryan. Aye.  
20 The Clerk. Mr. Kerrey?  
21 Senator Moynihan. No, by proxy.  
22 The Clerk. Mr. Robb?  
23 Senator Moynihan. Aye, by proxy.  
24 The Clerk. Mr. Chairman?  
25 The Chairman. No.

1           The Clerk.   Mr. Chairman, the tally is 3 ayes, 17  
2 nays.

3           The Chairman.   The amendment is not agreed to. By  
4 the earlier vote, the legislation is reported favorably  
5 to the Senate floor.

6           The committee is in recess.

7           [Whereupon, at 12:35 p.m., the meeting was concluded]

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THE HONORABLE WILLIAM V. ROTH, JR. A United States Senator from the State of Delaware	2
THE HONORABLE DANIEL PATRICK MOYNIHAN A United States Senator from the State of New York	5
THE HONORABLE PHIL GRAMM A United States Senator from the State of Texas	6

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**DESCRIPTION OF  
COMMUNITY RENEWAL AND  
NEW MARKETS ACT OF 2000**

Scheduled for Markup

By the

**SENATE COMMITTEE ON FINANCE**

on September 20, 2000

Prepared by the Staff

of the

**JOINT COMMITTEE ON TAXATION**



September 18, 2000

JCX-99-00

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## INTRODUCTION

This document,<sup>1</sup> prepared by the staff of the Joint Committee on Taxation, provides a description of the Chairman's Mark of an original bill, the "Community Renewal and New Markets Act of 2000", scheduled for markup by the Senate Committee on Finance on September 20, 2000.

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<sup>1</sup> This document may be cited as follows: Joint Committee on Taxation, *Description of the Chairman's Mark of the "Community Renewal and New Markets of 2000"* (JCX-99-00), September 18, 2000.

## DESCRIPTION OF PROPOSALS

### A. Tax Incentives for Distressed Areas

#### Present Law

In recent years, provisions have been added to the Internal Revenue Code that target specific geographic areas for special Federal income tax treatment. As described in greater detail below, empowerment zones and enterprise communities generally provide tax incentives for businesses that locate within certain geographic areas designated by the Secretaries of Housing and Urban Development ("HUD") and Agriculture.

#### Round I empowerment zones

The Omnibus Budget Reconciliation Act of 1993 ("OBRA 1993") authorized the designation of nine empowerment zones ("Round I empowerment zones") to provide tax incentives for businesses to locate within targeted areas designated by the Secretaries of HUD and Agriculture. The Taxpayer Relief Act of 1997 ("1997 Act") authorized the designation of two additional Round I urban empowerment zones.

Businesses in the 11 Round I empowerment zones qualify for the following tax incentives: (1) a 20-percent wage credit for the first \$15,000 of wages paid to a zone resident who works in the empowerment zone,<sup>2</sup> (2) an additional \$20,000 of section 179 expensing for qualifying zone property, and (3) tax-exempt financing for certain qualifying zone facilities. The tax incentives with respect to the empowerment zones designated by OBRA 1993 generally are available during the 10-year period of 1995 through 2004. The tax incentives with respect to the two additional Round I empowerment zones generally are available during the 10-year period of 2000 through 2009.<sup>3</sup>

#### Round II empowerment zones

The 1997 Act also authorized the designation of 20 additional empowerment zones ("Round II empowerment zones"), of which 15 are located in urban areas and five are located in rural areas. Businesses in the Round II empowerment zones are not eligible for the wage credit, but are eligible to receive up to \$20,000 of additional section 179 expensing. Businesses in the

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<sup>2</sup> For wages paid in calendar years during the period 1994 through 2001, the credit rate is 20 percent. The credit rate is reduced to 15 percent for calendar year 2002, 10 percent for calendar year 2003, and 5 percent for calendar year 2004. No wage credit is available after 2004 in the original nine empowerment zones.

<sup>3</sup> The wage credit, however, is reduced to 15 percent for calendar year 2005, and then reduced by five percentage points in each year in 2006 and 2007. No wage credit is available after 2007.

Round II empowerment zones also are eligible for more generous tax-exempt financing benefits than those available in the Round I empowerment zones. Specifically, the tax-exempt financing benefits for the Round II empowerment zones are not subject to the State private activity bond volume caps (but are subject to separate per-zone volume limitations), and the per-business size limitations that apply to the Round I empowerment zones and enterprise communities (i.e., \$3 million for each qualified enterprise zone business with a maximum of \$20 million for each principal user for all zones and communities) do not apply to qualifying bonds issued for Round II empowerment zones. The tax incentives with respect to the Round II empowerment zones generally are available during the 10-year period of 1999 through 2008.

### **District of Columbia Enterprise Zone**

The 1997 Act also designated certain economically depressed census tracts within the District of Columbia as the "D.C. Enterprise Zone," within which businesses and individual residents are eligible for special tax incentives. The D.C. Enterprise Zone designation remains in effect for the period from January 1, 1998, through December 31, 2002. In addition to the tax incentives available with respect to a Round I empowerment zone, the D.C. Enterprise Zone also has a zero-percent capital gains rate that applies to gain from the sale of certain qualified D.C. zone assets acquired after December 31, 1997 and held for more than five years.

With respect to the tax-exempt financing incentives, the D.C. Enterprise Zone generally is treated like a Round I empowerment zone;<sup>4</sup> therefore, the issuance of such bonds is subject to the District of Columbia's annual private activity bond volume limitation. However, the aggregate face amount of all outstanding qualified enterprise zone facility bonds per qualified D.C. Zone business may not exceed \$15 million (rather than \$3 million, as is the case for Round I empowerment zones).<sup>5</sup>

### **Description of Proposal**

#### **Overview**

As described in detail below, the proposal would conform the wage credit and tax-exempt bond incentives for the Round I and Round II empowerment zones and extend their designations through December 31, 2009. The proposal also would increase the incentives to existing empowerment zones by (1) increasing the additional section 179 deduction to \$35,000, and (2) providing a zero-percent capital gain rate for qualifying assets held for more than five years.

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<sup>4</sup> Portions of the District of Columbia were designated as an enterprise community under section 1391 in 1994. Accordingly, the District of Columbia was entitled to issue tax-exempt enterprise zone facility bonds.

<sup>5</sup> Section 1400A(a).

In addition, the proposal would authorize the Secretaries of HUD and Agriculture to designate 30 new "renewal zones" that would have the same tax incentives as empowerment zones. The designations of the new renewal zones would take effect on January 1, 2002, and terminate on December 31, 2009.

Thus, once the 30 new renewal zones have been designated, there will exist a total of 61 zones providing similar tax incentives for distressed areas, all of whose designations would terminate on December 31, 2009. The renewal zones would be treated as empowerment zones for all purposes of the Code.<sup>6</sup> After taking into account existing empowerment zones, each State would have at least one zone.

The proposal also would extend the D.C. Enterprise Zone designation through December 31, 2009.

### Existing zones

Conforming and enhancing incentives for Round I and Round II empowerment zones.--The proposal would extend the designation of empowerment zone status for Round I and II empowerment zones through December 31, 2009. In addition, a 15-percent wage credit would be made available in all Round I and II empowerment zones, effective in 2002 (except in the case of the two additional Round I empowerment zones, for which the 15-percent wage credit would take effect in 2005 as scheduled under present law). For all the empowerment zones, the 15-percent wage credit would expire on December 31, 2009.

In addition, \$35,000 (rather than \$20,000) of additional section 179 expensing would be available for qualified zone property placed in service in taxable years beginning after December 31, 2001, by a qualified business in any of the empowerment zones.<sup>7</sup>

Businesses located in Round I empowerment zones would be eligible for the more generous tax-exempt bond rules that apply under present law to businesses in the Round II empowerment zones (sec. 1394(f)). The proposal would apply to tax-exempt bonds issued after December 31, 2001. Bonds that have been issued by businesses in Round I zones before January 1, 2002, would not be taken into account in applying the limitations on the amount of new empowerment zone facility bonds that can be issued under the proposal.

Businesses located in any empowerment zone also would qualify for a zero-percent capital gains rate for gain from the sale of a qualifying zone assets acquired after date of enactment and

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<sup>6</sup> This would include, for example, the proposals relating to the historic homes credit and the broadband Internet access tax credit described below.

<sup>7</sup> The additional \$35,000 of section 179 expensing is available throughout all areas that are part of a designated empowerment zone, including the non-contiguous "developable sites" that were allowed to be part of the designated Round II empowerment zones under the 1997 Act.

before January 1, 2010, and held for more than five years. Assets that would qualify for this incentive would be similar to the types of assets that qualify for the present-law zero percent capital gains rate for qualifying D.C. Zone assets. The zero-percent capital gains rate would be limited to an aggregate amount not to exceed \$25 million of gain per taxpayer. Any gain attributable to the period before the date of enactment or after December 31, 2014, would not be eligible for the zero-percent capital gains rate.

D.C. Enterprise Zone.--The proposal would extend the D.C. Enterprise Zone designation through December 31, 2009. The proposal also would conform the D.C. wage credit to the wage credit to the other zones, so that there would be a 15-percent wage credit with respect to qualifying wages beginning in 2003 (and ending on December 31, 2009).

### Renewal zones

Designation of 30 renewal zones.--The Secretaries of HUD and Agriculture would be authorized to designate up to 30 renewal zones from areas nominated by States and local governments. At least six of the designated renewal zones must be in rural areas. The Secretary of HUD is required to publish (within four months after enactment) regulations describing the nomination and selection process. Designations of renewal zones would be made before January 1, 2002, and the designation (and tax incentives) would be effective for the period beginning on January 1, 2002 through December 31, 2009.

Eligibility criteria.--To be designated as a renewal zone, a nominated area must meet the following criteria: (1) each census tract must have a poverty rate of at least 20 percent; (2) in the case of an urban area, at least 70 percent of the households have incomes below 80 percent of the median income of households within the local government jurisdiction; (3) the unemployment rate is at least 1.5 times the national unemployment rate; and (4) the area is one of pervasive poverty, unemployment, and general distress.<sup>8</sup> In general, the areas with the highest average ranking of eligibility factors (1), (2) and (3), above would be designated as renewal zones. States without an empowerment zone would be given priority in the designation process. Moreover, after taking into account existing empowerment zones, each State would have at least one zone designation (empowerment or renewal zone).

There would be no geographic size limitations placed on renewal zones. Instead, the boundary of a renewal zone must be continuous. In addition, a renewal zone must have a minimum population of 4,000 if the area is located within a metropolitan statistical area (at least 1,000 in all other cases), and a maximum population of not more than 200,000. The population limitations would not apply to any renewal zone that is entirely within an Indian reservation.

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<sup>8</sup> For areas not within census tracts, the equivalent county division (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of defining poverty rates and median family income.

**Required State and local commitments.**--In order for an area to be designated as a renewal zone, State and local governments are required to submit a written course of action in which the State and local governments promise to take at least four of the following governmental actions: (1) a reduction of tax rates or fees; (2) an increase in the level of efficiency of local services; (3) crime reduction strategies; (4) actions to remove or streamline governmental requirements; (5) involvement by private entities and community groups, such as to provide jobs and job training and financial assistance; and (6) the gift (or sale at below fair market value) of surplus realty by the State or local government to community organizations or private companies.

**Enterprise community seeking designation as renewal zones.**--An enterprise community could apply for designation as a renewal zone. In making selections of renewal zones, the Secretary shall take into account the status of a nominated area as an enterprise community. If a renewal zone designation is granted, then an area's designation as an enterprise community would cease as of the date the area's designation as a renewal zone takes effect.

**Tax incentives for renewal zones.**--Businesses in renewal zones would have the same tax incentives as businesses in existing empowerment zones (as modified by this proposal), which would be available during the period beginning January 1, 2002 and ending December 31, 2009 (i.e., a zero percent capital gains rate for qualifying assets;<sup>9</sup> a 15-percent wage credit with respect to qualifying wages; \$35,000 in additional 179 expensing for qualifying property; and the enhanced tax-exempt bond rules that currently are available to businesses in the Round II empowerment zones).

### **Effective Date**

The extension of the existing empowerment zone designations (including the D.C. Enterprise Zone) would be effective after the date of enactment.

The additional section 179 expensing and the more generous tax-exempt bond rules for the existing empowerment zones generally would be effective after December 31, 2001. The zero-percent capital gains rate would apply to qualifying property purchased after the date of enactment.

The 15-percent wage credit generally would be effective for qualifying wages paid after December 31, 2001. With respect to the two additional Round I empowerment zones, however, the wage credit would be effective for qualifying wages paid after December 31, 2004. For the D.C. Enterprise Zone, the 15-percent wage credit would be effective for qualifying wages paid after December 31, 2002.

The 30 new renewal zones would be designated by January 1, 2002, and the resulting tax benefits would be available for the period beginning January 1, 2002, and ending December 31, 2009.

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<sup>9</sup> Any gain attributable to the period before January 1, 2002, or after December 31, 2014, would not be eligible for the zero-percent capital gains rate.

## B. New Markets Tax Credit

### Present Law

Some tax incentives are available to taxpayers making investments and loans in low-income communities. For example, tax incentives are available to taxpayers that invest in specialized small business investment companies licensed by the Small Business Administration to make loans to, or equity investments in, small businesses owned by persons who are socially or economically disadvantaged.

### Description of Proposal

The proposal would create a new tax credit for qualified equity investments made to acquire stock in a selected community development entity ("CDE"). The maximum annual amount of qualifying equity investments would be capped as follows:

<u>Calendar Year</u>	<u>Maximum Qualifying Equity Investment</u>
2002 .....	\$1.0 billion
2003-2006 .....	\$1.5 billion per year

The amount of the new tax credit to the investor (either the original purchaser or a subsequent holder) would be (1) a five-percent credit for the year in which the equity interest is purchased from the CDE and the first two anniversary dates after the interest is purchased from the CDE, and (2) a six percent credit on each anniversary date thereafter for the following four years.<sup>10</sup> The taxpayer's basis in the investment would be reduced by the amount of the credit (other than for purposes of calculating the zero-percent capital gains rules and section 1202). The credit would be subject to the general business credit rules.

A CDE is any domestic corporation or partnership (1) whose primary mission is serving or providing investment capital for low-income communities or low-income persons, (2) that maintains accountability to residents of low-income communities through representation on governing or advisory boards of the CDE, and (3) is certified by the Treasury Department as an eligible CDE.<sup>11</sup> No later than 120 days after enactment, the Treasury Department shall issue guidance that specifies objective criteria to be used by the Treasury to allocate the credits among eligible CDEs. In allocating the credits, the Treasury Department will give priority to entities

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<sup>10</sup> Thus, a credit would be available on the date on which the investment is made and for each of the six anniversary dates thereafter.

<sup>11</sup> A specialized small business investment company and a community development financial institution are treated as satisfying the requirements for a CDE.

with records of having successfully provided capital or technical assistance to disadvantaged businesses or communities.

If a CDE fails to sell equity interests to investors up to the amount authorized within five years of the authorization, then the remaining authorization is canceled. The Treasury Department can authorize another CDE to issue equity interests for the unused portion. No authorization can be made after 2015.

A "qualified equity investment" is defined as stock or a similar equity interest acquired directly from a CDE in exchange for cash. Substantially all of the investment proceeds must be used by the CDE to make "qualified low-income community investments." Qualified low-income community investments include: (1) equity investments in, or loans to, qualified active businesses located in low-income communities, (2) certain financial counseling and other services specified in regulations to businesses and residents in low-income communities, (3) the purchase from another CDE of any loan made by such entity that is a qualified low income community investment, or (4) an equity investment in, or loans to, another CDE if substantially all of the investment or loan by such entity is used to make the qualified low-income community investments described in (1), (2) or (3).<sup>12</sup>

The stock or equity interest cannot be redeemed (or otherwise cashed out) by the CDE for at least seven years. If the entity ceases to be a qualified CDE during the seven-year period following the taxpayer's investment, or if the equity interest is redeemed by the issuing CDE during that seven-year period, then any credits claimed with respect to the equity interest are recaptured (with interest) and no further credits are allowed.

A "low-income community" is defined as census tracts with: (1) poverty rates of at least 20 percent (based on the most recent census data), or (2) median family income which does not exceed 80 percent of the greater of metropolitan area income or statewide median family income (for a non-metropolitan census tract, 80 percent of non-metropolitan statewide median family income).<sup>13</sup> Pursuant to regulations to be prescribed by the Secretary, a "low-income community" also could be defined as a targeted population of low-income persons who satisfy the poverty rate and median income requirements set forth above within the targeted area and who otherwise lack adequate access to loans or equity investments.

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<sup>12</sup> If at least 85 percent of the aggregate gross assets of the CDE are invested (directly or indirectly) in equity interests in, or loans to, qualified active businesses located in low-income communities, then there would be no need to trace the use of the proceeds from the particular stock (or other equity ownership) issuance with respect to which the credit is claimed.

<sup>13</sup> For areas not within census tracts, the equivalent county division (as defined by the Bureau of the Census for purposes of defining poverty areas) shall be used for purposes of defining poverty rates and median family income.



A "qualified active business" is defined as a business which satisfies the following requirements: (1) at least 50 percent of the total gross income of the business is derived from the active conduct of trade or business activities in low-income communities; (2) a substantial portion of the use of the tangible property of such business is used within low-income communities; (3) a substantial portion of the services performed for such business by its employees is performed in low-income communities; and (4) less than 5 percent of the average aggregate of unadjusted bases of the property of such business is attributable to certain financial property or to collectibles (other than collectibles held for sale to customers). There is no requirement that employees of the business be residents of the low-income community.

Rental of improved commercial real estate located in a low-income community is a qualified active business, regardless of the characteristics of the commercial tenants of the property. The purchase and holding of unimproved real estate is not a qualified active business. In addition, a qualified active business does not include (a) any business consisting predominantly of the development or holding of intangibles for sale or license; (b) operation of any facility described in sec. 144(c)(6)(B); or (c) any business if a significant equity interest in such business is held by a person who also holds a significant equity interest in the CDE. A qualified active business can include an organization that is organized on a non-profit basis.

#### **Effective Date**

The proposal would be effective for qualified investments made after December 31, 2001.

## **C. Low-Income Housing Tax Credit Cap and Related Program Modifications**

### **Present Law**

#### **In general**

The low-income housing tax credit may be claimed annually over a 10-year period for the cost of rental housing occupied by tenants having incomes below specified levels. The credit percentage for newly constructed or substantially rehabilitated housing that is not Federally subsidized is adjusted monthly by the IRS so that the 10 annual installments have a present value of 70 percent of the total qualified expenditures. The credit percentage for new substantially rehabilitated housing also receiving most other Federal subsidies and for existing housing is calculated to have a present value of 30 percent of the total qualified expenditures. The new credit authority provided annually is \$1.25 per resident of each State. Projects that receive financing with proceeds of tax-exempt bonds issued subject to the private activity bond volume limit and receive the low income housing credit are outside the State's credit cap.

#### **Stacking rule**

The present-law stacking rule provides that a State is treated as using its annual allocation of credit authority (\$1.25 per State resident) and any returns during the calendar year followed by any unused credits carried forward from the preceding year's credit ceiling and finally any applicable allocations from the National pool.

### **Description of Proposal**

The proposal would increase the annual State credit caps from be \$1.25 to \$1.75 per resident beginning in 2001. Also beginning in 2001, the per capita cap would be modified so that small population states are given a minimum of \$2 million of annual credit cap. The \$1.75 per capita credit cap and the \$2 million amount are indexed for inflation beginning in calendar year 2002.

The proposal also would make two programmatic changes to the credit. First, the proposal would modify the stacking rule so that each State would be treated as using its allocation of the unused State housing credit ceiling (if any) from the preceding calendar before the current year's allocation of credit (including any credits returned to the State) and then finally any National pool allocations. Second, the proposal would provide that assistance received under the Native American Housing Assistance and Self-Determination Act of 1986 would not be taken into account in determining whether a building is Federally subsidized for purposes of the credit.

### Effective Date

The proposals generally would be effective for calendar years after December 31, 2000, and buildings placed in service after such date in the case of projects that also receive financing with proceeds of tax-exempt bonds which are issued after such date subject to the private activity bond volume limit.

## **D. Private Activity Bond State Volume Limits**

### **Present Law**

Interest on bonds issued by States and local governments is excluded from income if the proceeds of the bonds are used to finance activities conducted or paid for by the governmental units. Interest on bonds issued by these governmental units to finance activities carried out and paid for by private persons ("private activity bonds") is taxable unless the activities are specified in the Code. Private activity bonds on which interest may be tax exempt include bonds for privately-operated transportation facilities (airports, docks and wharves, mass transit, and high speed rail facilities), privately-owned or privately-provided municipal services (water, sewer, solid waste disposal, and certain electric and heating facilities), economic development (small manufacturing facilities and redevelopment in economically depressed areas), and certain social programs (low-income rental housing, qualified mortgage bonds, student loan bonds, and exempt activities of charitable organizations described in Code sec. 501(c)(3)).

The volume of tax-exempt private activity bonds that States and local governments may issue in each calendar year is limited by State-wide volume limits. The volume limits do not apply to private activity bonds to finance airports, docks and wharves, certain governmentally owned, but privately operated, solid waste disposal facilities, certain high speed rail facilities, and certain types of private activity tax-exempt bonds that are subject to other limits on their volume (qualified veterans' mortgage bonds and certain empowerment zone and enterprise community bonds). The current annual volume limits are \$50 per resident of the State or \$150 million (if greater). An increase in these volume limits to \$75 per resident or \$225 million (if greater) is scheduled to be phased-in during calendar years 2003-2007.

### **Description of Proposal**

The bill accelerates the currently scheduled phased increase in the present-law annual State private activity bond volume limits to \$75 per resident of each State or \$225 million (if greater) beginning in calendar year 2001. In addition, the \$75 per resident limit and the \$225 million State limit would be indexed for inflation beginning in calendar year 2002.

### **Effective Date**

The proposal would be effective for calendar years after December 31, 2000.

## **E. Mortgage Revenue Bonds**

### **Present Law**

Qualified mortgage bonds (QMBs) are tax-exempt bonds, the proceeds of which generally must be used to make mortgage loans to first-time homebuyers. The recipients of QMB-financed loans must meet purchase price, income, and other restrictions. Generally, the purchase price of an assisted home may not exceed 90 percent (110 percent in targeted areas) of the average area purchase price.

### **Description of Proposal**

The proposal would modify the purchase price rule for QMB financing. Specifically, QMB financing would be allowable to qualified residences the purchase price of which does not exceed the greater of (1) 90 percent of the average area purchase price; or (2) 3.5 times the applicable median family income. The applicable median family income would be defined as under the present-law QMB income restriction. The purchase price requirement applicable to targeted areas (i.e., 110 percent) would not be changed.

### **Effective Date**

The proposal would be effective for bonds issued after the date of enactment.

## **F. Tax Credit for Renovating Historic Homes**

### **Present Law**

Present law provides an income tax credit for certain expenditures incurred in rehabilitating certified historic structures and certain nonresidential buildings placed in service before 1936 (sec. 47). The amount of the credit is determined by multiplying the applicable rehabilitation percentage by the basis of the property that is attributable to qualified rehabilitation expenditures. The applicable rehabilitation percentage is 20 percent for certified historic structures and 10 percent for qualified rehabilitated buildings (other than certified historic structures) that were originally placed in service before 1936.

A nonresidential building is eligible for the 10-percent credit only if the building is substantially rehabilitated and a specific portion of the existing structure of the building is retained in place upon completion of the rehabilitation. A residential or nonresidential building is eligible for the 20-percent credit that applies to certified historic structures only if the building is substantially rehabilitated (as determined under the eligibility rules for the 10-percent credit). In addition, the building must be listed in the National Register or the building must be located in a registered historic district and must be certified by the Secretary of the Interior as being of historical significance to the district.

### **Description of Proposal**

The proposal would permit a taxpayer to claim a 20-percent credit for qualified rehabilitation expenditures made with respect to a qualified historic home which the taxpayer subsequently occupies as his or her principal residence for at least five years. The total credit which could be claimed by the taxpayer would be limited to \$20,000. Any eligible credit not claimed by the taxpayer in the year in which the qualified rehabilitation expenditures are made may be carried forward to each of the succeeding 10 years.

The proposal would apply to (1) structures listed in the National Register; (2) structures located in a registered national, State, or local historic district, and certified by the Secretary of the Interior as being of historic significance to the district, but only if the median income of the census tract within which the building is located is less than twice the State median income; (3) any structure designated as being of historic significance under a State or local statute, if such statute is certified by the Secretary of the Interior as achieving the purpose of preserving and rehabilitating buildings of historic significance.

A building generally would be considered substantially rehabilitated if the qualified rehabilitation expenditures incurred during a 24-month measuring period exceed the greater of (1) the adjusted basis of the building as of the later of the first day of the 24-month period or the beginning of the taxpayer's holding period for the building, or (2) \$5,000. In the case of structures in empowerment zones, in enterprise communities, in a census tract in which 70 percent of families have income which is 80 percent or less of the State median family income, and areas of chronic

distress as designated by the State and approved by the Secretary of Housing and Urban Development, only the \$5,000 expenditure requirement would apply. In addition, for all structures, at least 5 percent of the rehabilitation expenditures would have to be allocable to the exterior of the structure.

To qualify for the credit, the rehabilitation must be certified by a State or local government subject to conditions specified by the Secretary of the Interior.

A taxpayer who purchases a structure on which qualified rehabilitation expenditures have been made may claim credit for such expenditures if the taxpayer is the first purchaser of the structure within five years of the date the rehabilitation was completed and if no credit was allowed to the seller with respect to the qualified expenditures. Alternatively, a taxpayer may elect to receive a historic rehabilitation mortgage credit certificate in lieu of the credit otherwise allowable. A historic rehabilitation mortgage credit certificate may be transferred to a lending institution in exchange for which the lending institution provides the taxpayer with a reduction in interest rate on a mortgage on a qualifying structure. The lending institution would then claim the allowable credits against its tax liability. In the case of a targeted area or enterprise community or empowerment zone, the taxpayer may elect to allocate all or a portion of the mortgage credit certificate to reduce the down payment required for purchase of the structure.

If a taxpayer ceases to maintain the structure as his or her personal residence within five years from the date of the rehabilitation, the credit would be recaptured on a pro rata basis.

#### **Effective Date**

The proposal would be effective for expenditures paid or incurred beginning after December 31, 2001.

## **G. Expensing of Environmental Remediation Expenditures and Expansion of Qualifying Sites ("Brownfields")**

### **Present Law**

Taxpayers can elect to treat certain environmental remediation expenditures that would otherwise be chargeable to capital account as deductible in the year paid or incurred (sec. 198). The deduction applies for both regular and alternative minimum tax purposes. The expenditure must be incurred in connection with the abatement or control of hazardous substances at a qualified contaminated site.

A "qualified contaminated site" generally is any property that (1) is held for use in a trade or business, for the production of income, or as inventory; (2) is certified by the appropriate State environmental agency to be located within a targeted area; and (3) contains (or potentially contains) a hazardous substance (so-called "brownfields"). Targeted areas are defined as: (1) empowerment zones and enterprise communities as designated under present law; (2) sites announced before February 1997, as being subject to one of the 76 Environmental Protection Agency ("EPA") Brownfields Pilots; (3) any population census tract with a poverty rate of 20 percent or more; and (4) certain industrial and commercial areas that are adjacent to tracts described in (3) above. However, sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 cannot qualify as targeted areas.

Eligible expenditures are those paid or incurred before January 1, 2002.

### **Description of Proposal**

The proposal would extend the expiration date for eligible expenditures to include those paid or incurred before January 1, 2004.

In addition, the proposal would eliminate the targeted area requirement, thereby, expanding eligible sites to include any site containing (or potentially containing) a hazardous substance that is certified by the appropriate State environmental agency. However, expenditures undertaken at sites that are identified on the national priorities list under the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 would continue to not qualify as eligible expenditures.

### **Effective Date**

The proposal to extend the expiration date would be effective upon the date of enactment. The proposal to expand the class of eligible sites would be effective for expenditures paid or incurred after the date of enactment.



## **H. Tax Credit Bonds for the National Railroad Passenger Corporation ("Amtrak")**

### **Present Law**

Present law does not authorize the issuance by any private, for-profit corporation of bonds the interest on which is tax-exempt or eligible for an income tax credit. Tax-exempt bonds may be issued by States or local governments to finance their governmental activities or to finance certain capital expenditures of private businesses or loans to individuals. Additionally, States or local governments may issue tax-credit bonds to finance the operation of "qualified zone academies."

### **Tax-exempt bonds**

Interest on bonds issued by States or local governments to finance direct activities of those governmental units is excluded from tax (sec. 103). In addition, interest on certain bonds ("private activity bonds") issued by States or local governments acting as conduits to provide financing for private businesses or individuals is excluded from income if the purpose of the borrowing is specifically approved in the Code (sec. 141). Examples of approved private activities for which States or local governments may provide tax-exempt financing include transportation facilities (airports, ports, mass commuting facilities, and certain high speed intercity rail facilities); public works facilities such as water, sewer, and solid waste disposal; and certain social welfare programs such as low-income rental housing, student loans, and mortgage loans to certain first-time homebuyers. High speed intercity rail facilities eligible for tax-exempt financing include land, rail, and stations (but not rolling stock) for fixed guideway rail transportation of passengers and their baggage using vehicles that are reasonably expected to operate at speeds in excess of 150 miles per hour between scheduled stops.

Issuance of most private activity bonds is subject to annual State volume limits of \$50 per resident (\$150 million if greater). These volume limits are scheduled to increase to \$75 per resident (\$225 million if greater) over the period 2003 through 2007.

Investment earnings on all tax-exempt bonds, including earnings on invested sinking funds associated with such bonds is restricted by the Code to prevent the issuance of bonds earlier or in a greater amount than necessary for the purpose of the borrowing. In general, all profits on investment of such proceeds must be rebated to the Federal Government. Interest on bonds associated with invested sinking funds is taxable.

### **Tax credit bonds for qualified zone academies**

As an alternative to traditional tax-exempt bonds, certain States or local governments are given authority to issue "qualified zone academy bonds." A total of \$400 million of qualified zone academy bonds is authorized to be issued in each year of 1998 through 2001. The \$400 million is allocated to States according to their respective populations of individuals below the poverty line.

Qualified zone academy bonds are taxable bonds with respect to which the investor receives an income tax credit equal to an assumed interest rate set by the Treasury Department to allow issuance of the bonds without discount and without interest cost to the issuer. The bonds may be used for renovating, providing equipment to, developing course materials for, or training teachers in eligible schools. Eligible schools are elementary and secondary schools with respect to which private entities make contributions equaling at least 10 percent of the bond proceeds.

Only financial institutions are eligible to claim the credits on qualified zone academy bonds. The amount of the credit is taken into income. The credit may be claimed against both regular income tax and AMT liability.

There are no arbitrage restrictions applicable to investment earnings on qualified zone academy bond proceeds.

### **Description of Proposal**

The proposal would authorize the National Railroad Passenger Corporation ("Amtrak") to issue an aggregate amount of \$10 billion of tax credit bonds to finance its capital projects.<sup>14</sup> Annual issuance of the bonds could not exceed \$1 billion per year (plus any authorized amount that was not issued in previous years) during the ten Federal fiscal year period, 2001-2010. Unused bond authority could be carried forward to succeeding years until used, subject to a limitation that no tax credit bonds could be issued after fiscal year 2015.

Projects eligible for tax-credit bond financing would be defined as the acquisition, financing, or refinancing of equipment, rolling stock, and other capital improvements for (1) the northeast rail corridor between Washington, D.C. and Boston, Massachusetts;<sup>15</sup> (2) high-speed rail corridors designated under section 104(d)(2) of Title 23 of the United States Code; and (3) non-designated high-speed rail corridors, including station rehabilitation, track or signal improvements, or grade crossing elimination. The last purpose would be limited to a maximum of 10 percent of the proceeds of any bond issue. At least 70 percent of the tax credit bonds would be required to be issued for the purposes described in (2) and (3).

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<sup>14</sup> The Secretary of Transportation could allocate a portion of Amtrak's tax credit bond authority in any year to the Alaska Railroad for use in financing projects of that railroad that would qualify under the restrictions applicable to Amtrak.

<sup>15</sup> \$92 million of Amtrak's tax credit bond authority for Northeast corridor projects would be set aside for the acquisition and installation of platform facilities, performance of railroad force account work necessary to complete improvements below street grade, and any other necessary improvements related to construction at the new railroad station at the James A. Farley Post Office Building in New York City. Projects financed with this \$92 million of tax credit bonds would not be subject to the State contribution requirement, described below.

As with qualified zone academy bonds, the interest rate on Amtrak tax credit bonds would be set to allow issuance of the bonds at par, i.e., without any interest cost to Amtrak. In general, proceeds of Amtrak tax credit bonds would have to be spent within 36 months after the bonds were issued.

Amtrak tax credit bonds could only be issued for projects that were approved by the Department of Transportation and with respect to which Amtrak had binding commitments from one or more States to make matching contributions of at least 20 percent of the project cost.<sup>16</sup> The State matching contributions, along with earnings on investment of the tax-credit bond proceeds would be invested in a trust account (i.e., an sinking fund) and used along with earnings on the trust account for repayment of the principal amount of the bonds.

Amtrak tax credit bonds could be owned (and income tax credits claimed) by any taxpayer. The amount of the credit would be includable in the bondholder's income. Additionally, provisions are included in the proposal to allow the credits to be stripped and sold to different investors than the investors in the bond principal.

The proposal requires Amtrak to issue a multi-year capital plan to Congress and the Administration. It also includes provisions for independent project management oversight by a professional non-Amtrak entity (similar to the Federal Transit Administration); provisions for verification by the DOT Inspector General that the funds deposited in the escrow account are sufficient to ensure full repayment of the bond principal; and criteria to evaluate and select capital projects in order to optimize the investments made.

#### Effective Date

The proposal would be effective for tax credit bonds issued by Amtrak after September 30, 2000.

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<sup>16</sup> The required State matching contributions could not be derived from Federal monies. Any Federal Highway Trust Fund monies transferred to the States would be treated as Federal monies for this purpose.

## **I. Tax Treatment of Alaska Native Settlement Trusts**

### **Present Law**

An Alaska Native Settlement Corporation ("ANC") may establish a Settlement Trust ("Trust") under section 39 of the Alaska Native Claims Settlement Act ("ANCSA")<sup>17</sup> and transfer money or other property to such Trust for the benefit of beneficiaries who constitute all or a class of the shareholders of the ANC, to promote the health, education and welfare of the beneficiaries and preserve the heritage and culture of Alaska Natives.

With certain exceptions, once an ANC has made a conveyance to a Trust, the assets conveyed shall not be subject to attachment, distraint, or sale or execution of judgement, except with respect to the lawful debts and obligations of the Trust.

The Internal Revenue Service has indicated that contributions to a Trust constitute distributions to the beneficiary-shareholders at the time of the contribution and are treated as dividends to the extent of earnings and profits as provided under section 301 of the Code. The Trust and its beneficiaries are taxed in accordance with trust rules.

### **Description of Proposal**

An Alaska Native Corporation may establish a Trust under section 39 of ANCSA and if the Trust makes an election for its first taxable year ending after the date of enactment of the proposal, no amount will be included in the gross income of a beneficiary of such Trust by reason of a contribution to the Trust. In addition, unless the Trust fails to meet the transferability requirements of the provision, income of the Trust, whether accumulated or distributed, will be taxed only to the Trust (and not to beneficiaries) at the lowest individual tax rates of 15 percent for ordinary income (and the capital gains rate applicable to individuals subject to such 15 percent rate), rather than at the higher rates generally applicable to trusts or to higher tax bracket beneficiaries.

The earnings and profits of the ANC would not be reduced by the amount of contributions to the Trust at the time of the contributions. However, the ANC earnings and profits would be reduced (up to the amount of the contributions) as distributions are thereafter made by the Trust that would exceed the Trusts' total undistributed net income (less taxes paid) plus tax-exempt income for all prior years during which an election is in effect plus for the current year, computed under Subchapter J. In addition, such distributions that exceed such amounts would be reported and taxed to beneficiaries as if distributed by the ANC in the year of the distribution by the Trust, and would be treated as dividends to beneficiaries to the extent the ANC then has current or accumulated earnings and profits.

If the beneficial interests in the Trust or the shares of the ANC may be sold or exchanged to a person in a manner that would not be permitted under ANCSA if the interests were Settlement

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<sup>17</sup> 43 U.S.C. 1601 et. seq.

Common Stock (generally, to a person other than an Alaska Native), then all assets of the Trust that had not been distributed as of the beginning of that taxable year of the Trust are taxed to the extent they would be if they were distributed at that time. Thereafter, the Trust and its beneficiaries are generally subject to the rules of subchapter J and to the generally applicable trust income tax rates.

#### Effective Date

The provision would be effective for taxable years of electing Settlement Trusts, their beneficiaries, and sponsoring Native Corporations ending after the date of enactment, and to contributions made to electing Settlement Trusts during such year and thereafter.

**J. Treatment of Indian Tribes as Non-Profit Organizations  
and State or Local Governments for Purposes  
of the Federal Unemployment Tax (FUTA)**

**Present Law**

Present law imposes a net tax on employers equal to 0.8 percent of the first \$7,000 paid annually to each employee. The current gross FUTA tax is 6.2 percent, but employers in States meeting certain requirements and having no delinquent loans are eligible for a 5.4 percent credit making the net Federal tax rate 0.8 percent. Both non-profit organizations and State and local governments are not required to pay FUTA taxes. Instead they may elect to reimburse the unemployment compensation system for unemployment compensation benefits actually paid to their former employees. Generally, Indian tribes are not eligible for the reimbursement treatment allowable to non-profit organizations and State and local governments.

**Description of Proposal**

The proposal would provide that an Indian tribe (including any subdivision, subsidiary, or business enterprise chartered and wholly owned by an Indian tribe) would be treated like a non-profit organization or State or local government for FUTA purposes (i.e., given an election to choose the reimbursement treatment).

**Effective Date**

The proposal would be effective with respect to service performed in calendar years beginning after the date of enactment.

**K. Elimination of the Tax on Awards Under National Health Service Corps Scholarship Program and F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program**

**Present Law**

The National Health Service Corps Scholarship Program (the "NHSC Scholarship Program") and the F. Edward Hebert Armed Forces Health Professions Scholarship and Financial Assistance Program (the "Armed Forces Scholarship Program") provide education awards to participants on condition that the participants provide certain services. In the case of the NHSC Scholarship Program, the recipient of the scholarship is obligated to provide medical services in a geographic area (or to an underserved population group or designated facility) identified by the Public Health Service as having a shortage of health-care professionals. In the case of the Armed Forces Scholarship Program, the recipient of the scholarship is obligated to serve a certain number of years in the military at an armed forces medical facility. Because the recipients are required to perform services in exchange for the education awards, the awards used to pay higher education expenses are taxable income to the recipient.

Section 117 excludes from gross income amounts received as a qualified scholarship by an individual who is a candidate for a degree and used for tuition and fees required for the enrollment or attendance (or for fees, books, supplies, and equipment required for courses of instruction) at a primary, secondary, or post-secondary educational institution. The tax-free treatment provided by section 117 does not extend to scholarship amounts covering regular living expenses, such as room and board. In addition to the exclusion for qualified scholarships, section 117 provides an exclusion from gross income for qualified tuition reductions for certain education provided to employees (and their spouses and dependents) of certain educational organizations.

Section 117(c) specifically provides that the exclusion for qualified scholarships and qualified tuition reductions does not apply to any amount received by a student that represents payment for teaching, research, or other services by the student required as a condition for receiving the scholarship or tuition reduction.

Section 134 provides that any "qualified military benefit," which includes any allowance, is excluded from gross income if received by a member or former member of the uniformed services if such benefit was excludable from gross income on September 9, 1986.

**Description of Proposal**

The proposal would provide that amounts received by an individual under the NHSC Scholarship Program or the Armed Forces Scholarship Program are eligible for tax-free treatment as qualified scholarships under section 117, without regard to any service obligation by the recipient.

**Effective Date**

The proposal would be effective for education awards received after December 31, 1993.



## **L. Broadband Internet Access Tax Credit**

### **Present Law**

Present law does not provide a credit for investments in telecommunications infrastructure.

### **Description of Proposal**

The proposal would provide a 10 percent credit of the qualified expenditures incurred by the taxpayer with respect to qualified equipment with which the taxpayer offers "current generation" broadband services to subscribers in rural and underserved areas. In the addition, the proposal would provide a 20 percent credit of the qualified expenditures incurred by the taxpayer with respect to qualified equipment with which the taxpayer offers "next generation" broadband services to subscribers in rural areas, underserved areas, and to residential subscribers. Current generation broadband services would be defined as the transmission of signals at a rate of at least 1.5 million bits per second to the subscriber and at a rate of at least 200,000 bits per second from the subscriber. Next generation broadband services would be defined as the transmission of signals at a rate of at least 22 million bits per second to the subscriber and at a rate of at least 10 million bits per second from the subscriber.

Qualified expenditures would be those amounts otherwise chargeable to the capital account with respect to the purchase and installation of qualified equipment for which depreciation is allowable under section 168.<sup>18</sup> In the case of current generation broadband services, qualified expenditures would be those which are incurred by the taxpayer before January 1, 2003. In the case of next generation broadband services, qualified expenditures would be those which are incurred by the taxpayer after December 31, 2001, and before January 1, 2005. The expenditures would be taken into account for purposes of claiming the credit in the first taxable year in which the taxpayer provides broadband service to at least 10 percent of the potential subscribers. In the case of a taxpayer who incurs expenditures for equipment capable of serving both subscribers in qualifying areas and other areas, qualifying expenditures are determined by multiplying otherwise qualifying expenditures by the ratio of the number of potential qualifying subscribers to all potential subscribers the qualifying equipment would be capable of serving.

Qualifying equipment must be capable of providing broadband services at any time to each subscriber who is utilizing such services. In the case of a telecommunications carrier, qualifying equipment is only that equipment that extends from the last point of switching to the outside of the building in which the subscriber is located. In the case of a commercial mobile service carrier, qualifying equipment is only that equipment that extends from the customer side of a mobile telephone switching office to a transmission/reception antenna (including the antenna) of the subscriber. In the case of a cable operator or open video system operator, qualifying equipment is only that equipment that extends from the customer side of the headend to the outside of the

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<sup>18</sup> The taxpayer's basis in the equipment would be reduced by the amount of credit claimed.

building in which the subscriber is located. In the case of a satellite carrier or other wireless carrier (other than a telecommunications carrier), qualifying equipment is only that equipment that extends from a transmission/reception antenna (including the antenna) to a transmission/reception antenna on the outside of the building used by the subscriber. In addition, any packet switching equipment deployed in connection with other qualifying equipment would be qualifying equipment, regardless of location, provided that it is the last such equipment in a series as part of transmission of a signal to a subscriber or the first in a series in the transmission of a signal from a subscriber.

A rural area would be any census tract which is not within 10 miles of any incorporated or census designated place with a population of more than 25,000 and which is not within a county with a population density of more than 500 people per square mile. An underserved area would be any census tract which is located in an empowerment zone, enterprise community, renewal zone, or any census tract in which the poverty level is greater than or equal to 30 percent and in which the median family income is less than 70 percent of the greater of metropolitan area median family income or statewide median family income.<sup>19</sup> A residential subscriber would be any individual who purchases broadband service to be delivered to his or her dwelling.

#### **Effective Date**

The proposal would be effective for expenditures incurred after December 31, 2000.

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<sup>19</sup> In the case of an area outside of a metropolitan area, this area median family income must be less than 70 percent of statewide median family income.

## **M. Contribution in Aid of Construction**

### **Present Law**

Section 118(a) provides that gross income of a corporation does not include a contribution to its capital. In general, section 118(b) provides that a contribution to the capital of a corporation does not include any contribution in aid of construction or any other contribution as a customer or potential customer and, as such, is includible in gross income of the corporation. However, for any amount of money or property received by a regulated public utility that provides water or sewerage disposal services such amount shall be considered a contribution to capital (excludible from gross income) so long as such amount: (1) is a contribution in aid of construction, and (2) is not included in the taxpayer's rate base for rate-making purposes. If the contribution is in property other than water or sewerage disposal facilities, the amount is generally excludible from gross income only if the amount is expended to acquire or construct water or sewerage disposal facilities within a specified time period. A contribution in aid of construction does not include customer connection fees or amounts paid as service charges for starting or stopping services.

### **Description of Proposal**

The proposal would define contribution in aid of construction to include customer connection fees (including amounts paid to connect the customer's line to, or extend, a main water or sewer line). Thus, the proposal would permit customer connection fees received by a regulated public utility that provides water or sewerage disposal services to be treated as nontaxable contributions to capital (excludible from gross income). Amounts paid as a service charge for starting or stopping services to a customer would continue to be includible in gross income of a taxpayer.

### **Effective Date**

The proposal would be effective for amounts received after date of enactment.

