

1 EXECUTIVE BUSINESS MEETING TO CONSIDER THE AMERICAN
2 RECOVERY AND REINVESTMENT ACT
3 THURSDAY, JANUARY 27, 2009
4 U.S. Senate,
5 Committee on Finance,
6 Washington, DC.

7 The meeting was convened, pursuant to notice, at
8 10:38 a.m., in room G-50, Dirksen Senate Office Building,
9 Hon. Max Baucus (chairman of the committee) presiding.

10 Present: Senators Rockefeller, Conrad, Bingaman,
11 Kerry, Lincoln, Wyden, Schumer, Stabenow, Cantwell,
12 Nelson, Menendez, Carper, Grassley, Hatch, Snowe, Kyl,
13 Bunning, Crapo, Roberts, Ensign, Enzi, and Cornyn.

14 Also present: Democratic Staff: Bill Dauster, Deputy
15 Staff Director and General Counsel; Cathy Koch, Senior
16 Advisor, Tax and Economics; Liz Fowler, Senior Counsel to
17 the Chairman and Chief Health Counsel; Kristin Bailey,
18 Research Assistant. Republican Staff: Kolan Davis, Staff
19 Director and Chief Counsel; Mark Prater, Deputy Chief of
20 Staff and Chief Tax Counsel; Jim Lyons, Tax Counsel; Nick
21 Wyatt, Tax Counsel; and Theresa Pattara.

22 Also present: Edward Kleinbard, Chief of Staff,
23 Joint Committee on Taxation; Alan Cohen, Senior Budget
24 Analyst; Tom Bradley, Congressional Budget Office; Sam
25 Papenfuss, Unit Chief, Income Security and Education Cost

1 Estimates Unit, Congressional Budget Office; Pat
2 Boulisman, Natural Resource Advisor; Kate Massey,
3 Congressional Budget Office; David Schwartz, Health
4 Counsel; Josh Odnitz, Tax Counsel; Neleen Eisinger,
5 Professional Staff; Carla Martin, Chief Clerk; and Josh
6 LeVasseur, Deputy Clerk.

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

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4 The Chairman. The committee meets today to
5 consider an original bill entitled "The American Recovery
6 and Reinvestment Act".

7 In his first inaugural address, President Franklin
8 Roosevelt said, "This nation asks for action, and action
9 now." Today we once again live in times that require
10 action. Our Nation asks for action to help rebuild a
11 very badly damaged American economy. Consider the
12 terrible blows to our economy and the problems that we
13 face if we do not act.

14 Last year, the economy lost 2.6 million jobs: 2.6
15 million Americans lost their jobs. If we do not act, 3
16 to 4 million more could lose their jobs. If we do not
17 act, employment will fall by more than 2 percent in 2009.
18 The number of hours worked will fall by more than 3
19 percent.

20 The decline in home prices and the stock market
21 collapse have sharply reduced the net worth of American
22 families. Net worth declined by roughly one-fifth
23 between the middle of 2007 and the fourth quarter of
24 2008. According to CBO, the national average home price
25 will fall by another 14 percent between the third quarter

1 of 2008 and the middle of 2010.

2 Equity wealth has declined by \$6 trillion between
3 the end of 2007 and the end of 2008. The Standard &
4 Poors 500 Stock Index fell by almost 45 percent from
5 October 2007 to December 2008. The financial crisis has
6 spread around the world. These are not just numbers.
7 These are families who are hurting. These are mothers
8 and fathers who have lost jobs, who have seen savings
9 decimated and are struggling to keep their homes.

10 We have an obligation to help and I hope that the
11 committee will meet that challenge here today. We need
12 to act. This economic recovery bill will save or create
13 3 to 4 million jobs. It will position our economy to be
14 more competitive. Combined with the investments in
15 infrastructure that the Appropriations Committees are
16 marking up separately, the measure before us today
17 provides an appropriate response to the conditions that
18 we face. This economic recovery bill is a priority for
19 the American people. The Congress needs to act quickly
20 and in a unified fashion to address the economic woes of
21 this country.

22 The Senate Finance Committee has been working with
23 the President, with the members of the Senate and the
24 House, to put together the economic recovery bill that we
25 are going to consider today.

1 We think the provisions in this bill represent the
2 best ways to address spending slow-downs and rising
3 unemployment, and it will be effective. Ninety-two
4 percent of the bill's effect will come in the first two
5 years of the bill. Ninety-two percent. To counteract
6 weak consumer demand and spending slow-downs, we have
7 included several proposals that will put more cash in the
8 pockets of American taxpayers, seniors, and disabled
9 veterans.

10 The Making Work Pay Tax Credit cuts taxes for more
11 than 95 percent of American working families. It gives
12 single taxpayers up to \$500, and married taxpayers up to
13 \$1,000 in additional cash that they can use just now.
14 People will be able to receive their benefit throughout
15 the year through reduction in the amount of income tax
16 withheld from their paychecks.

17 Seniors, disabled veterans, and SSI recipients will
18 receive a one-time payment of \$300. Families with
19 children would also benefit from these proposals. The
20 income threshold to receive the Refundable Child Tax
21 Credit would be reduced so that more people would be
22 eligible for the refundable credit.

23 The Earned Income Tax Credit would be increased for
24 families with three or more children. Folks struggling
25 to pay for higher education would get relief from this

1 bill. The proposal includes a partially refundable new
2 tax credit up to \$2,500 for the cost of tuition and fees,
3 including books. Section 529 plans would be enhanced by
4 including the cost of computers as a qualifying expense.

5 This measure would help homeowners who are taking
6 advantage of the First-Time Homeowners Credit enacted
7 last year. Under current law, home builders have to pay
8 this credit back over 10 years. The bill before us today
9 would eliminate the repayment obligation unless the home
10 buyer sells the home within 36 months of the purchase.

11 For small businesses, we have included expanded
12 expensing through Section 179. This provision helps
13 small business quickly recover the cost of certain
14 capital expenses. For businesses in general, we would
15 increase the years they could carry back losses and
16 general business credits. This would put cash in the
17 hands of businesses right now. Businesses would also get
18 a tax incentive to the Work Opportunity Tax Credit for
19 hiring unemployed veterans and disadvantaged youth.

20 The economic downturn has frozen the municipal bond
21 market. This recovery bill includes changes that would
22 help to free up this market, unlocking cash for
23 infrastructure investment. Banks would be able to inject
24 more capital into projects, creating demand for municipal
25 bonds, driving down interest rates, and increasing the

1 small issue exception would increase the range of
2 municipalities from which banks can buy.

3 The bill would also eliminate tax-exempt interest on
4 private activity bonds as a preference item under the
5 Alternative Minimum Tax. This would draw new investors
6 and help stabilize the market.

7 The legislation would also establish a parity for
8 tribal governments on \$2 billion of tax-exempt bonds.
9 This important change would allow tribal governments to
10 issue debt for projects on equal footing with other
11 government issuers.

12 And this bill would create a new tax credit bond
13 option. This new bond would give State and local
14 governments a new tool to finance infrastructure
15 projects. By allowing investors to receive a tax credit
16 and taxable interest, the bond provides a deeper Federal
17 subsidy and this should help create investor demand.

18 We have also included nearly \$25 billion in
19 incentives for energy in this recovery package. These
20 incentives would create green jobs, producing the next
21 generation of renewable energy sources: wind, solar,
22 geothermal. These incentives would spur development of
23 alternatives and they would help to combat climate change
24 by reducing our use of carbon-emitting fuels.

25 The bill would extend and modify the Renewable

1 Energy Production Tax Credit for qualifying facilities.
2 The bill includes additional funding for clean renewable
3 energy bonds to finance facilities that generate
4 electricity from renewable resources, and the bill
5 includes conservation bonds for States to use to reduce
6 greenhouse gas emissions.

7 Energy experts often cite efficiency as the low-
8 hanging fruit. Efficiency is the easiest way for us to
9 reduce our energy consumption and greenhouse gas
10 emissions, so we have included incentives for energy
11 efficiency. The bill would increase the value of
12 existing credit for energy-efficient homes, and the bill
13 would eliminate the limitations on specific energy-
14 efficient property. The bill would extend the credits
15 for various types of energy-efficient property for both
16 residential and business.

17 Two new tax credits would spur our alternative
18 energy and production. The Advanced Energy Research and
19 Development Credit will provide an enhanced 20 percent
20 R&D credit for research expenditures incurred in the
21 fields of fuel cells, energy storage, renewable energy,
22 energy conservation, technology, efficient transmission,
23 distribution of electricity, and carbon capture and
24 sequestration.

25 The second energy tax credit is an Advanced Energy

1 Investment Credit for facilities engaged in the
2 manufacture of advanced energy property. The credits
3 would be available for projects certified by the
4 Secretary of Treasury, in consultation with the Secretary
5 of Energy, through a competitive bidding proposal.

6 This bill would make sound investments in health
7 information technology, or health IT. These investments
8 should reduce costs, improve quality, and help patients
9 make better decisions about their health care. Expanding
10 the use of health IT should make our health care system
11 more efficient, reduce errors, and help bring down costs.

12 Health IT would also provide a platform for
13 standardizing and collecting of data to move toward
14 paying for performance and improve our delivery system,
15 another way to improve efficiency and decrease costs.
16 Investing in health IT will help to put that
17 infrastructure in place while creating thousands of high-
18 tech jobs. Provisions included in this bill would help
19 nearly every doctor in America, and most hospitals, to go
20 paperless over the next 10 years. Let us not forget:
21 reforming health care is the right way to get a handle on
22 entitlement spending.

23 The economic crisis has also created significant
24 fiscal difficulties for States. At least 45 States will
25 face budget shortfalls. Economists expect those

1 shortfalls to total more than \$350 billion over the next
2 two years. These dire circumstances have forced painful
3 choices. Almost half of the States have already made or
4 proposed cuts to their Medicaid programs.

5 The continued rise in unemployment places a further
6 strain on Medicaid. Decreased revenue coming in means
7 less money to fund Medicaid, and experts warn that every
8 percentage point increase in unemployment adds one
9 million people to the Medicaid and Children's Health
10 Insurance Program rolls.

11 Economists tell us that State fiscal relief is an
12 effective means to stimulate the economy, and they also
13 advise that targeted relief to those States most in need,
14 not based on circumstances of States' own making but
15 based on a true measure of distress, is the best means of
16 distribution.

17 The bill before us today would provide much-needed
18 relief to every State through a temporary increase in the
19 Federal share of Medicaid funding. It would also provide
20 additional aid targeted to States facing the most
21 precarious fiscal situations, measured by an increase in
22 unemployment. The bill before us would also provide
23 critical support to individuals, families, and States who
24 have been disproportionately affected by our economic
25 crisis.

1 Since 2007, the American economy has lost 2.6
2 million jobs. The economic recovery package needs to
3 create new jobs, but it also needs to support those who
4 have lost employment and help them find new jobs.

5 While almost all workers pay into the Unemployment
6 Insurance program--almost all--only about half of them
7 qualify for benefits. American workers deserve better.
8 They deserve to know that the Unemployment Insurance
9 program will be there when they need it. The bill before
10 us today would increase and extend benefits to those
11 currently looking for work.

12 The bill before us would help States to cope with
13 the increasing number of families needing temporary
14 assistance, and it would remove the incentive for States
15 to artificially keep their TANF caseloads low.

16 In addition, the bill would ensure that families
17 that qualify could continue to receive child support
18 payments, those that are intended to be spent on
19 children. For those who receive it, child support
20 constitutes about 30 percent of a poor family's income.

21 The bill before us would also increase the incentive
22 to become employed by extending the Transitional Medical
23 Assistance program under Medicaid for 18 months. TMA
24 allows former recipients of temporary assistance for
25 needy families to retain Medicaid coverage for one year

1 after they become employed and begin earning too much to
2 otherwise remain eligible for Medicaid. These workers
3 usually earn too little to afford private coverage.

4 The bill before us would also remove barriers to
5 getting Medicaid and Children's Health Insurance Program
6 dollars for low-income American Indians and Alaska
7 Natives. The funds directed toward these programs for
8 vulnerable populations would go into the hands of folks
9 that need it and will spend it right away. These
10 proposals will increase economic activity, create jobs,
11 and shorten the amount of time that we all spend in this
12 economic crisis.

13 Another key component of our economic recovery
14 package would help unemployed workers maintain their
15 health coverage. When people lose their paychecks, they
16 often lose their health insurance coverage. To address
17 this problem, our proposal includes help for unemployed
18 workers to pay for their health care premiums.

19 Today, most workers who lose their jobs have the
20 right to keep their health insurance for up to 18 months
21 under the COBRA program, but to be eligible for COBRA
22 health benefits workers today must pay all of the premium
23 costs, the full 100 percent, plus an additional 2 percent
24 for administrative costs. Therefore, for most folks who
25 have just lost their job, this is simply unaffordable.

1 Our plan will provide a subsidy to cover up to 65
2 percent of health premiums costs up to nine months. This
3 premium subsidy is short term. It would be available
4 only to unemployed workers while they look for a new job.
5 For those workers that lose their jobs to international
6 trade, President Kennedy established Trade Adjustment
7 Assistance, or TAA. I have long championed TAA and have
8 worked to expand its reach and improve its effectiveness.
9 Today, TAA gives workers the chance to retrain for new
10 jobs, get access to health care, and ultimately get back
11 to work. That is why the bill before us today includes a
12 two-year extension of Trade Adjustment Assistance.

13 Yet, in a time when Americans are doing everything
14 they can to change, to adapt, and be flexible in the
15 global economy, I believe TAA should do the same. We can
16 do more to expand who can benefit from TAA. We can
17 improve how we get them those benefits. That is why I am
18 working with Senator Grassley, Chairman Rangel, and
19 Congressman Camp on a robust expansion of TAA. We hope
20 to include this approved TAA in the economic recovery
21 package before it is enacted.

22 The package that we are considering today is our
23 best effort to reach a consensus on an economic recovery
24 bill that can pass the Senate and pass the House quickly.
25 The Nation asks for action, and action now. Let us

1 quickly put our economy back on track. Let us act
2 quickly to make that happen. Let us act to restore our
3 Nation's financial health, and let us act to report this
4 important legislation today.

5 Now we will go to Senator Grassley.

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1 OPENING STATEMENT OF HON. CHUCK GRASSLEY, A U.S. SENATOR
2 FROM IOWA

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4 Senator Grassley. Thank you, Mr. Chairman, for
5 courteously and professionally consulting members on this
6 side of the aisle. We had one bipartisan members'
7 meeting where you heard us out. In addition, you
8 apprised me and my staff of negotiations between
9 Democratic leadership of both bodies and the Obama
10 administration. Those Democrats-only negotiations were
11 extensive. Folks on our side who read press reports
12 could see that.

13 Further evidence of that deal-making is the
14 relatively small differences between the Ways and Means
15 Committee and the Finance Committee packages. So, I
16 congratulate you on those negotiations. The fruit of
17 that labor is the Chairman's mark.

18 This bill is not the result, though, of the usual
19 bipartisan negotiations that are characteristic of how
20 this committee works. Republicans were courteously
21 consulted at the member and staff level, and while that
22 happened, we were never really at the negotiating table.

23 Speaker Pelosi best describes the bottom line of the
24 process when she said, on January 23 as reported in the
25 *Washington Post*: "Yes, we wrote the bill. Yes, we won

1 the election."

2 Indeed, there is a rumor floating around about an
3 informal agreement among Democratic members. The
4 agreement appears to be to vote against any Republican
5 amendments, no matter the merits. So let us be clear: we
6 know at the outset that the mark-up will ratify a deal
7 made between Democrat leaderships of the House and
8 Senate; no Republican ideas need apply.

9 There are a few comments on the process, so I would
10 like to speak now about some substance. First off, I
11 want to make clear that most on our side agree with
12 President Obama that a stimulus package is very, very
13 necessary. The economy, as described by Chairman Baucus,
14 is obviously flat on its back. Too many Americans who
15 want to find work cannot find jobs. A lot of Americans
16 are worried that their jobs will be the next to go. We
17 get that on our side as well.

18 Everyone here knows we need to do everything we can
19 to get the economy moving again. Where we differ is the
20 degree to whether the engine ought to be government or
21 private sector, especially America's biggest job creator,
22 the small business sector, where we brag about it
23 creating 70 or 80 percent of the new jobs. These are
24 honest, well-intended philosophical differences between
25 the two parties, but they are there.

1 On our side, we want the new jobs to come from the
2 private sector. On the other side, the preference is to
3 grow employment through an expansion of government. By
4 the conclusion of this mark-up, those differences will be
5 plain to the American people. We will see the
6 differences fleshed out in debate and amendments, and of
7 course that is the way the congressional process ought to
8 work.

9 Whether Republicans or Democrats have been in
10 control, the test of proper stimulus boils down to three
11 words, all of them beginning with the letter T. Stimulus
12 proposals should be timely, temporary, and targeted. But
13 if you apply the three Ts test to much of the spending in
14 this proposal, you will find that it fails the test. We
15 will get into that when we examine in detail the
16 Chairman's mark.

17 Some folks might ask, what is the problem if we
18 overshoot and flunk the test? The first problem is that
19 we are running out of budget room. When the bill reaches
20 the Senate floor, it is expected that the package will
21 total at least \$825 billion. All of this extra deficit
22 increase would be proposed when the baseline deficit of
23 this fiscal year will hit \$1.2 trillion. That amount
24 exceeds all historical records.

25 As a percentage of the economy, that will mean 8.3

1 percent. That amount easily exceeds the previous peak of
2 5.7 in 1983, and it is almost 50 percent above any
3 comparable post-World War II levels.

4 The figures on the Federal debt held by the public
5 are likewise staggering. In the period of 2001 to 2007,
6 debt held by the public increased by comparably smaller
7 amounts, roughly less than 1 percent per year. This
8 year's change easily exceeds all of that. So we need to
9 acknowledge the deficit situation we are in. It is very
10 serious. So whatever we do, we ought to not make the
11 long-term fiscal situation worse than it is.

12 The other problem is that if we prime the pump too
13 much and the pumped-out stimulus does not materialize
14 until after the hoped-for recovery is upon us, then it
15 might risk too much stimulus. And you know the result:
16 inflation.

17 Let us bring a sharper focus on this point. The
18 Congressional Budget Office, CBO, and Joint Tax Committee
19 tell us that the package will spend out, for fiscal year
20 2009, a total of roughly 21 percent of the total of \$825
21 billion. Ironically, the tax policy stimulus, much
22 maligned by the hard core of both Democratic caucuses,
23 helps the spend-out ratio greatly.

24 The theory for erring on the side of overloading on
25 the spending side is that we need to direct dollars to

1 the folks most likely to spend them. This is the reason
2 we are told that we need extra FMAP money, expanded
3 entitlements, and other State aid.

4 It misses the point that the U.S. fiscal policy
5 system already has an arsenal of anti-recessionary
6 automatic stabilizers directed at the same population.
7 These stabilizers provide immediate assistance to those
8 most vulnerable to an economic downturn. CBO says that
9 these benefits, including food stamps, Unemployment
10 Insurance, and Medicaid will grow to \$250 billion this
11 year. That built-in lower income population stimulus
12 will be equal to 1.8 percent of our economy.

13 It also misses the point about ensuring that the
14 lessons of moral hazard apply to States. The fiscal
15 problems faced by many of our States and localities are
16 largely the result of their inability to keep spending in
17 line with revenue. Between the third quarter of 2006 and
18 third quarter of 2008, State revenue increased 7 percent
19 and State spending increased 15 percent.

20 In other words, the States and localities spent
21 \$2.22 for each additional dollar of revenue. The States
22 have been on a spending spree and they have dug
23 themselves into a hole. Now we hear that an FMAP slush
24 fund for States is necessary to avoid tax increases at
25 the State and local level. We will also hear that vital

1 services will be cut unless we cut a big blank check to
2 the States.

3 Some on our side will test those assumptions with
4 amendments. From our side's view, those are the major
5 shortcomings on the substance of the mark before us.
6 Although we have heard there is a deal to vote down our
7 amendments no matter whether they are meritorious or not,
8 we would like to be constructive and build on the parts
9 of the package that we support.

10 In this respect, we will go back to the major
11 differences between our parties on how to get the economy
12 moving again. On our side, we would like to push more
13 incentives for long-term growth of private-sector jobs.
14 There is a good start on a broad-based middle income tax
15 cut in the package.

16 We would like to expand the tax cut to cover all
17 middle income taxpayers, and we would like to direct that
18 at labor and capital income earned by middle income
19 taxpayers as well. Since we were not at the negotiating
20 table to offer those pro-growth ideas, you will see them
21 arise as constructive offers to improve the package
22 before us.

23 The House-Senate-White House Democratic deal did not
24 contain relief from the Alternative Minimum Tax that at
25 least 24 million middle income families face this year.

1 We would like to ensure that the stealth AMT does not
2 consume large chunks of middle income tax relief that
3 both sides agree needs to be in the package.

4 I would like to now comment a little bit on health-
5 related provisions in the mark. Spending in this bill
6 should be judged based on two criteria: will it stimulate
7 the economy, and is the money being well spent? Mr.
8 Chairman, we have honest disagreements over whether
9 several of these provisions actually are stimulative.
10 Improving health information technology is critical for
11 our health care infrastructure. I have no argument with
12 that, so I would support many of the provisions that are
13 in the Chairman's mark.

14 But I have to ask, will it stimulate our economy and
15 is it money that we should add to the deficit rather than
16 offsetting it? It was not so long ago that \$16 billion
17 was a lot of money around here. Providing assistance to
18 States makes sense if we are concerned about States
19 raising taxes or cutting spending at a time that we have
20 a recession, but is \$87 billion the right number, and is
21 the increased Medicaid spending the right way to do it?
22 Could we better stimulate economic recovery using all or
23 parts of that money elsewhere?

24 The Chairman's mark also includes a two-year
25 extension of our Trade Adjustment Assistance programs,

1 and as the Chairman has said and I want to affirm, we are
2 working together to see if we can agree with our
3 counterparts on the House Ways and Means Committee on a
4 broader reauthorization of these programs, but that
5 process and negotiation is still in the works.

6 Apart from Trade Adjustment Assistance, I am
7 disappointed that this administration is not focusing on
8 trade as a component to the economic stimulus package,
9 because just two weeks ago we had a report, for the first
10 time since 1982, not just exports and imports from and
11 into the United States went down, but international trade
12 worldwide went down.

13 Now, I do not know whether that is the beginning of
14 the things that happened to bring on the Great Depression
15 of the 1930s, but we ought to be including vigorous trade
16 issues in order to make sure that not only the U.S.
17 economy recovers, but the world economy does not shut
18 down. Opening up new markets for U.S. exporters should
19 be part of the mindset to stimulate our economy. Our
20 pending trade agreements with Colombia, Panama, and South
21 Korea provide significant opportunities to do just that
22 and should be implemented as soon as possible.

23 As we go through the bill, I will offer several
24 amendments that I hope will be accepted to try to make
25 the bill better answer the questions that I have raised.

1 The people back home see Congress spending vast amounts
2 of taxpayers' dollars and they are counting on us to
3 ensure their money is spent wisely and not wastefully.

4 Now, at this point we have before us a stimulus
5 bill. Part of the reason that there is a lot of
6 questions out there at the grassroots of America of
7 whether this is going to do any good, are based on the
8 proposition that a lot that has been done already with
9 the \$700 billion bail-out has not accomplished much, or
10 if it has accomplished something, at least the people at
11 the grassroots of America have not seen any benefit from
12 it. So, that is a burden that this stimulus package
13 should not have to carry, but it does carry and it makes
14 it all the more difficult for us to sell this concept.

15 Mr. Chairman, I yield the floor.

16 The Chairman. Thank you very much, Senator. I
17 deeply appreciate your help here. In our effort to get
18 the stimulus passed very quickly, as you know, we talked
19 to you and your side very much in the very beginning and
20 there was reluctance to use spending to get the stimulus
21 package passed. In the interest of getting stimulus
22 passed quickly, we wanted to work with you, and did work
23 with you, but we just did not have the time to go into
24 very deep, lengthy negotiations, as often is the case, in
25 the interest of getting this bill passed very quickly.

1 Thank you.

2 I will now recognize Senators in the order in which
3 they appeared. I urge them to speak no more than four
4 minutes so we can get to the mark-up. First, is Senator
5 Rockefeller.

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1 OPENING STATEMENT OF HON. JOHN D. ROCKEFELLER, IV, A U.S.
2 SENATOR FROM WEST VIRGINIA

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4 Senator Rockefeller. Thank you, Mr. Chairman. I
5 would like to commend your technological capacity, and
6 also your swift action on the economic stimulus proposal
7 that is before us. The bill incorporates provisions that
8 are supported by both Democrats and Republicans, and
9 people should not make light of that. It focuses on
10 priorities that will help get our economy back on track.

11 Working families, as you have pointed out, are
12 hurting desperately. It gets harder and harder to say
13 those things in Washington. You have to be back in your
14 home States to see it, feel it, to be with the people.
15 Our Nation's economic challenges have had devastating
16 impacts on the millions of Americans who have been unable
17 to find jobs to help pay their bills, put food on their
18 tables, or provide health care for their children.

19 In West Virginia, the unemployment rate is a little
20 better than the national average, primarily because coal
21 has been doing better, temporarily. But families in my
22 State are still suffering. We are much more accustomed
23 to an 8 or 9 percent unemployment rate than the one we
24 have now.

25 Nearly every day we hear about plant closures. I

1 spent most of yesterday working on a huge one involving
2 all kinds of parties that do not want to cooperate and
3 have a pessimistic view of the future, so that makes
4 everything harder. There is so much on the line for the
5 economy, and with so many Americans who are hurting
6 during this recession I reject the notion that our
7 government should just sit back and let the economy fix
8 itself.

9 In closing, I would like to applaud you, Chairman
10 Baucus, for the \$87 billion in State Medicaid relief tax
11 incentives for broad-band technology; an extension of the
12 New Markets Tax Credit; a significant increase in funds
13 for school construction and renovation. I think that is
14 about \$10 billion; and the assistance to vulnerable
15 populations included in this bill. These are all
16 necessary and good, and I urge swift passage of
17 legislation.

18 I thank the Chair.

19 The Chairman. Thank you, Senator.

20 Next, I would recognize Senator Snowe.

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1 OPENING STATEMENT OF HON. OLYMPIA J. SNOWE, A U.S.
2 SENATOR FROM MAINE

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4 Senator Snowe. Thank you, Mr. Chairman. I want to
5 thank you for your leadership in bringing us to this
6 point, at a consequential time in our Nation's history
7 with one of the worst economic crises that this Nation
8 has confronted. I want to thank Ranking Member Grassley
9 for his tireless advocacy, as he mentioned in his
10 statement, on so many tax provisions, including the
11 Alternative Minimum Tax. We certainly appreciate his
12 significant contributions.

13 Mr. Chairman, I think there is no dispute about the
14 necessity of having an economic stimulus package. These
15 are critical times. We have already seen that this is
16 probably one of the worst recessions since World War II.

17 We are in the midst of the gravest economic
18 circumstances since the Great Depression.

19 We can expect, this week, the Commerce Department to
20 issue a projection of a 6 percent contraction in economic
21 growth during the last quarter of 2008. The last time we
22 experienced such a contraction was the first quarter of
23 1982. Last year also saw the greatest number of job
24 losses since 1945. Additionally, we heard the
25 announcement of a record number of layoffs yesterday,

1 with more than 50,000 jobs cut, and that may be a
2 fraction of the lay-offs that actually will occur.

3 Hopefully we can achieve bipartisan support, in this
4 committee and beyond, in terms of the totality of the
5 package that will come before the U.S. Senate. But today
6 we have matters that pertain to the Finance Committee's
7 jurisdiction. This is the beginning of the process, it
8 is not the end of it. But we have a responsibility to
9 get it right, Mr. Chairman. We cannot afford to fritter
10 away resources, our precious resources, at a time in
11 which we have to make sure that money spent is truly
12 temporary, targeted, and, most importantly, helps those
13 who have been displaced by the magnitude of this
14 downturn.

15 I see this stimulus package as a critical component
16 of a multi-dimensional approach to resolving the economic
17 crisis confronting the nation. We have already expended
18 \$700 billion in rescuing the financial institutions. We
19 have seen the Federal Reserve exhaust its options in
20 reducing its lending rate to zero, which, by the way, is
21 something that has not occurred since the 1930s; in
22 addition to which, it has amassed more than \$1 trillion
23 in debt to stabilize both financial and economic markets.

24 But this package, we have to get it right because the
25 ultimate price will be paid by the American people. It

1 is not about labeling what is tax relief and what is
2 spending.

3 The question is the merits of the proposals that are
4 incorporated in this legislation and beyond. It is about
5 job creation, it is about helping those individuals who
6 desperately need our support, and I happen to believe
7 that this package delivers on both fronts. It
8 strengthens the social safety net, it helps those who are
9 displaced, and it provides hardworking Americans with tax
10 relief. It also provides tax incentives for small
11 businesses and large businesses. Notably, this \$455
12 billion is well balanced with \$188 billion for spending
13 and \$275 billion for tax relief. Can we do more? We
14 will see and consider some of the amendments such as the
15 one that Senator Grassley is offering on the Alternative
16 Minimum Tax.

17 I'd also like to point out that we heard last year
18 from CBO, the maximum stimulus you can provide is through
19 unemployment insurance. This legislation provides \$39
20 billion. I appreciate the Chairman including a provision
21 to exclude unemployment compensation benefits up to
22 \$2,400 from taxation. That will, again, maximize the
23 stimulative benefit. After all, for every percentage
24 increase in unemployment, one million people will be
25 uninsured, both children and adults.

1 Second, the bill before us provides tax relief to 95
2 percent of hardworking Americans. Again, I think that
3 that is critical: 95 percent of hardworking Americans are
4 going to benefit from the tax relief in this package,
5 including working families who will see additional
6 dollars from the expanded Refundable Child Tax Credit,
7 which Senator Lincoln and I have advocated over the
8 years. It has been a great success. It is going to
9 benefit those individuals who earn between \$6,000 and
10 \$12,600. Are we saying that these people do not deserve
11 to benefit through this stimulus package? And besides,
12 this provision will put money in the hands of those
13 people who need it and will spend it.

14 As the Ranking Member of the Small Business
15 Committee, I am pleased that we are including tax relief
16 for small businesses. This legislation provides \$75 to
17 \$80 billion in measures that will provide incentives to
18 small businesses because they are the ones that are going
19 to lead us out of this economic crisis. They are the job
20 generators. They create two-thirds of net new jobs in
21 America. Moreover, the bill also includes accelerated
22 depreciation that will benefit larger businesses; up to
23 50 percent of their capital investments will be able to
24 be depreciated in the year of purchase.

25 The thing we do not want to be temporary in this

1 package, Mr. Chairman, is job creation. We want this
2 bill to create permanent jobs. That is why I appreciate
3 this package. We are on the vanguard of creating the
4 jobs for the 21st century, making investments in
5 renewable energy sources, green technology. We are going
6 to compete with every Nation on earth to emerge from this
7 global downturn, and the only way we are going to do it,
8 Mr. Chairman, is by creating the jobs for the 21st
9 century. If we had not dallied last year as a Congress
10 in extending the R&D for tax credits for renewables, we
11 would have been well on our way to creating 100,000 jobs.

12 The renewable tax credits in this package will create
13 89,000 jobs.

14 I know that there are those who are opposed to
15 health information technology legislation that Senator
16 Stabenow and I have been advancing. But it will create
17 40,000 jobs. These are the jobs of the future. This is
18 going to create innovation. Do we not want to say
19 eventually that we are going to save \$10 billion through
20 improvements in care, not to mention the avoidance of the
21 loss of life, because we are on the forefront of change.

22 We want to get ahead of every nation on earth in terms
23 of creating those jobs.

24 Finally, on Medicaid assistance to the States, the
25 Chairman mentioned that there are 45 States currently

1 facing budgetary shortfalls. That is a combined decline
2 in revenues of more than \$350 billion. Is anyone
3 suggesting that that is not going to have a profound
4 impact on the overall economy? Because after all, the
5 States are going to have to balance their budgets. They
6 are constitutionally required to do so. So they are
7 either going to have to ratchet back tremendously their
8 spending programs or they are going to have to raise
9 taxes.

10 So in order to avoid all that, we have an obligation
11 to assist them on the Medicaid front, not only to help
12 them with their current caseload, but also the burgeoning
13 caseload as a result of this declining economy. I
14 appreciate what the Chairman included because I thought
15 it was important to insert a provision for prompt
16 payment, to require the States to expeditiously pay their
17 providers so hospitals all across this country who are
18 having to cut back do not see their operations
19 threatened, which will only imperil more jobs. Finally,
20 I am pleased this legislation does allow the States to
21 expand their coverage benefits so that they can
22 accommodate as many people who are unemployed as
23 possible.

24 I think we have a two-fer here, Mr. Chairman. We
25 have the possibility of economic stimulus, as well as

1 economic transformation. These are not mutually
2 exclusive goals, and I think that we are on the right
3 track in achieving both objectives.

4 The Chairman. Thank you, Senator, very much.
5 Senator Conrad?

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1 OPENING STATEMENT OF HON. KENT CONRAD, A U.S. SENATOR
2 FROM NORTH DAKOTA

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4 Senator Conrad. Thank you, Mr. Chairman. Thank
5 you for your extraordinary effort, and the effort of your
6 staff, to put together this package. I think all of us,
7 if we were the ones that had the responsibility to put
8 together such a package, would do it somewhat
9 differently. That is the nature of something of this
10 complexity.

11 I do want to respond to something the Ranking Member
12 said, that there is some agreement to vote down all
13 Republican amendments. Let me just say, nobody ever
14 approached me about any such agreement, and I am not
15 party to any such agreement. Number two, I would say, in
16 the list of amendments that have been filed, there are
17 24--at least 24--that are bipartisan amendments. Members
18 from both sides have gone together to offer an amendment.

19 So I do not think there is anything to this rumor that
20 there is some agreement.

21 Finally, with respect to the Ranking Member's
22 remarks, I agree very much with his description of what
23 the criteria ought to be. It ought to be the three Ts,
24 of what is timely, what is temporary, and what is
25 targeted. Over the days here in the committee and on the

1 floor, hopefully we will be able to improve the overall
2 package to have fidelity to those goals.

3 I think all of us know why we are here. We face the
4 greatest economic and financial crisis since the Great
5 Depression. The latest reports we have is that the
6 economy declined at a rate approaching 6 percent for the
7 last quarter. That is the worst drop since the 1980s, as
8 the gentle lady from Maine indicated. We have lost
9 nearly 2 million jobs in this country in the last four
10 months.

11 On housing, 1 out of every 5 mortgages in this
12 country is under water. That is, they owe more money
13 than their house is worth. One in every 10 mortgage
14 loans is either delinquent or in foreclosure. Every day
15 brings new headlines about additional banks teetering on
16 the edge of collapse.

17 This is not reserved to the United States. This is
18 a global phenomenon. All of us read the stories over the
19 weekend that the European slow-down is even more severe
20 than our own. Economists of every stripe tell us that
21 there is a very real risk that the economy will tip into
22 a deflationary spiral. If that happens, economists tell
23 us that the usual tools are not likely to be effective in
24 bringing us out of that kind of downturn. We will face a
25 much more prolonged, much more painful recession than we

1 are already experiencing.

2 Most economists tell us to act boldly and
3 aggressively to create jobs and jump-start economic
4 growth. They tell us to err on the side of doing too
5 much rather than too little. Before the Budget Committee
6 last week, we had the former economic advisor to
7 President Reagan tell us to do a big economic recovery
8 package, and that in his judgment the package that was
9 being sent to us was not large enough. However, they
10 also tell us we can expect far less lift from a stimulus
11 package than we would normally get because of continued
12 weakness in the financial and housing sectors.

13 These weaknesses are creating a vicious cycle:
14 credit remains very much locked up, lack of credit causes
15 layoffs, job losses trigger more foreclosures,
16 foreclosures hurt bank balance sheets, and credit
17 tightens further. The bad news on all these fronts hurts
18 confidence, causing consumers and producers to retrench
19 further.

20 In this environment, an economic recovery package by
21 itself will not get the Nation's economy back on track.
22 Our policy response must be comprehensive. It must boost
23 employment via stimulus, it must restore credit channels,
24 and it must mitigate the worsening situation in housing
25 markets. Each of these components must be coordinated to

1 maximize the bang for the buck. The proposal the
2 Chairman has laid before us today is a good starting
3 point.

4 As this process moves forward, I have two major
5 concerns. First, I fear we will face pressure to extend
6 many of the tax and spending programs even after the
7 recession is over, which goes to the gentleman from
8 Iowa's point. Given our fiscal situation, we simply
9 cannot afford to make these policies permanent.

10 Second, as this gets joined with the Appropriations
11 Committee piece we will need to ensure that the component
12 pieces work together comprehensively to address the
13 economic, financial, and housing crises in a way that is
14 truly timely, temporary, and targeted--again, to the
15 point of the Ranking Member.

16 I believe it is critically important that we get
17 this right the first time. None of us wants to be back
18 here in six months facing another rescue package. I look
19 forward to working with my colleagues in the days ahead
20 to strengthen this package, to restore growth, create
21 jobs in the short run, and lay the foundation for
22 stronger economic growth in the future.

23 I thank the Chair.

24 The Chairman. Thank you very much, Senator.

25 Senator Kyl?

1 OPENING STATEMENT OF HON. JON KYL, A U.S. SENATOR FROM
2 ARIZONA

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4 Senator Kyl. Thank you, Mr. Chairman.

5 Early last year, Congress sent out \$600 rebate
6 checks to individuals and \$1,200 to couples. This cost
7 the taxpayers more than \$115 billion. Proponents of the
8 rebates argued that individuals would spend these checks
9 and create incentive for business to remain productive
10 and prevent the economy from going into a recession. I
11 opposed the legislation because history and economic
12 evidence certainly suggested that rebates would not work.

13 Results are now in. One of the economists quoted by
14 one of my Democratic colleagues, Marty Feldstein, who
15 initially supported the economic stimulus bill, recently
16 wrote: "The evidence is now in and that optimism was
17 unwarranted. Recent government statistics show that only
18 between 10 percent and 20 percent of the rebate dollars
19 were spent. The rebates added nearly \$80 billion to the
20 permanent national debt, but less than \$20 billion to
21 consumer spending. This experience confirms earlier
22 studies showing that one-time tax rebates are not a cost-
23 effective way to increase economic activity."

24 Now, the Majority has written another economic
25 stimulus package with yet another rebate. This time it

1 is withholding, for those families earning \$150,000, \$20
2 a week. Mr. Chairman, I will predict, as we have with
3 each of these situations before, that this stimulus
4 rebate will be no more effective than those before. It
5 will simply put us another several hundred billion
6 dollars in debt.

7 I am reminded by the comments of then-Secretary of
8 Treasury Henry Morgenthau, through the Depression. I
9 think it was in 1937. He was testifying before the House
10 Ways and Means Committee and he said we have spent all
11 this money. Unemployment is still very high and we just
12 have a bigger national debt to show for it. I am afraid
13 that is what we are heading into here.

14 I also fail to see how giving States and local
15 governments hundreds of billions of dollars pulls our
16 economy out of recession. The President has said that he
17 wants to make sure that investments actually stimulate
18 growth and have a high rate of return for the economy,
19 and that they will work.

20 Yet, if you look at the statistics, State and local
21 governments have been spending a prodigious rate going
22 into debt. Since 1998, their budgets have doubled to \$2
23 trillion, according to the Census Bureau. State and
24 local expenditures rose 34 percent from 2003 to 2007,
25 compared to inflation of 19 percent, and population

1 growth. They also loaded up with a great deal of debt.

2 The question is whether we should simply reward the
3 kind of profligacy which has gotten them into this
4 position by bailing them out, or whether we should say
5 you need to get your fiscal house in order. We are
6 taking the money from the same taxpayers; whether it is
7 State taxes or Federal taxes, it is the same source. It
8 is just that when the money comes to Washington, it is
9 redistributed to the worthy--that is to say, the more
10 politically powerful.

11 I will have an amendment that, at least with respect
12 to some of this money, puts it in the form of a loan.
13 Just as we have bailed out others by loaning them money
14 and hoping to get it back, I think we could do the same
15 thing with our State governments.

16 Finally, just with respect to tax policy--and we
17 will be talking more about this later with amendments--I
18 think I reflect the views of my Republican colleagues who
19 view this committee's role as helping to educate and lead
20 our colleagues who do not work with tax policy every day
21 to appreciate the fact that to be generally stimulating
22 tax cuts need to be immediate, permanent, and on the
23 margin, meaning that they apply to the next dollar of
24 income that a business or an individual earns.

25 It was the principle behind the Kennedy tax cuts in

1 1964, the Reagan tax cuts in 1981, which finally took
2 effect in 1983, and which is the basis for a Nobel Prize
3 in Economics won by a professor from Arizona State
4 University, Dr. Edward Prescott, who proved in actual
5 application what we all intuitively understand in theory.

6 It seems to me, Mr. Chairman, this committee could make
7 a significant contribution to a positive stimulus by
8 applying that principle to the tax policy that we
9 establish in this committee.

10 The Chairman. Thank you very much, Senator.

11 Senator Bingaman is next.

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1 OPENING STATEMENT OF HON. JEFF BINGAMAN, A U.S. SENATOR
2 FROM NEW MEXICO

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4 Senator Bingaman. Thank you, Mr. Chairman. Let
5 me, first, congratulate you on this mark that you have
6 put together for the committee to consider. I think
7 there is a lot of very good policy in here and I think
8 this will move us a long way toward accomplishing the
9 stimulus that President Obama is urging the Congress to
10 act on. I will have a couple of amendments later on in
11 the day, but I do congratulate you and know what an
12 enormous amount of work went into this.

13 Let me mention one provision. Just hearing my
14 colleagues, I think we are going to have to figure out,
15 do we want temporary provisions or do we want permanent
16 provisions? Because I understood Senator Grassley, when
17 he said that we have to follow the three T test, one of
18 the Ts is temporary. Then Senator Kyl said we have to
19 have permanent tax changes if they are going to have any
20 effect. So I think we need to sort that out and figure
21 out which of the two, in fact, we want to pursue.

22 There is one tax provision you have included in
23 here, which I very much support: a new tax credit for
24 investment in advanced energy property. You talked about
25 this in your opening statement. This is to attract high-

1 paying jobs in the clean tech manufacturing sector. I
2 think this is something that is long overdue.

3 This is written as a temporary provision. I know
4 there have been some who talked about how we should be
5 sure we do not make permanent or continue some of the
6 temporary provisions in here. I personally believe this
7 is a provision that should be made permanent, but I think
8 putting it in here as a temporary provision is a very
9 major step forward.

10 Simply stated, we are in the awkward position
11 worldwide where most of our international competitors,
12 industrial competitors around the world provide much more
13 in the way of incentives to attract high technology
14 manufacturing than we do in this country, and accordingly
15 we have lost a great deal of that.

16 The last figures I saw, 45 percent of the global
17 solar cell production was in Japan, 9 percent of it in
18 this country; 85 percent of the global wind component
19 market is in Europe. So we have to change our policies
20 if we are going to participate in that sector of the
21 economy. I think the provision you put in here gets us
22 started on that change in policy and I very much
23 appreciate it.

24 The Chairman. Thank you, Senator, very much.

25 Senator Bunning, you are next.

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

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4 Senator Bunning. Thank you, Mr. Chairman.

5 There is an old Chinese proverb that explains what
6 is wrong with this bill: "Give a man a fish and you feed
7 him for a day. Teach a man to fish and you feed him for
8 a lifetime." Not only does this bill hand out a
9 staggering \$825 billion in fish, but it borrows money
10 from our children and our grandchildren to do so.

11 The vast expansion of permanent and semi-permanent
12 government programs in this bill shreds the guarantee of
13 Medicare and Social Security benefits for this generation
14 and every subsequent generation. They will pay taxes,
15 but the benefits will be handed out today in the form of
16 \$500 checks.

17 What is most tragic about this is that the American
18 people really need government to function right now to
19 save the economy from a financial and housing crisis that
20 is spinning out of control. The citizens of Kentucky
21 need jobs; they need a way to keep their jobs. They do
22 not need a short-term transfer of cash that keeps States
23 from making the tough decisions that everyone else is
24 forced to make.

25 This bill includes so many old ideas rejected by

1 bipartisan consensus in past years, but now cynically
2 repackaged as stimulus. A case in point is the Making
3 Work Pay Credit. This was never designed as stimulus.
4 President Obama campaigned on this theme many months
5 before the housing crisis merged into the financial
6 crisis in October. Making Work Pay will increase the
7 dependency of low-income people on regular cash payments
8 from middle class taxpayers, but it is hard to see how
9 this will create jobs in the United States.

10 With this program and several other significant
11 changes in the bill, we will be paying millions of
12 citizens thousands of dollars each to file a tax return.
13 The gatekeepers of all of this wealth have minimal
14 oversight by State and Federal Governments. Some tax
15 preparers collect enormous fees for themselves, and
16 others even file fraudulent returns to claim cash
17 benefits due to others. The authors of this bill do not
18 want to talk about the return filing fraud that is likely
19 to expand as a result of these changes.

20 Even according to the claims of its supporters, this
21 bill will not create enough new jobs. By their own
22 admission, it will only create a few hundred thousand
23 more jobs than we have lost in the last several months.

24 This crisis is too important to get wrong. None of
25 the authors are economists, but they are pretending to do

1 the work of these experts. We need to listen and do what
2 the experts say, and come back and work together on a
3 bipartisan basis and create a plan that will truly
4 address the crisis unfolding before us. That is how
5 Congress works best.

6 This plan, designed in secrecy by the leadership of
7 the Democratic Party, is inadequate and there are better
8 solutions.

9 One idea that I intend to propose is to replace the
10 \$500 Making Work Pay Credit with a voucher to open a new
11 savings account for every child in America. This child
12 account program has been very successful in the United
13 Kingdom. It will promote savings and personal
14 responsibility. It will also respond directly to the
15 financial crisis, adding \$140 billion to bank capital,
16 allowing banks to lend out approximately \$1.4 trillion
17 under current regulatory standards.

18 This bill is a huge bailout to State governments,
19 providing about \$85 billion for their Medicaid programs.

20 This is a tremendous amount of money and we should make
21 sure that the States are running fiscally sound,
22 responsible programs before they access this money.

23 We are also making a significant investment in
24 health information technology in this bill. Health IT
25 certainly has the possibility of saving money, providing

1 better quality of care and improving health outcomes.
2 Senator Roberts and I have an amendment that will make an
3 important change to the Chairman's bill that would
4 equalize the payments between large hospitals and
5 critical access hospitals, especially in States like
6 Kansas and Kentucky. For many of these hospitals, this
7 is a very important change.

8 I would hope we could find a way to use coal more
9 efficiently, more cleanly in our energy problems, while
10 fulfilling our obligations to the environment. I realize
11 that some of my colleagues would like to take coal out of
12 our energy equation, but they have no viable alternative.

13 Thank you, Mr. Chairman.

14 The Chairman. Thank you very much.

15 Senator Kerry?
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1 OPENING STATEMENT OF HON. JOHN KERRY, A U.S. SENATOR FROM
2 MASSACHUSETTS

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4 Senator Kerry. Thank you, Mr. Chairman.

5 Mr. Chairman, I want to thank you for holding this
6 mark-up and for giving us the opportunity to help shape
7 this bill. I particularly want to thank you for
8 listening to us and working with us on a number of the
9 provisions here. I heard Senator Conrad earlier say that
10 each of us probably, if we were in charge of this, might
11 have approached it somewhat differently here and there,
12 but that is inevitable. I congratulate you on really
13 working with the committee, and I think on both sides. I
14 know you met with everybody on several occasions and we
15 have worked hard to get here.

16 I want to say a few words about some of the things
17 that are in this mark-up, and then I want to say
18 something generally about where we are.

19 First of all, it is vital that we respond to the
20 reality of what is happening to a lot of our fellow
21 citizens. You cannot do anything here in terms of
22 changing the downward spiral unless we also strengthen
23 the safety net.

24 I know that ideologically--and I am hearing it from
25 some friends on the other side of the aisle--there is

1 some resistance to some portions of these expenditures.
2 But I just do not see how you have a prayer, in a
3 comprehensive approach to our economy, of stopping the
4 hemorrhaging if you do not help people to be able to
5 survive day to day and not fall further behind, and then
6 drag the economy further down.

7 This bill does that in a number of time-tested ways.
8 We help low-income individuals by making more families
9 and children eligible for the Child Tax Credit and the
10 Earned Income Tax Credit. The Earned Income Tax Credit,
11 I might say, is one of the most proven ways of lifting
12 families out of poverty. The premise behind it is
13 simple: we reward work. The EITC delivers over \$40
14 billion a year in wage supplements to lower income
15 workers and their families and it lifts more than 4
16 million people out of poverty each year.

17 During the last several Congresses, Senator
18 Rockefeller and I have joined together in an effort to
19 try to strengthen the EITC, and two of the provisions
20 from this bill are included in this mark-up, and we
21 appreciate that, Mr. Chairman.

22 The legislation that we are about to take up
23 provides relief from the marriage penalty associated with
24 EITC, and that is in keeping with our belief--I think
25 shared across the aisle--that beneficiaries should not be

1 put at a disadvantage because they decide to marry.

2 Under current law, large families with three or more
3 children do not receive a greater EITC. This legislation
4 changes that. We create a new tier of credit for
5 families with three or more children, and the combination
6 of these changes will benefit 7.7 million families
7 nationwide.

8 As a couple of colleagues have mentioned--Senator
9 Snowe mentioned it in her comments--at least 45 States
10 have had to reduce services to their citizens. One of
11 the best ways that we can again stop the hemorrhaging is
12 to help the States not have to cut those services and lay
13 off people.

14 This legislation provides significant relief to the
15 States by increasing the Federal Medicaid match. Again,
16 I know that there are some colleagues on the other side
17 of the aisle that do not like that, but you can choose
18 your place here to provide some help to the States. In
19 the end, it is going to wind up being fungible to the
20 States and you have to measure what the impact is to
21 people.

22 By providing the assistance on the Medicaid, we are
23 actually providing additional safety net and enormous
24 upside benefits for children who will continue to have
25 adequate coverage. You can pay up front or you can pay

1 on the back end. If you do not cover those kids, you are
2 going to cover them when they go into the emergency room
3 or when there is some kind of chronic impairment that
4 they have as a consequence of not having had the care up
5 front and early. So I think it is important. As people
6 lose their jobs, we all know there is declining income,
7 so then they lose their health insurance and the State
8 revenues drop, and again it cascades downwards.

9 The States are currently projected to face deficits
10 of \$350 billion over the next 30 months, so providing
11 this type of assistance to the States is going to prevent
12 people from losing health care, number one, and it is
13 going to provide enormous assistance to the States to be
14 able to spend money elsewhere.

15 The legislation also extends unemployment benefits
16 to help those who are losing jobs. I think the
17 prediction yesterday is, we are going to lose another 2
18 million jobs over the course of this year, at least.
19 With unemployment continuing to rise, extending
20 unemployment insurance and increasing the amount of
21 benefits is important.

22 Now, I also want to thank the Chairman for including
23 in this the Unemployment Insurance modernization piece,
24 which I think is going to have important changes to help
25 workers benefit from the Unemployment program.

1 Let me just divert from some of the other benefits
2 to sort of conclude by pulling together a couple of
3 comments I want to say to all my colleagues. I want to
4 pick up the theme. I will try to do this quickly, but I
5 think it is important, Mr. Chairman.

6 I want to reiterate to some degree what Senator
7 Conrad said. He and I joined together yesterday in
8 writing an op-ed for the *Wall Street Journal*. I believe
9 what we said very powerfully: we are going to be back
10 here and it is inevitable that we are going to confront
11 how we are going to deal with banks that are insolvent.
12 We can do it sooner or we can do it later. If we do it
13 later, it is going to cost us a lot more money, there is
14 going to be a lot more turmoil in the economy as a whole,
15 and we are going to pay a much longer price in terms of
16 our recovery.

17 So I hope my colleagues will embrace this concept of
18 comprehensiveness. If more people are thrown out of
19 their homes and we do not do something comprehensively
20 about the mortgage foreclosure crisis, and if more people
21 continue to lose jobs, as we know they will, and the
22 economy continues to spiral downwards, there will be more
23 toxic assets added to the bank ledgers and then there
24 will be a bigger sum of money that we will be looking at
25 in order to restore solvency.

1 So I think the comprehensive is critical. We have a
2 credit card crisis coming at us. We have a commercial
3 real estate crisis yet to be fully felt. As we saw
4 yesterday, 32 Home Depots were shut. Those will be empty
5 malls. Those will be landlords who will not be receiving
6 their rent. Those will be mortgages that will not be
7 paid, and so the toxic assets will simply continue to
8 increase unless there is a major, comprehensive effort to
9 restore both the confidence and reality that our economy
10 needs. I hope we are going to join together in a
11 bipartisan way to do that, because otherwise I think we
12 are going to pay a much, much higher price in the long
13 term.

14 Thank you, Mr. Chairman.

15 The Chairman. Thank you, Senator, very much.

16 Senator Crapo, you are next.

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1 OPENING STATEMENT OF HON. MIKE CRAPO, A U.S. SENATOR FROM
2 IDAHO

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4 Senator Crapo. Thank you very much, Mr. Chairman.
5 I share a lot of the points that have been made by my
6 colleagues today with regard to concerns about the way
7 the bill has been prepared and its content. I do
8 appreciate the Chairman working with us and the
9 opportunity to work on a number of amendments to try to
10 improve the bill.

11 I am going to be presenting a number of amendments
12 today. For example, one that I wanted to talk about is
13 an amendment on an issue we have dealt with in this
14 committee for many years now, and that is trying to make
15 the capital gains and dividends tax provisions permanent,
16 or at least correcting and improving on them.

17 The amendment would make permanent the current zero
18 percent rate for those in the lowest income brackets. It
19 would, for those currently subject to the 15 percent
20 rate, make it permanent for those making less than
21 \$200,000 per year for individuals, or \$400,000 for a
22 couple. For those above those thresholds, the rate would
23 be capped at 20 percent beginning in 2011.

24 In terms of efforts that we are undertaking here in
25 the committee for trying to stimulate the economy, I do

1 not know of many provisions that would do better than our
2 efforts to try to bring some stability and permanency to
3 the rate levels that we have achieved on capital gains
4 and dividends. This is going to help our economy rebound
5 and it is these kinds of provisions that we need to
6 pursue.

7 I also believe, as a number of others have
8 mentioned, that we can achieve in this legislation
9 significant progress on other fronts while still
10 stimulating the economy. I return to the energy issue,
11 for example. Another amendment that I will bring with
12 Senator Stabenow is an effort on biogas tax production
13 credits. You do not have to go too far back when we were
14 facing \$4 gasoline to recognize the need that this
15 country still faces to have a meaningful, comprehensive
16 energy policy.

17 The potential we have for developing our own
18 independence in a number of arenas is large, and biogas
19 is one of those. This amendment would implement a tax
20 credit that would encourage and promote the production
21 and conservation of biomass from agricultural and organic
22 wastes.

23 There are a number of other amendments that I will
24 pursue, and I know other members of the committee will
25 pursue them as well. I simply encourage my colleagues to

1 consider the opportunity we have here not only to
2 stimulate the economy, but to develop much more
3 progressive and effective, comprehensive policies in the
4 area of places like energy, health care, and our tax
5 policy in general.

6 Again, Mr. Chairman, I thank you for working with me
7 on these issues.

8 The Chairman. You bet. Thank you, Senator Crapo.
9 Senator Wyden?

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1 OPENING STATEMENT OF HON. RON WYDEN, A U.S. SENATOR FROM
2 OREGON

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4 Senator Wyden. Thank you very much, Mr. Chairman,
5 and particularly for all the hours that you have put in,
6 listening to Senators and trying to reach out to address
7 this issue.

8 It seems to me this legislation is going to make a
9 lot of stops along the way in terms of the legislative
10 process, and I want to give a sense of what I think is
11 essential. First, this legislation must not be a
12 handout, it must not be a bailout, it has to be a pass-
13 out of these devastating economic times. What you, Mr.
14 Chairman, have done is lay out some principles that I
15 think clearly set out that philosophy.

16 For example, the three-year extension of the
17 Renewable Energy Production Tax Credit. To get this
18 credit, energy companies actually have to produce energy.
19 You say to yourself, heaven forbid! How can it be that
20 logical? You produce energy, you get the credit. It is
21 that kind of philosophy, Mr. Chairman, that seems to me
22 you have brought to this legislation in our part of the
23 world. And I note the comments of our colleague from
24 Idaho, geothermal, biomass, wave, a lot of these
25 renewable energies are going to benefit from the approach

1 that you are taking, Mr. Chairman.

2 Second, I want to thank you for working with myself
3 and Senator Thune on the Build America Bonds program. I
4 know we are going to have a colloquy later in the
5 discussion, but suffice it to say, Moody's, the economic
6 analysts, have said that there is no economic multiplier
7 out there like transportation, roads, bridges, and
8 economic systems. This legislation would amount to the
9 first time the Federal Government has made available tax
10 credit bonds for transportation.

11 So we are looking at breaking with a philosophy of
12 the past and looking towards a more modern approach with
13 the legislation you are taking, and I want to thank you,
14 Mr. Chairman and Senator Grassley, for working
15 particularly with Senator Thune and I. We are going to
16 continue to do it. We want to talk to some more private
17 sector groups and others, and I know we are going to have
18 a colloquy on that in a moment.

19 The health information technology provisions that
20 you have authored here, Mr. Chairman, is something that
21 is very much in order for the time. My view is, it is
22 time to put paper medical records in the National History
23 Museum next to the typewriter and the telegraph. That is
24 what this is all about. Mr. Chairman, you, Senator
25 Stabenow, Senator Snowe, and others have led on this and

1 I am very grateful for that.

2 Two other points, very quickly. We have a very fine
3 chairman of the Commerce Committee, Senator Rockefeller.
4 I had planned to offer a broad-band tax credit today with
5 Senator Snowe. I am going to hold off on offering that
6 because it is my desire to work with our new chairman of
7 the Commerce Committee, Chairman Baucus and Senator
8 Snowe. I think we all are looking for the same result
9 and it is my desire to hold off and to continue to work
10 with our colleagues.

11 The last point I would make, is I want to thank you,
12 Mr. Chairman, for what you have done for the States with
13 what is called the mini-COBRA program that helps these
14 small businesses. We understand as part of health reform
15 we are going to have to overhaul this program. COBRA, I
16 would note, is the only program the Federal Government
17 runs that is named after a poisonous snake. So we have
18 got a lot of work to do here and, Mr. Chairman, you help
19 us move in the right direction today with your approach
20 and I look forward to supporting this bill and working
21 with you.

22 The Chairman. Thank you, Senator.

23 Senator Roberts?

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1 OPENING STATEMENT OF HON. PAT ROBERTS, A U.S. SENATOR
2 FROM KANSAS

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4 Senator Roberts. Mr. Chairman, thank you. It is
5 obvious and it appears as if Senators have finally come
6 to the realization we have an economic crisis. I would
7 hope we would really concentrate on pro-growth policies
8 and permanent tax relief policies rather than just more
9 government spending that may be locked into programs that
10 will last forever.

11 My statement, sir, has the three Ts: it is timely,
12 it is temporary, it is targeted. It is pertinent, it is
13 relevant, it is declarative. So I am just going to ask
14 that it be put in the record. I am not in cycle, so I
15 can do that.

16 [The prepared statement of Senator Roberts appears
17 in the appendix.]

18 Senator Roberts. But I have two questions, among
19 many others that I plan to ask on down the road. It is
20 my understanding that a couple of weeks ago the CBO came
21 out with an estimate of how much, on a percentage basis
22 of \$825 billion, would actually go to people this year.
23 I think the number was 7 percent. Is that about
24 accurate? Can I ask anybody down there? Is that timely?

25 The Chairman. Senator, I might say, under the bill

1 before us, 92 percent comes out in the first two years.

2 Senator Roberts. Ninety-two percent?

3 The Chairman. Ninety-two percent will be spent in
4 the first two years.

5 Senator Roberts. What happened to the CBO estimate
6 of 7?

7 The Chairman. CBO looks at not only the Finance
8 Committee, but also Appropriations. That number was only
9 Appropriations.

10 Senator Roberts. Oh, just the Appropriations
11 Committee, not our work here?

12 The Chairman. That is correct.

13 Senator Roberts. So it is the appropriators that
14 are only going to give 7 percent out of \$825 billion.

15 The other one was, I was reading the bill--that is a
16 dangerous thing to do--and we have here renewable energy
17 projects, energy conservation projects, school
18 construction projects. But we have here a prevailing
19 wage requirement. That usually comes from Kansas City,
20 in our area, and it is about 30 to 40 percent more in
21 regards to the project cost from Kansas City out into
22 western Kansas, where we are going ahead with a lot of
23 energy projects, more especially wind, more especially
24 solar. Is that correct? I think that cost is about 30
25 to 40 percent more and will apply to every project that

1 we have in the bill. Is that correct? I am talking
2 about Davis-Bacon, basically. I think that is just a
3 short version of it.

4 Senator Grassley. He had to go to an appointment
5 and I cannot answer your question.

6 Senator Roberts. Oh. Would you answer the phone?

7 [Laughter.] That may be an answer to my question.

8 [Laughter.] Why do you not say yes? Yes, that is right.
9 Davis-Bacon applies to all the projects, 30 to 40 percent
10 more in all the rural areas. That does not seem to me to
11 be a very wise decision.

12 I yield back.

13 Senator Grassley. All right.

14 Senator Schumer?

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1 OPENING STATEMENT OF HON. CHARLES E. SCHUMER, A U.S.
2 SENATOR FROM NEW YORK

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4 Senator Schumer. Thank you, Ranking Member. I
5 want to thank you and the Chairman for working so hard
6 and diligently on this. I think it is a well-crafted
7 bill. It is just what the economic doctor ordered, given
8 the perilous economic times we face. Each of us would
9 craft it differently, there is no question about it, but
10 we all have to come together, particularly during these
11 difficult times.

12 There are three main purposes of this bill, and
13 every piece of it fits one of those. The first is to get
14 the economy moving again. The bottom line is that our
15 economy is headed sharply south. We are in a severe
16 recession. If we end up crossing the line and going into
17 a deflationary spiral, no economist knows how to deal
18 with that. That was the Great Depression. That was what
19 happened to Japan for 10 years. The need to avoid that
20 is very important and that means we have to get dollars
21 and jobs into the economy quickly, very quickly. The
22 Federal Government is not usually set up to do that.
23 That is why some of these programs are so important.

24 We had two conservative economists come before our
25 economic lunch last week, Feldstein and Zandy, and they

1 said if anything, this package has too little money in
2 it, not too much, because the danger of doing not enough
3 far exceeds the danger of doing too much, given the
4 inflationary spiral that may occur.

5 The second part is to create jobs. We have to do
6 that. We have lost, just yesterday, 75,000 more jobs
7 with company-announced layoffs. We are losing a half a
8 million a week. To create jobs is vital to get the
9 economy going. There are large parts of this,
10 particularly in the infrastructure section, that create
11 jobs.

12 The third part is to improve the efficiency and
13 long-term strength of our economy. Barack Obama--
14 President Obama--has wisely stated that at the end of the
15 day, should this stimulus work, God willing, that we have
16 something to show for it, that we have not only roads and
17 bridges, but a more efficient power grid, a more lean
18 energy system, a better health care system with
19 information technology, as Senator Wyden mentioned.
20 Those are the three parts of the bill.

21 Now, I would like to make a couple of comments about
22 the way to do those things. My colleagues on the other
23 side prefer tax cuts. We tend to prefer active
24 government intervention to create jobs. But there has to
25 be a spirit of compromise. A third of this bill is tax

1 cuts. That is probably more than many of us would put
2 in. The last stimulus bill was when George Bush was
3 President. It was all tax cuts, and most of us--myself
4 included--voted for it, even though we wanted some
5 spending programs.

6 I would hope we would see the spirit of compromise
7 that I believe most of us on this side of the aisle
8 exhibited during the last stimulus in this one as well.
9 I think most people say the tax cuts did not work. They
10 take too long to get into the economy and many of them do
11 not go to creating jobs.

12 So the mix makes sense and I hope that we will
13 continue to support, in a broad bipartisan way the mix of
14 both creating jobs through infrastructure and other
15 areas, as well as tax cuts to put money in the hands of
16 people.

17 Two final points. There has been some talk about
18 spending money to help the States, particularly through
19 FMAP. There is no better way to get money quickly to the
20 States and the States can use that, and should use that,
21 to prevent tax increases that most of them are mandated
22 to do. Forty-nine States have constitutional provisions
23 to balance the budget.

24 States, even those very conservative and with
25 Republican governors, are talking about raising taxes at

1 this time. That would be folly. For the Federal
2 Government to be putting money into the economy and then
3 have the State governments take money out of the economy,
4 it would not help get us out of this significant, severe
5 recession in which we find ourselves. The FMAP program
6 is the best way to do it. Those dollars will go to help
7 Medicaid, but then the States can take dollars that they
8 would have put into Medicaid to prevent tax increases or
9 cuts in other programs.

10 We would be loathe to do tax cuts in our bill and
11 then see the States take all that money away by raising
12 taxes. That is what will happen if we do not have a
13 large and significant FMAP program.

14 Finally, I would just like to thank members on both
15 sides of the aisle who worked with me on something I care
16 a lot about. This is a tax cut, but a very good one, and
17 that is the college tuition. I would like to thank you,
18 Mr. Chairman, and so many others, Senator Grassley, who
19 were supportive of these provisions. If young people who
20 are qualified to go to college cannot, or those who are
21 qualified to stay in college drop out because of the
22 economic problems we find ourselves in, we will never
23 make that up and we will have a less productive
24 workforce.

25 Making it easier, particularly for families well

1 into the middle class, to pay for college by giving them
2 a significant tax credit, a tax cut to make up for a
3 significant portion of those tuition costs makes eminent
4 sense and I think it is one provision in this bill that
5 has broad bipartisan support. I am thankful for both
6 you, Mr. Chairman, and Senator Grassley for helping to
7 get it.

8 Thank you.

9 The Chairman. Thank you, Senator, very much.

10 Senator Enzi, you are next.

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1 OPENING STATEMENT OF HON. MIKE ENZI, A U.S. SENATOR FROM
2 WYOMING

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4 Senator Enzi. Thank you, Mr. Chairman.

5 The Chairman. You bet.

6 Senator Enzi. Mr. Chairman, I was hoping for
7 change. This seems to me to be business as usual. Maybe
8 it is worse than business as usual. Much spending is for
9 things we could not find offsets for for years, so we
10 could not find the money to pay for them. A lot of it is
11 one-time money that is going to be spent for things that
12 people will expect us to keep paying for.

13 I noticed that we have not finished last year's
14 appropriations yet. I can only assume that it is to see
15 if some things can be jammed into this that would not
16 have to be put into appropriations and be offset.
17 Perhaps Americans have also changed expectations. A
18 billion-dollar increase for a program used to be a big
19 deal, but compared to the \$825 billion that we are
20 talking about, it will seem like there are no dollars at
21 all.

22 Economists are beginning to doubt that this \$825
23 billion giant can do anything except put our children and
24 grandchildren further in debt. The current recession has
25 proven resistant to previous stimulus plans and there is

1 no reason to expect more of the same will finally
2 succeed. In 2008, Congress threw billions of dollars at
3 households in the form of rebate checks, but empirical
4 data shows that it was ineffective. The first stimulus
5 package failed. In October, Congress showered banks with
6 \$350 billion, and while funds may have saved many banks
7 from failure, the TARP has done little to ease credit
8 markets and the lack of access to capital remains a
9 choke-point in the recession. The TARP failed.

10 A recent CBO report concluded that less than half of
11 the spending in the stimulus package would be released in
12 2009 or 2010. Government simply cannot spend
13 infrastructure funds fast enough to have any measurable
14 impact on jobs or income in this year or next without
15 streamlining Federal permitting processes. I realize
16 there is enormous pressure on the incoming administration
17 to show strong action, but we have to be careful that it
18 is not the wrong action.

19 What is the right action, then? We have so little
20 ammunition left. The Treasury is approaching the debt
21 limit with alarming speed. Revenue are falling, deficits
22 are climbing. Every precious tax dollar should be
23 focused on addressing the current housing and credit
24 crisis.

25 I can line up a room full of economists of varying

1 political stripes and they will all tell you the same
2 thing: the roots of the recession lie in the housing and
3 credit crisis. Until households and financial
4 institutions no longer fear their own balance sheets,
5 Congress and the Federal Reserve can throw unlimited
6 amounts of money into the economy with little or no
7 effect, and in the process destroy the credit worthiness
8 of our Federal Government and the value of the U.S.
9 dollar.

10 Infrastructure investment is a noble goal, but it
11 will not stem foreclosures. People with money to buy
12 homes are not buying. They are waiting to see what we
13 do, waiting for a bottom. We keep predicting "worse to
14 come" and we are making it self-fulfilling. Making Work
15 Pay is laudable, but it will not provide small business
16 the access to capital they need. Build America bonds
17 will not make banks lend. Congress cannot keep throwing
18 billions of dollars out of an airplane and expect to heal
19 our economy.

20 If Congress and our new President are truly
21 concerned about keeping jobs and creating new ones, let
22 us not play lip service to this so-called stimulus bill.
23 Instead, let us ensure that American workers have the
24 education and skills needed to fill the jobs by
25 reauthorizing and expanding the Workforce Reinvestment

1 Act. We have been trying to get that done for four
2 years. It provides flexibility for training people in
3 900,000 higher-skill jobs. Or let us unshackle the
4 entrepreneurial spirit that fuels our economic growth by
5 permanently extending the tax cuts we passed in 2001. To
6 my colleagues on this committee, I say we need strong
7 action, not wrong action. Unless changes are made, I
8 intend to oppose the bill.

9 Thank you, Mr. Chairman.

10 The Chairman. Thank you, Senator.

11 Senator Menendez is next.

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1 OPENING STATEMENT OF HON. ROBERT MENENDEZ, A U.S. SENATOR
2 FROM NEW JERSEY

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4 Senator Menendez. Thank you, Mr. Chairman. Let me
5 first commend you on producing a comprehensive mark that
6 I think will go a long way towards getting our economy
7 back on track.

8 We are meeting today in historic times, historic for
9 the challenges they present us. Unemployment is at 7.2
10 percent and rising. In fact, in my home State of New
11 Jersey, our unemployment rate rose to the highest point
12 in 15 years. The Dow has lost 40 percent in a year's
13 time, businesses are closing, life savings are being
14 drained, and millions of families are losing their homes.

15 So without bold and decisive action, the country
16 faces the possibility of a prolonged economic collapse
17 rivaling the worst we have ever seen. So we are here
18 today to move a recovery package that puts America back
19 on track. Millions of Americans are looking to us for
20 relief. They are looking to us to spearhead our economic
21 recovery and this country needs decisive action. I
22 believe your bill will deliver it.

23 I look at the history of government's actions in the
24 Great Depression, and the lessons they tell us is that of
25 being too timid, the government acting too timidly rather

1 than too boldly. We know the consequences of those wrong
2 decisions in our history.

3 I know this committee does not take lightly the fact
4 that this is a taxpayer investment and we have
5 responsibility to ensure it will be put to good use, and
6 I commend the Chairman for that balance.

7 The mark before us is about smart investments in the
8 types of projects, tax cuts, and programs that will help
9 fuel our economy and help create the jobs and conditions
10 necessary for a turnaround: from the First-time Home
11 Buyer Tax Credit to tax relief for working families, this
12 bill is going to make a difference to the many families
13 struggling to make ends meet; from the extension of the
14 Production Tax Credit to the provisions to maintain
15 growth in the solar energy industry, this bill is going
16 to have a real effect on our environment, while also
17 creating jobs and lowering costs; from unemployment
18 compensation to the subsidy for COBRA coverage,
19 struggling families are going to see substantive changes
20 in their lives because of this bill; and finally, this
21 bill will provide fiscal relief to States that have seen
22 their revenues dry up, enabling them to weather this
23 economic storm on behalf of all of our collective
24 constituents.

25 This is not about, as some suggest, throwing money

1 into the wind and hoping for an economic benefit. It is
2 about making smart and effective investments to pull us
3 out of an economic black hole.

4 Mr. Chairman, one of the amendments I will be
5 offering is a patch for the Alternative Minimum Tax. It
6 is vitally important that we do not add a tax burden to
7 middle class families at this critical time in our
8 economy and their lives.

9 Mr. Chairman, the renewable energy industry, and the
10 solar industry in particular, are struggling in this
11 economic climate and I think it is important that
12 Congress create a temporary grant program to help them
13 thrive in these tough times. I look forward to working
14 with you on this.

15 I want to thank Chairman Baucus for his inclusion of
16 a provision to improve the Child Tax Credit. I think
17 this provision will really help reduce the expected
18 increase in child poverty in this recession. Most
19 importantly, this provision has a clear benefit to our
20 economy and I commend you and hope that, in conference,
21 we can work to ensure that every working parent can claim
22 the child tax credit. I appreciate the Chairman's
23 modification of the mark to ensure that the energy-
24 efficient lighting technologies qualify for the
25 Manufacturing Tax Credit.

1 Finally, Mr. Chairman, as we navigate our way
2 through these treacherous waters and sit here in the
3 committee for what I am sure will be a long day, it is
4 critical to remember the American families that this bill
5 is working to protect and support. American families are
6 anxious. Jobs are being cut, pensions are being drained,
7 wallets are getting thin. It is frustrating to see the
8 impact of this storm, knowing the red flags that were
9 ignored by so many.

10 It is interesting. I listen to some of the comments
11 and I hear a sense that all of a sudden this suddenly
12 came about. This has been coming about for some time and
13 many of us have been raising the red flags. Many of us
14 said two years ago--in the Banking Committee, for
15 example--we are going to have a tsunami of foreclosures.

16 The previous administration told us that was an
17 exaggeration. We unfortunately have not even seen the
18 tip of that tsunami.

19 So it is frustrating to see the impact of a storm,
20 knowing the red flags that were ignored by so many. But
21 we cannot change the past, we can only work to improve
22 our collective future. I believe that is precisely what
23 this bill is designed to do.

24 Thank you, Mr. Chairman.

25 The Chairman. Thank you, Senator.

1 Senator Carper?
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1 OPENING STATEMENT OF HON. THOMAS CARPER, A U.S. SENATOR
2 FROM DELAWARE

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4 Senator Carper. Mr. Chairman, I have a statement
5 for the record.

6 [The prepared statement of Senator Carper appears in
7 the appendix.]

8 Senator Carper. Let me just mention one thing that
9 I would like to just leave you with. You and your staff
10 have been very kind to work with my staff and with me to
11 accept a number of our amendments. To those colleagues
12 here who have joined us in offering several of those
13 amendments, to those of you who have allowed me or
14 invited me to join you in offering your amendments, I
15 just want to say thank you.

16 Several of us serve on the Environment and Public
17 Works Committee. Last year, when we spent the better
18 part of a week debating climate change legislation, one
19 of the issues that we discussed is whether or not we
20 should, through the allocation of permits to emit CO₂,
21 try to pick technologies with which to provide some of
22 the proceeds of the auction that we were going to hold.

23 We wrestled with the question of whether or not to
24 pick technologies, to pick winners, whether it be solar,
25 wind, geothermal, which are important to me and I think

1 are supported by all of us, or whether we should simply
2 be fairly broad and say what we want to do is rather
3 intense and pick specific technologies. What we should
4 be about is saying we are interested in producing
5 electricity without creating carbon. We are looking for
6 carbon-free approaches to producing electricity.

7 Senator Crapo and I had worked on an amendment that
8 really takes the same approach and considered offering it
9 here today. I believe the Chair may have taken part of
10 our amendment, which we appreciate, but not all of it.
11 What I want to do is have the opportunity to revisit this
12 on the floor because I just want to signal clearly that
13 this is an issue that I think just makes good public
14 policy sense and it is one that I want us to revisit on
15 the floor.

16 The intent of what we did in the Environment and
17 Public Works Committee is to say to make sure, as we go
18 forward in this next decade and expand our ability to
19 provide electricity, whether it is buy solar, wind,
20 geothermal, nuclear, or biomass, or whatever, that the
21 components, the parts that are manufactured for providing
22 that electricity have a better chance of being made here
23 in the United States.

24 As a result, I am told we have something like 16
25 applications to build nuclear power plants in this

1 country that are before the Nuclear Regulatory
2 Commission. Sixteen applications to build 27 nuclear
3 power plants. A bunch of them are probably going to be
4 built. Today we have very limited, very limited ability
5 in this country to produce, to manufacture the
6 components, to build those plants.

7 We are going to end up, if we are not careful,
8 pretty much buying the components to build those plants
9 in other places rather than building those components
10 here. That is an issue I just want to flag, and I would
11 say that we look forward to continuing to work with the
12 Chairman, the Ranking Member, and other colleagues,
13 Senator Crapo, to make sure that when we get to the floor
14 we address this issue in a way that I think is acceptable
15 to all of us.

16 Thank you.

17 The Chairman. Thank you, Senator.

18 I think we were willing to make a modification to
19 the mark to include the first amendment you talked about.

20 I think that is going to be in there. That is my
21 understanding. But second, I know in the bill there are
22 credits for environmental technology in new plants and
23 equipment to get us started in that direction. My main
24 point is, I very much agree with the thrust and intent of
25 your comments. I think we have already accommodated some

1 of those within the bill.

2 Senator Carper. Yes. There has been an attempt to
3 accommodate us, to try to meet us halfway. What we would
4 like to do is explore with you, if not today then in the
5 days to follow, whether or not we can get the rest of the
6 way.

7 The Chairman. Thank you.

8 Senator Carper. Thank you.

9 The Chairman. Senator Cornyn?

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1 OPENING STATEMENT OF HON. JOHN CORNYN, A U.S. SENATOR
2 FROM TEXAS

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4 Senator Cornyn. Thank you, Mr. Chairman.

5 I think the most important question that any of us
6 can ask about this bill is: will it work? Will it work?

7 Even the best of intentions, we have seen, do not
8 necessarily produce good results. I think we need to be
9 very careful that this massive bill, which will add huge
10 numbers of money to the Federal deficit, the bills passed
11 on to our children and grandchildren, will it work or
12 will it just result in good intentions producing bad
13 results? To me, that is the most important question we
14 can ask.

15 I am reminded from my previous life, where I was a
16 great fan of Justice Oliver Wendell Holmes, a quotation
17 that he once wrote. He said, "Certitude is not the test
18 of certainty." He said, "We have been cocksure of many
19 things that were not so." What I hear is a lot of
20 certitude, but an amazing lack of real certainty about
21 whether this bill is likely to work. I have questions,
22 serious questions and doubts, about whether it will.

23 I believe that any stimulus proposal must grow the
24 economy and help create jobs. I will reiterate what
25 others have said on this panel, that the stimulus package

1 that we passed last year--or I guess the first part of
2 last year, January--did little to help the economy, but
3 in the process added about \$150 billion to the deficit,
4 again, to our children and grandchildren.

5 At a time when we are looking at a trillion dollar
6 deficit--\$1.2 trillion at last count, and that is before
7 this stimulus package passes; we are looking at runaway
8 entitlement spending and, of course, soaring health care
9 costs--we need to avoid repeating mistakes. That, to me,
10 should be the simplest thing we should learn.

11 We can put all the economists on the planet end to
12 end, and perhaps never reach a conclusion. But what we
13 can judge from is our experience. Our experience tells
14 us that some of the so-called tax provisions of this bill
15 will merely be a repetition of earlier mistakes and will
16 not solve the problem.

17 It is my hope that stimulus legislation will include
18 broad-based tax relief. Of course, I am a firm believer
19 that the American people know how to spend their money
20 better and more efficiently than sending their checks to
21 Washington, having it filtered through the bureaucracy,
22 and then returning a portion of it back to them in the
23 form of a stimulus package.

24 Indeed, I think that is part of the difference
25 between the perspectives on either side of the aisle

1 here. Will these jobs be created by more government
2 spending, where government picks the winners and losers,
3 or will it be by the private sector, by people getting to
4 keep more of what they earn?

5 It goes without saying, but I will say it anyway,
6 that our greatest natural resource is our people, our
7 workers, our small business owners that create the vast
8 majority of jobs. Americans remain the most innovative
9 and productive workers in the world and it is imperative
10 that we provide incentives to those people who are
11 willing to take risks and create jobs.

12 Therefore, I do have concerns about the mark: the
13 new Refundable Tax Credit. I think Senator Kyl and a
14 number of others have spoken to this; the so-called
15 Making American Work Credit is, in effect, a repetition
16 of the failed stimulus that we passed a year ago given
17 another form. This makes up more than half of the mark's
18 total. Refundable tax credits are providing cash from
19 the Federal taxpayer to people who do not pay taxes, so
20 it is a massive redistribution of wealth as well.

21 I would just ask, in our genuine bipartisan attempt
22 to try to do our jobs and to try to figure out what will
23 work as opposed to what has been tried and what has not
24 worked, we would just consider, for example, some of the
25 writings of President Obama's new chairwoman of the

1 Council of Economic Advisors who has written that "a tax
2 cut of 1 percent of GDP increases real output by
3 approximately 3 percent over the next three years."

4 I just think it is not only intuitive, but
5 apparently some of the most preeminent experts in the
6 world are of the opinion, based on their studies, that
7 tax relief will actually produce more economic stimulus
8 than government spending, particularly of the kind that
9 we have tried before and which has not worked. So, I will
10 offer amendments that I believe will help American
11 manufacturers, small investors, small business men and
12 women, and individual taxpayers.

13 I would like to close by thanking the professional
14 staff, on a bipartisan basis, of the Finance Committee
15 and the Joint Tax Committee for the outstanding work they
16 have done in helping us get prepared for this very
17 important piece of legislation, and I look forward to
18 working with the committee to a successful outcome.

19 Thank you.

20 The Chairman. Thank you very much, Senator.

21 I notice that we have one, two, three, four, five,
22 maybe six Senators, theoretically, slated to speak. The
23 President is going to attend the Republican caucus today
24 and Republican Senators, I am told, should be in their
25 seats before he arrives. I think that is about a quarter

1 of. I think he arrives at 1:00, if I am not mistaken.

2 Senator Hatch. Mr. Chairman?

3 The Chairman. Senator Hatch? I am suggesting that
4 we try to get all of our opening statements done and then
5 adjourn for the noon hour. Yes?

6 Senator Hatch. Mr. Chairman, may I just put my
7 speech in the record?

8 The Chairman. Sure.

9 Senator Carper. That will save a few minutes right
10 there.

11 The Chairman. Thank you. Thank you, Senator.
12 Thank you very much.

13 [The prepared statement of Senator Hatch appears in
14 the appendix.]

15 The Chairman. Senator Stabenow, you are next.

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1 OPENING STATEMENT OF HON. DEBBIE STABENOW, A U.S. SENATOR
2 FROM MICHIGAN

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4 Senator Stabenow. Well, thank you, Mr. Chairman.
5 I would put my full statement in the record and just make
6 a couple of comments, if I might.

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

9 Senator Stabenow. Not to reiterate all of the
10 positive things in this bill, but first to say thank you
11 to you and to your staff for the incredible effort that
12 has gone on, and for working with us to accept many
13 important Michigan amendments, and amendments for
14 families across the country.

15 I think, in hearing comments from colleagues on the
16 other side of the aisle, I think it is fair to say that
17 while we may not know whether or not this works, we are
18 certainly going to try very, very hard. Certainly
19 economists agree that this is the approach. But what we
20 do know, is the approaches of the last eight years have
21 not worked, the philosophies, the actions, and inactions.

22 This really is the first time that I can remember
23 since coming here in 2001 when we have a major package
24 focused on the American people, investing in the American
25 people, investing in middle class families, in

1 communities, in people who have been hit the hardest and
2 find themselves in very, very difficult circumstances,
3 States who have been in difficult circumstances.
4 Certainly with Michigan's unemployment rate at a 25-year
5 high of 10.6 percent, we do not relish being the highest
6 unemployment rate in the country.

7 We certainly are now, but too many States are
8 quickly coming to meet us. So every page of this bill is
9 important, from helping families in the banking crisis,
10 addressing companies who are down-sizing, jobs moving
11 overseas, health care, health IT, Medicaid assistance,
12 Unemployment Insurance, job training, all of these things
13 are incredibly important. I would just focus on one
14 thing, and that is there is a very important incentive
15 for advanced energy manufacturing in this bill.

16 I believe, Mr. Chairman, that one of the most
17 critical ways we create jobs in this country is to invest
18 in making things again. We have lost over 4 million
19 manufacturing jobs in the last eight years. We have lost
20 our capacity for good-paying middle class jobs in
21 manufacturing.

22 In this bill and in efforts that I would like to
23 work with you on to improve on policies here, we have the
24 opportunity to create a whole new economy, a green
25 manufacturing economy that addresses critical issues of

1 energy dependence in terms of foreign oil, global
2 warming, and jobs all at the same time.

3 I think for me, when I watch barges on Lake Superior
4 in Michigan and see wind turbines coming down from the
5 St. Lawrence Seaway, being made in other countries so we
6 can then put them up and use wind energy, I want those
7 being made here. That is part of what is in this
8 package.

9 One-third, roughly, of all of the polycrystalline
10 silicone that is used in solar panels is made in
11 Michigan, the global material made in Michigan through
12 Dow-Corning. It is then shipped around the world where
13 solar panels are made, and shipped back and we use them.

14 That does not make any sense. So being able to
15 manufacture here is critical.

16 The only piece of this that concerns me is that so
17 many companies now find themselves in a loss position
18 every day. We have new announcements of job layoffs,
19 major manufacturers as well as start-ups, that are going
20 to find it difficult to use tax credits. So as we look
21 at this, Mr. Chairman, I am anxious to make sure, in this
22 incredibly difficult time, an unusual time economically
23 that we have, that our policies are available to those in
24 a loss position as well as those making a profit.

25 We have begun to do that, and I appreciate the staff

1 working with us on that policy related to bonus
2 depreciation. But the traditional credits we have used
3 may not work with a start-up that has huge capital
4 investments to make and no profit. So as we go to the
5 floor, Mr. Chairman, I would like to continue to work
6 with you to figure out how we make sure that we truly
7 benefit from the terrific policies in this bill.

8 The Chairman. Thank you very much, Senator.

9 Next, is Senator Nelson.

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1 OPENING STATEMENT OF HON. BILL NELSON, A U.S. SENATOR
2 FROM FLORIDA

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4 Senator Nelson. Mr. Chairman, I want to compliment
5 you on crafting a very delicate balance that I think
6 meets the needs of an extraordinary time, that we have to
7 act swiftly and decisively. So, thank you.

8 I would echo the sentiments of Senator Snowe, who I
9 thought spoke eloquently and specifically, and I would
10 associate myself with her remarks.

11 Thank you.

12 The Chairman. Thank you, Senator, very much.

13 Senator Ensign, you are next.

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1 OPENING STATEMENT OF HON. JOHN ENSIGN, A U.S. SENATOR
2 FROM NEVADA

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4 Senator Ensign. Thank you, Mr. Chairman. I would
5 make a few points here. First of all, Senator Stabenow
6 mentioned wanting products made in the United States. I
7 think we all want that. We could learn a lesson from
8 Ireland. Microsoft has no exports from the United
9 States. They export huge amounts from Ireland. Ireland
10 has a 12.5 percent corporate tax rate.

11 There is almost nothing we could do to make American
12 business more competitive than to lower our corporate tax
13 rate, especially given the fact that we have the second
14 highest corporate tax rate in the industrialized world.
15 It makes no sense in this globally competitive market
16 that we are in today. So I know there will be amendments
17 that will be offered attempting to do that, and it is one
18 of the things that I would like to see in a bill to get
19 our economy going.

20 I think that, overall, we need to learn from the
21 lessons of the Great Depression, learn from what Japan
22 did, what worked, what did not work. Certainly what a
23 lot of people forget is the 1929 stock market crash was
24 not the beginning of the Great Depression. But Herbert
25 Hoover -- a lot of people portray him as somebody who

1 kind of sat on the sidelines and was laissez-faire, but
2 he was just the opposite. He was very much a big
3 government interventionist.

4 He made some critical mistakes that I believe
5 contributed greatly to us sliding into a Great
6 Depression. First, he raised taxes. Second, he signed
7 the protectionist laws that were put into place, the
8 famous Smoot-Hawley laws. Third, he not only encouraged
9 the Federal Government but also State and local
10 governments to invest in infrastructure, none of which at
11 the time helped.

12 As a matter of fact, the economic conditions
13 obviously continued to get worse and worse. During the
14 Depression, we as a country continued to invest in
15 infrastructure. Obviously FDR did some good things. He
16 actually liberalized some trade policies and that was one
17 of the good marks of his administration. Obviously he
18 did some good things with the banks and the FDIC, and
19 some other very good things during the Depression.

20 But all of the government spending did not take us
21 out of the Depression. Some people say, well, we just
22 did not spend enough. We were not aggressive enough, and
23 that was the lesson of history. I would tend to disagree
24 with that. I think that the fact is that we did not put
25 in the incentives for the private sector to grow us out

1 of these tough economic times.

2 Mr. Chairman, I appreciate some of the tax relief
3 provisions that you have put in the bill. I think they
4 are too few and far between, but there are some good
5 things, the NOL provisions, the bonus depreciation, the
6 expensing provisions, some of the other things.

7 I have a couple of provisions I would like to see
8 included. One of them we are going to try to do on the
9 floor. It is the repatriation of profits back to the
10 United States. We did this back in 2004, and over \$350
11 billion came back to the United States. The Joint
12 Committee on Taxation said that it would cost the Federal
13 Government \$3.3 billion. It actually produced \$16.4
14 billion in direct revenue to the U.S. Government. It
15 produced over 600,000 jobs in the United States.

16 I was talking to Safra Catz from Oracle. One of the
17 things that they did is out-bid a German company for an
18 American company here and kept the jobs in the United
19 States instead of those jobs being relocated to Germany.

20 So there are some good things that were done there, and
21 today there is about \$1 trillion sitting overseas and a
22 large part of that could be repatriated.

23 The estimates are about half of that would come back
24 to the United States. Unfortunately, Joint Committee on
25 Taxation says that it will cost \$15.9 billion, when last

1 time it produced revenues. Outside economists tell us it
2 will bring in \$45 billion. So I would like to see some
3 of these positive things done that would encourage
4 investment and encourage entrepreneurial spirit in the
5 United States to happen here.

6 Lastly, Mr. Chairman, one provision I do appreciate
7 that you at least put a little bit in is the idea of the
8 cancellation of indebtedness, or the idea that if you can
9 lower your debt, for example, if you buy your bonds back,
10 right now that is a taxable event unless you are in
11 Chapter 11 or insolvent. This is something that I have a
12 provision on that would say it is not a taxable event if
13 a company discharges debt in the next two years.

14 We need companies in the United States to de-
15 leverage. We understand that too many companies have too
16 much leverage. It will help fix the problem also two to
17 three years from now. There is a massive mountain of
18 debt, corporate debt, that comes due. No secondary
19 market currently exists for that debt today. This will
20 help create the secondary market for that debt
21 refinancing that needs to happen.

22 And lastly, Mr. Chairman, all of us know, the thing
23 that brought down the economy today was not the Bush tax
24 cuts, it was not the Bush policies, it was a combination
25 of policies through this Congress, the previous

1 administration, including the Bush administration, on
2 housing. That is what brought the economy down. That is
3 what we should be focusing on. We should be focusing on
4 fixing the housing problem and creating jobs with the
5 right tax stimulus package. I do not believe that this
6 bill goes far enough in any of those directions to really
7 be effective.

8 I appreciate the work that you have done and your
9 staff has done. They have put in a tremendous amount of
10 work. I just do not think that this mark has actually
11 hit the mark in the right way that will grow our economy
12 out of this very, very tough time that it is in.

13 Thank you, Mr. Chairman.

14 The Chairman. Thank you, Senator.

15 Senator Lincoln?
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1 OPENING STATEMENT OF HON. BLANCHE L. LINCOLN, A U.S.
2 SENATOR FROM ARKANSAS

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4 Senator Lincoln. Well, I want to add my thanks to
5 you, Mr. Chairman. You have done a tremendous job and
6 brought great leadership in putting together an important
7 package. I also want to thank the Finance Committee's
8 exceptional staff, their talent and skill in working with
9 all of us to try to come up with something that really
10 makes sense.

11 During this difficult time it is certainly
12 imperative that we promote policies that spur capital
13 investment, they create jobs. It has got to provide
14 relief to our working families and our small businesses,
15 and that is exactly what this economic recovery package
16 does. Does it have everything everyone wants? No. That
17 is not possible at this juncture. But our hope is that
18 it will keep those good ideas in our minds and keep
19 moving forward with them.

20 I would just like to comment on a few of those. The
21 New Market Tax Credit allocation increase for 2008 will
22 ensure that so many of these good economic development
23 projects in low-income and rural communities, which have
24 already been reviewed by Treasury and just need the
25 resources with the green light to go, will now be funded

1 and can get off the ground in the coming months. That is
2 immediate.

3 The election to also claim the Section 48 Investment
4 Tax Credit in lieu of the Section 45 credit will provide
5 a very valuable tool for growth in renewable energy
6 opportunities in my State particularly because it
7 certainly gives the allowance for biomass. I, along with
8 others on this committee, have been concerned with the
9 lack of parity under the Section 45 credit, and I am very
10 appreciative that the committee has taken this important
11 step towards ensuring that we provide a sufficient
12 incentive for all renewable energy technologies.

13 If we are going to get ourselves out of this problem
14 we are going to have to make sure that we encompass
15 everyone with their good ideas and the technologies that
16 exist. It is my hope that this provision will result in
17 new green jobs all across the South through woody
18 biomass, animal waste, electricity production projects,
19 which we have all seen in the process and now will be
20 able to move forward. Thank you so much for that.

21 In addition, the 179 extension, bonus depreciation,
22 relief from built-in gains tax for S corporations, as
23 well as the net operating loss carry-back will provide
24 tax relief for our small businesses, which we all know
25 are the engines of our economy and our communities, the

1 extension of the Refundable Tax Credit, the Child Tax
2 Credit at a lower income threshold. Senator Snowe,
3 again, as Senator Nelson mentioned, was extremely
4 eloquent in all of her points, but certainly with that
5 level going down to 6,000, it reinforces what we want to
6 do, and that it is to support families that are working
7 and who have children. So, I am grateful for her work
8 and working with me on that important issue.

9 Improvements to the Home Buyers Tax Credit and the
10 Making Work Pay Credit will provide some much-needed
11 relief to our working families with children who are
12 struggling to make it through these tough times. It is
13 also critical to bolster our Nation's health safety net
14 to care for those who have lost their jobs, who have no
15 health insurance, or are otherwise particularly
16 vulnerable in times like these, and also to invest in
17 health IT for our Nation's future. I think these are
18 critical areas. Again, Mr. Chairman, you have made an
19 excellent first step in that.

20 So, thank you, Mr. Chairman. I appreciate all the
21 hard work that has gone into this package. I am thankful
22 to both you and your staff for working so closely with me
23 and my staff to ensure that the package provides some
24 real relief for my State and for the issues that we have
25 there.

1 I would just like to quickly add to the record a few
2 co-sponsors to my amendment. Senators Snowe and Enzi are
3 both co-sponsors of the Lincoln-Hatch #1 amendment
4 regarding built-in gains, which we are pleased has been
5 accepted or included in the modified mark.

6 Senator Snowe is also a co-sponsor of the Lincoln-
7 Hatch #3 modifying the effective date for the NOL
8 provision, which we are also grateful for seeing in the
9 mark.

10 Then Senators Schumer and Crapo are co-sponsors of
11 the Lincoln-Wyden #1 to ensure that CMS completes its
12 study on hospital wage index reclassification. I hope
13 that is something we can do. I do not think it has a
14 cost, but it certainly does help many of us in the need
15 to have that information so that we can make the
16 necessary steps later on.

17 Thank you, Mr. Chairman.

18 The Chairman. Thank you, Senator, very, very much.

19 Senator Cantwell is next. But I might say before I
20 recognize you, Senator Cantwell--I see Senator Enzi here--
21 -when you are finished, Senator Cantwell, I am going to
22 move to have several colloquys entered in the record.
23 The only Senator here -- Senator Lincoln, you are still
24 here. Either we can do these live or we can just put
25 them in the record. But I am giving both you, Senator

1 Enzi and Senator Snowe, that option after Senator
2 Cantwell speaks or we can just put them in the record.
3 It will be your choice, after Senator Cantwell speaks.
4 Senator Cantwell?

5 Senator Cantwell. Mr. Chairman, I will submit a
6 statement for the record.

7 The Chairman. Oh, aren't you nice? [Laughter.]

8 [The prepared statement of Senator Cantwell appears
9 in the appendix.]

10 The Chairman. Senator Enzi, do you wish to -- it
11 is your choice. I do not want to put any pressure on
12 you. We can go to your colloquy or we can put it in the
13 record.

14 Senator Enzi. Well, Mr. Chairman, I would ask that
15 it be put in the record. I just want to mention that I
16 support what you and Senator Conrad have been doing on
17 comparative effectiveness. We have gotten comments from
18 a number of others that would then be a part of the
19 record as well, because it does develop comparative
20 effectiveness infrastructure, but prohibits from taking
21 any clinical guidelines for coverage decisions. It
22 supports an open and transparent process, and it requires
23 that the CE research consider differences in how people
24 respond to treatments.

25 So, I would submit the full statement for the

1 record. Thank you, Mr. Chairman.

2 The Chairman. Thank you, Senator.

3 [The prepared statement of Senator Enzi appears in
4 the appendix.]

5 The Chairman. The other is Senator Snowe's, which
6 I will put in the record.

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

9 The Chairman. Senator Lincoln?

10 Senator Lincoln. Mine is fine to put in the
11 record. I understand that we have another one that we
12 will deal with later on. I think you just have one of
13 mine right now.

14 The Chairman. Sure. All right. Fine.

15 Senator Lincoln. Great. Thank you.

16 The Chairman. All right. The committee will
17 recess until 2:15.

18 [Whereupon, at 12:39 p.m. the committee was
19 recessed.]

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1 AFTERNOON SESSION

2 [2:34 p.m.]

3 The Chairman. The committee has before it the
4 Chairman's mark on the American Recovery and Reinvestment
5 Act, and my modification to that mark.

6 Senators have had the Chairman's mark since Friday.

7 I would ask Ed Kleinbard to very briefly explain the
8 tax components to the modification of the mark.

9 Mr. Kleinbard. Thank you, Mr. Chairman.

10 The original bill is well known to all of you. I
11 will, therefore, simply identify some of the highlights
12 of the Chairman's modification.

13 The modification in general follows the basic
14 structure of the original mark, but it does make a number
15 of changes and additions. For individuals, the
16 modification provides that the Making Work Pay Credit is
17 available only if the individual provides a valid Social
18 Security number under the same rules that apply today for
19 the Earned Income Tax Credit.

20 The modification also extends the waiver of
21 recapture of the First-Time Home Buyers Credit by two
22 months, to cover the summer selling season, to purchasers
23 through August 31, 2009.

24 In respect to energy incentives, the modification
25 extends the new election, to claim an Investment Tax

1 Credit instead of the Electricity Production Tax Credit,
2 to coincide with the proposed termination dates for the
3 production tax credit.

4 On business incentives, the net operating loss rules
5 have been revised to permit taxpayers to elect the new
6 extended carry-back period for years either beginning in
7 or ending in 2008 and 2009. The rules that permit
8 taxpayers temporarily to defer cancellation of
9 indebtedness income have been modified to provide a
10 longer deferral period, totaling up to 10 years.

11 The modification also expands the projects that
12 qualify for the new Investment Credit for Advanced Energy
13 Properties; modifies some requirements of Recovery Zone
14 Bonds, Tribal Economic Development Bonds, and Qualified
15 School Construction Bonds, and makes other technical
16 changes.

17 In addition to these refinements to the Chairman's
18 mark, the Chairman's modification adds eight entirely new
19 provisions. First, the modification requires that carbon
20 dioxide used as a tertiary injectant in an enhanced oil
21 or natural gas recovery project must be permanently
22 sequestered before it can qualify for existing law's \$10
23 a ton tax credit.

24 Second, the modification modifies the tax credit for
25 plug-in electric vehicles by increasing the total number

1 of vehicles that can qualify from 250,000 to 500,000, and
2 by excluding low-speed vehicles from that credit. In
3 turn, low-speed plug-in electrics get a new 10 percent
4 credit, subject to a maximum of \$4,000.

5 Third, the modification creates parity for qualified
6 transportation fringe benefits by increasing the monthly
7 exclusion for employer-provided mass transit to the same
8 level as that provided for employer-provided parking.

9 Fourth, the modification temporarily reduces the S
10 corporation built-in gains holding period from 10 years
11 to 7 years for gains recognized in 2009 and 2010.

12 Fifth, the modification addresses a controversial
13 IRS notice on the ability of certain bank acquirors to
14 use favorable tax attributes of a target. The
15 modification provides that the notice has no effect after
16 January 16, 2009, subject to standard exclusions for
17 binding written commitments.

18 Sixth, the modification revises the definition of
19 high-speed inner-city rail transportation for tax-exempt
20 bond financing purposes to require that such trains be
21 reasonably expected to attain a top speed of greater than
22 150 miles an hour.

23 Seventh, the bill provides a new tax credit for
24 expanding broadband Internet service. The credit is 10
25 percent for current generation broadband in rural and

1 under-served areas, and a 20 percent credit for
2 investment in unserved areas. NextGen broadband receives
3 a 20 percent credit and applies to a broader range of
4 potential subscribers.

5 Finally, the modification applies the so-called
6 Davis-Bacon prevailing wage requirements of current law
7 to projects financed with the new tax-favored bonds
8 contained in the proposal.

9 Mr. Chairman, that completes my summary.

10 The Chairman. Thank you, Mr. Kleinbard, very, very
11 much.

12 Now Neleen Eisinger will briefly explain the health
13 spending components of the modifications to the mark.

14 Ms. Eisinger. Thank you, Mr. Chairman.

15 As you said, I will describe the modifications to
16 Titles 2 through 5 of the Chairman's mark, starting out
17 with five technical corrections relating to drafting
18 errors.

19 The first, is a modification to correct a drafting
20 error in Title 2, Subtitle A, related to special
21 transfers in fiscal year 2009 for administration on page
22 11 of the mark by striking the last two sentences of the
23 second paragraph under "Special Transfers in Fiscal Year
24 2009 for Administration".

25 Number two, to modify the mark to correct drafting

1 errors in Title 3, Subtitle D, related to consultation on
2 Medicaid, CHIP, and other health care programs funded
3 under the Social Security Act involving Indian Health
4 programs and urban Indian organizations.

5 Number three, a modification to the mark to correct
6 a drafting error in Title 3, Subtitle D, related to
7 application of prompt-pay requirements to nursing
8 facilities on page 28 of the mark document.

9 Modification number four in this category is to
10 correct drafting errors in Title 5 related to temporary
11 Federal Medical Assistance Percentages (FMAP) increases,
12 including on page 44 of the mark by striking "5.5" on
13 line of the third paragraph and replacing it with "5.6",
14 and making corresponding changes in subsequent examples.

15 Number five in this category of correcting drafting
16 errors is a modification in Title 5, "Temporary Federal
17 Medical Assistance (FMAP) Increase", and this is on page
18 45 of the mark.

19 The next category of modifications relate to
20 amendments that were accepted. The first of these is a
21 modification to accept, with modification, an amendment
22 offered by Senator Rockefeller and others. This
23 amendment would add a new section to Title 5 and would
24 require States to report to the Secretary of Health and
25 Human Services detailing how the Federal Medicaid relief

1 funds distributed under this title were expended.

2 The second modification is to accept, with
3 modification, Senator Rockefeller's amendment #9. This
4 relates to adding a new section to Title 4 to require the
5 Secretary of HHS, in consultation with other agencies, to
6 issue a report not later than October 1, 2010 on the
7 current availability of open-source health information
8 technology systems to Federal safety net providers, the
9 total cost of ownership of such systems in comparison to
10 proprietary commercial products available, and other
11 items.

12 Number three is a modification to accept an
13 amendment offered by Senators Schumer, Roberts, and
14 others. This is amendment #45, and this would add a
15 provision to reverse the phase-out of the Medicare
16 Hospital Indirect Medical Education Adjustment Factor as
17 of October 1, 2008.

18 Number four is to accept, with modification, an
19 amendment offered by Senator Grassley, amendment #21.
20 This would amend Title 3 to provide a special enrollment
21 right for assistance-eligible individuals to allow them
22 to change coverage options upon electing COBRA.

23 Number five is to accept Grassley amendment #24.
24 This is to amend Title 3 to provide employers adequate
25 time to administer the COBRA subsidy.

1 Number six is to accept, with modification, an
2 amendment offered by Senator Grassley, #39. This would
3 add a new section to Title 5, "Funding for the Department
4 of Health and Human Services Office of the Inspector
5 General".

6 Number seven is to accept, with modification, an
7 amendment offered by Senator Grassley, amendment #40.
8 This would amend Title 4 to require the Secretary to
9 design and implement a detailed strategy to assure no
10 duplication of incentive payments to eligible providers
11 for participation in Medicare and Medicaid health
12 information technology initiatives.

13 Number eight is to accept, with modification, an
14 amendment offered by Senator Hatch, #24. This adds a new
15 provision to Title 4 to require HHS to provide assistance
16 to eligible professionals and rural hospitals to
17 implement and use electronic health record systems.

18 Number nine is to accept, with modification, an
19 amendment offered by Senator Hatch, #27, to add a new
20 provision to Title 4 that would allow the Secretary of
21 HHS to require that funds provided in this title for
22 health information technology be used to purchase
23 technology manufactured in the United States, provided
24 there is sufficient domestically-based supply.

25 Lastly, the modification --

1 Senator Nelson. Mr. Chairman, I am trying to find
2 it. I cannot find it in your description of the
3 Chairman's modification to the revenue provisions.

4 The Chairman. All right. Ms. Eisinger, where is
5 it?

6 Senator Nelson. I cannot find it.

7 Ms. Eisinger. Excuse me. It is a separate --

8 The Chairman. I am sorry. That is the wrong
9 person.

10 Mr. Kleinbard, where is that? She is talking to the
11 health section.

12 Senator Nelson. Right.

13 The Chairman. We are talking about the health
14 side.

15 Senator Nelson. The health.

16 Ms. Eisinger. There is a separate document, sir,
17 on the health provisions.

18 Senator Nelson. There is? All right. Thank you.

19 The Chairman. Thank you.

20 Ms. Eisinger. And finally, the final modification
21 is to accept, with modification, an amendment offered by
22 Senator Snowe, amendment #4. This would add a new
23 provision to Title 5 that prevents States from receiving
24 the increased FMAP under this title when a State is out
25 of compliance with the prompt-pay requirements of Section

1 1902A 37(a). This is the end of the modifications to
2 these titles.

3 Thank you.

4 The Chairman. Thank you.

5 Next, Al Cohen. Al, go ahead.

6 Dr. Cohen. Thank you, Mr. Chairman.

7 I have only one modification to report on, and that
8 is that the Chairman's modification today clarifies that
9 the Treasury Offset Program applies to the one-time
10 payments that are in the mark. The mark which was
11 distributed on Friday provides one-time payments to
12 Social Security beneficiaries, disabled veterans,
13 railroad retirement beneficiaries, including disabled
14 individuals, and Supplemental Security Income, Aged, and
15 Disabled individuals.

16 The Treasury Offset Program is essentially an
17 administered collection program that is run by the
18 Financial Management Service of the Treasury Department.
19 This program collects delinquent debts that are owed to
20 Federal agencies and State agencies. Thus, the one-time
21 payments in the Chairman's mark would now be offset by
22 debts owed to these Federal agencies and State agencies.

23 That is my report.

24 The Chairman. Thank you very much, Alan.

25 Are there any questions from Senators on the

1 modifications to the mark? I might say for those
2 watching and wondering why this looks a little lopsided
3 up here, we have got a lot of Democratic Senators on one
4 side and the Republicans are not quite here, the answer
5 is because the President arrived late to meet with the
6 Republican caucus, and therefore Republican Senators are
7 going to leave late in coming to the mark-up. But they
8 should be here very shortly.

9 Any questions on the modification? Do any Senators
10 have any questions?

11 [No response.]

12 The Chairman. I understand Senator Wyden has a
13 colloquy he would like to address.

14 Senator Wyden. Thank you very much, Mr. Chairman.
15 I will be brief. This is in reference to the Build
16 America Bonds issue. You have been exceptionally
17 generous with your time, Mr. Chairman, you and your
18 staff. This is a significant departure in the area of
19 infrastructure spending. As we talked about, we are
20 getting in the business of making it possible to have
21 additional investments through bonds. Senator Thune and
22 I have worked on this for a number of years with our
23 former colleague, Senator Talent.

24 There are three areas that I would hope we could
25 continue to work with you and your staff on, Mr.

1 Chairman, as we go forward to try to refine it. I
2 support the staff's idea of getting more of the private
3 sector organizations and the transportation funding
4 experts involved.

5 The three areas that we would like to consider as we
6 go forward with our discussions is, first, trying to make
7 the bond a bit more attractive to investors. There has
8 been discussion about what will really be needed in that
9 area. Second, the possibility of creating a more
10 centralized issuer, along the lines of what Senator Thune
11 and I did in the Build America Bonds area. Finally,
12 trying to make it attractive for issuers to sell at least
13 a portion of their bonds in small denominations, because
14 it has always been our view that it would be exciting to
15 see Americans--for example, for a holiday--buy a child a
16 Build America Bond to invest in our country's future.

17 You have been very kind and gracious with respect to
18 working with us, and I sought this colloquy to just put
19 on the record what I think you and your staff have
20 indicated, that we can work further on these issues in a
21 fast-track way in order to get those kinds of policies
22 and make the Build America Bonds program as effective as
23 possible as part of the stimulus.

24 The Chairman. Thank you, Senator. I share your
25 desire to make the municipal bonds market work much more

1 efficiently, and I appreciate that very much. I will
2 work with you as this legislation goes forward. But you
3 have been very helpful in addressing a real need, and I
4 thank you for it.

5 Senator Wyden. Thank you, Mr. Chairman.

6 The Chairman. Other Senators that have either
7 colloquys, statements, questions of the staff on the
8 modification?

9 [No response.]

10 The Chairman. Well, we are a little stuck right
11 now. The rules require that a member of the other party
12 be present to adopt the modification, so we will await
13 the arrival of someone who can help make that happen. So
14 here is an opportunity to make those statements.

15 I might, just in the meantime, just tell Senators
16 what I have in mind when we are able to have enough
17 Senators present to conduct business. We will adopt the
18 modification and then it is my suggestion that we move to
19 the AMT patch issue.

20 I have got an idea. Senator Menendez and Senator
21 Grassley have both expressed a very strong desire to
22 amend the mark to include the patch. Of course, I could
23 have put the AMT patch in the Chairman's modification,
24 but I know how strongly Senators Grassley and Menendez
25 feel about authoring the amendment to provide for the AMT

1 patch. So when the time comes -- oh, Senator Grassley is
2 here right now. Good. I think a better order would be
3 to start from the beginning again since Senator Grassley
4 is here.

5 Senator, we have just been going through a
6 description of the modification of the mark. Actually,
7 there were no questions asked. But if you have got
8 questions to ask on the modification, now would be a good
9 time to ask them. Then I am going to just outline the
10 order, or the suggested order of amendments once the
11 modification of the mark is adopted. As you know, under
12 the rules, we need you to adopt the modification. So if
13 you are inclined to --

14 Senator Grassley. Do you want to do that right
15 now?

16 The Chairman. Yes, let us do that now. Do you
17 have questions?

18 Senator Grassley. Yes.

19 The Chairman. Why don't you ask those questions
20 first, then? Why don't you go ahead and ask those
21 questions and I will try to work things out with you.

22 Senator Grassley. All right. First of all, I
23 would like to go to the question about a COBRA subsidy.
24 This would be for Joint Tax. Am I correct that, under
25 the current law, about 26 percent of the people that are

1 offered COBRA coverage enroll and pay premiums out of
2 pocket?

3 Mr. Kleinbard. Yes, sir.

4 Senator Grassley. All right. And you estimate
5 that as a result of this new 65 percent COBRA subsidy,
6 that the number will increase to 54 percent?

7 Mr. Kleinbard. Yes, sir.

8 Senator Grassley. So that is a 26 percent take-up
9 of COBRA benefits under the current law, and that
10 increases to 54 percent under the Chairman's mark.

11 Mr. Kleinbard. Yes.

12 Senator Grassley. That seems to mean that if the
13 bill is enacted, for every person we expand coverage to
14 as a result of the subsidy, the taxpayers will be
15 providing a government subsidy to a person that could
16 have purchased it anyway. Would that be right?

17 Mr. Kleinbard. Yes, sir. That follows from the
18 nature of the subsidy, that it is not targeted.

19 Senator Grassley. All right. Would I be correct
20 in assuming that a reasonable cap on income and assets
21 before a person could use the subsidy would help make
22 sure that we are targeting the subsidy to the persons
23 that need it the most?

24 Mr. Kleinbard. Sir, we have some data on the
25 income levels of people that we anticipate would obtain

1 the subsidy, and about half or more would be under
2 \$40,000 a year in income levels. If you wish to
3 introduce an income cap, of course it can be designed to
4 do so. But it would require some administrative
5 engineering work because of the way the subsidy is
6 designed to be a real-time subsidy. We would have to ask
7 the question: are we going to look back to prior income,
8 or are we going to look at year-to-date income at the
9 time you are fired? It can be done, but it requires some
10 engineering.

11 Senator Grassley. All right. But if we were to do
12 that, it would help make sure that we are targeting the
13 subsidy to the persons that need it the most.

14 Mr. Kleinbard. It would reduce the cost of the
15 subsidy program. If the cap is the 65 percent --

16 Senator Grassley. Yes. But the lower income
17 people are, the more they are apt to need it, right?

18 Mr. Kleinbard. Yes, sir. My only point was that
19 if you do not change the 65 percent subsidy, it simply
20 reduces the cost of the program. It does not increase
21 the base of the number of people who are subscribing.

22 Senator Grassley. I assume some would object to an
23 income and asset test because of the administrative
24 challenges--you have explained them--but in the case of
25 an income test, the IRS could reconcile the taxpayer

1 identification number of a person getting the subsidy
2 with the person's tax number. The IRS could determine
3 whether the person had income over the limit at the end
4 of the year. Here, the IRS could recapture the subsidy
5 that was provided in advance. Would that work?

6 Mr. Kleinbard. Yes, sir. I believe that the most
7 administratively straightforward means of implementing
8 the idea would be to have an after-the-fact
9 reconciliation and recapture, if appropriate.

10 Senator Grassley. Now, in the case of an asset
11 test, we could modify the excessive investment income
12 rules that apply in the case of the Earned Income Tax
13 Credit. Here, the IRS has a mechanism already in place
14 for enforcement. If the IRS determines a person has
15 income in excess of the limit, the IRS could recapture
16 the advance subsidy. Would that be correct?

17 Mr. Kleinbard. Recognizing that what you have
18 described is an income test, sir, and not an asset test,
19 it is correct that the IRS, today, has procedures in
20 place and does receive, obviously, reports of people's
21 income. They do not receive any kind of data on people's
22 assets.

23 Senator Grassley. So there is potentially a system
24 we could use to administer an income and assets test to
25 make sure that only the people that need the subsidy are

1 getting it?

2 Mr. Kleinbard. An income test, sir, yes. Assets?
3 The Internal Revenue Service does not keep any kind of
4 records on assets, only on income.

5 Senator Grassley. Well, I was suggesting a
6 modification of the excessive investment income rules.

7 Mr. Kleinbard. Right. Right. But that is an
8 income test. But yes, it works for purposes of tracking
9 investment income. Yes, sir.

10 Senator Grassley. Mr. Chairman, I have some
11 questions for CBO and counsel.

12 Mr. Bradley, about Medicare and Medicaid spending in
13 this bill and the health information technology
14 provisions. Mr. Bradley, what is the total amount of
15 Medicare and Medicaid spending in health information
16 technology in the Chairman's mark?

17 Mr. Bradley. The spending on health IT. I assume
18 you are referring to the bonus and penalty mechanism, the
19 financial incentives.

20 Senator Grassley. Yes. A 10-year figure.

21 Mr. Bradley. Through 2018, it would spend \$31.8
22 billion in the bonus payments, split \$11.9 billion for
23 Medicare, that would be offset by \$2.6 billion in
24 withholds from payment rates in Medicare, for a net of
25 \$29.2 billion.

1 Senator Grassley. How much do you have to be spent
2 out in the year 2009?

3 Mr. Bradley. One hundred and nineteen million.

4 Senator Grassley. And how much in 2010?

5 Mr. Bradley. One hundred and forty million.

6 Senator Grassley. How much of the spending is in
7 2011?

8 Mr. Bradley. It is \$4.2 billion.

9 Senator Grassley. And then 2012?

10 Mr. Bradley. It is \$4.9 billion.

11 Senator Grassley. All right.

12 So this leads me to, what has CBO forecast as a
13 percentage change in real gross domestic product for
14 fiscal year 2009?

15 Mr. Bradley. I had to look that up: negative 1.9
16 percent.

17 Senator Grassley. All right.

18 And forecast for 2010?

19 Mr. Bradley. Positive 0.4 percent.

20 Senator Grassley. All right.

21 Let me ask you for 2011 and 2012.

22 Mr. Bradley. It is 3.8 percent and 4.4 percent,
23 respectively.

24 Senator Grassley. So it sounds as though you are
25 projecting that the economy will be picking up again in

1 2011 and 2012. If we are only spending \$259 million in
2 2009 and 2010, that is just 2.5 percent of the health IT
3 spending when the Gross Domestic Product is either
4 negative or barely growing. So, it does not seem like
5 that is much of a stimulus. The bulk of the spending on
6 health IT, more than 97 percent, is in 2011 and 2012,
7 when the economy should be back on track.

8 So I have told in my opening statement how I support
9 health IT, and I think we should encourage its adoption.
10 But why are we doing this in a stimulus package? Does it
11 not really belong in health care reform? That is a
12 question to the Chairman. Maybe you do not want to
13 answer it, and you do not have to.

14 The Chairman. No, that is fine. No, no, no, no,
15 no. First of all, this is not directly on target to your
16 question.

17 Senator Grassley. It is not?

18 The Chairman. No. I have two answers.

19 Senator Grassley. It is intended to be.

20 The Chairman. My answer is not, but it will be.

21 Senator Grassley. All right.

22 The Chairman. The first point is that 91 percent
23 of the spending, 91 percent of this bill has an effect in
24 the first two years, that is 2009 and 2010. Ninety-one
25 percent total.

1 Senator Grassley. That would be of the whole --

2 The Chairman. The whole bill.

3 Senator Grassley. Yes.

4 The Chairman. Second, I believe that health care
5 reform is so important. We should take advantage of this
6 opportunity to put health IT in because it is really an
7 investment. The pay-out is going to not be for several
8 years. As I said in my prepared statement, the hope is,
9 the thought is, the anticipation is that doctors and
10 hospitals will basically be a paperless society, but it
11 will take about 10 years to get there. This is not
12 something that is going to happen right away.

13 So if we have an opportunity in the stimulus bill to
14 spend more on health IT, I think we should get an early
15 start and spend it. I very much hope we get to health
16 care reform this year. I have been working very hard to
17 get health care reform this year. I cannot guarantee
18 when it might occur. Maybe health care reform is not
19 enacted this year. Maybe it is next year. That would be
20 close to a two-year delay in getting started with
21 something which we all know is critical and we need in
22 this economy, and that is health information technology.

23 So it is a judgment call. It is my personal belief
24 that this is an investment worth taking and making, and
25 we should start it now, even though it is not going to

1 create a great number of jobs in the spend-out in the
2 first couple of years. In the long haul, I think
3 intuitively we all know it is going to be extremely
4 beneficial and very much help our economy, and help us
5 get costs down in health care spending and become more
6 efficient. That is not the only way we will get health
7 care costs down, but it is certainly a good way to do it.

8 Senator Grassley. Well, I think your statement
9 that it is in there for a reason is legitimate from the
10 standpoint of, the sooner you get started the better.
11 But from the standpoint of some of us on this side of the
12 aisle, and even some on that side of the aisle that are
13 very concerned about what is creating jobs or not
14 creating jobs, I think you have admitted that this is not
15 going to be creating jobs. I am not going to argue with
16 you on the point of the necessity of this in our health
17 care system. I am going to go on, Mr. Chairman. Just as
18 soon as we get a few of our members back here, I will
19 quit asking questions.

20 The Chairman. You might as well ask them now.

21 Senator Grassley. All right. Well, I am going to.

22 I just was explaining that I just came in late because
23 the President did not --

24 The Chairman. Right. I explained that.

25 Senator Grassley. All right. All right.

1 Now I have some questions for CBO about Medicaid
2 spending in the bill, and I also have some questions
3 about the House bill, if that is not inappropriate.

4 The Medicaid spending in this bill provides more
5 Federal dollars to States so that the Federal taxpayers
6 are picking up a larger share of Medicaid costs. To Ms.
7 Massey, what is the total amount of Medicaid spending in
8 the Chairman's mark?

9 Ms. Massey. Medicaid spending in the Chairman's
10 mark is \$89.6 billion over 10 years.

11 Senator Grassley. And how much is in the year
12 2009?

13 Ms. Massey. In 2009, we are estimating \$33.6
14 billion in outlays.

15 Senator Grassley. In the House bill, there is also
16 new Medicaid spending. The House bill would expand
17 Medicaid to cover involuntarily separated unemployment
18 individuals. So a question to you again: Medicaid costs
19 are usually shared between the Federal Government and the
20 States. Under this new Medicaid option in the House
21 bill, what is the Federal share?

22 Ms. Massey. Under the House bill, the Federal
23 share is 100 percent.

24 Senator Grassley. So the States pay nothing.

25 An additional question. What is the cost of the new

1 Medicaid option in the House bill, combined with the
2 subsidies for COBRA coverage of the unemployed?

3 Ms. Massey. The net effect for the combination of
4 the Medicaid option, as well as the COBRA subsidies, is
5 approximately \$40 billion over 10 years. There are two
6 components to that. The first is the lost revenue
7 related to the COBRA subsidy of \$26.7 billion, and the
8 remainder is attributable to Medicaid and other program
9 interactions. That totals \$13.3 billion.

10 Senator Grassley. All right.

11 Both the \$87 billion and the Federal assistance to
12 States, and the new Medicaid option in the House bill are
13 both supposed to expire in 2010. Is that right?

14 Ms. Massey. Yes.

15 Senator Grassley. All right.

16 And the Federal subsidy to purchasing health
17 coverage from a former employer is also supposed to
18 sunset at the same time, right?

19 Ms. Massey. Yes, sir.

20 Senator Grassley. Now, 2010 being an election
21 year, I am going to have a hard time being convinced that
22 most of us in Congress, but particularly a Democratic-
23 controlled Congress, is going to allow these Medicaid
24 provisions to sunset.

25 So I am curious about what these provisions would

1 cost if they did not sunset in 2010. Question: can you
2 give me a ballpark idea of what these two Medicaid items
3 would cost over the next 10 years if they do not sunset?

4 Ms. Massey. At this point we cannot provide that
5 estimate, although we would be happy to go back and
6 provide you with that number at a later date.

7 Senator Grassley. All right.

8 The Chairman. I might, at this point, add that one
9 of those is not in this bill. The House option is not in
10 the Senate bill.

11 Senator Grassley. All right. I was hoping to hear
12 a figure around \$14 billion, \$13 billion.

13 Ms. Massey. Fourteen billion -- the Medicaid
14 component in the House bill is approximately \$13.3
15 billion.

16 Senator Grassley. All right.

17 So you cannot give me a ballpark figure. Let me say
18 what my staff can do, without your expertise, and their
19 thinking on this. See if these generally seem reasonable
20 to you. Question: if that new Medicaid spending created
21 in these bills continues for the next 10 years at the
22 same rate that overall Medicaid is growing, that would be
23 one way to look at it, I hope you would agree.

24 Ms. Massey. Well, I mean, I am not confident that
25 the estimate would actually track to Medicaid spending

1 growth exactly, so I would prefer to kind of go back,
2 take a look at the model, estimate it, and then provide
3 you with specific growth rates.

4 Senator Grassley. Well, we have, as you look
5 ahead, about a 7 percent increase or growth. So if that
6 were the case, if one were to take the Medicaid spending
7 in these two bills and assume that they keep growing at
8 that rate, it would total out to about \$729 billion over
9 the next 10 years. Now, does that not sound reasonable
10 to you? We were talking about ballpark, not exact
11 figures.

12 Ms. Massey. Right. I mean, that is an estimate
13 that CBO has not actually calculated. So if you are
14 taking average Medicaid spending growth.

15 Senator Grassley. Seven percent.

16 Ms. Massey. Seven percent. And applying it to
17 whatever base, then I think that is a fair ballpark.
18 Seven percent is consistent with our most recent baseline
19 update. That is the average annual growth over 10 years.

20 Senator Grassley. Ms. Massey, my staff contacted
21 you over the weekend and told you that I was going to
22 discuss a report produced by Urban Institute for the
23 Kaiser Commission on Medicaid and the Uninsured. The
24 title of that study is "Rising Unemployment, Medicaid,
25 and the Uninsured".

1 Question: the Urban Institute report suggests that
2 pressure on State Medicaid programs during the recession
3 comes from three sources: increased State costs for
4 Medicaid enrollment, cost of uncompensated care for the
5 uninsured, and budgetary pressures created by falling
6 revenues.

7 Are you generally familiar with this report and
8 their model for predicting Medicaid costs during the
9 economic downturn?

10 Ms. Massey. I am familiar with the report, but I
11 would just want to clarify and emphasize that CBO has not
12 actually done an analysis of the Urban model that
13 predicts increased spending as a result of an economic
14 downturn.

15 Senator Grassley. Well, then you were not able to
16 respond to the request that my staff made over the
17 weekend?

18 Ms. Massey. We are familiar with the report and we
19 are also familiar with the calculations that the Urban
20 Institute presents, but we have not been able to do an
21 independent analysis of Urban's conclusion.

22 Senator Grassley. Well, in their model,
23 enrollment-driven increases in Medicaid spending caused
24 by the recession is just one component. You would agree
25 with that?

1 Ms. Massey. Yes, that is true.

2 Senator Grassley. CBO scored an amendment for me
3 over this weekend that tried to replicate the Urban
4 Institute work, and you are familiar with that amendment?

5 Ms. Massey. Yes, I am.

6 Senator Grassley. The Urban Institute asserts that
7 for every 1 percent increase in nationwide unemployment,
8 Medicaid and CHIP programs will see an increase of one
9 million additional beneficiaries nationwide. Is that
10 correct? Is that your understanding?

11 Ms. Massey. Yes. That represents the Urban
12 Institute's conclusion.

13 Senator Grassley. All right. So using that
14 formula and the unemployment baseline that the Chairman's
15 mark uses for computing the recession-adjusted bonuses,
16 my amendment gives States a per capita payment for every
17 new enrollee that the Urban Institute research assumes
18 will go to Medicaid and SCHIP during the 27 months
19 contemplated in the Chairman's mark. CBO has reviewed my
20 amendment and given my staff an informal cost estimate,
21 and I hope you will say that that is \$10.8 billion for
22 five years.

23 Ms. Massey. Yes. Yes.

24 Senator Grassley. All right.

25 More a comment than a question. It is clear that

1 States are getting significant funding in the Chairman's
2 mark that goes well beyond any amount that they might
3 need to address enrollment-driven increases in Medicaid
4 spending.

5 I would like to ask a few questions of Mr. Schwartz.
6 What conditions does the Chairman's mark place on States
7 for receiving increased FMAP funding?

8 Mr. Schwartz. Sorry, Senator?

9 Senator Grassley. No. You just take your time
10 because I want you to be able to answer these questions.

11 Mr. Schwartz. Thank you. I think your question
12 was, what conditions are imposed on States to receive
13 increased FMAP. Is that correct?

14 Senator Grassley. Yes. Yes.

15 Mr. Schwartz. There are two components to the FMAP
16 increases in the Chairman's mark. The first is a base of
17 a 5.6 percent increase in the Federal share, and there
18 are no conditions for that. The second component is
19 referred to as the bonus structure, and that is based on
20 percentage point increases in unemployment on an
21 individual State-by-State basis.

22 States with anywhere between a 1.5 percentage point
23 increase and a 2.5 percentage point increase would be in
24 the low bonus; they would get a 5 percent reduction in
25 their State share. The next level, the mid-level, is for

1 those States with between a 2.5 and 3.5 percentage point
2 increase in their unemployment rate, and they would get a
3 10 percent reduction in their State share. The top level
4 is for those States with a 3.5 percentage point increase
5 or greater in their unemployment rate, and they would get
6 a 13 percent reduction in their State share.

7 Senator Grassley. Can the State lower its income
8 eligibility under this proposal to bring more people in?

9 Mr. Schwartz. Can a State lower its income
10 eligibility?

11 Senator Grassley. Maybe I had better find out if I
12 said that right. Yes, I said it right.

13 Mr. Schwartz. Yes, sir, they could.

14 Senator Grassley. All right.

15 Does the Chairman's mark prevent a State from
16 cutting Medicaid payments to community health centers?

17 Mr. Schwartz. No, the Chairman's mark does not
18 prevent it.

19 Senator Grassley. Does the Chairman's mark prevent
20 a State from cutting Medicaid payments to children's
21 hospitals?

22 Mr. Schwartz. No, it does not.

23 Senator Grassley. Does the Chairman's mark prevent
24 a State from cutting Medicaid payments to workers
25 providing home- and community-based services?

1 Mr. Schwartz. No, it does not.

2 Senator Grassley. Does the Chairman's mark prevent
3 a State from cutting Medicaid payments to pediatricians?

4 Mr. Schwartz. No, it does not.

5 Senator Grassley. Does the Chairman's mark prevent
6 the State from cutting Medicaid payments to pharmacists?

7 Mr. Schwartz. No, it does not.

8 The Chairman. You might, when you answer those
9 questions, also indicate what is also going on, namely
10 that States are cutting. In the shortfalls that States
11 are facing, it is enormous, the amounts left. I would
12 leave Mr. Schwartz to verify this--I could be incorrect--
13 that the payments in this bill do not cover all of the
14 shortfalls that States are facing in Medicaid, so some of
15 the technical questions you are asking are accurate, but
16 the main point is, the States, due to the economic
17 recession and because of what you named and said earlier,
18 that is, for every one percent increase in unemployment,
19 that is another, what is it, million?

20 Mr. Schwartz. Yes, one million.

21 The Chairman. One million added to Medicaid and
22 Children's Health Insurance Program rolls. So the fact
23 that you might have said earlier, that this bill goes
24 well beyond what is needed, the fact is, it is just the
25 opposite. It does not keep up with what is needed in the

1 States.

2 Senator Grassley. I think the Chairman has helped
3 me make my point, and I thank him for that. That is
4 nearing the end of my questions because, we have a
5 situation where we are trying to take care of the people
6 who need some assistance in a recession, but we are not
7 in a position of demanding that the States keep a strong
8 core of people, health care delivery people.

9 So that is the point. We have got States getting
10 \$87 billion in additional Medicaid dollars, but they are
11 still going to be able to cut payments to people who
12 treat Medicaid enrollees, and in doing so threaten the
13 safety net and access to care.

14 One of my colleagues just today told me that only 40
15 percent of the doctors take Medicaid people, as an
16 example. So you have got States cutting. States are
17 going to get a big increase. I think we ought to be
18 thinking about putting some requirements on this \$87
19 billion, particularly when it looks like the need is only
20 \$10.8 billion. Getting all this other money, we ought to
21 spend some time making sure that we are paying doctors,
22 pharmacists, rural hospitals, and all that to make sure
23 that we have got a core of people to do that.

24 Does the Chairman's mark prevent a State from
25 raising taxes?

1 Mr. Schwartz. No, it does not. And actually,
2 Senator Grassley --

3 Senator Grassley. Well, it is probably obvious
4 that we are not going to do that at the Federal level.
5 But you have got a situation where we are trying to help
6 the recession by giving more than we should, helping
7 people in need, but not to make sure that there is an
8 adequate core of people there to take care of them, just
9 giving the States a lot of money and not with adequate
10 assurances of how it is going to be spent.

11 So, I will yield the floor. That is the end of my
12 questions.

13 Senator Rockefeller. Mr. Chairman?

14 The Chairman. Senator Rockefeller?

15 Senator Rockefeller. Just to follow up on a couple
16 of points that Senator Grassley made. I would ask Mr.
17 Schwartz, what maintenance of effort requirements were
18 included in the 2003 relief?

19 Mr. Schwartz. Senator Rockefeller, I believe in
20 2003 there was what was referred to as an eligibility
21 maintenance of effort requirement, which is contained in
22 the Chairman's mark. I believe that I may have answered
23 inaccurately, Senator Grassley, your question about
24 reductions in eligibility, so I apologize. I think I can
25 now answer correctly while I address Senator Rockefeller.

1 The Chairman's mark says that eligibility must be
2 maintained. States cannot decrease their eligibility
3 levels so as to decrease the rolls while they are getting
4 more money; on the other hand, I think that that is the
5 part of your question that I answered wrong, sir, and I
6 apologize.

7 But Senator Rockefeller, I believe that the
8 eligibility MOE, or maintenance of effort, as they call
9 it, in the Chairman's mark--and it is identical to what
10 was in the House package--is slightly tighter in this
11 package than it was in 2003, so that things that even
12 indirectly affect eligibility would be covered so that
13 States are held accountable for maintaining the
14 eligibility that they have today and not reducing it.

15 Senator Rockefeller. Could I further ask you, with
16 the \$20 billion in fiscal relief that we provided back in
17 2003, and that is including the \$10 billion for Medicaid,
18 did States restore eligibility for provider payments and
19 benefits?

20 Mr. Schwartz. I believe that some States did. Of
21 course, it varied across the board. I think, though,
22 what may be most important is that that infusion of cash
23 prevented any further cuts. Individual States' ability
24 to restore cuts that had been made previously obviously
25 was dependent on the extent of their fiscal crisis.

1 Senator Rockefeller. Thank you, Mr. Chairman.

2 The Chairman. Thank you, Senator.

3 I have here--I just have not read it, but just
4 glancing at it--the GAO letter to me dated yesterday.
5 Basically it says, you asked us to provide information
6 on: 1) the fiscal pressures facing State and local
7 governments; and 2) principles to consider in determining
8 how to effectively target and time temporary assistance
9 to States, especially for Medicaid.

10 Just glancing at this, the first section says: "The
11 State and local sector faces immediate and long-term
12 fiscal pressures, exacerbated by the current recession."

13 I see a sentence in there: "The cumulative two-year
14 projected operating deficit totals approximately \$312
15 billion." That is a two-year operating deficit facing
16 States over two years. The current results represent a
17 significant deterioration from our November 2008 update.

18 The next section is: "Consideration of State fiscal
19 relief requires attention to targeting and timing." I
20 have not had a chance to read this, but "unemployment is
21 a key variable for targeting Medicaid-related assistance
22 because it was generally accepted as indicator of
23 increased Medicaid enrollment. It is not easily
24 influenced by outside sources or State policy, and it has
25 been a reliable indicator and collected in a consistent

1 manner from all 50 States."

2 So in summary, considerations involved in developing
3 a strategy for Federal fiscal relief include targeting,
4 and timing, so it is delivered as soon as needed, also
5 temporary, and also trigger mechanisms.

6 I might say, too, that there is obviously -- and I
7 think Senator Grassley made a very good point. We enact
8 a program. What is the will of Congress to terminate it,
9 even though it self-destructs or it is a temporary
10 program? The question being, what pressure will be on
11 the Congress in 2010 to continue this same program?

12 I might say my sense is that a lot of that will
13 depend upon the economy. If it is true that one million
14 people are added to Medicaid and the CHIP rolls for every
15 one percent increase in unemployment, it is my hope that
16 unemployment is going to come down so we will, therefore,
17 cut the payments.

18 However, to be honest about it, if unemployment
19 levels are still as high in 2010 as they are today, or
20 maybe even higher, then we are going to have to bite that
21 bullet. It is an issue we are going to have to face in
22 as responsible way as we possibly can. So I do not think
23 there is really any iron-clad answer to a very good
24 question, but just a lot of it depends on circumstances
25 and essentially the economy, and more essentially on

1 employment levels. So it is all the more important we
2 pass this stimulus bill to help create some jobs, help to
3 address the unemployment levels in this country.

4 Now, of course, this bill alone is not going to
5 solve that problem. There are other measures that must
6 be undertaken. Senator Dodd and the Banking Committee
7 are wrestling with what else to do with respect to
8 financial institutions and how potential TARP money could
9 be targeted to small business and to smaller banks and so
10 forth.

11 Our country has never faced a problem like this in
12 our lifetimes since we have held these positions, but I
13 would just say that I think at this time that the only
14 appropriate response is to help make sure that people on
15 Medicaid get the health care that they need and they are
16 not taken off the Medicaid rolls because of State
17 budgetary pressures. My guess is, if we were not to
18 provide this \$87 billion, then more people would not be
19 on Medicaid and that States would cut even more than they
20 already have. It is a delicate balance.

21 We have to look at eligibility, we have to look at
22 benefits, and we have to look at provider payments, all
23 three. This legislation basically holds eligibility
24 harmless. We do not deal with benefits. States can
25 still cut benefits if it is their decision. There are

1 some who want to protect the provider payments, and I do
2 not know the degree to which we have done that in this
3 bill. I do not think we have done much. Some Senators
4 have asked for that.

5 In the priority of the three, it is my judgment--and
6 we can certainly change that--that eligibility should be
7 maintained as we deal with a very tough situation, and
8 States face a very tough situation. As I said in citing
9 GAO, GAO says that it is about \$312 billion in deficit
10 mode that States are in over the last two years. My
11 guess is that is not going to get any better in the next
12 two years.

13 Are there any further questions?

14 Senator Kyl. Mr. Chairman?

15 The Chairman. Senator Kyl?

16 Senator Kyl. Maybe Senator Grassley -- did you
17 want to ask that? I had three questions I needed to ask
18 on your behalf. Let me just ask three questions here.

19 First of all, what percent of the entire bill--not
20 just the part that is before the committee but the part
21 also being marked up in the Appropriations Committee--is
22 actually a tax cut, i.e., revenue reductions?

23 Mr. Kleinbard. We scored the tax provisions of the
24 modification amounting to \$272 billion over the 10-year
25 period. Now, part of that is outlay, part of that is

1 reductions in income tax. The total is \$272 billion,
2 sir.

3 Senator Kyl. The number I had was \$189 billion was
4 actually dedicated to revenue reductions. Is my number
5 incorrect?

6 Mr. Kleinbard. What that represents is the \$272
7 billion figure from our table, less the \$86 billion in
8 refundable credits and other tax provisions that are
9 scored as outlays. So that is how you would get to the
10 \$189 billion.

11 Senator Kyl. How many of the refundable business
12 tax credits are in the package, and what is their total
13 cost? Do you know that?

14 Mr. Kleinbard. Yes. There is one refundable
15 business credit in the package. That is the ability to,
16 in effect, cash-out your AMT and research and development
17 tax credits in lieu of claiming bonus depreciation. We
18 estimated that at \$805 million over the window.

19 Senator Kyl. Over the 10 years?

20 Mr. Kleinbard. Yes, sir.

21 Senator Kyl. All right.

22 Just as a matter of economics, the information that
23 I have is that most economists think it is more efficient
24 to run spending programs on the spending side of the
25 budget rather than as a refundable credit like this. Do

1 you believe that that is the view of most of the
2 economists that have a view on this?

3 Mr. Kleinbard. I think, candidly, the view of most
4 economists is a little more nuanced than that. It is a
5 very important point that you are making. This area is
6 known as tax expenditure analysis, and the question is
7 how to look at the tax expenditures which are neither
8 reductions in tax or outlays, but subsidies of one kind
9 or another that are embodied in the Tax Code and that in
10 some cases could be alternatively run through the
11 spending side. It is very important. The JCT staff has
12 devoted much of 2008 to preparing a significant body of
13 work on this question of tax expenditure analysis.

14 I would suggest that most economists would probably
15 say, first, the question is, is this something the
16 government should be subsidizing? Is this a useful
17 subsidy? If it is a useful subsidy, the next question
18 would be, what is the most efficient way to deliver the
19 subsidy in light of the design objectives and intended
20 reach? So, for example, the Earned Income Tax Credit, I
21 think most economists would think is very efficiently
22 run. Although it could be run as a spending program, it
23 is very efficiently run through the tax system because so
24 many wage earners file tax returns.

25 On the other hand, a much narrower program that

1 requires Department of Energy authorization could
2 arguably be run more efficiently through the spending
3 side and not through the tax side. So it depends on what
4 is the subsidy, what are the parameters of its design,
5 and then what is the most efficient mechanism for
6 delivering it to Americans.

7 Senator Kyl. Thank you. Part of the reason for my
8 question is, obviously when we hear descriptions of how
9 much of the program is tax reduction rather than
10 spending, it is more complicated than that. Republicans
11 want the most efficient way to actually stimulate the
12 economy, and I appreciate the point that you have made
13 here. Clearly, 40 percent of the package is not tax
14 cuts, and that is, I think, well established.

15 The last question I have is: can you identify how
16 many of the spending programs in the bill actually spend
17 out their funds by the end of the year 2010? I guess
18 that would be CBO.

19 Mr. Kleinbard. While CBO is gathering its
20 material, on the tax side we estimate that for refundable
21 tax credits, \$120 billion will be spent by the end of
22 fiscal year 2010--that is to say, September 2010. So
23 that is just on the tax side, sir. That is all I can
24 speak to, while CBO gathers the spending data.

25 Senator Kyl. Mr. Chairman? Is there any other --

1 Senator Conrad. Just in response to this question.

2 Senator Kyl. Sure. Yes. Go ahead.

3 Senator Conrad. I have just been given numbers
4 answering that question. If the Senator is interested, I
5 would be happy to share what I was just given.

6 Senator Kyl. I think it would be helpful, since
7 obviously the part that we have -- what is the total
8 amount of the part before the committee right now? Is it
9 \$464 billion? Is that correct?

10 Senator Conrad. I have \$461.8 billion.

11 Senator Kyl. That is close enough for government
12 work. So if \$120 billion of the \$461-plus billion is
13 spent --

14 Senator Conrad. That does not include the
15 modification that was just made, but in pre-modification,
16 \$461.8 billion. Our indication is that the percentage of
17 the spend-out in 2009 and 2010 in the package before us
18 is 96.4 percent before the modification. If the AMT
19 patch is included, that would then rise and the total
20 package would then be 79.3 percent. That includes the
21 appropriated amounts which are estimated and went through
22 the Appropriations Committee already, which was 49.6
23 percent. That is the only one that is not at this moment
24 scored by CBO or the Joint Committee.

25 So the Finance tax, modified, is scored by Joint

1 Tax; the Finance mandatory is scored by CBO; and the AMT
2 patch is scored by Joint Tax. So you rack it all up, and
3 this package, the Appropriations package, and including
4 the AMT patch, it would be 79.3 percent that would go out
5 in the first two years. If the AMT patch is not included
6 it, would be 75.7 percent. That is before the Chairman's
7 modification that added marginally to this package.

8 The Chairman. That is correct. CBO scored this
9 whole bill at about 75 percent before AMT. That is
10 correct. But second, I might say that JCT has also
11 scored the Finance package at 91 percent the first two
12 years. Or am I incorrect? I know 91 is about right. Is
13 that the CBO score? The CBO score is 91 percent. The
14 Finance Committee package. Is it 91 percent?

15 Ms. Massey. What we just calculated was an 81.3
16 percent spend-out of total direct spending in 2009 and
17 2010.

18 The Chairman. That is the spending.

19 Senator Conrad. That is just the spending.

20 The Chairman. I am talking about adding the taxes
21 in there.

22 Ms. Massey. Oh.

23 The Chairman. My figure is about 91 percent.
24 There is no reason to think that that is not objective.
25 So again, before AMT, 75 percent CBO in the first two

1 years. Is that correct? And also before AMT, the
2 Finance Committee package, including tax reductions, is
3 91 percent spent in the first two years.

4 Mr. Kleinbard?

5 Mr. Kleinbard. I think I see what your staff has
6 done, sir. The tax package alone--because all I can
7 speak to is the tax package--the first two years
8 contemplate a reduction in tax liabilities in total,
9 actually in excess of 100 percent of the tax package
10 because there are income inclusions in later years.

11 The Chairman. All right.

12 Mr. Kleinbard. So the tax reduction to the
13 American people and business would be a little bit over
14 100 percent of the total.

15 The Chairman. All right. But again, before AMT,
16 Dr. Cohen, why do you not explain what percent is spend
17 in the first two years?

18 Dr. Cohen. Mr. Chairman, before the AMT, my
19 figures indicate that the combination of the tax revenue
20 provisions in the bill, plus the spending provisions
21 scored by CBO, is 92.3 percent of that total is in the
22 first two years.

23 The Chairman. All right. Thank you.

24 Any further questions?

25 Senator Grassley. Can I ask one more?

1 The Chairman. Senator Grassley?

2 Senator Grassley. This will be the last one. The
3 last one for me, at least.

4 To Joint Tax: do the Build America Bonds give a tax
5 credit to tax-exempt entities? Let me ask three
6 questions: how does it work; has a tax credit ever been
7 given to tax-exempt entities before; and if the answer to
8 that is yes, which provisions were these and how were
9 these other provisions structured?

10 Mr. Kleinbard. It is my pleasure to answer. I am
11 afraid that the answer takes about two minutes, though,
12 so I hope you will not object.

13 The "how does it work" requires backing up a little
14 bit to understand how tax-exempt financing today works as
15 a tax matter, and then layer on these tax credit bonds.

16 The short answer to your question is that every tax-
17 exempt bond that we have had, really since the beginning
18 of the Internal Revenue Code, actually provides a subsidy
19 to tax-exempt issuers. So we have always had, as an
20 economic matter, subsidies to issuers. The question is,
21 are those efficient subsidies or not? Are they well
22 targeted subsidies? The way to understand that is, just
23 imagine we have a \$1,000 bond that pays 10 percent
24 interest, it is a taxable bond, could not be simpler, so
25 it pays \$100 a year of interest.

1 Mr. Schwartz, who has kindly volunteered here to be
2 my partner in this example, is in the maximum tax bracket
3 of 35 percent, I am in the 25 percent tax bracket. He
4 and I each buy one bond. He has \$100 of income, I have
5 \$100 of income. He pays \$35 of tax, I pay \$25, and he
6 has \$65 left over, I have \$75.

7 Now we take that basic idea of a taxable bond and we
8 move it into the tax-exempt sector. What happens? Well,
9 in theory, a tax-exempt issuer should be able to sell
10 that bond to Mr. Schwartz with a 6.5 percent coupon
11 because that is all he got after tax from buying a
12 taxable bond. That 6.5 percent coupon that Mr. Schwartz
13 would be willing to accept is the after-tax equivalent of
14 the 10 percent taxable bond.

15 There is a subsidy at work right there, but that
16 subsidy is from the Federal Government to the State. Mr.
17 Schwartz has the same return. He has the same diminution
18 in return, whether he buys the taxable bond or the tax-
19 exempt bond. So the subsidy, in fact in every tax-exempt
20 bond, is targeted to the State.

21 The problem is, in the tax-exempt bond market there
22 are too many bonds chasing too few buyers, and as a
23 result of the fact that there are too many bonds chasing
24 too few buyers, the tax-exempt issuer, the State, has to
25 offer a higher rate to attract me, the lower tax bracket

1 investor, into the mix. What does that mean? It means
2 that Mr. Schwartz, in the maximum tax bracket, is getting
3 a windfall.

4 So the Federal Government, by intending to subsidize
5 the State, is spilling over and giving an extra subsidy
6 to Mr. Schwartz, who really does not need it to make the
7 investment, in order to induce me, in the lower income
8 bracket, to accept. The tax credit bonds are designed to
9 address that. In a nutshell, what they do is they give a
10 dollar value to holders in some cases, and those we have
11 had for some time. New CREBs, Clean Renewable Energy
12 Bonds, is an example of that.

13 Instead of giving tax-exemption, which is worth
14 different amounts to different people, they give
15 effectively the same as a Federal voucher, just the same
16 as if the bond were issued by two issuers, the State and
17 the Federal Government jointly issuing it in the case of
18 the holder of tax credit bonds.

19 The tax credit comes to the holder in the form of a
20 Federal voucher that he or she can use to pay his or her
21 taxes, and that voucher is worth the same regardless of
22 the holder's tax rate. So the idea of tax credit bonds
23 is that they can be more efficient than current tax-
24 exempt bonds.

25 The most recent innovation in that thinking, and

1 your committee and the Congress has been experimenting
2 with tax credit bonds for several years now--the new
3 Clean Renewable Energy Bonds is one example--is, well, if
4 the whole idea is to give a simple dollar voucher, why
5 not give it directly to the issuer and then the issuer,
6 the State, pays the coupon. The coupon is fully taxable,
7 but there is no risk of any friction or misdirection of
8 the subsidy in that way.

9 But every tax-exempt bond from the beginning of
10 time, the purpose of it has been to subsidize the tax-
11 exempt issuer.

12 Senator Wyden. Mr. Chairman?

13 Senator Enzi. Mr. Chairman?

14 Senator Wyden. Mr. Chairman? On that point.

15 The Chairman. Senator Wyden?

16 Senator Wyden. I will be very brief, because you
17 and Senator Grassley have been patient with us. The
18 bottom line, Mr. Kleinbard, is as we look at this new
19 philosophy in transportation, and that is what Senator
20 Thune and I have sought to do now for five years, what I
21 think you have just told us is that this tax credit
22 approach, in your view, can be more efficient than the
23 status quo. The status quo is largely these tax-exempt
24 bonds. What Senator Thune and I have sought to do, with
25 the Chairman's help, is the tax credit approach. You

1 have just testified that this approach will be more
2 efficient.

3 Mr. Kleinbard. Yes, sir. The theory is that the
4 tax credit bond has the same value to all investors, it
5 can be given to the holder, it can be given to the
6 issuer. The question is: will the markets accept it? So
7 your committee, in effect, has embarked on an experiment
8 to see, will the markets accept this alternative form of
9 financing?

10 Senator Wyden. Very good.

11 Mr. Chairman, thank you.

12 The Chairman. You bet.

13 Are there any further questions?

14 Senator Enzi. Mr. Chairman? Mr. Chairman?

15 The Chairman. Senator Enzi?

16 Senator Enzi. Yes. I have some questions that I
17 need to kind of get my hands around to be able to do
18 this, as one of new people on the committee.

19 The Chairman. Sure. You have got it. You are on.

20 Senator Enzi. Thank you.

21 For CBO, lost amid the national conversation on the
22 economic stimulus is the fact that the Federal budget
23 does include automatic stabilizers that provide immediate
24 assistance to the most vulnerable families, the families
25 and individuals with low incomes or without jobs. Those

1 benefits are deployed without any intervention on our
2 part. We already did that, I think. The two most common
3 examples of automatic stabilizers are unemployment
4 compensation and food stamps. Is that correct?

5 Ms. Massey. Yes.

6 Senator Enzi. All right.

7 In testimony before the Senate Budget Committee on
8 January 8, CBO Director Robert Sunshine estimated that
9 the Federal Government will inject another \$250 billion
10 into the economy between 2008 and 2009 through these two
11 programs without lifting a finger. Is that a correct
12 statement?

13 Mr. Bradley. Yes.

14 Senator Enzi. Does this estimate include spending
15 on the new Emergency Unemployment Compensation program
16 that Congress adopted in June 2008, and then expanded
17 again last November?

18 Mr. Bradley. It includes that spending through
19 March. Well, the program expires as of March 31, and
20 then there are outlays that continue after that. But,
21 yes.

22 Senator Enzi. Thank you.

23 According to the National Bureau of Economic
24 Research, this recession began in December of 2007. As
25 workers lose their job, they become eligible for

1 Medicaid. Is that correct?

2 Mr. Bradley. Yes.

3 Senator Enzi. Are there other examples of
4 automatic stabilizers in the Federal budget that I have
5 not mentioned, and how much have we spent on those?

6 Mr. Bradley. There might be. I am not aware of
7 that, but we can get back to you with the answer.

8 Senator Enzi. All right.

9 Adding up the ones that we have mentioned, spending
10 on unemployment compensation, food stamps, Medicaid, how
11 much do you estimate that Congress has spent on an
12 automatic stimulus in response to this economic crisis?

13 Mr. Bradley. I do not have a total for that yet,
14 but we can get that back to you.

15 Senator Enzi. All right. Thank you.

16 For Joint Tax, I want to ask a little bit about the
17 Making Work Pay. The maximum credit under the Making
18 Work Pay is \$500 for an individual, \$1,000 for a family.

19 The Chairman's mark says the delivery mechanism would be
20 a revision to the withholding schedule. This means that
21 the \$500 credit would trickle out over the calendar year.

22 Is that correct?

23 Mr. Kleinbard. That is the intention of the
24 Chairman's mark. Yes, sir. Over the second half of
25 2009.

1 Senator Enzi. All right.

2 If my math is correct, the \$500 divided by 12 months
3 means a worker would see, at most, an extra \$41 on his
4 paycheck every month. Is that right?

5 Mr. Kleinbard. It is the intention of the
6 Chairman's modification that it be distributed over six
7 months rather than 12, over the second half of 2009. So,
8 the numbers would be double.

9 Senator Enzi. So it would be \$82. All right.

10 Mr. Kleinbard. Yes. I take your point.

11 Senator Enzi. So we are going to spend \$142
12 billion this year to give workers an extra \$82 a month,
13 thinking this will incite a consumer spending revolution,
14 when last year's rebates which cost \$117 billion and gave
15 workers one big check had virtually no impact on consumer
16 spending? Is that correct?

17 Mr. Kleinbard. I think that is a question either
18 for CBO or for macro-economists. Obviously the delivery
19 mechanism is different. Last time it was a lump sum
20 distribution. It is a question of, in effect, the
21 psychology of the consumer. That goes beyond what JCT
22 can testify to, sir.

23 Senator Enzi. All right. Thank you.

24 Another question for Joint Tax. The Home Buyer Tax
25 Credit is limited to first-time home buyers only. Is

1 that correct?

2 Mr. Kleinbard. Yes, sir.

3 Senator Enzi. How much would this program cost if
4 it was extended to those refinancing their mortgage into
5 more affordable terms or current homeowners moving into
6 vacant or long unsold homes? Would doing so help stem
7 foreclosures or reduce the housing inventory more
8 effectively than this bill would do today?

9 Mr. Kleinbard. I cannot address whether it would
10 be more effective than this current bill. That requires
11 a much broader economic analysis than Joint Tax's
12 mandates. I do not have a number, I am afraid, for what
13 it would cost to open this up to all home owners. It
14 would clearly be very expensive. We do not have a
15 number. I am sorry, sir.

16 Senator Enzi. All right.

17 Currently, how much money in this stimulus bill
18 would be put towards the foreclosure relief?

19 Mr. Kleinbard. That is a question of how you
20 choose to count things. The Making Work Pay Credit is
21 available to pay any bill that you choose to. The first-
22 time home buyer credit obviously supports home prices,
23 and we estimate that at \$3.7 billion over the 10 years.
24 So several of these provisions--the expansion of the
25 Earned Income Tax Credit, the expansion of the Child

1 Credit, the Making Work Pay Credit--all put money in
2 people's pockets. What they do with that money is an
3 issue that JCT does not investigate.

4 Senator Enzi. I have had an interest in the health
5 IT, along with Senator Stabenow. We did pass that, once,
6 unanimously through the U.S. Senate a couple of years
7 ago, and tried last time and it was held up because of
8 some extreme privacy issues that were not able to be
9 worked out, evidently. We thought we had them worked out
10 once, but they came back again. Senator Kennedy and I
11 have had quite an interest in this and have been working
12 on it, so I have a few questions to CBO on this.

13 How many doctors, hospitals, and other providers are
14 expected to adopt health IT if we spend the \$22 billion?

15 Mr. Bradley. If you will bear with me while I find
16 the right piece of paper, please. All right. Under
17 current law, we project that the proportion of physicians
18 who will adopt health IT by 2019 is about 65 percent, and
19 for hospitals --

20 The Chairman. I am sorry. I have been given the
21 figure of 90 percent in 10 years.

22 Mr. Bradley. I am starting with current law, and
23 then after the proposal.

24 The Chairman. All right. Thank you.

25 Mr. Bradley. So under current law, the number in

1 2019 for physicians is about 65 percent, for hospitals is
2 about 45 percent. With the financial incentives in this
3 proposal, we estimate that the proportion for physicians
4 would increase to about 90 percent and the proportion for
5 hospitals would increase to about 70 percent.

6 Senator Enzi. To what extent will the \$22 billion
7 in new spending in this bill actually get health
8 providers to adopt health IT sooner than what CBO assumes
9 they would already be doing?

10 Mr. Bradley. In 2019, both of those figures are
11 about a 25 percentage point increase. However, in 2015
12 we have got about a 40 percentage point increase for
13 physicians and 28 for hospitals, so in fact there is a
14 considerable acceleration of adoption, particularly for
15 the physicians.

16 Senator Enzi. Are those numbers based on us doing
17 something with interoperability or just with \$22 billion?

18 Mr. Bradley. They are based on the financial
19 incentives which in the 2015 case are nearly all, if not
20 exclusively, the bonus payments mechanism, adopting
21 standards that meet the criteria that are established by
22 the Secretary.

23 Senator Enzi. Thank you. And a final area of
24 questions here.

25 The Chairman. Senator, I hope you will proceed

1 quickly. We are going to have to get on to amendments
2 pretty quickly here.

3 Senator Enzi. All right. I have got to ask
4 something about COBRA, though, of the committee counsel.

5 The Chairman. All right.

6 Senator Enzi. Is it true that any individual who
7 is terminated from their job, absent the commission of
8 gross misconduct, would be entitled to receive the new
9 subsidies to assists them with purchasing COBRA coverage?

10 Mr. Kleinbard. Yes.

11 Senator Enzi. Is there any means testing that will
12 be involved in that? For instance, would the CEO of
13 Merrill Lynch, John Thane, who was forced to resign,
14 getting \$83.1 million in annual compensation, be entitled
15 to receive the subsidies or is there mean testing in
16 this?

17 Mr. Kleinbard. Senator Enzi, we apologize. Could
18 you possibly repeat the question for us?

19 Senator Enzi. Sure. The first part of that was,
20 absent misconduct, would they be entitled to receive the
21 subsidies, regardless of how much they make?

22 Mr. Kleinbard. Yes, assuming that they were
23 terminated as opposed to quit. Yes, sir.

24 Senator Enzi. Yes. And so the former CEO of
25 Merrill Lynch, making \$83.1 million, who was forced out

1 would have the same right to that as anybody else?

2 Mr. Kleinbard. Yes, sir.

3 Senator Enzi. Thank you.

4 The Chairman. Thank you very much, Senator.

5 Just a couple of points. I do want to get to
6 amendments. There has been some talk about economic
7 stabilizers. Dr. Cohen, I wonder if you could address
8 the economic destabilizer. That is, when there is a
9 recession, revenue is down, people lose jobs.

10 Dr. Cohen. Well, that is absolutely right,
11 Senator. As the recession moves forward and unemployment
12 rises, first of all, that reduces revenues because there
13 are fewer people paying taxes. Of course, businesses are
14 less profitable so they are paying less corporate revenue
15 tax for that. Sales taxes are going down because people
16 are buying less. In this particular downturn, property
17 taxes are going down because the values of homes are
18 going down.

19 So, generally speaking, economists have indicated
20 that there is a big drop-off in revenue when you get a
21 significant recession. Now, the automatic stabilizer is
22 designed to address some of that, but I do not think
23 anybody believes that the automatic stabilizers are
24 sufficiently large to address all of it. That is why you
25 need --

1 The Chairman. Thank you.

2 Another question is, in your judgment, the last
3 stimulus rebate, how much was there a positive effect
4 there?

5 Dr. Cohen. Senator, I think about two-thirds was
6 ultimately seen to be spent rather than saved. There was
7 early analysis which did not show that consumption did
8 not seem to have changed that much, but Mark Zandy, who
9 is the chief economist at Moody's, did an analysis in
10 which he noted that the savings of the wealthy increased
11 during this period of time, for whatever reasons,
12 relative to their consumption. Those folks did not get
13 the rebate. So when you add that factor in, there
14 actually was a sizeable increase in consumption and it
15 worked out to about two-thirds of the cost of the rebate.

16 The Chairman. Well, I thank my colleagues. I
17 would like, now, to get to --

18 Senator Nelson. Mr. Chairman, may I ask one quick
19 question?

20 The Chairman. Senator Nelson.

21 Senator Nelson. On the seniors, disabled veterans,
22 and SSI. This proposal has a one-time payment of \$300.

23 Dr. Cohen. That is correct.

24 Senator Nelson. And it goes to all Social Security
25 recipients?

1 Dr. Cohen. It does. But it goes to others, too.
2 It goes to all SSI recipients--that is Supplemental
3 Security Income--it goes to all the people that are in
4 various veterans' disability programs, as well as the
5 veterans' pension program, and it also goes to railroad
6 retirees and railroad workers who are disabled. So it is
7 significantly broader than just Social Security
8 recipients.

9 Senator Nelson. So if you are a retired railroad
10 worker, you would get \$300?

11 Dr. Cohen. Absolutely.

12 Senator Nelson. And if you were also on Social
13 Security, you would get it?

14 Dr. Cohen. You would not get two of them.

15 Senator Nelson. You would not get two?

16 Dr. Cohen. No. There is an offset there. You do
17 not get --

18 Senator Nelson. Thank you for clearing that up.

19 Dr. Cohen. Sure.

20 Senator Nelson. Now, if you are just on Social
21 Security, even though you are employed and have an
22 income, you are still going to get the \$300?

23 Dr. Cohen. Well, you might be eligible for the
24 Making Work Pay Credit. Again, there is an offset so
25 that the two of them are looked at together and you do

1 not get a duplication.

2 Senator Nelson. Oh, there is an offset with Making
3 Work Pay?

4 Dr. Cohen. That is correct. That is right.

5 Senator Nelson. All right. Thanks. I did not
6 know that.

7 The Chairman. Thank you, Senator Nelson. Thank
8 you.

9 A quorum is now present. I thank my colleagues for
10 attendance. The committee has before it the Chairman's
11 mark, the American Recovery and Reinvestment Act, and my
12 modification to that mark. At the request of Senator
13 Hatch, I want to further modify the modification and
14 leave the matter in the modification reflecting the Hatch
15 Buy America amendment, and the modification and the mark
16 are so modified. The modification is deemed appropriate
17 to the Chairman's mark.

18 A quorum is present. I would like to now just
19 indicate my thoughts on how we will proceed. First, I
20 would like to take up the AMT patch amendments. Then
21 afterwards, there are, I am told, some amendments offered
22 by Republican Senators. I would like to first take up
23 those that we call the mixed tax and spending: Senator
24 Hatch R&D, Senator Bunning has a couple of amendments,
25 and there are a few more on down the list. I am told

1 Senator Roberts has one on expensing; Senator Grassley
2 has several on e-verify; Senator Hatch, on NOL. Oh,
3 excuse me. That is the amendment number. It is Hatch 2,
4 Grassley 44, Bunning 2, Hatch 1, et cetera. Then later
5 on we will go to tax-only.

6 But let us take up the AMT. I note that Senator
7 Menendez and Senator Grassley have expressed a desire to
8 amend the mark with a one-year AMT patch. Frankly, I
9 favor the patch. I could have put that in the
10 modification, but I felt, frankly, it would be more
11 appropriate to let Senators Grassley and Hatch offer that
12 amendment.

13 What I really ask we consider, is this: that we,
14 frankly, just ask consent that the Senator Grassley
15 amendment and the Senator Menendez amendment, together,
16 be adopted. They are both the same amendment. It is a
17 one-year AMT patch. I ask the committee to vote in favor
18 of that amendment.

19 Senators Grassley and Menendez may wish to speak. I
20 will let sponsors of the amendment speak first if they
21 wish to.

22 Senator Grassley. All right. Mr. Chairman, the
23 Alternative Minimum Tax has crept further and further
24 into the middle class. As you know, it was originally
25 intended to apply only to very wealthy Americans who,

1 despite having high incomes, were able to eliminate their
2 tax liabilities through legal means.

3 But Congress did not index it at that time, index it
4 for inflation, so what was once a tax only on the very
5 wealthy has now become a tax on the middle class. Since
6 2001, this committee has worked on a bipartisan basis to
7 ensure that middle income Americans do not have to pay
8 higher taxes as a result of the AMT. Instead of
9 eliminating the AMT entirely, or at least permanently
10 indexing the AMT for inflation, what we have done is
11 temporarily patched the AMT.

12 While I have long advocated elimination of AMT, I
13 recognize that that is a difficult task. But I do
14 believe that Congress needs to protect more than 24
15 million middle income American families from higher taxes
16 this year, and that is why I have filed this amendment.
17 It would be Grassley amendment #7, that would provide a
18 one-year AMT patch for 2009.

19 As you said, Senator Menendez has introduced a
20 related amendment to the patch. There is a little bit of
21 difference between his and mine because his amendment #1
22 does not protect as many taxpayers from being hit by the
23 AMT as my amendment does, so I would urge the adoption of
24 my amendment, and also find no fault with the amendment
25 from Menendez, except for that little thing I pointed

1 out.

2 The Chairman. Senator Menendez?

3 Senator Menendez. Thank you, Mr. Chairman. Since
4 I came to the Senate three years ago, on the floor of the
5 Senate during our first budget debate at that time I
6 offered something on the AMT, so I am pleased to be able
7 to offer it here as well. Senator Grassley talked about
8 those 24 million; over 1 million of them come from the
9 State of New Jersey, so I know firsthand the consequences
10 to middle class families in this context.

11 Let me just first, Mr. Chairman, ask so we can
12 uniformity here, to modify my amendment to clarify that
13 the purpose is to extend the AMT patch to 2009 by
14 increasing the exemption levels to hold harmless the
15 number of taxpayers subject to the AMT at 4.2 million
16 taxpayers. I think that puts it in conformity with
17 Senator Grassley's.

18 We know that the AMT captures more and more
19 taxpayers in its web. It was designed for those who
20 actually bucked the system by, in essence, using all of
21 the accounting measures to avoid paying any taxes towards
22 the common good. However, it was not indexed for
23 inflation and so it has burdened the middle class. If we
24 do not do this patch, we will have 24 million Americans
25 who will be paying more.

1 Certainly weathering the economic storm, having a
2 sense of certainty of their tax burden would give these
3 families the opportunity to more accurately plan their
4 spending this year so they will not have to worry about
5 saving more to pay taxes next year. In that respect, I
6 think it falls squarely on what we are trying to do.
7 This is not a small amount of money for average families,
8 either. We are talking about, for millions of middle
9 class families, each would keep more than \$3,000 in their
10 pocket. So, I believe it is fitting and appropriate. I
11 am happy to join with Senator Grassley, and urge its
12 adoption.

13 The Chairman. Thank you, Senator. It is my
14 understanding that, with your modification, it is
15 identical to the one given out by Senator Grassley.

16 Senator Nelson?

17 Senator Nelson. I certainly do not have an
18 objection, but I just want to understand now what we are
19 doing by adopting this amendment and taking care of AMT
20 for this year.

21 The Chairman. Yes. For taxable year 2008.

22 Senator Nelson. 2008. We are now, in effect,
23 adding \$69 --

24 The Chairman. I am sorry, 2009.

25 Senator Nelson. 2009. All right. We, in effect,

1 are adding \$69 billion to the stimulus bill.

2 The Chairman. Well, I get different numbers. It
3 is either \$69 billion or \$82 billion. We are adding a
4 chunk. We will have to get the right calculation. It is
5 \$69.8 billion. Let us ask the calculators.

6 Mr. Kleinbard. It is \$69.759 billion.

7 The Chairman. Thank you. Thank you. That is what
8 we are adding. Correct.

9 Is there further debate?

10 [No response.]

11 The Chairman. If there is no further debate,
12 without objection the amendment is agreed to.

13 Next on the agenda, we have Republican amendments
14 with respect to the sort of mixed tax/spending category,
15 then the tax-only, then the spending amendments. Then we
16 will intersperse Democratic amendments in there to the
17 degree that those come up.

18 So of those present, here is what I have on my list.

19 I would like them to be offered, if there is no
20 objection, in this order: Senator Hatch is not here;
21 Senator Bunning is not here; Senator Roberts is here. I
22 have Roberts #1 on expensing; then I have Grassley 44 on
23 e-verify; Senator Hatch #2, net operating loss; Senator
24 Kyl, 2010 sunset; Senator Bunning #5 on TARP and NOLs;
25 Senator Hatch #4, small bank NOLs.

1 Senator Kyl. Mr. Chairman, that is not the list
2 that I was aware of. I just wonder if Minority staff
3 could help figure out if we are on the same list there.

4 The Chairman. We will figure it out. We will
5 figure it out.

6 Senator Roberts, do you want to offer an amendment?

7 Senator Roberts. Thank you, Mr. Chairman.

8 My amendment is pretty self-explanatory. I think
9 all members of the committee are aware of the value of
10 the small business expensing extension. My amendment
11 strikes Title 5 of the Chairman's mark and replaces it
12 with an additional year of small business expensing
13 through 2010.

14 It seems to me that if we allow small business
15 owners to immediately expense the critical investments
16 that they have as a key component to real growth of our
17 economy, the allowance can help spur increased business
18 investment, it can direct assistance to small business
19 owners who are the leading job creators.

20 I think we all know that small business creates
21 between 60 and 80 percent of U.S. jobs--in Montana,
22 Kansas, Iowa--and accounts for 47 percent of the wages
23 paid. At a time when small businesses may be having
24 difficulty getting access to the capital, due to the
25 credit crunch, that they need, it seems to me extending

1 the allowance can help them finance expansion out of
2 their own retained earnings.

3 Extending the expensing allowance can help these
4 businesses make needed investments to grow, expand, and
5 create jobs and help get out economy back on track.
6 There has been a long history of bipartisan support for
7 small business expensing. I urge my colleagues to
8 support an additional year extension to help our small
9 businesses weather this economic storm.

10 I might add that the Republican conference was very
11 privileged to have President Obama with us, and he made a
12 very good presentation and I think was very well
13 received. But he indicated that this was an economic
14 challenge that would not be over this year or the next,
15 or the next. I think he was being very candid in that
16 regard. It seems to me that if we could extend this
17 expensing allowance, that would give people some
18 credibility and some consistency that we desperately
19 need.

20 The Chairman. Any discussion?

21 Senator Rockefeller. Mr. Chairman, I would oppose
22 this amendment because I think that in your mark you have
23 already extended Section 179 tax breaks for 2009. I am
24 not willing to support this amendment because it would,
25 in effect, do what I think some of Senator Grassley's

1 amendments were doing, and that is, the real purpose is
2 to cut FMAP, which is essential for States to meet
3 enrollment for Medicaid. That could be disguised in a
4 variety of ways, but I think cutting of FMAP is a theme
5 that we have to deal with here and it is not a good
6 theme.

7 The Chairman. Senator Roberts, I understand what
8 you are doing here, trying to do. The goal, clearly, is
9 to encourage businesses, encourage people, incent them to
10 spend earlier rather than later. The thought was that if
11 the expensing provision 179, which frankly is pretty
12 high, is kept to this year, 2009, that would encourage
13 them to expense to buy items that are going to qualify
14 under Section 179 and spend them in this year, 2009. It
15 is maybe a small concern, but the concern is, if it is
16 two years, then maybe there would be an inclination to
17 wait and expense it in 2010 as opposed to 2009.

18 Now, my thought is that it is more appropriate to
19 keep the current deadline, December 2009, and then
20 revisit this at a later date this year if it looks like
21 that is more appropriate. There will be a lot of
22 vehicles later on this year. There is going to be a
23 middle income tax bill later this year. So there will be
24 lots of opportunities to address the propriety of
25 extending for one more year. But at this point I think

1 it is more appropriate to incent people, incent
2 businesses to spend as quickly as possible, and that is
3 the reason for the one year right now.

4 Senator Kyl?

5 Senator Kyl. Mr. Chairman, that is a good
6 argument, but it should be applied across the board then
7 and we should insist on all of the other spending. We
8 are very proud to say it spends out by the end of the
9 year 2010, that we should hold that to the same standard.

10 In other words, I do not think there is anybody on this
11 committee that does not believe in this particular
12 provision of the Tax Code, and we do want it to be spent
13 as soon as possible.

14 But there is a bit of a double standard here when we
15 are saying the other provisions are all right because
16 they spend out, at least half of them, by the end of the
17 year 2010, but the standard for this one has to be that
18 we want it all to be spent this year. For business
19 planning purposes, a two-year time frame, 600, 700 days
20 is really not all that long. So I would suggest that the
21 Senator has a good amendment and we should support it.

22 The Chairman. Well, I hear what you are saying.
23 Frankly, some of the other provisions in this bill,
24 whether it is FMAP or tax provisions or whatnot, I think
25 are more appropriately provisions that extend for a

1 couple of years because of the nature of those subjects.

2 But we are talking about business incentives. That
3 is a little bit different. I urge us to not adopt this
4 amendment. You are right, Senator, we all do support
5 Section 179, but if we really need to, when the time
6 comes it will be extended another year. But I do not
7 know that this is the time right now, and if the Senator
8 is --

9 Senator Roberts. Well, if I might, Mr. Chairman.
10 I am sorry.

11 The Chairman. No, no. Go ahead.

12 Senator Roberts. If I might, the program where we
13 take the funds, we are talking billions. As the Senator
14 from Arizona has very accurately pointed out, it is over
15 a period of years. What we are talking about is putting
16 money in the hands of people who really create jobs. I
17 pointed out that small business may be having difficult
18 getting access to the capital they need--that was brought
19 out by the President today in our lunch--because of the
20 credit crunch.

21 So we can say that we have extended it until 2009.
22 If we can get this credit crunch unlocked, at least they
23 have this provision to go ahead in the following year.
24 The expense here is minuscule as compared to the other
25 program that we are using, if you will pardon the

1 expression, for a bank, and we could get that job done.
2 If you look at the expenditure item which I have, and I
3 am not ready to itemize that yet in regards to the cost,
4 but we are talking about the low billions.

5 It just seems to me that it would give our small
6 business people at least some consistency and some idea
7 that, hey, what I wanted to do in regards to expansion of
8 machinery -- and all that means jobs in regards to what
9 they are doing with their company, depending on the
10 company, that this would be a good thing to do.

11 The Chairman. If there is no further debate, the
12 committee will vote on the amendment.

13 All those in favor say aye, those opposed, no. All
14 those in favor say aye.

15 [A chorus of Ayes.]

16 The Chairman. Those opposed, say no.

17 [A chorus of Nays.]

18 The Chairman. In the opinion of the Chair, the
19 nays have it.

20 Senator Roberts. Mr. Chairman, I ask for a
21 recorded vote.

22 The Chairman. A recorded vote has been asked for.

23 The Clerk will call the roll.

24 The Clerk. Mr. Rockefeller?

25 Senator Rockefeller. No.

1 The Clerk. Mr. Conrad?
2 Senator Conrad. No.
3 The Clerk. Mr. Bingaman?
4 Senator Bingaman. No.
5 The Clerk. Mr. Kerry?
6 The Chairman. No by proxy.
7 The Clerk. Mrs. Lincoln?
8 Senator Lincoln. No.
9 The Clerk. Mr. Wyden?
10 Senator Wyden. No.
11 The Clerk. Mr. Schumer?
12 The Chairman. No by proxy.
13 The Clerk. Ms. Stabenow?
14 The Chairman. No by proxy.
15 The Clerk. Ms. Cantwell?
16 Senator Cantwell. No.
17 The Clerk. Mr. Nelson?
18 Senator Nelson. No.
19 The Clerk. Mr. Menendez?
20 Senator Menendez. No
21 The Clerk. Mr. Carper?
22 The Chairman. No by proxy.
23 The Clerk. Mr. Grassley?
24 Senator Grassley. Aye.
25 The Clerk. Mr. Hatch?

1 Senator Grassley. Aye by proxy.
2 The Clerk. Ms. Snowe?
3 Senator Snowe. Aye.
4 The Clerk. Mr. Kyl?
5 Senator Kyl. Aye.
6 The Clerk. Mr. Bunning?
7 Senator Bunning. Aye.
8 The Clerk. Mr. Crapo?
9 Senator Grassley. Aye by proxy.
10 The Clerk. Mr. Roberts?
11 Senator Roberts. Aye.
12 The Clerk. Mr. Ensign?
13 Senator Ensign. Aye.
14 The Clerk. Mr. Enzi?
15 Senator Enzi. Aye.
16 The Clerk. Mr. Cornyn?
17 Senator Cornyn. Aye.
18 The Clerk. Mr. Chairman?
19 The Chairman. No.
20 The Clerk. Mr. Chairman, the tally is 10 ayes and
21 13 nays.
22 The Chairman. The nays have it. The amendment
23 fails.
24 I now recognize Senator Kyl for his amendment.
25 Senator Kyl. Thank you, Mr. Chairman. This is my

1 amendment #2. I am not sure if that corresponds. Is
2 that correct?

3 The Chairman. All right. Kyl amendment #2.

4 Senator Kyl. Thank you. Like the proverbial
5 Scotsman, State governments will gladly take any given
6 amount from us. But our constituents are experiencing
7 bail-out fatigue. This amendment should satisfy both
8 groups, our State governments and our taxpaying
9 constituents. The amendment is very simple. It simply
10 converts the spending in Title 5, the so-called FMAP
11 spending, into a three-year zero-interest loan. So
12 interest of a grant, it is a loan. Let me provide a
13 little background.

14 OMB publishes a set of tables that shows how much
15 the Federal Government provides to State and local
16 governments and what it is spent on. OMB estimates that
17 the Federal Government will provide \$476.1 billion to
18 State and local governments in 2009. That is an increase
19 of roughly \$10 billion from 2008, 67 percent more than
20 2000, and that is before any action that we take here.

21 In determining the total amount of assistance from
22 the Federal Government, one must also factor in the
23 foregone revenue that results from tax expenditures which
24 benefit State and local governments. The two biggest are
25 the deduction for State and local tax payments and the

1 interest exclusion on public-purpose State and local
2 debt. You combine these two and it reduces Federal
3 revenue by nearly \$60 billion in this year of 2009.

4 Also according to CBO, the Federal Government will
5 register a budget deficit totalling \$1.2 trillion, or 8.3
6 percent of GDP this year, including the proposed economic
7 stimulus bill. That figure is pushed way above the \$2
8 trillion level, more than 14 percent of GDP, and that
9 assumes that we would not spend anything else this year
10 without paying for it.

11 So converting the \$86 billion of FMAP funding into a
12 loan would require the governments to pay back what they
13 borrowed so that our Nation can reduce its budget deficit
14 at the end of the term. I also suggest that it would
15 make the State governments a little more careful about
16 how much money they take and how they spend it.

17 The theory here is the "you-do-not-wash-a-rent-a-
18 car" theory. If they have to pay it back, they are going
19 to be careful about how much they take because they know
20 at the end of the day, like the others we have bailed
21 out, they are going to have to pay it back.

22 I would also note a very interesting fact. That is
23 that if the Federal Government did not provide State and
24 local governments with assistance, the Federal budget
25 would run a persistent surplus. There would have only

1 been 16 budget deficits over the last 50 years, and
2 obviously U.S. debt would have been substantially lower.

3 So we do a lot for the States. Our largesse will
4 actually enable most of them to balance their budgets.
5 Almost all of them have a balanced budget requirement,
6 and this will go a long way toward helping them achieve
7 that, in contrast to our \$2-plus trillion deficit this
8 year. So I do not think it is too much to ask the States
9 to do their part and, like the others we have helped,
10 ultimately repay the money.

11 The Chairman. Any further debate?

12 Senator Rockefeller. Mr. Chairman?

13 The Chairman. Senator Rockefeller?

14 Senator Rockefeller. I oppose this, and I think
15 for good reason. All States, in fact, would not be able
16 to accept or use Federal loans. They cannot do it. Many
17 States have constitutional or other legal barriers that
18 explicitly prohibit them from borrowing funds to cover
19 operating expenses.

20 Other States' constitutions or laws strictly limit
21 the amount of debt a State may incur, and the proposed
22 loans could breach these limits. If fiscal relief is to
23 be replaced by loans that cannot be accepted or used,
24 most States will then have deep budget cuts--maybe that
25 is the purpose of this, I do not know--and in some cases

1 hefty tax increases to balance their budgets. It is not
2 a good amendment.

3 Senator Conrad. Mr. Chairman?

4 The Chairman. Senator Conrad?

5 Senator Conrad. Could I just observe that normally
6 I would not be in favor of this kind of increased aid to
7 States on this basis, but as I indicated the other day,
8 this is not a normal situation. What Senator Rockefeller
9 has just stated, I think almost all of us know to be
10 true. If this were in the form of loans, very few States
11 would be able to accept them because of their
12 constitutional prohibitions, so it would be a nullity.

13 One thing the economists have told us of every
14 philosophical stripe, is that these provisions are among
15 the most effective at providing rapid stimulus because it
16 averts State cuts that would otherwise substantially
17 increase unemployment. So just on the face of it, I
18 think this amendment has to fail, otherwise you will
19 create as a nullity the stimulative effects of what is
20 trying to be accomplished.

21 Senator Kyl. Mr. Chairman?

22 The Chairman. Yes. Senator Kyl?

23 Senator Kyl. I certainly respect -- and Senator
24 Conrad would certainly have background to know what the
25 State laws are in this regard, and I respect the view. I

1 am not sure that it is true that all States would be
2 prohibited from borrowing this money. If it is a
3 limitation on operating expenses, and I obviously take
4 your word for it, it seems to me that that is the last
5 thing that the Federal Government should be subsidizing
6 States for. Operating expenses? That does not meet the
7 Larry Summers test of a return on investment for the
8 Federal Government. I just would remind my colleagues,
9 State governments have been on a spending binge for the
10 last five years.

11 I quoted the statistic earlier from the *Wall Street*
12 *Journal* of January 26: "Since 1998, State and local
13 budgets have nearly doubled, to \$2 trillion." This is
14 Census Bureau data. "The expenditures rose 37 percent
15 just from 2003 to 2007 and they have loaded up their
16 States with debts." The article goes on to point out,
17 State by State, and my State, unfortunately, is one of
18 those that has loaded up a huge amount of debt and has
19 spent way above the rate of inflation and population
20 growth.

21 The question is whether the Federal Government
22 should bail out States for this kind of activity or
23 whether, like families who find themselves way over-
24 leveraged, they conclude that they have to do something
25 about it rather than just looking for someone to bail

1 them out to pay their operating expenses.

2 Families are making the right decisions by saving.
3 It hurts us in terms of the recession, but it is the
4 right thing for them to do and States should be
5 encouraged to do the same thing. I just think that it is
6 a wise thing for us to ask them, like others, to repay
7 what we send to them. It will make them a lot more
8 careful about what they spend.

9 The Chairman. Just a couple of points here. I
10 mean, States are likely to spend more money during times
11 of recession because they have to.

12 Senator Kyl. It is the last five years.

13 The Chairman. Well, we are now, and they are
14 spending money. Second, is health care costs are going
15 up. That is a big State expenditure, health care costs,
16 generally. That is one reason I hope we have health care
17 reform. Add to that, there is education. States have
18 major responsibilities in spending a good number of
19 dollars in education. So there are reasons why States
20 are spending more.

21 I might add, too, that first of all it is true that
22 not all States' constitutions prohibit borrowing, but it
23 is true that most States' constitutions do. Add to that,
24 I do not know if we want to be in a situation where we
25 get into a big conflict with States who are not repaying

1 the loans. I can just conjure up all kinds of problems
2 that would cause. But I think we all know that it
3 probably makes most sense that this amendment not be
4 adopted.

5 Senator Ensign. Mr. Chairman, just one quick
6 comment on it.

7 The Chairman. Yes. Senator Ensign?

8 Senator Ensign. The TARP funds. We tried to name
9 them "rescue funds" because nobody liked the word "bail-
10 out". I think I am quoting correctly. Earlier today
11 Senator Wyden said, "This bill is not a bail-out." This
12 bill is a bail-out for the States. At least in TARP
13 funds, we were loaning the money. This is not a loan.
14 Senator Kyl's amendment would at least make this a loan
15 for the States.

16 To be fiscally responsible, at some point somebody
17 is going to have to pay this back. We are just basically
18 making our children do it. Instead of making some of the
19 tough choices that we need to make here, we are not
20 paying for any of this bill. We are not making the
21 States pay for any of their spending or any parts of the
22 recession and the spending that is continuing to go on.
23 So I think from a fiscally responsible standpoint we
24 should adopt this amendment.

25 The Chairman. If there is no further debate, the

1 committee will vote on the amendment. All those in favor
2 say aye.

3 [A chorus of Ayes.]

4 The Chairman. A recorded vote has been requested.
5 The Clerk will call the roll.

6 The Clerk. Mr. Rockefeller?

7 Senator Rockefeller. No.

8 The Clerk. Mr. Conrad?

9 Senator Conrad. No.

10 The Clerk. Mr. Bingaman?

11 Senator Bingaman. No.

12 The Clerk. Mr. Kerry?

13 The Chairman. No by proxy.

14 The Clerk. Mrs. Lincoln?

15 Senator Lincoln. No.

16 The Clerk. Mr. Wyden?

17 Senator Wyden. No.

18 The Clerk. Mr. Schumer?

19 Senator Schumer. No.

20 The Clerk. Ms. Stabenow?

21 The Chairman. No by proxy.

22 The Clerk. Ms. Cantwell?

23 Senator Cantwell. No.

24 The Clerk. Mr. Nelson?

25 The Chairman. No by proxy.

1 The Clerk. Mr. Menendez?
2 Senator Menendez. No.
3 The Clerk. Mr. Carper?
4 Senator Carper. No.
5 The Clerk. Mr. Grassley?
6 Senator Grassley. Because of my State
7 constitution, I am going to have to vote "present".
8 The Clerk. Mr. Hatch?
9 Senator Grassley. Aye by proxy.
10 The Clerk. Ms. Snowe?
11 Senator Snowe. No.
12 The Clerk. Mr. Kyl?
13 Senator Kyl. Aye.
14 The Clerk. Mr. Bunning?
15 Senator Bunning. Aye.
16 The Clerk. Mr. Crapo?
17 Senator Grassley. Aye by proxy.
18 The Clerk. Mr. Roberts?
19 Senator Roberts. Aye.
20 The Clerk. Mr. Ensign?
21 Senator Ensign. Aye.
22 The Clerk. Mr. Enzi?
23 Senator Enzi. Aye.
24 The Clerk. Mr. Cornyn?
25 Senator Cornyn. Aye.

1 The Clerk. Mr. Chairman?

2 The Chairman. No.

3 The Clerk will announce the vote.

4 The Clerk. Mr. Chairman, the tally is 8 ayes, 14
5 nays, and 1 present.

6 The Chairman. The nays have it. The amendment
7 fails.

8 The next amendment is Senator Bunning's. I think
9 Mr. Bunning, is it #2? Bunning amendment #2 on capital
10 gains.

11 Senator Bunning. Thank you very much, Mr.
12 Chairman.

13 I now call up the Bunning amendment #2, the capital
14 loss rules. Before the mid-1970s, tax writers on this
15 committee and the public at large were not as knowledge
16 able about what inflation can do to savings as we are
17 today. It was common for Congress to write dollar limits
18 into the Tax Code without any thought about what
19 inflation would do to its value in future years.

20 The \$3,000 fixed limit on capital losses was last
21 adjusted in 1977 following the Tax Reform Act of 1976.
22 Since then, inflation has eroded the value of this limit
23 by more than 71 percent. Under my amendment, the limit
24 would be increased to a level more consistent with
25 congressional intent, \$15,000, when Congress enacted this

1 provision. I would index it for inflation to avoid
2 erosion in the future.

3 Clearly, as millions of Americans experience severe
4 losses because of the financial crisis, this erroneous
5 limit is more important than ever. It is fundamentally
6 unfair to tax a person who has experienced significant
7 capitals losses as though that person were still earning
8 income. The size of those losses is often large enough
9 to wipe out any other income.

10 The provision will stimulate the economy by
11 permanently lowering taxes and moderating a source of
12 unfairness in the Tax Code. I urge my colleagues to
13 support this.

14 Senator Rockefeller. Mr. Chairman?

15 The Chairman. Senator Rockefeller?

16 Senator Rockefeller. If a person's capital losses
17 on investments exceed their capital gains difference, is
18 used to offset the person's tax liability, this
19 amendment, as the Senator has indicated, takes it from
20 \$3,000 to \$15,000. And while it may be a good idea to
21 provide relief for those who have lost money in the stock
22 market, my problem is--my constant problem on so many of
23 these amendments--this amendment would be offset by
24 decreasing funding under FMAP. If that is what we are
25 going to do, and FMAP is essential for States to meet

1 enrollment for Medicaid, I cannot support this.

2 The Chairman. Is there further debate?

3 Senator Conrad. Mr. Chairman?

4 The Chairman. Senator Conrad?

5 Senator Conrad. Just very briefly. Is this
6 Senator Bunning's?

7 Senator Bunning. Yes, 2. Number 2.

8 Senator Conrad. I think Senator Bunning has got a
9 point here. The capital loss limits have not been
10 adjusted for, I do not know --

11 Senator Bunning. 1977.

12 Senator Conrad. So that is more than 30 years.
13 The capital loss limits clearly need to be adjusted. I
14 do not know if this is the place to do it because that
15 has a long tail on it. I mean, it kind of goes against
16 the temporary test to apply. But Senator Bunning does
17 raise a very legitimate point that should be addressed by
18 this committee this year. It does trouble me that it
19 does not fit the notion of temporary, but this is
20 something we have got to do. Do we have the cost of
21 this?

22 The Chairman. Mr. Kleinbard, could you tell us the
23 cost? What is the cost of this un-offset?

24 Mr. Kleinbard. I am sorry, sir. We have not
25 completed that estimate.

1 Senator Bunning. We asked for it. We did not --

2 The Chairman. Right. So what might your gut
3 guess, un-offset, that the cost of this would be?

4 Senator Bunning. Oh, please. Please do not do
5 that.

6 Mr. Kleinbard. I cannot do that.

7 The Chairman. Yes, you can. I have asked you.
8 [Laughter.]

9 Mr. Kleinbard. I want only to please you, but I
10 want only to please my staff more. They will be very
11 cross with me if I make a --

12 The Chairman. I am not holding you to an exact
13 number, but just give us the parameters here.

14 Mr. Kleinbard. It will be many billions of
15 dollars.

16 The Chairman. Many billions of dollars since it is
17 un-offset. And what is the offset here?

18 Senator Bunning. The FMAP.

19 The Chairman. Sorry?

20 Mr. Kleinbard. Reducing FMAP spending, sir.

21 The Chairman. In what category, what area? I am
22 sorry, Senator. Can you indicate where the offset would
23 be?

24 Senator Bunning. Just generally from the FMAP
25 money.

1 The Chairman. FMAP. So it is FMAP.

2 Senator Bunning. Yes, it is.

3 The Chairman. You want to reduce FMAP. So the
4 effect of this amendment is to reduce --

5 Senator Bunning. That is \$86 or \$87 billion.

6 The Chairman. Well, that is the total.

7 Senator Bunning. That is the total. We asked for
8 a scoring on it and did not get it.

9 The Chairman. Right. Do not have a score yet.
10 Right. All right.

11 Senator Bunning. I understand.

12 The Chairman. Unless there is further debate, let
13 me just say that clearly this \$3,000 limit has got to be
14 raised. It was set in 1986 and it needs to be raised.
15 However, I do not think --

16 Senator Bunning. 1976.

17 The Chairman [continuing]. This is the time and
18 place to make that adjustment.

19 Senator Bunning. 1976.

20 The Chairman. We do not have a score. Second, it
21 is paid for by cutting aid to States under Medicaid, and
22 I think that is inappropriate. There is a time and place
23 for everything, and this is not the time and the right
24 place, in my judgment, to address the \$3,000 capital loss
25 provision.

1 Senator Bunning?

2 Senator Bunning. Let me just close by saying that
3 with a 45 percent reduction in most portfolios of anybody
4 who owned stock over the last year-plus and the amount of
5 money lost by the average American, to allow only a
6 \$3,000 tax reduction from losses because they invested in
7 the market, I think, is outrageous. So I urge support to
8 make the improvements in my amendment, as offered. Thank
9 you.

10 The Chairman. Senator, you make some good points.
11 We all know that defined contribution plans' value
12 declined significantly. I think the number is about \$2
13 trillion in the last year or two, and they are heading
14 south. We are going to have to find some ways to address
15 people's savings, and lack of savings. I have instructed
16 my staff to come up with some way to address that
17 problem. There are lots of ideas. Perhaps this
18 provision is part of it. But I frankly think it is going
19 to take a much more comprehensive solution to address the
20 problems that families are having because of their
21 401(k)s and defined contribution --

22 Senator Bunning. Let us have a roll call, please.

23 The Chairman. Sorry?

24 Senator Bunning. Roll call vote, please.

25 The Chairman. A roll call vote is requested. The

1 Clerk will call the roll.

2 The Clerk. Mr. Rockefeller?

3 Senator Rockefeller. No.

4 The Clerk. Mr. Conrad?

5 Senator Conrad. Reluctantly, no.

6 The Clerk. Mr. Bingaman?

7 Senator Bingaman. No.

8 The Clerk. Mr. Kerry?

9 The Chairman. No by proxy.

10 The Clerk. Mrs. Lincoln?

11 Senator Lincoln. No.

12 The Clerk. Mr. Wyden?

13 Senator Wyden. No.

14 The Clerk. Mr. Schumer?

15 Senator Schumer. No.

16 The Clerk. Ms. Stabenow?

17 Senator Stabenow. No.

18 The Clerk. Ms. Cantwell?

19 Senator Cantwell. No.

20 The Clerk. Mr. Nelson?

21 The Chairman. No by proxy.

22 The Clerk. Mr. Menendez?

23 Senator Menendez. No.

24 The Clerk. Mr. Carper?

25 Senator Carper. No.

1 The Clerk. Mr. Grassley?
2 Senator Grassley. Aye.
3 The Clerk. Mr. Hatch?
4 Senator Grassley. Aye by proxy.
5 The Clerk. Ms. Snowe?
6 Senator Snowe. No.
7 The Clerk. Mr. Kyl?
8 Senator Kyl. Aye.
9 The Clerk. Mr. Bunning?
10 Senator Bunning. Aye.
11 The Clerk. Mr. Crapo?
12 Senator Grassley. Aye by proxy.
13 The Clerk. Mr. Roberts?
14 Senator Roberts. Aye.
15 The Clerk. Mr. Ensign?
16 Senator Ensign. Aye.
17 The Clerk. Mr. Enzi?
18 Senator Enzi. Aye.
19 The Clerk. Mr. Cornyn?
20 Senator Grassley. Aye by proxy.
21 The Clerk. Mr. Chairman?
22 The Chairman. No.
23 The Clerk will tally the vote.
24 The Clerk. Mr. Chairman, the tally is 9 ayes, 14
25 nays.

1 The Chairman. The nays have it. The amendment is
2 not adopted, it fails.

3 I understand the next amendment -- Senator Bunning,
4 do you have another amendment at this time on TARP and
5 NOL? That is my understanding.

6 Senator Bunning. I did not know I was going to get
7 a chance for two at the same time.

8 The Chairman. You are in luck. You get two.

9 Senator Bunning. Thank you, Mr. Chairman.

10 The Chairman. You bet.

11 Senator Bunning. Then I would call up amendment
12 #5.

13 The Chairman. Number 5. Bunning 5.

14 Senator Bunning. The purpose of this amendment is
15 to encourage banks to make modifications to home
16 mortgages and lessen the storm of foreclosures that is
17 destabilizing the housing market. It modifies the
18 special rule for TARP recipients in the Chairman's mark
19 to allow banks to carry back losses caused by the write-
20 down of a home mortgage. Under the Chairman's mark, the
21 regular carry-back is five years and banks with home
22 mortgages losses would be allowed to carry back those
23 losses for five years as well.

24 Unlike many other provisions in this bill, this
25 amendment directly addresses one of the principal drivers

1 of destabilization in the market right now. It would
2 encourage banks to do what they are not doing now:
3 writing down loans. This would diminish the threat of
4 foreclosures for millions of homeowners and their
5 families.

6 I urge my colleagues to support the amendment.

7 The Chairman. Excuse me, Senator. Is this the
8 amendment which allows TARP recipients to participate in
9 the five-year carry-back? Is that the one?

10 Senator Bunning. Yes, that is the amendment.

11 The Chairman. Is there debate on the amendment?

12 Senator Rockefeller. Mr. Chairman, only to suggest
13 that the offset is the one that seems to be establishing
14 quite a lot of momentum: it is called FMAP. That is the
15 offset. I oppose the amendment.

16 The Chairman. Is there further debate on the
17 amendment?

18 [No response.]

19 The Chairman. If there is not further debate, all
20 those in favor say aye.

21 [A chorus of Ayes.]

22 The Chairman. Those opposed, no.

23 [A chorus of Nays.]

24 The Chairman. In the opinion of the Chair, the
25 nays have it. The nays do have it.

1 Senator Bunning. Could we please have a roll call?
2 The Chairman. A roll call has been requested. The
3 Clerk will call the roll.
4 The Clerk. Mr. Rockefeller?
5 Senator Rockefeller. No.
6 The Clerk. Mr. Conrad?
7 Senator Conrad. No.
8 The Clerk. Mr. Bingaman?
9 Senator Bingaman. No.
10 The Clerk. Mr. Kerry?
11 The Chairman. No by proxy.
12 The Clerk. Mrs. Lincoln?
13 Senator Lincoln. No.
14 The Clerk. Mr. Wyden?
15 Senator Wyden. No.
16 The Clerk. Mr. Schumer?
17 Senator Schumer. No.
18 The Clerk. Ms. Stabenow?
19 Senator Stabenow. No.
20 The Clerk. Ms. Cantwell?
21 Senator Cantwell. No.
22 The Clerk. Mr. Nelson?
23 Senator Nelson. No.
24 The Clerk. Mr. Menendez?
25 Senator Menendez. No.

1 The Clerk. Mr. Carper?
2 Senator Carper. No.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. Aye.
5 The Clerk. Mr. Hatch?
6 Senator Grassley. Aye by proxy.
7 The Clerk. Ms. Snowe?
8 Senator Snowe. No.
9 The Clerk. Mr. Kyl?
10 Senator Kyl. Aye.
11 The Clerk. Mr. Bunning?
12 Senator Bunning. Aye.
13 The Clerk. Mr. Crapo?
14 Senator Grassley. Aye by proxy.
15 The Clerk. Mr. Roberts?
16 Senator Roberts. Aye.
17 The Clerk. Mr. Ensign?
18 Senator Ensign. Aye.
19 The Clerk. Mr. Enzi?
20 Senator Enzi. Aye.
21 The Clerk. Mr. Cornyn?
22 Senator Cornyn. Aye.
23 The Clerk. Mr. Chairman?
24 The Chairman. No.
25 The Clerk will announce the vote.

1 The Clerk. Mr. Chairman, the tally is 9 ayes and
2 14 nays.

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

5 Next, I understand, Senator Kyl, you have an
6 amendment. You are going to wait. All right.

7 Are there any other amendments on what I guess I
8 will call the fixed tax and spending section?

9 [No response.]

10 The Chairman. I am not pushing these. I have
11 Grassley 44, I have --

12 Senator Grassley. I am not going to offer that
13 one.

14 The Chairman. All right. You are not going to
15 offer that one, #44. I will cross that off. Okay. I
16 have Kyl #3, on sunset. Senator Kyl, do you want to
17 offer your sunset amendment?

18 Senator Kyl. No.

19 The Chairman. The answer is no. All right. Of
20 the Senators present, I guess that is it.

21 We will now move to the tax section. Senator
22 Grassley, #2.

23 Senator Grassley. Section 45?

24 The Chairman. Yes, that is the one. Grassley
25 amendment #2.

1 Senator Grassley. This deals with energy. The
2 Chairman's mark extends Section 45 for three years. That
3 is a very good start. My amendment would extend the
4 Section 45 electricity Production Tax Credit for five
5 years, which is an additional two years longer than the
6 Chairman's mark. I offer this amendment in order to help
7 restore jobs and generate even more private sector
8 investment in wind energy, which President Obama has been
9 supportive of.

10 We have become quite a wind energy State in Iowa,
11 because of the Production Tax Credit, in the transmission
12 and production of electricity. We have also, in the
13 recent three or four years, become the location for a lot
14 of component manufacturers of the structures that provide
15 wind energy.

16 We are having layoffs in those areas, just
17 announced, much to the surprise -- well, maybe it should
18 not be a surprise; we are in a recession. But
19 particularly how we have been so good through the
20 Production Tax Credit to wind energy, solar, almost every
21 form of alternative energy over the last two decades, and
22 as recently as last year, extending some of those. So we
23 are in a situation where, if we can get this going in the
24 longer projection of time the better it is, as evidenced
25 by what we did for solar energy. In last year's energy

1 bill, as an example, we extended it for a much longer
2 period of time.

3 My amendment maintains the option for producers to
4 take either the Production Tax Credit or Investment Tax
5 Credit for 2009 and 2010, and that was included in the
6 bill passed last week in the House of Representatives and
7 it is now in the Chairman's mark.

8 In addition, my amendment includes a 10-year carry-
9 back of the credit, either the Production Tax Credit or
10 the Investment Tax Credit depending upon the wind energy
11 company's election, against prior income taxes paid by
12 the wind energy company. Current law is a one-year
13 carry-back of Production Tax Credits. The Chairman's
14 mark includes a five-year carry-back credit. My
15 amendment extends the credit carry-back to 10 years in
16 order to help get more wind projects started again, as I
17 have explained to you how that has been dampened now.

18 Due to the economic downturn, the tax equity
19 financing market, which is typically how wind energy
20 projects are financed, has dried up. We all recognize
21 that. The investors in these projects, which are large
22 financial institutions, no longer have any appetite for
23 obtaining the Production Tax Credit because they have no
24 income tax liabilities, so a lot of these projects are on
25 hold.

1 The longer carry-back is designed to get some of
2 those stalled projects going and to get people working
3 again. In addition, a longer term extension of the
4 Production Tax Credit will provide more certainty to
5 those financing these projects, making the projects more
6 attractive to invest in and, therefore, generating more
7 wind energy projects and jobs, as well as making the
8 production tax credit a more efficient tax credit.

9 We had an offset for this that was used in the
10 Chairman's mark, so this is not offset at this point. He
11 is not here, but I wanted to make that clear so Senator
12 Rockefeller would not fight me on this. So, that is my
13 amendment. And I hope the fact that it is not offset,
14 considering everything we are doing to get jobs created
15 here, that this is not going to be an argument on the
16 offset, for the simple reason that you want to create
17 jobs.

18 At the Cedar Rapids plant, 90 people were laid off
19 last week. Now, 90 may not sound like very much when one
20 of the tractor companies lays off, what, 20,000 yesterday
21 or something, or is going to lay them off. But still, it
22 is not a recession for that person, it is a depression
23 for that person. I hope that you will look favorably
24 upon this amendment.

25 The Chairman. Thank you, Senator. Might I ask,

1 what is the cost of this amendment?

2 Mr. Kleinbard. I apologize. We are still working
3 on it. We do not have a cost at this point.

4 The Chairman. I am not going to go through the
5 same interchange again, asking you to estimate. I have
6 just a couple of points I want to make on this. I am a
7 strong advocate of Section 45 of the Tax Code, very
8 strong. The Production Tax Credit, I think, is extremely
9 helpful in producing wind energy and other renewable
10 energy sources. It has done a good job.

11 It is my understanding that the wind industry has
12 managed to double its generating capacity from 2006 by
13 exceeding 20,000 mega-watts, and that has grown as much
14 in the last two years as it did in two and a half
15 decades. It has grown. It is moving. Now, clearly, I
16 think most members of this committee would like to see it
17 grow further, grow more. I might say, though, on the
18 length of the extension, we are talking about the place
19 and service rule, really. The committee mark extends the
20 place and service period for three years; it is two years
21 for wind, three years for other renewables. It is three
22 for all forms?

23 Mr. Kleinbard. Correct. Correct.

24 The Chairman. All right. Three for all forms.
25 But the point is, three for all forms, for wind and for

1 other. But three years expires in 2012 for wind, and it
2 expires in 2013 for other.

3 It is also connected with--I see Senator Bingaman
4 here--with the renewable electricity standard, which I
5 suspect this Congress, this Senate, will address this
6 year. My guess is that the renewable electricity
7 standard would have a major effect in promoting wind and
8 other renewables.

9 Senator Grassley. But that would only be if you
10 can get the financing. It is an incentive to do it. And
11 by the way, I support that renewable portfolio standard.

12 The Chairman. Yes. That is a good point. It is
13 both. It is both the standard, plus financing. It is
14 kind of the carrot and the stick. But that is right.

15 I am a little concerned about the five-year carry-
16 back. Excuse me. The 10-year carry-back. There is
17 already a five-year carry-back in the mark. First of
18 all, the IRS does not retain information necessary to
19 administer carry-back beyond seven years. They have
20 very, very sketchy information beyond seven years and
21 they really cannot get a good audit seven years after you
22 pay taxes. IRS data is really sketchy. That is going to
23 be a huge problem.

24 Second, it is my understanding that the 10-year
25 carry-back could be prohibitively expensive. I do not

1 have the estimate here, but I understand it would be big.
2 I might say, took that the five-year carry-back is meant
3 to address the cyclical nature of the business. It is my
4 judgment, mostly because we do not have an estimate, but
5 second, I do not think it is really necessary. Add to
6 that, the IRS cannot go back more than seven years. This
7 mark makes major improvements to the current Section 45.
8 This amendment, even though it is well intended, even
9 though it is a subject that I care a lot about, we have
10 to make decisions and draw lines in some places. I think
11 the additions we have made in the mark are appropriate.

12 Senator Grassley. Mr. Chairman, can I respond?

13 The Chairman. Then I would ask Mr. Kleinbard. Do
14 you have something to say, Mr. Kleinbard?

15 Mr. Kleinbard. Just in respect to the estimate.

16 The Chairman. Yes?

17 Mr. Kleinbard. The estimate for the three-year
18 extension works out to about \$4.5 billion per year of
19 extension.

20 The Chairman. Right.

21 Mr. Kleinbard. So just from that, you would think
22 that it would be \$9 billion-ish to extend an additional
23 two years. What makes things difficulty, is that at this
24 point you are pushing expenses outside of the 10-year
25 window, so that might mean the cost is lower. But then

1 the 10-year carry-back means that costs that would not
2 otherwise fall within the 10-year window -- if you could
3 overcome the administrative problems that you describe,
4 which the IRS tells me are quite serious, would result in
5 very large refunds in the immediate years.

6 So without the carry-back, you could argue that the
7 number would be in the \$8 to \$10 billion range, but the
8 10-year carry-back makes it extremely difficult to be
9 more specific.

10 The Chairman. If there is no further debate, the
11 question -- Senator Grassley?

12 Senator Grassley. Yes. I want to comment on a
13 couple, three things that you said.

14 The Chairman. Sure.

15 Senator Grassley. Number one, this problem with
16 the IRS is not a problem for the IRS. The problem is for
17 the company that wants to take advantage of it to make
18 sure they have got the records to do it. If they are
19 going to audit me, I have got to produce everything that
20 justifies what I did in my income tax. So anybody that
21 is going to make use of the carry-back, any company is
22 going to have to do that. The IRS does not have to have
23 any records. They want you to produce the records.

24 The other thing is, we would have done better last
25 year in this area, and we did it for solar. The reason

1 for solar eight years out is because it is not much of an
2 industry and not a lot of cost, but wind has come on
3 before solar and it has now been in existence for 15
4 years or so with the Production Tax Credit, so it is
5 very, very expensive to do it more years than what we did
6 in the bill last year.

7 But here we are talking about a situation where we
8 are trying to create jobs, just not have alternative
9 energy. This is a job-related bill, so this is very much
10 related to keeping these jobs that are being lost. It is
11 even worse in solar, the people that are being laid off
12 so far, than in wind. It is phenomenal, what I read last
13 week about layoffs in the solar industry. So I think if
14 we are putting together a jobs bill, you have got to
15 consider it from that standpoint.

16 I mean, this is not as extraordinary, what I am
17 asking you to do in this area for wind energy as what
18 Senator Rockefeller is doing in the way of FMAP, when we
19 just had evidence in answer to my questions that it is
20 going to be \$10, \$11 billion. We have got \$87 billion in
21 here. Money is fungible. States are going to use it for
22 whatever they want to. If you want to give more money to
23 States, there is some way of doing it other than covering
24 it up in a program that is not going to be used. We are
25 talking about just doing very little compared to that.

1 Senator Cantwell. Mr. Chairman?

2 The Chairman. Senator Cantwell?

3 Senator Cantwell. Mr. Chairman, if I could. I
4 certainly understand Senator Grassley's frustration in
5 the context of, if I was writing this bill I would make
6 it even more robust about energy. I would certainly look
7 at these issues that you are raising here, particularly
8 as it relates to the carry-back provisions and things of
9 that nature.

10 But I will say this, that there is a challenge here
11 as you look at your proposal, focusing on wind, that
12 leaves some other issues unaddressed, so that if we were
13 having this larger discussion about energy I would say to
14 you, what about parity? What about the parity for the
15 other energy sources that we care about as well, about
16 biomass, about the fact that you have wind getting a
17 little more than 2 cents a kilowatt and other sources are
18 only getting half of that?

19 Also, there is a really critical balance here on
20 energy issues as it relates to the CREBs program, the
21 Clean Renewable Energy Bonds, that public power takes
22 advantage of. So in a sense, I certainly want to do
23 more. But I think doing this at this point in time
24 curtails some other options for us. So I would love to
25 work with you on a broader perspective of how we could

1 add this, whether it is here, the next energy bill, or
2 what have you, but to get this done so that we are being
3 more robust, because I do agree with you in general. But
4 we are going to leave some other people behind and we are
5 going to incent wind, and I think this parity issue and
6 public power issue is really a very important one.

7 Senator Grassley. Parity was part of my argument.

8 I would like to have a little parity for wind like we
9 did for solar.

10 Senator Cantwell. But there is biomass.

11 Senator Conrad. Mr. Chairman?

12 The Chairman. Senator Conrad?

13 Senator Conrad. Mr. Chairman, earlier this morning
14 the Ranking Member made a very strong statement about the
15 need for this package to be temporary, targeted, and
16 timely. His amendment fails the temporary test. I have
17 introduced and supported every move to make the wind
18 credit five years most recently, as the group of 10 that
19 became a group of 20.

20 But to me, this is just the wrong place because this
21 then becomes something that is clearly not temporary. It
22 is five years. If we go down that trail with item after
23 item, we are going to have an overall package that
24 explodes deficit and debt after the time we are in
25 recovery. That, I think, would be counterproductive. So

1 I would resist the gentleman's amendment, although the
2 underlying notion is something I have always supported
3 and I hope to be able to support later in another
4 package.

5 The Chairman. Is there any further discussion on
6 this amendment? Senator Stabenow?

7 Senator Stabenow. Thank you, Mr. Chairman. Just
8 to add my voice as well. I think that our Ranking Member
9 has an excellent argument for why we need to be
10 supporting those companies currently in a loss position,
11 but I would hope, rather than picking out wind, that we
12 would look comprehensively at what we have in the package
13 in terms of tax credits and how we make sure that not
14 only those in a loss position, but even this amendment
15 does not address those that are start-ups.

16 As I indicated earlier today, we have many start-ups
17 in capital-intensive operations, whether it is wind,
18 solar, electric vehicles, and so on that are not in a
19 position to benefit from the credits, and I would hope
20 that we would take a look at that.

21 The Chairman. Senator Bunning?

22 Senator Bunning. Just to understand the amendment,
23 it is temporary. It is not an extension, but the past
24 five years. We extend from three to five. I think he
25 includes wind so that those that have invested in that

1 research and that development of wind understand that the
2 Federal Government supports, beyond three years, that
3 investment. I think it is a definitive job creator and
4 would do wonders in a stimulus package to help us create
5 jobs.

6 Thank you.

7 The Chairman. If there is no further debate, the
8 vote is on the amendment. All those in favor, say aye.

9 [A chorus of Ayes.]

10 The Chairman. Those opposed, no.

11 Senator Grassley. I asked for a roll call vote.

12 The Chairman. Oh, sorry. A roll call vote has
13 been requested. The Clerk will call the roll.

14 The Clerk. Mr. Rockefeller?

15 The Chairman. Mr. Rockefeller passes.

16 The Clerk. Mr. Conrad?

17 Senator Conrad. No.

18 The Clerk. Mr. Bingaman?

19 Senator Bingaman. No.

20 The Clerk. Mr. Kerry?

21 The Chairman. No by proxy.

22 The Clerk. Mrs. Lincoln?

23 Senator Lincoln. No.

24 The Clerk. Mr. Wyden?

25 Senator Wyden. No.

1 The Clerk. Mr. Schumer?
2 Senator Schumer. No.
3 The Clerk. Ms. Stabenow?
4 Senator Stabenow. No.
5 The Clerk. Ms. Cantwell?
6 Senator Cantwell. No.
7 The Clerk. Mr. Nelson?
8 The Chairman. No by proxy.
9 The Clerk. Mr. Menendez?
10 Senator Menendez. No.
11 The Clerk. Mr. Carper?
12 Senator Carper. No.
13 The Clerk. Mr. Grassley?
14 Senator Grassley. Aye.
15 The Clerk. Mr. Hatch?
16 Senator Grassley. Aye by proxy.
17 The Clerk. Ms. Snowe?
18 Senator Snowe. Aye.
19 The Clerk. Mr. Kyl?
20 Senator Kyl. No.
21 The Clerk. Mr. Bunning?
22 Senator Bunning. Aye.
23 The Clerk. Mr. Crapo?
24 Senator Crapo. Aye.
25 The Clerk. Mr. Roberts?

1 Senator Roberts. Aye.

2 The Clerk. Mr. Ensign?

3 Senator Grassley. Aye by proxy.

4 The Clerk. Mr. Enzi?

5 Senator Enzi. Aye.

6 The Clerk. Mr. Cornyn?

7 Senator Cornyn. Aye.

8 The Clerk. Mr. Chairman?

9 The Chairman. No.

10 Senator Rockefeller votes "no" by proxy.

11 The Clerk will announce the results.

12 The Clerk. Mr. Chairman, the tally is 9 ayes and
13 14 nays.

14 The Chairman. The nays have it. The amendment
15 fails.

16 Senator Bingaman, do you wish to speak to an
17 amendment?

18 Senator Bingaman. Yes, I do. Mr. Chairman, I have
19 an amendment that I filed. It is amendment #1, that I
20 did not plan to offer right now but I did want to bring
21 it up and talk about it.

22 This relates to trying to get project financing for
23 renewable energy projects in a way that does not involve
24 the tax equity market. I think we are all aware that the
25 tax credit, which is a great thing, we all are glad we

1 were able to extend the tax credit for solar energy, for
2 wind energy, the tax credit is not very useful if you do
3 not have any income against which to claim the credit.

4 Accordingly, the House has passed a provision that
5 tries to solve that by essentially setting up a grant
6 program. I think they run it through the Secretary of
7 Energy, a grant program where companies that do these
8 projects can essentially come in and get a payment from
9 the government for 30 percent of the cost of the project.

10 My concern with that, Mr. Chairman, is that I want
11 to see these projects constructed, but many of the
12 companies involved with constructing them do not need the
13 taxpayer to fund 30 percent of that project on a
14 permanent basis. My thought is that we ought to have
15 some mechanism in the law so that the Secretary of
16 Treasury, first of all, should run this program rather
17 than the Secretary of Energy, because this really is a
18 refundable tax credit, is what is involved here.

19 But even beyond that, I think the Secretary of
20 Treasury should be required to get some appropriate
21 compensation in the way of a promise of repayment, or
22 warrants, or something in return for the 30 percent of
23 the cost of the project that the taxpayer is being asked
24 to fund. If you have got a successful project that is
25 being built by a company that is making profits and down

1 the road it turns out to be a very successful project, I
2 do not see why everybody should be benefited except the
3 taxpayer.

4 For that reason I developed an amendment, which I
5 understand some would rather I not offer at this time. I
6 guess I would ask whether or not you share the concerns
7 that I have about this and whether you would agree, if we
8 get into conference with the bill or the provision that
9 the House has passed, if you would insist that we protect
10 the taxpayer in any provision that we actually bring back
11 from conference.

12 The Chairman. I would. I think you have a good
13 point, some of this danger. Otherwise taxpayers are not
14 going to be sufficiently protected. You have raised a
15 very good point, and I appreciate your raising it,
16 frankly.

17 Senator Bingaman. On that basis I will not offer
18 the amendment. Thank you.

19 The Chairman. Thank you, Senator.

20 Senator Kyl?

21 Senator Kyl. Thank you, Mr. Chairman. I am going
22 to be real quick with this one. This might just be one
23 that is adopted; if we can do it by voice vote, that is
24 all right with me. This is my amendment #15.

25 The Chairman. Kyl 15.

1 Senator Kyl. It deals with the American
2 Opportunity Tax Credit. This is the scholarship tax
3 credit: 100 percent of the first \$2,000 in expenses, and
4 then 25 percent of the next \$2,000; 30 percent is
5 refundable.

6 What this amendment does is to add a couple of
7 requirements to qualify for it that are similar to other
8 financial aid. If you refer to the Federal Student Aid
9 Handbook, it states that a student is disqualified from
10 Federal student aid if he or she is convicted of a
11 Federal or State drug conviction. This provision would
12 adopt that limitation. You cannot be convicted of a
13 Federal or State drug conviction and receive this
14 financial assistance.

15 The second applies the so-called "Solomon"
16 amendment. This is the amendment that restricted funding
17 to schools which allowed ROTC recruiters on campus. What
18 this amendment does is to permit this opportunity
19 scholarship to students who attend such universities, but
20 not to students who attend universities that do not allow
21 the ROTC on campus. I have some things here that
22 President Obama has said about the younger generation
23 serving their country and so on, but I will waive that in
24 the interest of time if my colleagues would be willing to
25 accept the amendment.

1 Senator Schumer. Mr. Chairman?

2 The Chairman. Senator Schumer?

3 Senator Schumer. Yes. I have a problem with it,
4 for this reason: if the school does not allow ROTC on
5 campus, and I think schools should allow ROTC on campus,
6 why are you punishing the poor student? This money goes
7 directly to the student. It helps them go to college.

8 Senator Kyl. Well, Mr. Chairman, Senator Schumer,
9 I am not trying to punish the student. The student would
10 not be eligible, just as the university would not be
11 eligible. Obviously our intent is to encourage their
12 school to allow these recruiters on campus and give these
13 students an opportunity to participate in the program.

14 Senator Schumer. Well, I would say to Jon, come up
15 with an amendment that goes at the college itself and the
16 administration rather than at the student.

17 Senator Kyl. Mr. Chairman, Senator Schumer --

18 Senator Schumer. You could have a member of the
19 Young Americans for Freedom not get the benefit of this
20 tuition credit, which we all think is a good thing, and
21 it would not be fair.

22 Senator Kyl. In effect, Mr. Chairman, what the
23 amendment does is to prohibit the funds going to the
24 school which does not allow this on campus. But in this
25 case, part of this is a refundable tax credit so you

1 cannot just limit it, as the Solomon amendment does, to
2 the school itself.

3 The Chairman. Any further debate?

4 [No response.]

5 The Chairman. All those in favor of the amendment
6 say aye.

7 [A chorus of Ayes.]

8 The Chairman. Those opposed, no.

9 [A chorus of Nays.]

10 The Chairman. In the opinion of the Chair, the
11 nays have it. The nays have it.

12 Senator Kyl. I would appreciate a roll call.

13 The Chairman. A roll call has been requested. The
14 Clerk will call the roll.

15 The Clerk. Mr. Rockefeller?

16 Senator Rockefeller. No.

17 The Clerk. Mr. Conrad?

18 Senator Conrad. Pass.

19 The Clerk. Mr. Bingaman?

20 The Chairman. No by proxy.

21 The Clerk. Mr. Kerry?

22 The Chairman. No by proxy.

23 The Clerk. Mrs. Lincoln?

24 Senator Lincoln. No.

25 The Clerk. Mr. Wyden?

1 Senator Wyden. No.
2 The Clerk. Mr. Schumer?
3 Senator Schumer. No.
4 The Clerk. Ms. Stabenow?
5 Senator Stabenow. No.
6 The Clerk. Ms. Cantwell?
7 The Chairman. No by proxy.
8 The Clerk. Mr. Nelson?
9 The Chairman. No by proxy.
10 The Clerk. Mr. Menendez?
11 Senator Menendez. No.
12 The Clerk. Mr. Carper?
13 Senator Carper. No.
14 The Clerk. Mr. Grassley?
15 Senator Grassley. Aye.
16 The Clerk. Mr. Hatch?
17 Senator Grassley. Aye by proxy.
18 The Clerk. Ms. Snowe?
19 Senator Snowe. Aye.
20 The Clerk. Mr. Kyl?
21 Senator Kyl. Aye.
22 The Clerk. Mr. Bunning?
23 Senator Bunning. Aye.
24 The Clerk. Mr. Crapo?
25 Senator Crapo. Aye.

1 The Clerk. Mr. Roberts?
2 Senator Roberts. Aye.
3 The Clerk. Mr. Ensign?
4 Senator Grassley. Aye by proxy.
5 The Clerk. Mr. Enzi?
6 Senator Enzi. Aye.
7 The Clerk. Mr. Cornyn?
8 Senator Cornyn. Aye.
9 The Clerk. Mr. Chairman?
10 The Chairman. No.
11 The Clerk will announce the vote.
12 Senator Conrad. Mr. Chairman?
13 The Chairman. Senator Conrad?
14 Senator Conrad. Aye.
15 The Chairman. Senator Conrad votes aye.
16 The Clerk. Mr. Chairman, the tally is 11 ayes and
17 12 nays.
18 The Chairman. The nays have it. The amendment is
19 not agreed to.
20 Senator Kyl. Mr. Chairman? Mr. Chairman?
21 The Chairman. Senator Kyl?
22 Senator Kyl. Could I indulge the Chair and ask
23 unanimous consent to amend my amendment by dropping the
24 provision relating to ROTC so that all we have is the
25 Federal Student Handbook limitation on the Federal or

1 State drug conviction?

2 The Chairman. Well, technically you would have to
3 re-offer the amendment because we have taken action by
4 voting on the amendment. So if the Senator wants to
5 offer another amendment, that would certainly be within
6 his purview.

7 Senator Kyl. Well, since we just dealt with that,
8 I thought perhaps the committee --

9 The Chairman. So what is the amendment, just so we
10 know?

11 Senator Kyl. The amendment would only have one
12 limitation then, and that is the Student Aid Handbook
13 limitation on the Federal or State drug conviction. You
14 cannot have a State or Federal drug conviction and
15 receive the benefit of this particular provision.

16 The Chairman. Is there any discussion?

17 [No response.]

18 The Chairman. I am prepared to accept that
19 amendment.

20 Senator Kyl. Thank you.

21 The Chairman. It is accepted.

22 Senator Kyl. Thank you, Mr. Chairman.

23 Senator Stabenow? Do you have an amendment, Senator
24 Stabenow?

25 Senator Stabenow. Mr. Chairman, I am offering, but

1 going to withdraw, an amendment related to TAA. I just
2 want to place for the record. First of all, Mr.
3 Chairman, thank you and Senator Grassley for your work in
4 trying to bring the modernization of TAA as part of this.
5 I know we have extended in the bill the TAA provisions we
6 currently have, but Trade Adjustment Assistance needs to
7 be modernized.

8 There are many workers that currently do not receive
9 assistance even though they are under the original intent
10 of the law. My hope is that as this moves through, that
11 we will be able to include your bill which would do the
12 necessary modifications. I also want to thank Senator
13 Bingaman, who has been a real champion for this as well.

14 But I would very much like to work with you as we
15 proceed to hopefully create a TAA modernization that
16 parallels what you had introduced and would actually,
17 along with Senator Snowe, who has been a strong proponent
18 of this and is a co-sponsor with me on the amendment,
19 make sure that we are updating Trade Adjustment
20 Assistance for the times and the communities, the
21 businesses, and the individuals that have lost their
22 jobs.

23 Thank you.

24 The Chairman. Thank you, Senator. No, you are
25 absolutely right. I highly compliment you on your

1 efforts to push trade adjustment assistance. It is so
2 necessary. The entire program is so dated, so many
3 changes need to be made. As you indicated, several of us
4 have worked on legislation to get that passed. We are in
5 the final stages right now. We are finally getting that
6 worked out, especially with Chairman Rangel. There is
7 one little issue, and once that is resolved, and I
8 expect that it will, then that will enable the rest
9 of the measures to be agreed to. It is all the points
10 you make about expanded services, all the other
11 things we are trying to accomplish. So, thank you very
12 much.

13 Senator Stabenow. Thank you.

14 Senator Snowe. Mr. Chairman?

15 The Chairman. Senator Snowe?

16 Senator Snowe. Yes, Senator. Thank you. I wanted
17 to commend Senator Stabenow as well for highlighting this
18 critical issue, and thank you, Mr. Chairman, for
19 including an extension in this stimulus package. That is
20 critical, as we all know, and you have been a leader on
21 this. We need to expand it and have a more robust
22 program to be realistically reflective of the loss in the
23 manufacturing sector and those who have lost their jobs
24 that were directly affected by trade agreements and the
25 lack of fair competition from abroad. That means

1 expanding it to the service sector. It also means
2 expanding the health care subsidies that are so critical.
3 We have lost more than 4 million jobs since 1994 with
4 respect to various agreements.

5 As a result, there are great demands on the Trade
6 Adjustment program, but it also needs to be updated,
7 as you well know, with legislation that you have
8 introduced. So hopefully we can work on that issue and
9 focus on it in an expeditious fashion here in the
10 committee.

11 Thank you, Mr. Chairman. Thank you, Senator
12 Stabenow.

13 The Chairman. Thank you, Senator.

14 It is my understanding that Senator Bunning is next.

15 Senator Bunning. Yes. Thank you. Thank you, Mr.
16 Chairman.

17 The Chairman. And this is Bunning #1?

18 Senator Bunning. This is Bunning #3.

19 The Chairman. Number 3? All right.

20 Senator Bunning. Number 3.

21 This amendment simply extends --

22 The Chairman. You just pulled a switch on us.

23 Senator Bunning. No, I did not. It is the one I
24 had in front of me.

25 The Chairman. You are good. Is that a curve ball

1 or fast ball?

2 Senator Bunning. No. I only throw very softly.

3 The Chairman. Good. All right. This is Bunning

4 3.

5 Senator Bunning. Three.

6 The Chairman. All right.

7 Senator Bunning. This amendment simply extends the
8 Alternative Fuel Credit through 2012. Alternative fuels
9 provide us the opportunity to use our domestic resources,
10 to secure our energy independence, and meet America's
11 energy needs for the next 25 years.

12 There is great potential for the development and use
13 of alternative fuels, but it is up to us to get them off
14 the ground. As it currently stands, the Alternative Fuel
15 Credit will expire at the end of this year. My amendment
16 would simply extend this credit for another three years.

17 At a time when we are considering alternative energy
18 proposals, I believe that we cannot afford to leave
19 alternative fuels out of the debate. I urge my
20 colleagues to support the amendment and extend the
21 Alternative Fuels Tax Credit.

22 The Chairman. Is there further debate?

23 Senator Rockefeller. Mr. Chairman?

24 The Chairman. Senator Rockefeller?

25 Senator Rockefeller. Ordinarily I think you would

1 expect me to be supportive of this amendment, and Senator
2 Bunning and I have very common views on many of these
3 matters. But once again, I look down and I say, how is
4 this paid for? The offset is made by making cuts in FMAP
5 payments.

6 Senator Bunning. But very little.

7 The Chairman. Any further debate?

8 Senator Bunning. Excuse me. Would the gentleman
9 offer us some kind of estimate on how much this is going
10 to cost? Because, unfortunately, 30 seconds after the
11 last debate we got exactly what it would cost from the
12 Joint Tax Committee.

13 Mr. Kleinbard. It is \$669 million over 10 years.

14 Senator Bunning. What is it, now?

15 Mr. Kleinbard. It is \$669 million over 10 years.

16 Senator Bunning. \$669 million.

17 Mr. Kleinbard. Over 10 years, sir.

18 Senator Bunning. Out of \$87 or \$86 billion.

19 Excuse me. So it is minuscule. It is a week's spilling
20 in Washington, DC, Senator Rockefeller. Negligible.

21 Senator Rockefeller. Mr. Chairman, I am being
22 assaulted by the other side here. [Laughter.] Probably
23 properly. But I must say that the FMAP thing is near and
24 dear to my heart. I was a governor; I know what this
25 means. I know what happens when you do not get it and I

1 know what you have to do. I have been through the
2 experience of laying off 10,000 Department of Highway
3 workers when things were not going very well in one
4 particular year, and I just do not want this to happen to
5 children.

6 Senator Bunning. I will close the debate. It will
7 be very short. I would like to offer it with no offset,
8 as Senator Kyl just did. We would not take any money
9 from the FMAP and it would be spent, like many other
10 things in this bill, from us printing up the money and
11 using it for a very, very good purpose, which is
12 alternative fuels. Nobody in this room or at this desk
13 can debate the fact that we need alternative fuels and we
14 need an extension of that at the end of this year for
15 some time, and I just put three years on it. That is why
16 the estimate was so small.

17 The Chairman. I would hope this amendment is not
18 adopted. First of all, there are no provisions in this
19 bill, sort of major provisions, on clean coal or on
20 biofuels, so those are two major subjects that we are
21 going to address.

22 Senator Bunning. Alternative fuels, totally.

23 The Chairman. I know. We are going to have to
24 address this later, and should address energy later this
25 year.

1 Senator Bunning. I imagine we will, in energy.

2 The Chairman. Yes. An energy bill. That is
3 correct.

4 If there is no further debate, all those in favor of
5 the amendment --

6 Senator Bunning. Roll call, please.

7 The Chairman. A roll call has been requested. The
8 Clerk will call the roll.

9 Senator Rockefeller. Mr. Chairman, could I say one
10 thing to Senator Bunning? There will be opportunities on
11 the floor.

12 Senator Bunning. All right. That is fine. Thank
13 you.

14 The Chairman. The Clerk will call the roll.

15 The Clerk. Mr. Rockefeller?

16 Senator Rockefeller. No.

17 The Clerk. Mr. Conrad?

18 Senator Conrad. No.

19 The Clerk. Mr. Bingaman?

20 The Chairman. No by proxy.

21 The Clerk. Mr. Kerry?

22 The Chairman. No by proxy.

23 The Clerk. Mrs. Lincoln?

24 Senator Lincoln. No.

25 The Clerk. Mr. Wyden?

1 Senator Wyden. No.
2 The Clerk. Mr. Schumer?
3 The Chairman. No by proxy.
4 The Clerk. Ms. Stabenow?
5 Senator Stabenow. No.
6 The Clerk. Ms. Cantwell?
7 Senator Cantwell. No.
8 The Clerk. Mr. Nelson?
9 Senator Nelson. No.
10 The Clerk. Mr. Menendez?
11 Senator Menendez. No.
12 The Clerk. Mr. Carper?
13 Senator Carper. No.
14 The Clerk. Mr. Grassley?
15 Senator Grassley. Aye.
16 The Clerk. Mr. Hatch?
17 Senator Grassley. Aye by proxy.
18 The Clerk. Ms. Snowe?
19 Senator Snowe. No.
20 The Clerk. Mr. Kyl?
21 Senator Grassley. Kyl, no by proxy.
22 The Clerk. Mr. Bunning?
23 Senator Bunning. Aye.
24 The Clerk. Mr. Crapo?
25 Senator Crapo. Aye.

1 The Clerk. Mr. Roberts?

2 Senator Roberts. Aye.

3 The Clerk. Mr. Ensign?

4 Senator Grassley. Aye by proxy.

5 The Clerk. Mr. Enzi?

6 Senator Enzi. Aye.

7 The Clerk. Mr. Cornyn?

8 Senator Cornyn. Aye.

9 The Clerk. Mr. Chairman?

10 The Chairman. No.

11 The Clerk. Mr. Chairman, the final tally is 8 ayes
12 and 15 nays.

13 The Chairman. The nays have it. The amendment
14 fails.

15 I understand that Senator Crapo has an amendment he
16 wishes to offer.

17 Senator Crapo. Thank you, Mr. Chairman. I call
18 forward the Crapo #1 amendment.

19 The Chairman. Number 1.

20 Senator Crapo. Mr. Chairman, this amendment deals
21 with the tax rates on dividends and capital gains. And
22 as I think all the members of the committee know, this is
23 an issue that I, and many of us on the committee, have
24 been working on for some time.

25 What we are about here today is to try to craft a

1 stimulus package. We have had a lot of debate, and will
2 continue to have a lot of debate, about whether certain
3 provisions will or will not stimulate the economy and
4 what would be the best way to approach it. But I think
5 that there is very little disagreement among financial
6 experts, that one of the most strong stimuluses that we
7 can give to our economy is to maintain our current
8 capital gains and dividends tax rates.

9 Some may say it is not time to do it, we have got a
10 couple of years because the rates do not spring back up
11 for a couple of years. But, frankly, those who are
12 looking at dealing in long-term capital gains or capital
13 transactions are not as concerned about what the rate is
14 in the next couple of years as they are for the long
15 term. That is what they are called, long-term capital
16 gains. The issue really focuses on what will happen in
17 our economy if we give certainty to the fact that there
18 will be a stable, low dividend and capital gains tax
19 rate.

20 The amendment that I have crafted seeks to follow
21 what President Obama has indicated is his intent in this
22 area. First of all, it would make permanent the current
23 zero percent rate for those in the lowest income tax
24 brackets. Second, for those currently subject to the 15
25 percent tax rate, that rate would be made permanent for

1 those making less than \$200,000 per year for individuals,
2 or \$400,000 per year for couples. For those in income
3 thresholds above that, income levels above that, the rate
4 would be capped at 20 percent beginning in 2011, which is
5 the rate to which it would spring back if Congress does
6 not make all the rates permanent.

7 The effort here is to seek to do exactly as the
8 President has suggested we should do, namely not allow a
9 tax increase for those in the middle and lower income
10 categories, and also to do it now at a time when our
11 economy can use the strength that this stimulus would
12 provide.

13 I know, again, that some might suggest that it is
14 expensive, but the stimulus that it would provide is very
15 powerful. Frankly, again, the President has said that he
16 does not believe that these taxes, in terms of the
17 current taxes that may spring back, should be offset. I
18 agree with him on that. But also, the question is,
19 should we do it now or wait until 2011? If we wait until
20 2011 -- and I think this Congress will do it, and I do
21 not think this Congress will offset it. But if we wait
22 until 2011 to do this, we have lost two years of some of
23 the most significant stimulus that we could give to our
24 economy by bringing certainty to the dividend and capital
25 gains tax rates. So, I encourage my colleagues to

1 support the amendment.

2 The Chairman. Discussion? Senator Carper?

3 Senator Carper. Mr. Chairman, some of our
4 colleagues are aware of an effort that several of us have
5 been a part of for a couple of years now to try to
6 provide the certainty that Mr. Crapo is calling for.
7 What we do in the legislation we have introduced, I
8 think, now in maybe the last two Congresses, is to say
9 that the capital gains rate -- we were watching the rates
10 step down, I think, to 45 percent. We are watching the
11 amount of taxes that are excluded.

12 The amount of an estate that is excluded goes up to,
13 I think, \$3.5 million. What we suggested, is rather than
14 seeing it go to zero and go back to where we were in
15 2001, that in 2009 we basically stop where we are, \$3.5
16 million exclusion, a 45 percent tax rate on that which is
17 not excluded, and then we increase the amount in the
18 future that is excluded from taxation by something like
19 the CPI.

20 It provides certainty. The impact on the Treasury
21 is not inconsiderable, but I think it is a pretty good
22 way to balance this out. When I read what President
23 Obama is saying he thinks we should do, I think it
24 actually mirrors what I just described. My hope is, if
25 we do not adopt this amendment here today, that Mr.

1 Crapo, I, and others who have similar interests can maybe
2 find common ground.

3 The Chairman. Further discussion?

4 Senator Crapo. Mr. Chairman?

5 The Chairman. Senator Crapo?

6 Senator Crapo. I would appreciate the opportunity
7 to continue to work to find that common ground. This
8 amendment does not deal with the estate tax, which you
9 discussed, and I think that we can find some common
10 ground there. But I believe that ultimately we will do
11 something very similar to, if not identical, what this
12 amendment suggests. It is what the President has
13 suggested he believes in. It is a medium position from
14 what the Republicans have been pushing for for the last
15 four or five years. I have heard a lot of support for it
16 on the other side.

17 My point is simply that we should not continue to
18 wait. We are told that we face incredible economic
19 stress and that we need to provide strong stimulus to our
20 economy, and financial experts around the world are
21 saying if you want to provide strong stimulus to your
22 economy one of the most important things you can do is to
23 give some certainty to the low capital gains and
24 dividends tax rates.

25 So although I understand the fact that we may want

1 to work on a more broad-based consensus package later on,
2 I really believe that this issue's time has come. Every
3 time we debate it, the response is, it is a good idea but
4 we should not do it now. We should do it now. We are
5 trying to develop a stimulus package for our country and
6 this is the kind of thing that will really work.

7 Senator Carper. Mr. Chairman?

8 The Chairman. Senator Carper?

9 Senator Carper. I misunderstood the intent of the
10 amendment, but the offer to try to work on common ground
11 on the estate tax still holds firm. Thank you.

12 The Chairman. If there is no further debate, all
13 those in favor of the amendment say aye.

14 [A chorus of Ayes.]

15 The Chairman. Those opposed, no.

16 [A chorus of Nays.]

17 The Chairman. In the opinion of the Chair, the
18 nays have it. The amendment is not agreed to.

19 Senator Crapo. I request a roll call.

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

21 The Clerk will call the roll.

22 The Clerk. Mr. Rockefeller?

23 Senator Rockefeller. No.

24 The Clerk. Mr. Conrad?

25 Senator Conrad. No.

1 The Clerk. Mr. Bingaman?
2 The Chairman. No by proxy.
3 The Clerk. Mr. Kerry?
4 The Chairman. No by proxy.
5 The Clerk. Mrs. Lincoln?
6 The Chairman. No by proxy.
7 The Clerk. Mr. Wyden?
8 Senator Wyden. No.
9 The Clerk. Mr. Schumer?
10 The Chairman. No by proxy.
11 The Clerk. Ms. Stabenow?
12 Senator Stabenow. No.
13 The Clerk. Ms. Cantwell?
14 Senator Cantwell. No.
15 The Clerk. Mr. Nelson?
16 Senator Nelson. No.
17 The Clerk. Mr. Menendez?
18 Senator Menendez. No.
19 The Clerk. Mr. Carper?
20 Senator Carper. No.
21 The Clerk. Mr. Grassley?
22 Senator Grassley. Aye.
23 The Clerk. Mr. Hatch?
24 Senator Grassley. Mr. Hatch is "aye" by proxy.
25 The Clerk. Ms. Snowe?

1 Senator Grassley. No by proxy.
2 The Clerk. Mr. Kyl?
3 Senator Grassley. No by proxy.
4 The Clerk. Mr. Bunning?
5 Senator Bunning. Aye.
6 The Clerk. Mr. Crapo?
7 Senator Crapo. Aye.
8 The Clerk. Mr. Roberts?
9 Senator Roberts. Aye.
10 The Clerk. Mr. Ensign?
11 Senator Grassley. Aye by proxy.
12 The Clerk. Mr. Enzi?
13 Senator Enzi. Aye.
14 The Clerk. Mr. Cornyn?
15 Senator Cornyn. Aye.
16 The Clerk. Mr. Chairman?
17 The Chairman. No.
18 Senator Hatch?
19 The Clerk. Mr. Hatch?
20 Senator Hatch. Aye.
21 The Chairman. The Clerk will announce the vote.
22 The Clerk. Mr. Chairman, the tally is 8 ayes and
23 15 nays.
24 The Chairman. The nays have it. The amendment is
25 not agreed to.

1 Senator Conrad, I think, wishes to speak to an
2 amendment.

3 Senator Conrad. Mr. Chairman, I would like to
4 bring up my amendment #3, Conrad #3, on certain
5 cancellation of debt income treatment. Mr. Chairman, my
6 amendment provides a way to help businesses that are
7 over-leveraged and banks with over-valued assets. The
8 amendment would suspend the cancellation of debt income
9 rules for 50 percent of income derived in 2009 and 2010.
10 The remainder would be subject to recognition under the
11 schedule of the Chairman's mark.

12 Mr. Chairman and colleagues, if I could just give a
13 brief example. If a company has \$1 million of debt and
14 they are able to renegotiate and get it reduced to
15 \$800,000 through a change in the interest requirements or
16 other debt forgiveness by creditors, that \$200,000
17 difference is now a taxable event. When you have an
18 economy like this one that is falling away from you
19 rapidly, I think it is one of the fastest ways you can
20 help businesses recapitalize and de-leverage to prevent
21 all of that from coming back as taxable income in the
22 year the renegotiation occurs.

23 Senator Ensign has a similar amendment that costs
24 roughly twice as much as the one I would be offering
25 because he has full forgiveness of that in the taxable

1 year it occurs, the renegotiated amount. Mine reduces it
2 to 50 percent. In other words, instead of having a
3 \$200,000 taxable event you would have a \$100,000 taxable
4 event and the remainder would be recognized over the same
5 formulas in the Chairman's mark, which would be years 3
6 through 10.

7 I think this is critically important in several
8 ways. The underlying mark limits the use of this
9 provision to cash-for-debt exchanges, and I think that
10 dramatically limits the stimulative effect of what is in
11 the Chairman's mark. In today's economy, debt-for-debt
12 is often the only realistic debt restructuring option for
13 many companies. Extending the relief to exchanges beyond
14 cash-for-debt will reduce the possibility of bankruptcy.

15 It is also important to remember that there are two
16 sides to these exchanges. We understand that many banks
17 will not accept cash for debt because it depletes a
18 company's cash on hand, and therefore puts the remaining
19 debt at greater risk.

20 Now, I normally would not support a provision like
21 this, but again, these are not normal times. My reading
22 of the banking situation is that we are far from being
23 out of the woods. I think we are going to find
24 additional banks that are, in fact, insolvent. If we do
25 not find a way of recapitalizing them, we could reap the

1 whirlwind.

2 So I would hope very much my colleagues would give
3 strong consideration to this amendment. If I could, Mr.
4 Chairman, might I inquire if there is an estimate of the
5 cost of this amendment?

6 The Chairman. Mr. Kleinbard?

7 Mr. Kleinbard. Yes, sir. Our preliminary estimate
8 is between a \$14 and \$16 billion cost above the
9 Chairman's mark, sir.

10 Senator Wyden. Mr. Chairman?

11 The Chairman. I am sorry. Senator Conrad is still
12 -- do you wish to ask more questions, Senator?

13 Senator Conrad. No. I thank, very much, the
14 Chairman for allowing me to ask the question.

15 The Chairman. Sure.

16 Senator Wyden?

17 Senator Wyden. Thank you, Mr. Chairman. I have a
18 question, both for the sponsor and for Mr. Kleinbard,
19 because I think Senator Conrad is clearly trying to
20 initiate a step to get our economy moving, and I
21 certainly support that. What I have been concerned about
22 on these various issues relating to banks is whether or
23 not these new incentives that are being discussed could
24 go, for example, to a financial institution that has
25 gotten TARP money from the Troubled Asset Relief Program

1 and is not lending.

2 What I am concerned about is whether that could take
3 place under this amendment, because I think what Senator
4 Conrad wants to do generally is a sound proposition and I
5 want to support that. I am concerned about that
6 particular type of institution getting assistance here.
7 Maybe the sponsor and Mr. Kleinbard can unpack this for
8 me so I can understand it fully.

9 Senator Conrad. I think the honest answer from my
10 perspective is: yes, it would be possible for that to
11 occur. I think we have got to weigh all of this against
12 what I see happening in the financial sector and in the
13 corporate sector. If we look at the financial sector,
14 because capital positions are eroding, because capital is
15 impaired, banks and other financial institutions are
16 unable to lend.

17 If this remains locked down, all of the estimates,
18 all of the models that have been used to estimate job
19 creation are flawed. We are not going to get the kind of
20 job creation the underlying economic recovery package
21 hopes to deliver because the financial system is still
22 locked down. We have got to find additional creative
23 ways to recapitalize these institutions.

24 I have always thought when I was a tax commissioner,
25 the one thing that really gave me heartburn was a company

1 may have been a very good company for a long period of
2 time, runs into trouble, they get relief from their
3 lender. As I gave in this example, you have \$1 million
4 of debt, you get it renegotiated to \$800,000. All of a
5 sudden, you have got a \$200,000 taxable event at the
6 worst possible time. It really is a fiction. It is
7 fictional income. You never got it. You never received
8 it, and yet you are paying taxes on it.

9 Now, I have reduced the hit here. Senator Ensign
10 had a 100 percent reduction, I have a 50 percent
11 reduction to try to reduce the cost. But I would just
12 say to my colleagues, if you think of the factual
13 situation I have described, a company owes the million
14 dollars, they get it renegotiated to \$800,000, and all of
15 a sudden they get hit with taxes on a \$200,000 stream of
16 income that is an absolute fiction.

17 Senator Ensign. Mr. Chairman?

18 The Chairman. Senator Ensign?

19 Senator Ensign. Mr. Chairman, first of all, I want
20 to thank Senator Conrad for developing this amendment.
21 He has looked at my amendment over the last several days
22 and modified it, and I think that his amendment actually
23 would not quite have the same stimulative effect as my
24 amendment would, but it would have probably 80, 90
25 percent of the stimulative effect that my amendment has.

1 The example that you gave is exactly right.

2 One thing we have to keep in mind--correct me if I
3 am wrong--is we did this exact same thing for homeowners
4 last year, right? So the precedent has been set. These
5 are not ordinary times. We know that we have basically
6 an over-leveraged economy. Whether it is individuals,
7 businesses, the governments, all of us have too much
8 debt.

9 One of the ways to de-leverage this economy is to do
10 this amendment. There is another side benefit to this
11 amendment that a lot of people are not thinking about.
12 Two to three years from now, the American economy and the
13 corporate world will have a mountain of debt that comes
14 due. There is no secondary market today. This measure
15 creates the secondary market for that debt that comes
16 due. If we do not have that secondary market, we are
17 going to face a second fiscal and financial crisis in the
18 United States.

19 If a company is in Chapter 11, debt cancellation is
20 not taxable. Correct?

21 Mr. Kleinbard. It is correct that it is not
22 taxable, but it has to reduce net operating losses and
23 other favorable tax attributes which would otherwise have
24 been available to offset income in the future.

25 Senator Ensign. Correct. The reason I think that

1 during these extraordinary times that we would want not
2 even to lose the tax attributes, in my opinion, is
3 because we want companies to de-leverage. It is the
4 bottom line, if a company is in better fiscal and
5 financial shape, guess what? They have a better chance
6 of staying in business, which saves jobs. Not only that,
7 they have a better chance of having money to be able to
8 invest in capital expenditures, which also create jobs.
9 So overall this is probably one of the most stimulative
10 amendments, if it is included in this bill, of this
11 entire stimulus package.

12 So, Mr. Chairman, I would strongly suggest that if
13 we cannot adopt it in committee here, that we take a
14 good, hard look at it and adopt it on the floor of the
15 Senate because I strongly believe in this provision.

16 The Chairman. I appreciate that, Senator. Thank
17 you, Senator Conrad, for offering this amendment. I do
18 not think that this is the right time to pass this
19 amendment. There are provisions in the bill to spread
20 out cancellation of indebtedness income. It is eight
21 years to spread it out. Now, that might not be
22 sufficient, it might be sufficient. It is also unclear
23 as to which industries really need this as opposed to
24 other industries.

25 The amount of this bill--the total amount I do not

1 have it with me right now--has a significant amount of
2 individual tax reduction and a significant amount of
3 business tax reductions. Overall, this bill, when it is
4 added all together--and everybody agrees it is not
5 perfect, but everyone also, I think, thinks it is going
6 to have a significant benefit in the economy. It is
7 going to be north of \$850, maybe \$825 billion. That is
8 going to help. That is going to help the economy.

9 Senator Ensign. Mr. Chairman, as part --

10 The Chairman. If I might continue. The business
11 provisions in this bill total about \$28 billion
12 individual, about \$195. That is going to help. Now, it
13 may be that by the time we get to the floor that we will
14 find that we need to address this in an approach
15 indicated by you, Senator, and also Senator Conrad. That
16 may be, and I am more than open to that. I just do not
17 know, at this time, that we should adopt this amendment.
18 The expenses are significant, but we need to know more
19 about what we are doing here before I think we adopt this
20 amendment.

21 Senator Conrad?

22 Senator Conrad. Mr. Chairman, if I might, the
23 Chairman's mark has a provision that moves in this
24 direction but it is limited to cash-for-debt financing.
25 I think that dramatically reduces the usefulness of what

1 we are trying to accomplish. I hear the Chairman and I
2 respect very much his view. I would hope the Chairman
3 would be willing to work with us as we go to the floor.
4 This is the first we have heard the score. I must say,
5 \$14 to \$16 billion gives me a bit of sticker shock. We
6 were hoping for about \$10 billion.

7 So if the Chairman would give us an assurance that
8 he would work with us and try to refine it and improve
9 it, I would certainly be willing to go along with his
10 advice that we work before we get to the floor.

11 The Chairman. Well, I thank the Senator. You have
12 that assurance.

13 Senator Ensign. Mr. Chairman?

14 The Chairman. As I mentioned earlier, it is an
15 issue. It is a problem, as you have outlined. Let us,
16 again, kind of figure out where we are. We will have a
17 better idea of where we are when we go to the floor next
18 week.

19 Senator Ensign. Mr. Chairman?

20 Senator Conrad. I would acknowledge, \$14 to \$16
21 billion is beyond what we had contemplated here. But I
22 do very much want to work with the Chairman because I
23 think we need to improve the underlying mark to have the
24 kind of stimulative effect we are hoping for. I believe
25 this would be one of the most stimulative things we could

1 do. I really think this would put a charge into the
2 financial sector, the corporate sector that is going to
3 have to de-leverage, and right now there is very little
4 to help them do that.

5 Senator Ensign. Mr. Chairman?

6 The Chairman. Senator Ensign?

7 Senator Ensign. Just to have it on the record, you
8 asked about what sectors of the economy, what kinds of
9 companies. We have around 40 different trade
10 associations that are supporting this provision, and it
11 includes from the American Farm Bureau, the American Gas
12 Association, American Trucking Association, Business
13 Roundtable, Mortgage Bankers Association, and individual
14 companies. We have over 40 individual companies that
15 have even put their names on, from Beazer Homes, to
16 Syntex Corporation, Century Aluminum Company, Comcast,
17 Dish Network, and Expedia.

18 Basically it is across the board. It makes sense
19 that it is across the board because businesses across the
20 board are hurting, businesses across the board have debt.

21 If they can refinance that debt and get some forgiveness
22 of that debt, it just makes sense to do that to keep jobs
23 in America.

24 The Chairman. I appreciate that. I am sure most
25 businesses would appreciate this provision. Of course,

1 it is our job to find the right balance between
2 protecting the taxpayers and also trying to stimulate the
3 economy, and we will try to find that balance as we go to
4 the floor.

5 Senator Cantwell. Mr. Chairman?

6 The Chairman. Senator Cantwell.

7 Senator Cantwell. Are we ready to move on?

8 The Chairman. I think Senator Cornyn is going to
9 offer an amendment.

10 Senator Cornyn?

11 Senator Cornyn. Thank you, Mr. Chairman.

12 Mr. Chairman, I would call up Cornyn amendment #3.
13 Simply put, this reduces the 10 percent income tax
14 bracket to 5 percent for years 2009 and 2010. Currently,
15 a taxpayer who makes up to \$8,025 a year, or joint filers
16 up to \$16,050 a year, are taxed at the 10 percent tax
17 bracket. This amendment would cut their taxes in half
18 for 2009 and 2010. Clearly, if the goal of this bill is
19 to put more money in the hands of taxpayers so they can
20 use it to help bolster the economy, it would do that.
21 This kind of tax relief would apply, of course, across
22 the board. It would be fully transparent and does not
23 pick winners and losers. I would hope that my colleagues
24 would support it.

25 The Chairman. Further discussion?

1 [No response.]

2 The Chairman. Seeing no further discussion, all
3 those in favor say aye.

4 [A chorus of Ayes.]

5 The Chairman. Those opposed, no.

6 [A chorus of Nays.]

7 Senator Cornyn. The ayes have it.

8 The Chairman. In the opinion of the Chair, the
9 nays have it. [Laughter.] The nays have it. The
10 amendment is not agreed to.

11 Senator Cornyn. Mr. Chairman, I would ask for a
12 roll call vote, please.

13 The Chairman. All right. Senator Cornyn requests
14 a vote. The Clerk will call the roll.

15 The Clerk. Mr. Rockefeller?

16 Senator Rockefeller. No.

17 The Clerk. Mr. Conrad?

18 Senator Conrad. Pass.

19 The Clerk. Mr. Bingaman?

20 The Chairman. No by proxy.

21 The Clerk. Mr. Kerry?

22 The Chairman. No by proxy.

23 The Clerk. Mrs. Lincoln?

24 Senator Lincoln. No.

25 The Clerk. Mr. Wyden?

1 Senator Wyden. No.
2 The Clerk. Mr. Schumer?
3 The Chairman. No by proxy.
4 The Clerk. Ms. Stabenow?
5 Senator Stabenow. No.
6 The Clerk. Ms. Cantwell?
7 Senator Cantwell. No.
8 The Clerk. Mr. Nelson?
9 Senator Nelson. No.
10 The Clerk. Mr. Menendez?
11 Senator Menendez. No.
12 The Clerk. Mr. Carper?
13 Senator Carper. No.
14 The Clerk. Mr. Grassley?
15 Senator Grassley. Aye.
16 The Clerk. Mr. Hatch?
17 Senator Hatch. Aye.
18 The Clerk. Ms. Snowe?
19 Senator Snowe. Aye.
20 The Clerk. Mr. Kyl?
21 Senator Grassley. Aye by proxy.
22 The Clerk. Mr. Bunning?
23 Senator Bunning. Aye.
24 The Clerk. Mr. Crapo?
25 Senator Grassley. Aye by proxy.

1 The Clerk. Mr. Roberts?
2 Senator Roberts. Aye.
3 The Clerk. Mr. Ensign?
4 Senator Ensign. Aye.
5 The Clerk. Mr. Enzi?
6 Senator Enzi. Aye.
7 The Clerk. Mr. Cornyn?
8 Senator Cornyn. Aye.
9 The Clerk. Mr. Chairman?
10 The Chairman. No.
11 The Clerk will tally the vote.
12 Senator Conrad. Mr. Chairman, if I might vote.
13 The Chairman. Senator Conrad?
14 Senator Conrad. No.
15 The Clerk. Mr. Chairman, the tally is 10 ayes, 13
16 nays.
17 The Chairman. The nays have it. The amendment is
18 not agreed to.
19 Are there further amendments? Senator Cantwell,
20 would you like to speak to your amendment?
21 Senator Cantwell. Yes, Mr. Chairman. I would like
22 to call up Cantwell amendment #4, which is also sponsored
23 by Senators Hatch, Stabenow, Kerry, Menendez, and Carper.
24 I want to thank my colleague from Utah, Senator
25 Hatch, for his hard work on this amendment. About two

1 years ago, Senator Hatch, myself, Senator Obama, and our
2 staffs sat down together to craft an important piece of
3 legislation which we really thought was the incentive
4 needed to get our country off of fossil fuel from a
5 transportation mode and onto the electricity grid as a
6 possible power source. So this legislation has also been
7 introduced as stand-alone on the floor, and I would like
8 to thank my colleague, Senator Alexander, for also
9 sponsoring it.

10 This amendment is about a manufacturing investment
11 credit, about smart meters, about plug-in conversion
12 credits. But overall, the amendment that we have
13 introduced today is really about saying that as a part of
14 the \$700 billion stimulus package, we are very interested
15 in seeing the United States capitalize on the
16 manufacturing of lithium ion battery technology. The
17 United States, while we have done a lot on the R&D side,
18 we have not been the country that has actually been in
19 the manufacturing of this technology that we think will
20 be the wave of the future.

21 Now, I know that the Chairman, in the Chairman's
22 mark, has made some improvements. I know that the
23 underlying bill recognized that an ITC manufacturing
24 credit, so that the United States could focus on
25 renewable energy, would be an important part of this

1 legislation. But I believe it needs to go further to
2 include plug-ins, and this particular amendment is
3 something that really focuses on exactly how we would do
4 that by allowing this expensing, which would be for both
5 U.S. companies and foreign companies.

6 What is at stake here is that while we have been
7 doing the research, and the opportunity is that while we
8 look at the electricity grid the current grid has 70
9 percent capacity for cars today to be fueled off the
10 electricity grid, so instead of paying the exorbitant
11 rates, people would have been paying, basically, \$1 a
12 gallon using the price of electricity.

13 But what is going on here, is that in Asia there are
14 250,000 jobs being created and over 120 different
15 manufacturers that are working on plug-in technology and
16 actually manufacturing that technology. The question is
17 whether the United States is going to move from being
18 dependent on foreign oil to being dependent on foreign
19 plug-in battery technology.

20 I would hope that we could take this legislation,
21 this proposed amendment, and adopt this legislation so
22 that we could show that part of the stimulus, we believe,
23 is really taking the first steps towards that
24 manufacturing credit and assuring that the United States
25 will be a competitive player. It also further

1 accelerates the smart meter depreciation, which I also
2 believe is important.

3 While I think that there are other provisions--not
4 in this committee--as it relates to the electricity grid
5 and smart grid technology, there are many aspects of the
6 regulatory framework at the utilities and transportation
7 commission level and at the grand process level that are
8 going to make the implementation of those provisions
9 very, let us just say, challenging. I am not saying that
10 they will not be used, but they will be challenging.
11 Predictability, I believe, in the Tax Code on something
12 like this is very important.

13 So I wanted to bring the amendment up, Mr. Chairman.

14 I wanted to give my colleague, Senator Hatch, an
15 opportunity and thank him for his hard work on this
16 amendment.

17 The Chairman. Senator Hatch?

18 Senator Hatch. Mr. Chairman, I appreciate the hard
19 work of the distinguished Senator from Washington. It is
20 always a pleasure to work with her on these matters, and
21 we have worked on them. For my Democratic friends who
22 might not know, I want to remind them that President
23 Barack Obama was an original sponsor of these same
24 provisions during the last Congress when we introduced
25 the Hatch-Cantwell-Obama Freedom Act, and we did enact

1 some of that.

2 I pointed this out to the White House last Friday in
3 the White House, that this would be a very, very good
4 thing for the administration to do. So I wholeheartedly
5 join with Senator Cantwell in urging the committee to
6 support this amendment on plug-in hybrids. I might add
7 that the mark expands the consumer credit for the
8 purchase of plug-in vehicles, however, I do not believe
9 the provision alone stands up to the life-and-death
10 challenges that are confronting our American auto
11 industry today.

12 The future of the American auto industry pivots on
13 whether or not the United States can lead the world into
14 the future with regard to vehicle technologies. We have
15 already learned that we cannot do that by living in the
16 past. American auto makers, battery makers, electric
17 motor technologies, ultra-capacitor makers, and plug-in
18 hybrid conversion companies are poised to lead the world
19 into the future of transportation, and the Cantwell-Hatch
20 amendment would provide strong incentives for these world
21 leaders to manufacture their products here on U.S. soil.

22 It would also provide strong incentives for
23 American-made and safety-proven technologies to convert
24 existing hybrids into plug-in hybrid vehicles, thus
25 allowing the market quicker access to the electricity

1 grid as an alternative transportation fuel. As the
2 members of the committee know, 97 percent of our
3 transportation fuel comes from oil. The other 3 percent
4 is made up mostly of ethanol and natural gas.

5 Electricity is much cheaper and it is much cleaner
6 than oil for each mile driven, and last Congress this
7 committee heard expert testimony that if smart metering
8 were used to recharge plug-in vehicles, we could have 70
9 percent of all cars on the road switch to plug-in hybrids
10 before we would have to build one new power plant.

11 That is why the Cantwell-Hatch amendment includes
12 incentives to move our Nation toward a smart grid. The
13 linkage of electricity, transportation and information
14 technologies through plug-in electrics and smart grid
15 technologies will transform the way consumers use energy,
16 significantly reduce the Nation's greenhouse emissions,
17 and spur export-driven economic growth.

18 I want to remind my Republican colleagues that
19 President Bush put plug-in hybrid vehicles on his very
20 short list of energy priorities. I would also remind
21 them that the Republican Gas Price Reduction Act
22 introduced last year by Senate Republicans narrowed GOP
23 energy priorities down to only four priorities, and plug-
24 in hybrids was one of those.

25 Now, I could go on and on here, but I appreciate the

1 distinguished Senator from Washington and her leadership
2 on this matter. I would hope that we could do this in
3 this stimulus bill because it makes a lot of sense. All
4 of us have been dedicated to try to move us into this
5 next part of the world where we can exist without total
6 dependence on oil and gas, or at least oil.

7 Thank you, Mr. Chairman.

8 Senator Stabenow. Mr. Chairman?

9 The Chairman. Senator Stabenow?

10 Senator Stabenow. Thank you, Mr. Chairman. I,
11 too, want to commend Senator Cantwell and Senator Hatch,
12 and now our President, who is deeply involved in this
13 issue. I cannot think of a more important piece to add
14 to this package than this particular focus on moving us
15 as quickly as possible to plug-in electric vehicles. It
16 is about whether or not we are going to go from
17 dependence on foreign oil to dependence on foreign
18 technology.

19 Right now, we are dependent on foreign technology.
20 We do not have batteries, the cells made in America.
21 When the first hybrid SUV was made, the battery was
22 bought from Japan. Right now we have companies that are
23 working very hard, A-1, 2, 3 Batteries, and I have been
24 partnering with people in Michigan and around the
25 country. But the reality is, that without significant

1 incentives, we are still going to find ourselves in a
2 position where we are behind the other countries of the
3 world.

4 Germany, last summer, announced the Great Battery
5 Alliance to provide national funding for German vehicles.

6 China, Japan, Korea have all boldly moved forward to
7 rush to get to the electric vehicles first. Mr.
8 Chairman, I know that it is your intent to work with us
9 as we move to the floor, but this is an incredibly
10 important piece of the puzzle because it is important to
11 have the batteries, it is important to have the consumer
12 credits, but if we do not manufacture the components and
13 the vehicles here in this country, we are losing a
14 tremendous amount of opportunity on jobs. I believe it
15 becomes ultimately a national security issue if we are
16 not able to produce our own electric vehicles and the
17 technologies for the future.

18 Thank you.

19 The Chairman. Thank you.

20 Senator Cantwell, Senator Hatch, you are leaders.
21 You are pushing this Congress to do more, and I think
22 that is appropriate. I might say, already in this
23 bill there are some provisions, and I think they are
24 very significant provisions, that lead in this direction.
25 There is the manufacturing tax incentive, for

1 example, and also a tax incentive for plug-in hybrids.
2 But you made some compelling points, both of you--all
3 three of you--and I--

4 Senator Hatch. We want you to be compelling too,
5 Mr. Chairman. [Laughter.]

6 The Chairman. Yes, I know. There are things that
7 we have got to work out. So I tell you, I do pledge full
8 cooperation to figure out some way to get more of the
9 balance of the provisions you are talking about.

10 Senator Cantwell. Mr. Chairman?

11 The Chairman. Senator Cantwell?

12 Senator Cantwell. I thank the Chairman, and I look
13 forward to that cooperation.

14 The Chairman. Thank you. Thank you, Senator.

15 Senator Hatch, do you have an amendment?

16 Senator Hatch. Yes, I do.

17 The Chairman. All right.

18 Senator Hatch. Mr. Chairman, I call up the Hatch
19 #1 amendment. This amendment would make the research
20 credit permanent. It is co-sponsored by Senators Roberts
21 and Crapo. However, there are at least 10 other Senators
22 on this committee who also should be co-sponsoring this
23 amendment. This is because there were 13 current members
24 of the Finance Committee who co-sponsored the Hatch-
25 Baucus Research Credit bill from the 110th Congress on

1 which this amendment is based. Those folks were myself,
2 Senators Baucus, Cantwell, Crapo, Kerry, Lincoln, Wyden,
3 Bunning, Ensign, Roberts, Schumer, Snowe, and Stabenow.

4 Moreover, eight more members of the committee have
5 co-sponsored bills making the research credit permanent
6 in a previous Congress. These were Senators Cornyn,
7 Grassley, Rockefeller, Enzi, Kyl, Nelson, Bingaman, and
8 Conrad.

9 All told, 21 of the 23 current members of this
10 committee have co-sponsored a permanent research credit
11 since 2001. If we were to go up and down this table and
12 ask all 23 members of this committee if he or she
13 supports the idea of a permanent research credit, chances
14 are good that I would get at least 20 answers in the
15 affirmative, and maybe as many as 23.

16 Yes, just about everybody says they are for a
17 permanent research credit. President Obama is for it.
18 Senator McCain was for it on the campaign trail last
19 year. Both sides support it. However, it seems that
20 very few really want to do it. I have been the
21 Republican plugger of this idea since the mid-1990s,
22 along with my dear friend Chairman Baucus. We have been
23 partners in this matter.

24 Even though everyone says they want to see it done,
25 we cannot seem to get the ball over the finish line. The

1 closest we came was in 2001 when we added a permanent
2 research credit to the tax cut bill. Unfortunately,
3 neither the House nor the Bush administration would fight
4 for it and it was dropped in conference.

5 So here we are today with the biggest tax bill we
6 are likely to do this Congress, and maybe in a long time.
7 The permanent research credit belongs in this bill.
8 Making the credit permanent will stimulate business and
9 it will send a strong message that we recognize that
10 innovation is the lifeblood of our economy.

11 Some are hesitant because of the cost. I do not
12 have an exact number, but I think a permanent credit
13 probably is in the neighborhood of \$100 billion over 10
14 years. Maybe it is more. However, each one of us knows
15 that we are going to extend this credit again anyway.
16 The problem is, we do it annually and businesses really
17 cannot put it into their planning mechanism the way they
18 should. Boy, they could sure do a lot more if they could
19 do that.

20 Another extension would be for one, two, or maybe
21 even three years, and then we would be right back to
22 where we are now, looking for short-term extensions
23 forever. The sad thing, Mr. Chairman, is that we are
24 going to spend the money one way or another. It just
25 depends on whether we spend it all at once, by making it

1 permanent, or a little at a time as we always do, which
2 is certainly a disadvantage to the companies who want to
3 have this as a permanent credit. That is the whole high-
4 tech industry.

5 Mr. Chairman, it is time for us to put our money
6 where our mouths are. Can anyone here tell me that there
7 is going to be a better time than now for us to make this
8 credit permanent? Is there going to be a time later when
9 we can better send the signal that we support U.S.-based
10 research? I think we should put this permanent research
11 credit in this bill, or let us admit that we are not
12 really serious about it ever being made permanent.

13 In the current downturn, many companies are
14 curtailing research spending. Extending the research
15 credit will incentivize companies not to shelve
16 critically needed research projects, and it will create
17 or save thousands of high-paying U.S. jobs and keep us at
18 the forefront of innovation throughout this world.
19 Recent reports indicate that U.S. investment in R&D is
20 projected to decline in 2009.

21 Moreover, I am concerned that R&D is leaving the
22 U.S. because many other countries now offer more generous
23 and permanent incentives than we do. The research credit
24 is available only for qualified research performed in the
25 United States. It really is a jobs provision, since over

1 80 percent of the benefits of the credit are attributable
2 to the salaries of workers performing research.

3 I know it is expensive to make the credit permanent,
4 but the piecemeal way we extend the credit one or two
5 years at a time is expensive, too, and it does not work
6 as well. This is a time to take care of making this
7 permanent, to bite that bullet, because we all know it is
8 not going to happen in just a regular tax bill.

9 So, Mr. Chairman, I hope that we can put this in the
10 bill. I really believe it is something, if we want to
11 make this a real stimulus package, that really would help
12 to do it. I have appreciated your loyal support, and my
13 loyal support for you over the years as we have tried to
14 do this.

15 The Chairman. Right. Well, Senator, you are
16 correct. I have co-sponsored some of these bills to make
17 the R&D tax credit permanent.

18 Senator Hatch. You have been a leader on that.

19 The Chairman. I do not disagree. But there is a
20 time and place for everything. I am afraid if we make
21 that permanent here in this bill, there is going to be an
22 argument to make some of the other provisions permanent.
23 I think we should take those as they come along. It is
24 also true that we have extended it every year, but it is
25 also true, as you say, that it causes some uncertainty

1 for businesses because they are uncertain whether we will
2 extend it.

3 I am open to trying to find something else before
4 this bill gets out of the Senate. I just do not think we
5 should make it permanent here at this time. It costs
6 over \$100 billion over a 10-year period. But I am open
7 to working something out here. We have got to send the
8 proper signal.

9 Senator Hatch. Well, if we are serious about this
10 being a stimulus bill, I do not know hardly anything that
11 would make it more of a stimulus bill than this will.

12 The Chairman. I hear you. I hear you.

13 Senator Hatch. I just think we ought to wake up on
14 this.

15 The Chairman. I hear you.

16 Senator Hatch. Well, if we could have a vote on
17 that, I would appreciate that.

18 Senator Rockefeller. Mr. Chairman?

19 The Chairman. Senator Rockefeller?

20 Senator Rockefeller. I agree with the Senator. I
21 do not agree with the offset.

22 Senator Hatch. Well, tell me a better one.

23 Senator Rockefeller. Well, that is what I am
24 suggesting that we work on. But I know this is broken up
25 into health care, children, and taxes and all these kinds

1 of things. But people keep coming back to FMAP. When
2 the numbers are as big as they are on that as an offset,
3 I just stall.

4 Senator Hatch. Can I interrupt you for a second?
5 Can I interrupt you? Why do we not take it out of the
6 Making Work Pay Credit, which is not going to do much of
7 anything to stimulate the economy? Now, I think
8 President Obama --

9 The Chairman. You just lost the President.

10 Senator Hatch. No, no. I think he would love this
11 over -- well, maybe not. [Laughter.] But it is good for
12 him to realize that we are right and he is wrong on this,
13 you know. [Laughter.] He is a strong supporter.

14 The Chairman. Senator, you are digging your hole a
15 little deeper. [Laughter.]

16 The question is on the amendment. All those in
17 favor of the amendment say aye.

18 [A chorus of Ayes.]

19 Senator Hatch. I would like a roll call vote.

20 The Chairman. All right. A roll call vote has
21 been requested. The Clerk will call the roll.

22 The Clerk. Mr. Rockefeller?

23 Senator Rockefeller. No.

24 The Clerk. Mr. Conrad?

25 Senator Conrad. No.

1 The Clerk. Mr. Bingaman?
2 The Chairman. No by proxy.
3 The Clerk. Mr. Kerry?
4 The Chairman. No by proxy.
5 The Clerk. Mrs. Lincoln?
6 Senator Lincoln. No.
7 The Clerk. Mr. Wyden?
8 Senator Wyden. No.
9 The Clerk. Mr. Schumer?
10 The Chairman. No by proxy.
11 The Clerk. Ms. Stabenow?
12 Senator Stabenow. No.
13 The Clerk. Ms. Cantwell?
14 Senator Cantwell. No.
15 The Clerk. Mr. Nelson?
16 Senator Nelson. No.
17 The Clerk. Mr. Menendez?
18 Senator Menendez. No.
19 The Clerk. Mr. Carper?
20 Senator Carper. No.
21 The Clerk. Mr. Grassley?
22 Senator Grassley. Aye.
23 The Clerk. Mr. Hatch?
24 Senator Hatch. Aye.
25 The Clerk. Ms. Snowe?

1 Senator Snowe. No.

2 The Clerk. Mr. Kyl?

3 Senator Grassley. Aye by proxy.

4 The Clerk. Mr. Bunning?

5 Senator Grassley. Aye by proxy.

6 The Clerk. Mr. Crapo?

7 Senator Grassley. Aye by proxy.

8 The Clerk. Mr. Roberts?

9 Senator Roberts. Aye.

10 The Clerk. Mr. Ensign?

11 Senator Ensign. Aye.

12 The Clerk. Mr. Enzi?

13 Senator Enzi. Aye.

14 The Clerk. Mr. Cornyn?

15 Senator Cornyn. Aye.

16 The Clerk. Mr. Chairman?

17 The Chairman. No.

18 The Clerk will announce the vote.

19 The Clerk. Mr. Chairman, the tally is 9 ayes and

20 14 nays.

21 The Chairman. The nays have it. The amendment is

22 not agreed to.

23 Does anyone have a quick amendment we can voice in

24 about one minute? Because there are seven minutes left

25 on this vote.

1 [No response.]

2 The Chairman. I do not see anyone offering. All
3 right.

4 Senator Conrad, did you want to do a short
5 discussion or do you want to wait?

6 Senator Conrad. I could do it.

7 The Chairman. We have three votes. There are
8 three votes. I will recess the committee until the third
9 vote. Immediately following the third vote, we will
10 reconvene to finish this bill tonight.

11 Senator Conrad?

12 Senator Conrad. I will just withhold. I do not
13 want to prevent --

14 The Chairman. Sure. Right. All right.

15 The committee is in recess until the third vote.

16 [Whereupon, at 5:57 p.m. the meeting was recessed.]

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1 [No response.]

2 The Chairman. All right. This is Cornyn number --
3 Senator Cornyn. Seven.

4 The Chairman. Seven. Let me find it. Well, you
5 are ahead of us, Senator. We do not have our act
6 together here. We are trying to find a copy of the
7 amendment. Do we have Cornyn 7? We are going to have to
8 set aside. I apologize. We do not have it right now.

9 Senator Conrad?

10 Senator Conrad. Mr. Chairman--and I will be very
11 brief, Senator Cornyn, so they can come right back to you
12 and this is disposed of. We will do it very quickly.

13 The Chairman. All right. Why do you not take
14 yours, Senator?

15 Senator Conrad. Mr. Chairman, this is Conrad #2.
16 It expands the scope of the \$7,500 Home Buyer Credit
17 beyond first-time home buyers. In the underlying mark we
18 have the \$7,500 credit, but it is restricted to only
19 first-time home buyers. I think many of us believe the
20 two sectors of the economy that remain deeply troubled
21 are the housing sector and the financial sector.

22 I think many share the view that we are not focusing
23 enough on those two. This attempts to shore up the home
24 buying sector by providing the \$7,500 tax credit to
25 anybody who purchases a home, but not a second home.

1 Second homes would not qualify. It is subject to the
2 income limits that are in the underlying bill.

3 But I think many of us believe that we need to do
4 more to encourage home purchasing in order to clear the
5 inventory--the glut of inventory--that is out on the
6 market. While we welcome the extension of the time
7 available for the Home Buyers Credit, we also think there
8 is a need to expand its eligibility.

9 There are very few transactions that have the
10 multiplier effect of a home purchase. Real estate
11 economists estimate that for each dollar spent on a home
12 purchase, that will generate \$7 in additional spending
13 associated with home ownership. So I am hopeful that at
14 some point this expansion of eligibility can be approved.
15 This amendment, I am informed by the staff, would cost
16 somewhere in the range of \$12 billion. It is really the
17 highest priority that I have in terms of an amendment.

18 I know, Mr. Chairman, that your staff has indicated
19 that you would prefer that this not be voted on at this
20 moment, and I certainly respect that. But I hope that
21 colleagues will weigh in with the Chairman on this issue
22 before we get to the floor, and that, Mr. Chairman, as we
23 proceed to the floor, we can have further opportunity to
24 discuss this and the merits of it, and if it needs to be
25 altered in some way, what modifications might be

1 necessary. But I really believe that this is an
2 important part of recovery.

3 I thank the Chair.

4 Senator Ensign. Mr. Chairman?

5 The Chairman. Senator Ensign?

6 Senator Ensign. I have one that I could offer and
7 not have a vote on, but talk about it for 60 seconds.

8 The Chairman. Sure. Yes. I just want to say, I
9 appreciate what Senator Conrad is suggesting and do want
10 to work with him. We had a discussion not too long ago
11 about the need for this direction, and want to do that.
12 I serve notice to everybody, we are going to move to
13 health amendments very shortly, so get your health
14 amendments ready.

15 Senator Ensign?

16 Senator Ensign. Mr. Chairman, I have an amendment
17 that I would like to work with you on that Senator Reid
18 and I are very interested in, between now and when the
19 bill goes to the floor. It would have a very small cost.

20 I appreciate that you have included in the mark an AMT
21 exemption for new private activity bonds. This will
22 certainly help ensure important infrastructure projects
23 will be able to proceed during this economic and
24 financial crisis.

25 Unfortunately, a well-intentioned provision

1 affecting the date of issuance for refunding bonds could
2 cause many worthy projects to be needlessly delayed, and
3 by treating new refunding bonds as if they were issued
4 before 2009 or 2010, these refunding bonds will not
5 benefit from the AMT exemption.

6 So airports in Las Vegas --

7 The Chairman. Senator, could you identify the
8 amendment you are addressing?

9 Senator Ensign. Yes. It is amendment #7.

10 The Chairman. Number 7?

11 Senator Ensign. Ensign amendment #7.

12 The Chairman. Ensign 7?

13 Senator Ensign. Yes.

14 The Chairman. Thank you.

15 Senator Ensign. Mr. Chairman, McCarran Airport,
16 and actually Reagan National here, are the two airports
17 that this sort of short-term financing would affect. I
18 do not think there are a lot of projects out across the
19 country. I think this would be a fairly minor score and
20 we would like to work with you between now and the floor.
21 I will not ask for a vote on it now. If Senator Reid's
22 and my staff could work with you between now and coming
23 to the floor, we would appreciate it. Thank you, Mr.
24 Chairman.

25 The Chairman. You bet. Senator Reid spoke to me

1 about that. Thank you.

2 Any further tax amendments? Senator Cornyn, that is
3 right. I forgot you. We will come back to you. Go
4 ahead, Senator.

5 Senator Cornyn. I was just hoping that we could at
6 some point get a vote on that elimination of the capital
7 gains and dividends tax rate to zero for people making up
8 to \$75,000 as an individual, \$150,000 as a couple. This
9 corresponds to the level where Making Work Pay tax credit
10 begins to phase out. I would ask for a roll call vote at
11 the appropriate time.

12 The Chairman. You bet. Is there further
13 discussion? Senator Nelson?

14 Senator Nelson. On the tax?

15 The Chairman. On Senator Cornyn's amendment.

16 [No response.]

17 The Chairman. All right. It is my judgment this
18 is not the time and place to take this up. There will be
19 another time to address this issue when we do a tax bill
20 later in the year. But I certainly appreciate what the
21 Senator is attempting to accomplish here. So I therefore
22 urge the amendment not be agreed to. If there is no
23 further debate, the Clerk will call the roll.

24 The Clerk. Mr. Rockefeller?

25 Senator Rockefeller. No.

1 The Clerk. Mr. Conrad?
2 Senator Conrad. No.
3 The Clerk. Mr. Bingaman?
4 Senator Bingaman. No.
5 The Clerk. Mr. Kerry?
6 The Chairman. No by proxy.
7 The Clerk. Mrs. Lincoln?
8 Senator Lincoln. No.
9 The Clerk. Mr. Wyden?
10 Senator Wyden. No.
11 The Clerk. Mr. Schumer?
12 The Chairman. No by proxy.
13 The Clerk. Ms. Stabenow?
14 Senator Stabenow. No.
15 The Clerk. Ms. Cantwell?
16 Senator Cantwell. No.
17 The Clerk. Mr. Nelson?
18 Senator Nelson. No.
19 The Clerk. Mr. Menendez?
20 Senator Menendez. No.
21 The Clerk. Mr. Carper?
22 Senator Carper. No.
23 The Clerk. Mr. Grassley?
24 Senator Grassley. Yes.
25 The Clerk. Mr. Hatch?

1 Senator Grassley. Aye by proxy.

2 The Clerk. Ms. Snowe?

3 Senator Grassley. No by proxy.

4 The Clerk. Mr. Kyl?

5 Senator Grassley. Aye by proxy.

6 The Clerk. Mr. Bunning?

7 Senator Grassley. Yes by proxy.

8 The Clerk. Mr. Crapo?

9 Senator Grassley. Yes by proxy.

10 The Clerk. Mr. Roberts?

11 Senator Roberts. Aye.

12 The Clerk. Mr. Ensign?

13 Senator Ensign. Aye.

14 The Clerk. Mr. Enzi?

15 Senator Grassley. Aye by proxy.

16 The Clerk. Mr. Cornyn?

17 Senator Cornyn. Aye.

18 The Clerk. Mr. Chairman?

19 The Chairman. No.

20 The Clerk will announce the vote.

21 The Clerk. Mr. Chairman, the tally is 9 ayes and
22 14 nays.

23 The Chairman. The nays have it. The amendment is
24 not agreed to.

25 I will now entertain a colloquy with Senator Lincoln

1 on the timber tax.

2 Senator Lincoln. Yes. Thank you, Mr. Chairman.

3 The Chairman. Is that the subject?

4 Senator Lincoln. That is it.

5 The Chairman. All right.

6 Senator Lincoln. Well, Mr. Chairman, I appreciate
7 your attention, and your staff has been wonderful to work
8 with. I did want to express my concern that the recovery
9 package does not extend the timber tax provisions that
10 were enacted in Sections 15311 and 15312 of the Farm Bill
11 and which are scheduled to expire on May of 2009 this
12 year. I, and others, have long advocated--and I want to
13 thank Senator Crapo, who I have worked with extensively
14 on this bill--the enactment of provisions that would
15 permanently reform the tax rules for timber income.

16 Given budget constraints, certainly in this bill, we
17 understand it is temporary. But as a part of the farm
18 bill, we establish the new rules for one year as the
19 first step. It is such an important provision for States
20 like mine. I visited with several of my timber
21 industries this past weekend while I was home in
22 Arkansas. It is so important that we do not allow these
23 provisions to lapse, otherwise our good work could be
24 undone in terms of the things that we have done, because
25 we will revert to the same situation as we were before in

1 which companies that harvest timber are subject to higher
2 tax rates simply because of their form of business
3 organization.

4 These are companies that have been hit by hard
5 times, whether it is by trade, or certainly now by a lack
6 of capital or the ability to access credit. These are
7 critical industries to my State, and I know to many of
8 yours. I just really hope that we can work on this to
9 try and bring some kind of an assurance to them, that at
10 least we can give them an extension until at least past
11 the middle of the year, because I am afraid we will not
12 do another tax bill before May. My hope is that you can
13 work with us on this.

14 The Chairman. Senator, I would tell you, I admire
15 your leadership on this. You, over the months with your
16 persuasive talent, have made me realize how important
17 this is. And you are right, it expires pretty quickly
18 under the Farm Bill provisions, and we will find a way to
19 extend it.

20 Senator Lincoln. Well, I really appreciate it, Mr.
21 Chairman. I promise and certainly pledge to work with
22 you and your staff to figure out a way that we can do
23 this. But the timber industry is critical to this
24 country, and I know it is certainly well represented on
25 this committee.

1 The Chairman. Thank you.

2 Senator Nelson?

3 Senator Nelson. Nelson amendment #1. I just want
4 to get it out on the table and work with you. You have
5 in your mark additional first-year depreciation on
6 property that is placed in service in this year, 2009.
7 Interestingly, under the tax regulations if it is a plant
8 or a vine that a farmer plants, it is not considered
9 placed in service until the crop is harvested. Well, of
10 course, the farmer can only control when they plant, for
11 example, the citrus tree.

12 You want to give bonus depreciation as an incentive
13 to go on and do these things. We have lost a lot of
14 trees. We just had a freeze. We have had canker, we
15 have had greening. It is time to plant these trees in
16 2009. That is a worthwhile activity. The bonus
17 depreciation that is provided in your mark would not
18 attach to that, to other crops, trees and vines, fruits
19 and nuts, and those kind of crops.

20 The Chairman. Well, that is interesting. I did
21 not know that. You learn something every day.

22 Senator Nelson. Yes, sir.

23 The Chairman. I appreciate you raising that,
24 Senator. There may be something I can do by the time we
25 get to the floor. Thank you very much.

1 Senator Grassley?

2 Senator Grassley. I have three. Two of them I am
3 going to discuss and withdraw, and the third one I will
4 want a vote on.

5 Number 14. Within the last year, our Nation has
6 experienced a housing market crisis, a credit freeze, and
7 a 30 to 40 percent drop in the stock market. This
8 economic volatility has wreaked havoc on the investments
9 of all Americans. This includes investments in tax-
10 favored savings vehicles such as 401(k)s and 529 college
11 savings plans.

12 One difference between 401(k) and 529s, however, is
13 that an owner of a 529 plan is limited in their ability
14 to change investment options under the plan. Since 2001,
15 529 plan owners were only able to change their investment
16 options once per year. The Treasury Department recently
17 issued guidance that allows owners to change investments
18 twice a year. Overly restricting 529 plan owners'
19 ability to change their investment option is not good
20 policy, especially in times of unprecedented market
21 volatility.

22 That is why I, together with Senator Schumer, am
23 offering an amendment to allow 529 plan owners to change
24 their investment options no more frequently than four
25 times a year. Detractors of this amendment may argue

1 that four times is too much, that 529 plan owners may
2 make the wrong choices and on one end of the spectrum
3 invest in overly-risky investments, and on the other end
4 invest in overly-conservative investments.

5 But tell that, would you, to 529 plan owners whose
6 kids are only two years away from college. These owners
7 saw their account balance drop significantly over the
8 past six months, even if they had a diversified
9 portfolio. In some cases, owners' account balances are
10 now less than their principal contributions.

11 So, Mr. Chairman, it is these owners that we are
12 trying to help. It is these owners that should have the
13 flexibility of changing their investment options more
14 than twice. Detractors may also argue that owners will
15 incur fees for changing their investment options and
16 these fees will eat into the owner's account balance. A
17 market decline decimates an owner's account balance,
18 changing their investments once, twice, or even four
19 times does not.

20 Finally, Mr. Chairman, detractors may argue that
21 allowing additional investment option changes will make
22 the 529 plan a tax shelter. If we were allowing a 529
23 plan owner to change their investments monthly or weekly
24 then I would agree, but that is not where our efforts are
25 directed.

1 Also, our staffs have put together what we call 529
2 tighteners, which is intended to prevent the use of a 529
3 plan as a tax shelter. In these financial dark times,
4 Congress needs to do everything it can to help out
5 struggling Americans. This includes helping these
6 struggling Americans adequately save for their kids'
7 college. That is number 14.

8 The Chairman. Right. And you are going to
9 withdraw it?

10 Senator Grassley. Withdraw. Nobody here wants to
11 discuss this with me? [Laughter.]

12 The Chairman. Well, it is already 7:00. What time
13 is it?

14 Senator Grassley. Then I withdraw it.

15 The Chairman. All right. Thank you.

16 Senator Conrad. Mr. Chairman?

17 The Chairman. Senator Conrad? Thank you.

18 Senator Grassley. I thought you looked brotherly.

19 Senator Conrad. You know, this is one of the best
20 ideas that has come before the committee all day. I
21 guess we are not going to get a chance to vote, which
22 means it is a really good idea.

23 Senator Grassley. I do not have to withdraw it.
24 [Laughter.]

25 The Chairman. Do not go.

1 Senator Conrad. It is such a good idea that maybe
2 we could come back to it.

3 The Chairman. That is right. Maybe we should
4 improve upon it.

5 Senator Grassley. All right.

6 My next amendment deals with a change to the
7 American Opportunity Tax Credit, #14.

8 The Chairman. All right. Amendment #14.

9 Senator Grassley. No, I am sorry. I withdrew that
10 one. Number 15.

11 The Chairman. Fifteen?

12 Senator Grassley. Yes.

13 The Chairman. Thank you.

14 Senator Grassley. I have long been an advocate of
15 helping Americans afford college through the Tax Code. I
16 successfully included a number of education tax measures
17 in the Economic Growth and Tax Relief Reconciliation Act
18 of 2001. These measures were enacted into law as part of
19 a bipartisan agreement. Now Americans can take an above-
20 the-line deduction for the cost of higher education
21 expenses. In addition, people with student loans have
22 greater flexibility when deducting student loan interest.

23 I have also promoted Section 29 qualified tuition
24 programs by repealing the sunset provisions Congress
25 imposed back in 2001. The other education tax provisions

1 we included in the 2001 bipartisan tax legislation should
2 also be made permanent.

3 But that debate has to be left to another day
4 because today I am here to build on the American
5 Opportunity Tax Credit that the Chairman has included in
6 his mark. I think most members of this committee will
7 agree that my amendment makes this proposal much better
8 this way: my amendment would ratably increase the tax
9 credit for middle income Americans. A lot has been said
10 about the middle class over the past six months.

11 A debate started during the presidential election
12 over "what is the middle class?" I am not here to rehash
13 that debate, nor am I here to define what I think the
14 middle class is. But I believe that if this committee
15 wants to help out low-income Americans through a
16 refundable tax credit, this committee should also help
17 out middle-income Americans in a similar way. That is
18 why my amendment increases the maximum tax credit of
19 \$2,500 to a maximum tax credit of \$3,250 for middle-
20 income Americans.

21 The amendment works like this. Taxpayers with
22 incomes of \$50,000 or less will be eligible for a \$2,500
23 tax credit. This \$2,500 credit would ratably increase by
24 \$750 for Americans with incomes in excess of \$50,000, but
25 no more than \$80,000. My amendment does not change the

1 refundable portion of the Chairman's mark, which provides
2 a maximum of a \$750 refundable tax credit. That is the
3 amendment, and I know everybody wants to discuss it so I
4 will just wait for response.

5 The Chairman. All right.

6 Senator Rockefeller. Mr. Chairman?

7 The Chairman. Senator Rockefeller?

8 Senator Rockefeller. President George W. Bush
9 signed into law, on the Higher Education Act, a very
10 interesting aspect of encouraging people to go to
11 college, and then the paying of it by the following.
12 That is, he agreed that if, upon graduation, those
13 students would agree to 10 years of something called
14 community service, which could be joining the military,
15 which could be working as a forest ranger, Vista, Peace
16 Corps, it is endless, hospitals, teaching, assistant
17 teaching, all kinds of things -- and 10 years is a long
18 time. The purpose of that is to show that they are
19 serious about it. But if they do that, all of their
20 college tuition, loans, obligations, debts, everything
21 else are forgiven. I just wanted my colleagues to be
22 aware of that, because it is law, signed by President
23 Bush. I am not sure that many people know about it.

24 Senator Grassley. I will withdraw that amendment
25 and go to 17. I want a vote on this. This is, Senator

1 Kerry, a job creation amendment but it creates jobs that
2 do not pay. Let me explain that. We have nonprofit
3 organizations --

4 The Chairman. What kind of job is that?

5 Senator Grassley. Well, just a minute. We have
6 nonprofit organizations that are saying it is very, very
7 difficult right now to get people to volunteer. We have
8 always had a mileage deduction for that, and that is what
9 my amendment deals with. This is amendment #17. The Tax
10 Code currently restricts a charity from reimbursing its
11 volunteer drivers more than 14 cents a mile because those
12 drivers have to pay taxes on any amount in excess of 14
13 cents per mile.

14 For those drivers who do not receive reimbursements
15 from a charity but may be able to take a deduction for
16 charitable miles driven, the Tax Code limits that
17 deduction and is also limited to 14 cents a mile. The
18 14-cent rate is fixed in the Tax Code and it has been,
19 for over 10 years, that way.

20 In contrast, IRS currently has the discretion to
21 adjust the reimbursement and deduction rates for miles
22 driven for business, medical, or moving purposes, but the
23 IRS has not had the discretion to set the rate for
24 charitable miles driven since 1984.

25 So even though the price of gas was steadily

1 increasing last year, the volunteer drivers continued to
2 receive the same low rate, while those driving for
3 business, medical, or moving purposes received the
4 benefits of the IRS adjustments. Charities in Iowa such
5 as Meals on Wheels, Big Brothers, Big Sisters saw a
6 noticeable decline in volunteers last year.

7 Since Iowa is a rural State where cities are far
8 apart, the volunteers often have to drive further than
9 their urban counterparts to fulfill their volunteer
10 commitments. While gas prices may be low now, these
11 charities are still facing a shortage of volunteers since
12 many of these volunteers are affected by the economic
13 crisis.

14 Unfreezing the charitable mileage rate allows those
15 charities who are on the front lines of the economic
16 crisis to provide some incentives to volunteers. My
17 staff informs me that while we have not received an
18 official score from Joint Tax yet, my staff informs me
19 that the 10-year score is expected to be about \$980
20 million, just the change left over from the \$87 billion
21 that is in the bill for FMAP.

22 I would like to point out that this amount, as a
23 percentage of an overall expected \$800 billion stimulus
24 package, is less than two-tenths of one percent. Giving
25 the IRS the discretion to change the charitable mileage

1 rate is a no-brainer from a tax policy perspective
2 because it has worked that way for business for a long,
3 long period of time. It works that way for those of us
4 in the Senate for our reimbursement.

5 The Giving Incentive to Volunteers Everywhere Act of
6 2009 was introduced in the Senate by Senator Cardin on
7 January 14 of this year, along with committee Senators
8 Schumer, Snowe, Ensign, Cantwell, and myself co-
9 sponsoring.

10 I understand that Senator Snowe, hopefully, will
11 support this amendment if it is un-offset. Given the
12 bipartisan support this provision has among committee
13 members, I urge support for this amendment, modified to
14 remove the requirement that it will be offset by a
15 reduction in spending or a tax outlay effect.

16 The Chairman. Senator, you have a good idea here.

17 There are a lot of other Senators who are going to offer
18 amendments that are also good ideas, some of them we have
19 incorporated in the mark and some of them we have not.
20 But we do want to work with them when we introduce the
21 manager's amendment on the floor. I would urge you to
22 not offer this amendment so that I can work with you.

23 I like your idea, frankly. I have a lot of people
24 who come to me from charitable organizations that have
25 made this point to me, and I think it is a very good

1 point. Probably, I think we may end up doing exactly
2 what you are suggesting here. The trouble is, I have
3 urged other Senators who have also other meritorious
4 amendments not to offer them at this point so we could
5 work out a way to accommodate them. So, I just would
6 hope that maybe you would not push for a vote.

7 Senator Grassley. Is that all right with Senator
8 Cantwell, Senator Ensign and Senator Snowe if we work
9 with him? Then we will work with you.

10 The Chairman. Thank you, Senator. You have a good
11 idea.

12 Senator Ensign. As long as he agrees to include
13 it, yes, absolutely fine.

14 The Chairman. Well --

15 Senator Grassley. I have been in his position too
16 for a while. I just think that we will get something
17 worked out.

18 The Chairman. Yes, we will. Because again, many
19 people have come to me and pointed out that it is not
20 fair. That is, charitable organizations just do not get
21 the mileage that they should get compared with others and
22 it is not fair.

23 Senator Grassley. This is a real jobs amendment,
24 so I am sure it will be included. [Laughter.]

25 The Chairman. Right. Thank you.

1 Senator Lincoln?

2 Senator Lincoln. Mr. Chairman, I would just like
3 to take a few seconds and talk about--I will not request
4 a vote--on Lincoln amendment #4, which I have worked with
5 my friend from Kansas, Senator Roberts, on. It is the
6 Renewable Production Tax Credit. As it is, it is not
7 currently allowed for electricity that is produced from
8 biomass that is used on-site, and it seems an odd policy
9 to me as any use of biomass electricity, whether it is
10 produced on-site or purchased from a utility, it has the
11 same positive impact of reducing fossil fuel consumption.

12 In fact, this committee has worked to address this
13 inequity in past legislation.

14 The energy bill we passed out of committee in
15 December of 2007 included the same fix, as is in this
16 amendment. So I just wanted to raise the issue to make
17 sure it does not get left behind when we move on to an
18 energy bill in the coming months. I want to say I
19 appreciate, and would like to continue to work with,
20 Senator Roberts, and also to continue to work with you,
21 Mr. Chairman, and your staff. We have done it before.
22 It makes good sense. However we can produce energy from
23 biomass, whether it is on-site or not, again, is a move
24 in the right direction and I hope that you will continue
25 to work with us.

1 The Chairman. Thank you, Senator. It is a
2 departure, because Section 45 was first electricity sold
3 on the grid, not on-site. But you make a good point. We
4 can work something out there. Thanks.

5 Senator Roberts. So we can work with you, Mr.
6 Chairman?

7 The Chairman. I am sorry?

8 Senator Roberts. So we can work with you on this,
9 Mr. Chairman?

10 The Chairman. Absolutely.

11 Are there further tax amendments?

12 Senator Grassley. I think we are done.

13 The Chairman. If not, we are through the tax
14 amendments. We will now move on to the health
15 provisions.

16 Let me go through them. I am just going to list the
17 health amendments I am aware of so that Senators can get
18 a sense of what we are dealing with tonight and plan
19 accordingly. Of course, Senators do not have to offer
20 all these, but here they are. I have Senator Grassley's
21 #37, which is no funds for expansions after July 23, then
22 Grassley 38, and Hatch 16 regarding COBRA, Enzi 11
23 regarding COBRA, Enzi 12 regarding COBRA, Grassley 25
24 also regarding COBRA, Roberts #5 to remove the cap on
25 health IT incentive payments for CAHs, Enzi 9, health IT,

1 Enzi 10, health IT, Grassley 36 regarding FMAP. Maybe
2 these are together, I do not know.

3 Senator Grassley. Some of mine are together.

4 The Chairman. All right. There is Cornyn 1 and
5 Hatch 26. These look like they are together, too. It is
6 Grassley #28 and Grassley 27, and then I have Grassley,
7 and the remainder are provider amendments en bloc. Okay.

8 Senator Grassley, you are recognized.

9 Senator Grassley. Yes. This first one, Mr.
10 Chairman, I am going to discuss and withdraw.

11 The Chairman. All right.

12 Senator Grassley. The mark before us proposes \$87
13 billion in funding to States for their Medicaid program.
14 Appropriately, the Chairman's mark prevents States from
15 getting the enhanced FMAP for expansion of eligibility.
16 The date for this policy is July 1, 2008.

17 The policy is right but the date is wrong. My
18 amendment changes that date to January 23, 2008. What is
19 unique about July 23 of last year, I have a letter that I
20 want to bring to my colleagues' attention. It is from
21 the National Governors Association to Senators Reid and
22 McConnell, Speaker Pelosi, and Minority Leader Boehner.

23 The letter is a request for \$12 billion in Federal
24 assistance. The letter requests Federal assistance
25 because of the effects of the slowing economy. The

1 letter is dated January 23, 2008, not 2009. We should
2 not be giving one additional dime to a State that
3 increased its eligibility after that date. This modest
4 step is the least we can do for the people back home who
5 expect Congress to be spending their money wisely. I am
6 not going to ask for a vote on this amendment, but I
7 could not resist making this point.

8 So I withdraw that amendment, unless somebody wants
9 to ask me some questions about it or the legitimacy of
10 it.

11 [No response.]

12 Senator Grassley. All right.

13 The Chairman. The amendment is withdrawn.

14 Senator Grassley. I call up, now, amendments 38
15 and 41 and debate them at the same time.

16 The mark before us proposed \$87 billion in funding
17 to States for Medicaid programs. States need some
18 assistance with their Medicaid spending, but I do not
19 believe anyone can argue that States need \$87 billion
20 over the next two years to pay for increased Medicaid
21 spending as a result of the recession. States are facing
22 deficits of as much as \$312 billion in the aggregate over
23 the next two years.

24 So let us not fool ourselves. The Chairman's mark
25 gives States money to help them fill their deficit. The

1 Chairman's mark gives States money to keep them from
2 looking to Medicaid cuts to help them fill their deficit.
3 The Chairman's mark specifically prevents States from
4 cutting back their Medicaid programs. We are giving
5 States \$87 billion and hoping that States do not take
6 actions that are contrary to economic growth.

7 Now, I used the word "hope" because we are not doing
8 enough in this bill to make sure that States do what is
9 best for the economy. The bill prevents Medicaid cuts,
10 but if we are giving \$87 billion and telling them not to
11 cut Medicaid, should we not also be telling them not to
12 raise their taxes?

13 My amendment prevents States from raising income,
14 personal property, or sales tax as a condition for
15 receipt of \$87 billion in Federal assistance. The people
16 back home expect us to spend their money wisely and allow
17 States to raise taxes after Congress hands them \$87
18 billion, and that is not wise use of their money.

19 My second amendment, #41, says States cannot raise
20 tuition if they take the increased FMAP money. Again,
21 why should we allow States to price kids out of school
22 without tuition increases? I urge the support of both of
23 my amendments.

24 The Chairman. Senator, are you asking for a vote,
25 or are you going to offer and withdraw? What is your

1 inclination?

2 Senator Grassley. No, I want a vote.

3 The Chairman. On both, or one? On each of them?

4 Senator Grassley. No, en bloc. No?

5 The Chairman. You want two separate votes?

6 Senator Grassley. Yes.

7 The Chairman. All right. Well, I would hope that
8 we do not adopt this amendment. I just do not think it
9 is fair to tie the hands of the States this way, to
10 prevent States or conditioning aid to States to keep low-
11 income people -- keeping health benefits, to condition
12 that on telling States you cannot raise your in-State,
13 you cannot increase your income taxes, property taxes, or
14 sales taxes. I am not for a tax increase, but I do not
15 think it is wise to tie the States' hands. That is their
16 decision. The same is true with respect to tuition.

17 So the first vote would be on, I guess, #38,
18 Grassley 38, with respect to States' certification that
19 it will not increase State income, property, or sales
20 taxes.

21 The Clerk will call the roll.

22 The Clerk. Mr. Rockefeller?

23 Senator Rockefeller. No.

24 The Clerk. Mr. Conrad?

25 Senator Conrad. No.

1 The Clerk. Mr. Bingaman?
2 Senator Bingaman. No.
3 The Clerk. Mr. Kerry?
4 The Chairman. No by proxy.
5 The Clerk. Mrs. Lincoln?
6 Senator Lincoln. No.
7 The Clerk. Mr. Wyden?
8 Senator Wyden. No.
9 The Clerk. Mr. Schumer?
10 The Chairman. No by proxy.
11 The Clerk. Ms. Stabenow?
12 Senator Stabenow. No.
13 The Clerk. Ms. Cantwell?
14 Senator Cantwell. No.
15 The Clerk. Mr. Nelson?
16 Senator Nelson. No.
17 The Clerk. Mr. Menendez?
18 Senator Menendez. No.
19 The Clerk. Mr. Carper?
20 Senator Carper. No.
21 The Clerk. Mr. Grassley?
22 Senator Grassley. Aye.
23 The Clerk. Mr. Hatch?
24 Senator Hatch. Aye.
25 The Clerk. Ms. Snowe?

1 Senator Grassley. No by proxy.
2 The Clerk. Mr. Kyl?
3 Senator Grassley. Aye by proxy.
4 The Clerk. Mr. Bunning?
5 Senator Grassley. Aye by proxy.
6 The Clerk. Mr. Crapo?
7 Senator Crapo. Aye.
8 The Clerk. Mr. Roberts?
9 Senator Roberts. Aye.
10 The Clerk. Mr. Ensign?
11 Senator Ensign. No.
12 The Clerk. Mr. Enzi?
13 Senator Enzi. Aye.
14 The Clerk. Mr. Cornyn?
15 Senator Grassley. No by proxy.
16 The Clerk. Mr. Chairman?
17 The Chairman. No.
18 The Clerk will announce the results of the vote.
19 The Clerk. Mr. Chairman, the tally is 7 ayes and
20 16 nays.
21 The Chairman. The nays have it. The amendment is
22 not agreed to.
23 We will now have a roll call vote on Grassley #38.
24 Excuse me, I am wrong. It is #41. We just voted on 38.
25 The vote now is on Grassley #41.

1 The Clerk. Mr. Rockefeller?
2 Senator Rockefeller. Let me look at it.
3 The Clerk. Mr. Conrad?
4 Senator Conrad. No.
5 The Clerk. Mr. Bingaman?
6 Senator Bingaman. No.
7 The Clerk. Mr. Kerry?
8 The Chairman. No by proxy.
9 The Clerk. Mrs. Lincoln?
10 Senator Lincoln. No.
11 The Clerk. Mr. Wyden?
12 Senator Wyden. No.
13 The Clerk. Mr. Schumer?
14 The Chairman. No by proxy.
15 The Clerk. Ms. Stabenow?
16 Senator Stabenow. No.
17 The Clerk. Ms. Cantwell?
18 Senator Cantwell. No.
19 The Clerk. Mr. Nelson?
20 Senator Nelson. No.
21 The Clerk. Mr. Menendez?
22 Senator Menendez. No.
23 The Clerk. Mr. Carper?
24 Senator Carper. No.
25 The Clerk. Mr. Grassley?

1 Senator Grassley. Aye.
2 The Clerk. Mr. Hatch?
3 Senator Hatch. Aye.
4 The Clerk. Ms. Snowe?
5 Senator Grassley. No by proxy.
6 The Clerk. Mr. Kyl?
7 Senator Grassley. Aye by proxy.
8 The Clerk. Mr. Bunning?
9 Senator Grassley. Aye by proxy.
10 The Clerk. Mr. Crapo?
11 Senator Crapo. Aye.
12 The Clerk. Mr. Roberts?
13 Senator Roberts. [No response.]
14 The Clerk. Mr. Ensign?
15 Senator Ensign. No.
16 The Clerk. Mr. Enzi?
17 Senator Enzi. Aye.
18 The Clerk. Mr. Cornyn?
19 Senator Grassley. No by proxy.
20 The Clerk. Mr. Chairman?
21 The Chairman. No.
22 The Clerk will announce the vote.
23 Senator Roberts. Mr. Chairman, I would like to be
24 recorded as voting "no".
25 The Chairman. I am sorry. Senator Rockefeller?

1 Senator Rockefeller. No.

2 Senator Roberts. I am sorry.

3 The Clerk. And Mr. Roberts?

4 Senator Roberts. I would like to be recorded as
5 voting "no".

6 The Chairman. Senator Snowe?

7 Senator Snowe. No.

8 The Chairman. The Clerk will announce the result.

9 The Clerk. Mr. Chairman, the final tally is 6 ayes
10 and 17 nays.

11 The Chairman. The nays have it. The amendment is
12 not agreed to.

13 We could recognize Senator Hatch next. There are
14 also some Democratic members who wished to also be
15 recognized, and I wonder who wants to go first, either
16 you, Senator Hatch, and then we can do Senator Bingaman.

17 Is that all right with you? All right. Senator Hatch,
18 you are next.

19 Senator Hatch. All right. Well, I would call up
20 amendment #26. This amendment requires all States that
21 receive the Medicaid FMAP bail-out to submit a financial
22 stability plan to HHS and Congress detailing the specific
23 steps the State will take in order to avoid needing
24 another Medicaid bail-out in the future.

25 This is similar to the requirement that many propose

1 placing on the automobile industry or the automotive
2 industry. If it is a good idea to require the automobile
3 industry to submit a financial stability plan before they
4 receive a Federal loan, then why should the States not be
5 required to do the same?

6 In 2003, Congress passed a similar, albeit far less
7 mammoth, increase in the FMAP due to a recession. When
8 Congress was asked to consider this increase we were told
9 it would be one time and temporary. We are back where we
10 started. Medicaid provides care to over 46 million
11 children, parents, pregnant women, disabled, seniors, and
12 even some childless adults. It also increasingly
13 provides long-term care services to middle class
14 Americans.

15 The Centers for Medicare and Medicaid Services
16 estimate that Medicaid spending will increase by nearly
17 \$5 trillion, approximately 7.9 percent annually. So this
18 bill spends close to \$100 billion on the Medicaid program
19 and does not hold States accountable for a single penny.
20 If financial accountability is good enough for the auto
21 industry it should be good enough for the State Medicaid
22 programs, and I hope that my colleagues will support this
23 amendment.

24 The Chairman. All right. Is there further
25 discussion on this amendment?

1 Senator Hatch. Can I also add that I am offering
2 this on behalf of Senator Cornyn and myself?

3 The Chairman. All right. This amendment is also
4 offered on behalf of Senator Cornyn. This is Hatch 26,
5 is that correct?

6 Senator Hatch. Right.

7 The Chairman. All right. Is there any further
8 debate?

9 [No response.]

10 The Chairman. If not, the question is on the
11 amendment. All those in favor say aye.

12 [A chorus of Ayes.]

13 The Chairman. Those opposed, no.

14 [A chorus of Nays.]

15 The Chairman. In the opinion of the Chair the nays
16 have it. The amendment is not agreed to.

17 Next amendment. Senator Bingaman, do you have a
18 colloquy, discussion, or compromise, and so forth?

19 Senator Bingaman. Yes, Mr. Chairman. I have two
20 amendments. I think one of them is non-controversial.
21 The other is the one that I think you are referring to
22 that we may have come to an accommodation on.

23 The first I would like to call up is my amendment #4
24 related to the disproportionate share hospital payments.
25 These Medicaid DSH payments have become one of the most

1 important sources of financing for the Nation's health
2 care safety net. Currently, the DSH caps were
3 arbitrarily set at the size of the State's DSH program in
4 1991. We recognized this as a problem in 2003. We
5 passed the Medicaid Modernization Act, and at that time
6 we made provision for the low DSH States to begin to
7 increase to bring a little more equity to the program.

8 Even now the program is way out of whack, but at
9 least we are moving in the right direction.

10 Unfortunately, the provisions that we enacted in
11 2003 expired three months ago in September, and I am just
12 trying to reinstate them as part of this amendment. As
13 far as I know, this should not be controversial. I do
14 not think any State is hurt by this. It allows the
15 States that have very little leeway, very low caps with
16 regard to their DSH payments to see those rise. It is
17 money that comes out of their overall Medicaid program,
18 so it is not cost.

19 The Chairman. Senator, are you addressing a DSH
20 provision that expired?

21 Senator Bingaman. Yes. It is a provision that
22 expired in September and I am just trying to go ahead and
23 reinstate it.

24 The Chairman. I think we can accept it. I urge
25 the committee to accept the amendment. Without

1 objection, the amendment is accepted.

2 [No response.]

3 Senator Bingaman. Thank you, Mr. Chairman.

4 Let me talk about the other amendment which is more
5 controversial. Let me pass out--maybe you have copies of
6 this--a chart that I have prepared to explain my concern
7 on this next item. I think quite a few members are aware
8 that I have been concerned that the mark does not
9 contemplate the increased FMAP funding going to States on
10 the basis of the formula that applies to current FMAP
11 funding.

12 At the current time, FMAP funds essentially are
13 allocated to States based on the States' per capita
14 income. The States with lowest per capita income get
15 higher portions, the States with higher per capita income
16 get lower portions. In the past when we have increased
17 the FMAP funding, we have done it across the board. It
18 seemed to me that that was the fair way to do it, to take
19 the formula that we currently have in the law and add the
20 funds to it, whatever funding we are going to add.

21 The mark does not do that. The mark contemplates
22 about 60 percent of the new FMAP money would be allocated
23 across the board, but the rest would be allocated on a
24 bonus basis, or tiered basis, as it is described. I have
25 planned to offer an amendment to go across the board. I

1 have talked to the Chairman and he has dissuaded me from
2 doing that and urged that I accept going to an 80 percent
3 across-the-board payment with 20 percent being still
4 subject to this bonus system. So, I am agreeable to
5 that.

6 I do want to talk about one other aspect of it, but
7 perhaps we should have a colloquy on that issue of the
8 80/20 split rather than the 60/40 split first, and then
9 let me talk about this chart that I passed out.

10 The Chairman. Thank you, Senator. This is
11 obviously a matter that triggers strong feelings on both
12 sides and there has been a lot of discussion on what the
13 proper allocation should be. The House adopts a certain
14 approach of 50 percent for the across-the-board, 50
15 percent tiered. It affects different States differently,
16 obviously. We--you and I--and most all Senators on the
17 committee have been working to try to find the right
18 balance, what is fair here, because States are treated
19 very differently depending upon which formula is used.

20 It is my thought that we could begin to assault this
21 by incorporating the amendment on the floor, in the mark,
22 the 80/20 allocation which you have referred to,
23 recognizing that there will be plenty of opportunities to
24 further address this issue on the floor, and probably
25 most clearly in conference. The House, as I mentioned,

1 has a certain view which is close to the view of some
2 members of this committee, but other members of this
3 committee are very much opposed to that approach.

4 So it is my thought that the 80/20 that you were
5 suggesting is a good way to get the ball rolling here.
6 It is a good beginning, recognizing that is not where we
7 are going to end up. But I pledge to you my full
8 appreciation of the two approaches. Some Senators have
9 been very, very firm with me in saying they want one as
10 opposed to the other, and vice versa, but it is my
11 judgment that we could start with 80/20 on the floor and
12 we could take it from there and find a solution that ends
13 up balanced, and a compromise certainly by the time we
14 come out of conference.

15 Senator Stabenow?

16 Senator Stabenow. Thank you, Mr. Chairman. I find
17 myself in, I think, the extremely unusual situation of
18 disagreeing with my good friend from New Mexico. I think
19 that is a rare occasion. But obviously I come from a
20 very different State and I have co-sponsored Senator
21 Rockefeller's amendment to develop a counter-cyclical
22 Medicaid relief system. I believe Medicaid should be
23 more responsive to State economic realities, but I also
24 understand that there are multiple interests here.

25 I do want to go on record as supporting the

1 Chairman's mark and not supporting, at this point, the
2 compromise because I believe the Chairman's mark was a
3 reasonable way to go, with the majority of funds going
4 across the board, but at the same time recognizing States
5 with extremely high unemployment and the needs that come
6 with that.

7 Last month in Michigan we added 25,000 new cases to
8 the already 1.2 million people on Medicaid.
9 Unfortunately, our 10.6 unemployment is estimated to be
10 at 12 percent by March. Unfortunately, too many States
11 are now coming to double digits, as Michigan has. I
12 think we are talking about people getting health care.
13 There are situations now with States with very serious
14 challenges as it relates to providing families and low-
15 income seniors with health care. So, just for the
16 record, Mr. Chairman.

17 The Chairman. Thank you. Thank you, Senator.
18 Other Senators?

19 Senator Menendez. Mr. Chairman?

20 The Chairman. Senator Menendez?

21 Senator Menendez. Thank you, Mr. Chairman. Mr.
22 Chairman, I find myself in the similar position as
23 Senator Stabenow. I have been relatively quiet
24 throughout this whole mark-up, but this is one issue that
25 is of great consequence. First of all, I have no idea,

1 unlike the Chairman's mark where there was a chart, what
2 an 80/20 split means. So I am being asked to accept
3 something without knowing what the consequence is to my
4 State, and that is a little difficult under these
5 circumstances.

6 Second, clearly the Chairman tried to strike a
7 balance in his mark far different than the House, which
8 had, I believe, a 50/50 split. So the Chairman decided
9 to give the majority of the money across the board, but
10 still recognized that there are States with very
11 significant unemployment challenges, and because of those
12 unemployment challenges, very significant Medicaid
13 impacts. Hence, I thought you struck the right balance.

14 The higher a State's unemployment, the more people
15 that are going to qualify for Medicaid and the less
16 revenue a State has to pay for increases in the Medicaid
17 rolls. So increases in unemployment, the measure used to
18 target the FMAP assistance is, in my view, the best way
19 to measure the level of need for this type of assistance.

20 I think a recent GAO letter points out that it is
21 more efficient as well when we are talking about the
22 efficiency of this whole stimulus package, to target
23 funding to States with greater need, and that larger
24 amounts of funding are needed to get the same effect if
25 an across-the-board approach is used.

1 Also, spending more funds to States with greater
2 need provides greater assurances that funding will be
3 spent on the health care needs of low-income households
4 and the newly unemployed, since such States have the
5 greater need within their Medicaid programs.

6 Finally, States with greater unemployment increases
7 and higher levels of need are also likely to spend
8 available funding sooner, providing a more immediate
9 stimulus to the economy. If States with higher levels of
10 needs get a smaller portion of their need filled by
11 Federal funding, they would be forced to make larger
12 budget cuts and/or more tax increases to meet their
13 balanced budget requirements.

14 So, Mr. Chairman, for those reasons I understand my
15 distinguished colleague from New Mexico's view, but for
16 us this is very difficult to accept.

17 The Chairman. I know, Senator, you are in a very
18 difficult spot and I appreciate the spot you are in. I
19 am just wondering, either you, Senator Bingaman, or Mr.
20 Schwartz, explain this chart, this table. It is pretty
21 complicated.

22 Senator Bingaman. I am glad to explain it as best
23 I can.

24 The Chairman. All right.

25 Senator Bingaman. This chart goes to another

1 defect and unfairness both in the mark and in the House-
2 passed provision. Basically what it says is, this is the
3 detail of how they calculate the so-called bonus. First
4 of all, I have always thought that a bonus was something
5 you got in addition to what you were otherwise getting.
6 Here, they define the bonus as a 5 percent reduction in
7 State share, and bonus B is a 10 percent reduction in
8 State share, and a bonus C is a 13 percent reduction in
9 State share.

10 You may wonder, why are we doing that? Why are they
11 defining it as a reduction in State share? Well, it
12 turns out that when you apply that reduction in State
13 share to a so-called wealthy State, that is, a State that
14 has a low FMAP ratio, you get a much higher increase in
15 the Federal share by doing so than you would if you
16 applied that reduction in State share to a poorer State
17 like my State.

18 So this chart tries to point out the difference in
19 treatment so that being entitled to a bonus A if you are
20 in a wealthy State gives you a 2.5 percent FMAP increase.
21 Being entitled to a bonus A in a poor State like mine
22 gives you a 1.5 percent FMAP increase.

23 This is a concern I have, Mr. Chairman. At your
24 request I am not proposing a change in that right now,
25 but I want to see if I can persuade you and other members

1 of the committee to change this between now and the
2 floor. If we get to the floor and do not have agreement
3 to change this, I expect to offer an amendment there to
4 eliminate this unfair --

5 The Chairman. I appreciate that. I appreciate
6 your explanation. It is more clear now.

7 Mr. Schwartz, do you know where this approach, that
8 is a reduction in State share, comes from?

9 Mr. Schwartz. That is correct. That is the
10 approach that the mark contemplates, very similar to what
11 the House bill does. It is a bonus, as Senator Bingaman
12 described, that comes on top of the 5.6 across-the-board
13 increase that applies to all States. Then the A, B, C
14 listed here is dependent on the level of increase by
15 percentage point in unemployment. As the chart shows, it
16 reads "a reduction in State share", which is translated
17 into a percentage point change in FMAP. That is how it
18 would be calculated, but the language in the mark does
19 say "reduction in State share".

20 Senator Schumer. Mr. Chairman?

21 The Chairman. Senator Schumer?

22 Senator Schumer. Yes. I have a few questions
23 before I comment. So right now what is being proposed is
24 not a change in the formula, but just a change in the
25 percentage, from 60/40 to 80/20, with the exact same

1 formula?

2 Mr. Schwartz. I believe that is correct, sir.

3 Senator Schumer. Is that correct?

4 Mr. Schwartz. Yes.

5 Senator Schumer. All right.

6 Second, the reason that the wealthy States get a
7 greater increase or a lesser decrease is because their
8 costs are higher. It costs more to get space in a
9 wealthy State, whether it is square footage for a
10 hospital, to pay a nurse. All of these things are more
11 expensive.

12 What this is supposed to do, as I understand it, is
13 if your State has a huge number of new people on
14 Medicaid, like mine -- if you look at the layoffs in the
15 chart today, the two highest were New York companies
16 because they were financial companies; 50,000, I think,
17 in Citigroup and 35,000--I do not remember the exact
18 numbers--in another. It costs. Every time we put
19 somebody on Medicaid it costs us more.

20 It is just unfair to say, if it costs, in New
21 Mexico--and I am just making this up--\$150 a day to put
22 somebody in a certain bed, and it costs in New York \$250
23 a day to put somebody in a bed, that New York and New
24 Mexico ought to get reimbursed exactly the same way. We
25 wealthy States already get a lower Federal share of

1 Medicaid. In New York, we get 50 percent. Many States
2 that are poorer get a higher percent.

3 I just have to tell you, Mr. Chairman, I feel very
4 strongly about this. We do not do across-the-board in
5 any other part of this bill because we are trying to
6 match the need. So, for instance, we did a load of
7 energy tax cuts. I am all for them. They are good for
8 America. My State is going to get almost none of that.
9 We do not make solar panels, we do not make wind, we have
10 a lot of hydro power which is already there.

11 If I were to propose that all the energy tax cuts be
12 distributed on an across-the-board basis, a lot of my
13 colleagues from more energy-intensive States where they
14 have more of these industries would say that is silly,
15 stupid. But when it comes to the one thing that in
16 States like Michigan, New Jersey, or New York, which are
17 high-cost States where health care costs us more, where
18 the original Medicaid formula discriminates against us to
19 begin with, at least in our opinion, and now we are
20 supposed to deal with the new burdens on the States, not
21 rectify other injustices, we are saying across the board.

22 My view? I would rather see the whole thing be a
23 formula, myself, because I think that fits the needs the
24 greatest. At least 50/50. Then the Chairman--and I know
25 how difficult this is for you, Mr. Chairman. You have

1 tried to be very fair--goes to 60/40 and all of a sudden
2 we are going to 80/20.

3 Now we are told if we do not get changes we will go
4 to the floor and say it does not matter that the costs
5 are more expensive in New York, New Jersey or Michigan,
6 we want to get the poorer States that costs them less the
7 same amount of increase. I do not think that is fair. I
8 do not think this change is fair. I do not think this is
9 how we have run the rest of the whole bill, which is a
10 very good bill and I am very supportive of it. Somehow,
11 because frankly on this committee the larger, wealthier
12 States are a minority, a greater minority than they are
13 in the Senate, and certainly a greater minority than they
14 are in the House, we get hurt.

15 But I am making a plea for fairness here. I am
16 making a plea for what is right. I am making a plea that
17 someone who loses his or her job in New York needs
18 Medicaid every bit as badly, on an equal basis as
19 somebody who loses his or her job in New Mexico, but it
20 is going to cost somebody more to put them on Medicaid,
21 whether it is the Federal Government or the State
22 government. So I would hope we would stick to the
23 original.

24 I understand the Chairman is trying his best, but
25 80/20? Gee whiz. I mean, 60/40 was not to many of our

1 likings, but it really slants the thing against the one
2 thing in this bill that takes something into account of
3 States like ours which have huge job losses, high costs,
4 and are not very energy-intensive in either production or
5 consumption in any way.

6 The Chairman. Senator Conrad?

7 Senator Schumer. So I hope we would not put this
8 compromise in, but I know the Chairman is trying his best
9 to balance the needs.

10 The Chairman. Senator Conrad?

11 Senator Conrad. Mr. Chairman, I think this is one
12 of those cases where fairness is in the eye of the
13 beholder. I would say to my dear friend from New York,
14 when we confront Medicare formulas, here is how it works.
15 Mercy Hospital in Devil's Lake, North Dakota gets X
16 amount to treat various disease states. Our Lady of
17 Mercy Hospital in New York City gets twice as much. We
18 do not get any rural discount when we go to buy
19 technology.

20 They do not say to us, you are going to buy an MRI,
21 or you are going to buy some other technology and we know
22 you only get half as much, so we are going to give you a
23 50 percent discount. We do not get any rural discount
24 when we go to hire a doctor or a nurse. In fact, MedPAC
25 will tell you it takes more money to attract a doctor or

1 a nurse to our States than to east or west coast States.

2 Senator Schumer. That is not true.

3 Senator Conrad. Absolutely, it is true. It takes
4 more money to attract -- this is MedPAC's analysis. It
5 takes more money to attract a doctor to a --

6 Senator Schumer. Would my friend yield?

7 Senator Conrad. No. I want to complete my
8 thought. I listened to your argument.

9 Senator Schumer. All right.

10 Senator Conrad. I want to make mine. It costs
11 more money. I will tell you, my hospitals are going
12 right down the drain because they are getting half as
13 much money as the more urban States in this country. I
14 will tell you, you want to see passion on an issue, come
15 to my State and see hospitals -- 10 percent of the
16 hospitals in my State are on the brink of failure because
17 they are getting half as much and they get no rural
18 discount.

19 Now we go to Medicaid. The differences in cost are
20 supposed to be reflected in the underlying formula. Now
21 we come along and are going to make an adjustment which
22 needs to be done, and your State and others like yours
23 are going to get the lion's share, and I do not argue
24 with that because you have a bigger problem, without
25 question.

1 But I have got to tell you, to ask some of us to
2 vote for something that disadvantages our States, even
3 80/20 disadvantages our State, and it certainly does when
4 we have got a formula that is a bonus. Let us think
5 about this. A bonus. And here is how it works. A bonus
6 is accorded based on a 5 percent reduction in the State's
7 share. Who ever heard of a bonus that is passed out by
8 reducing something? I mean, we know what is afoot here.
9 I mean, we can read the results.

10 Now, I am not going home and telling the people that
11 I represent that I was asleep at the switch and I agreed
12 to a deal that gives a bonus based on a reduction in what
13 you get. Not my State. It is not going to be probably
14 in any of these tiers, certainly not the first year. We
15 are not going to be in any of these tiers.

16 So, boy, I will tell you, I hear the argument on
17 fairness. I wish you could come to my State and go town
18 to town with me. I just did 50 community forums and at
19 every single one--every single one--the hospital
20 administrator came and said, we are getting killed on the
21 formulas that are in place and it is not fair.

22 Senator Schumer. Mr. Chairman?

23 The Chairman. Before I go any further, let us get
24 the facts. Mr. Schwartz, could you just clarify a little
25 bit here as to what the facts are?

1 Mr. Schwartz. I would be happy to, Mr. Chairman.
2 The phrasing "reduction in State share" does not mean
3 that States lose any money. That is absolutely not the
4 case. It simply means that whatever percentage remains
5 after the 5.6 is applied, so in the example of a 50/50
6 State, you would be down at 44.4. It is that number that
7 gets reduced by either the 5 percent, the 10 percent, or
8 the 13 percent. So it is phrased as "reduction in State
9 share", but it does not mean States get --

10 Senator Conrad. Is that how it is calculated?

11 Mr. Schwartz. I am sorry?

12 Senator Conrad. That is precisely how it is
13 calculated. A bonus is calculated based on a reduction,
14 not in the Federal share. This is the Federal
15 Government. It is based on the State share. We know
16 exactly what the result of it is. We know exactly what
17 the result is.

18 Mr. Schwartz. So the flip-side of that is shown in
19 the larger boxes at the bottom of Senator Bingaman's
20 chart, that if we hypothetically reduced 44.4 percent
21 State share, further reduced it by that 10 percent, that
22 would mean States were obligated to pay 4.4 percent less
23 and the Federal Government was obligated to pay 4.4
24 percent more. So the sort of inverse of the statement is
25 true. If there is a reduction in a State share, there is

1 an equal increase in the Federal share.

2 The Chairman. Senator Grassley?

3 Senator Grassley. Well, I cannot say it any better
4 than Senator Conrad did, but I want to encourage Senator
5 Bingaman to move ahead. I think several people on my
6 side of the aisle would be glad to help him.

7 The Chairman. Well, are there other Senators who
8 wish to speak? Senator Lincoln?

9 Senator Lincoln. Mr. Chairman, just briefly. To
10 Senator Schumer's comment, we have done it before. In
11 2003, this is exactly how we did it, was across the
12 board, because it was simple, it pays out quickly. This
13 is what we are talking about in this bill, is something
14 that is going to move quickly, be timely, targeted, and
15 all of those things. So I think it is important to
16 remember that it does simplify things by doing it across
17 the board.

18 But to the point of the different States, the
19 majority of my hospitals in Arkansas are high Medicaid
20 hospitals. I may not be experiencing the level of
21 unemployment you are yet, but if you want to come
22 experience high Medicaid, I am in one of the top three
23 poorest States in the country. So my Medicaid rolls are
24 phenomenal, and being able to cover those individuals in
25 a State where we are expected to have a budget shortfall

1 next year, to put us in a less competitive State or in
2 terms of those Medicaid dollars, I just think it is very,
3 very difficult for us to see happen. I think that is
4 what we are trying to express, when at least 35 States do
5 better under an across-the-board proposal.

6 We know that 45 States are experiencing or facing
7 budget shortfalls. So it is not that we want more or we
8 are afraid to take less. We just want to defend our
9 States for what we know they are going to need, because
10 we have lived it. We have lived with these high Medicaid
11 hospitals and with these low incomes.

12 I would just say that, as we move forward, also
13 remember that all of your unemployed are not necessarily
14 going to go on Medicaid. That is the reason we provided
15 COBRA in this bill and initiatives in those respects,
16 particularly from wealthier States. You are more likely,
17 or at least a good part of that population is more
18 likely, to use COBRA.

19 So I think as we move forward, we just want to look
20 and make sure that States like ours that have been
21 traditional poor, who have been traditional high
22 Medicaid, and who know we are going to see an even worse
23 time down the road because we are still reeling from the
24 last economic downturn, that our States and our ability
25 to serve those individuals, again, the Medicaid

1 population and the poverty population that we continue to
2 have. We understand that unemployment has hit you harder
3 perhaps, but we have been living with poverty for a long
4 time. Being able to make sure that we can care for those
5 people is critically important.

6 Thank you, Mr. Chairman.

7 The Chairman. Senator Rockefeller? Oh, excuse me.

8 Senator Nelson. I would recognize him, first.

9 Senator Nelson. Senator Bingaman, you keep
10 referring to a chart and I do not think we have copies of
11 the chart down here.

12 Senator Bingaman. Well, I passed it out. I
13 apologize.

14 The Chairman. It went this way, not that way.

15 Senator Nelson. All right. Thanks.

16 What I would say is, the House took a position which
17 was 60 percent of the funds were going to be bonus.

18 The Chairman. It is 50/50.

19 Senator Nelson. 50/50. All right. The Chairman
20 has tried to strike a balance. Now, you all are going to
21 put the Chairman in a difficult position. Each of us
22 could vote selfishly the interests of our State. Is this
23 a way to unravel the whole bill? I would just say, is
24 there not the possibility of collegiality here as we move
25 on to the floor?

1 The Chairman. That would certainly be my hope,
2 Senator.

3 Senator Rockefeller?

4 Senator Rockefeller. Quite a long time ago, GAO
5 actually, as far as I know, had no real approach to how
6 to react to this. I think I, in 2003, asked GAO to do a
7 study on how States should be treated with respect to
8 unemployment, Medicaid, et cetera. They came out with
9 their report. So they did not have a position, really,
10 before that. It was not across the board, or it was not
11 multi-tiered, or anything of that sort. But they came
12 out with their report in 2006, and in that report they
13 came down rather heavily on the side of being sensitive
14 to those States that had particular unemployment
15 problems.

16 I have to say, having listened to -- I am not sure.

17 I guess it was you, Blanche. This business of -- I am
18 very well acquainted with all the hospital people in New
19 York, and that goes back to the Pepper Commission. But
20 the cost of health care, the cost of keeping, when you
21 are surrounded by five States, as we are in West
22 Virginia, all of whom are substantially better off than
23 we are, of keeping a teacher, of keeping a doctor in a
24 rural setting when he or she is being offered \$10,000,
25 \$15,000 more to go to Virginia, we cannot fight that. We

1 lose that every single time because they, too, have
2 children. Nothing to be angry about, but they have their
3 own responsibilities.

4 So it is a very ticklish problem. It seems to me,
5 at the root of the American value system is adjusting
6 inputs into areas based upon their need for those inputs
7 as opposed to grand formulas which were not thought about
8 carefully until more recently. So, I would oppose this.

9 Senator Menendez. Mr. Chairman?

10 The Chairman. Senator Menendez?

11 Senator Menendez. Mr. Chairman, very briefly.
12 Fairness is in the eye of the beholder. For many of us
13 who supported, for example, a multi-billion agricultural
14 bill, largely not realizing any of it in our States, we
15 understood that it was right for America. I am sure that
16 I could have--and I did--have tons of people who said to
17 me, well, what does that do for New Jersey? But it was
18 right for America. It ultimately met some national
19 goals. In this case, the reality is, the only reason the
20 bonus kicks in is because we have higher unemployment
21 rates. We would willingly, happily give that reality to
22 others. We would love not to be in the position of
23 having higher unemployment rates than some of our sister
24 States, but the reality is we have it.

25 In terms of poverty, I appreciate that as well. But

1 I welcome you to come to Camden, I welcome you to come to
2 Newark, some of the highest poverty rates in the country.
3 So the reality is that the happenstance of where you live
4 simply does not dictate the reality that, in fact, things
5 will all be treated the same. The happenstance of where
6 you live very often makes differences in the consequences
7 in which whatever we want to accomplish for any one of
8 our citizens has a disproportionate effect. That is what
9 this FMAP is a result of.

10 The Chairman. Is there any further debate?

11 Senator Conrad. Mr. Chairman?

12 The Chairman. Yes, Senator Conrad?

13 Senator Conrad. Mr. Chairman, just briefly. I
14 have heard the Farm Bill argument made over and over.
15 Sixty-six percent of the Farm Bill was for nutrition that
16 went into every district in this country, goes
17 disproportionately to the districts that have the very
18 economic problems the gentleman talks about. Now, this
19 is not a re-do of the Farm Bill debate. This is a
20 question on the merits of this legislation. Unemployment
21 is one measure. I will tell you another measure of what
22 is happening in a State: out-migration, population loss.
23 My State would be in the top two in the country. There
24 is no measure in any of these things on that metric.

25 But I will tell you, you want to talk about

1 hardship? Come to Ft. Yates, North Dakota. Come to Ft.
2 Berthold, North Dakota. Come to Standing Rock, North
3 Dakota. Those are three of the highest poverty counties
4 in the entire country. They are in my State. I will bet
5 no member has been there, other than Senator Inouye,
6 Senator Dorgan, and myself.

7 So I tell you, this thing where they have got this
8 little kicker, not only 50/50, but then for the 50
9 percent to be determined not based on the Federal portion
10 but that the bonus is applied based on a reduction in
11 State share that gives another disproportionate result,
12 this we will have a chance to vote on and we will see
13 where the interests lie. Because as I look at this
14 legislation, in the top 10 States, in the increase in
15 Federal Medicaid spending, 10 States get 60 percent of
16 the increase, the bottom 10 get 2.5 percent of the
17 increase. We want to talk about fairness? We will have
18 a very good debate on the floor of the Senate about where
19 fairness lies. Ten States get 60 percent of \$87 billion.
20 The bottom 10 States get 2.5 percent.

21 Senator Schumer. Kent, what is the population? It
22 is not the number of the State, it is the population.
23 How big is the population in those 10?

24 Senator Conrad. No, no, no, no, no. No, no, no.
25 That is a combination of the effect of --

1 The Chairman. We have had very healthy debate
2 here. I am now ready to go for a vote.

3 Yes, Senator Carper?

4 Senator Carper. Mr. Chairman, I think the last
5 time I sat in on a debate as robust as this one was on a
6 funding formula, a fight that was in Homeland Security,
7 Government Affairs. You all may recall the debate we had
8 on the allocation of grants there to different parts of
9 the country.

10 It is interesting in that debate. Almost without
11 exception, people ended up taking a position--and they
12 argued fairness--that inured to the benefit of their
13 respective State. Delaware has been pretty fortunate in
14 terms of the strength of our economy in recent years, so
15 I do not know if I can be totally objective about this.

16 But I ask us to think of this. If somebody comes
17 from a State where the unemployment rate is, say, 3.9
18 percent versus another State where the unemployment rate
19 is, say, 8.9 percent, just sort of basic fairness would
20 argue to me that we try to craft a formula, I think much
21 as you did in the underlying bill, that acknowledges that
22 there has got to be a little extra pain in a State with a
23 high rate of unemployment. This is a hard one to please
24 everybody. I find it impossible to please everybody, but
25 I think you came pretty close with respect to your

1 original mark and I just hope that we end up there.

2 The Chairman. I see --

3 Senator Ensign. Mr. Chairman, I just want to make
4 a comment. Our side has kind of enjoyed watching you
5 guys debate. [Laughter.]

6 The Chairman. I will bet you have. All right.

7 Senator Grassley. I would ask for a roll call.

8 The Chairman. Oh, no, no, no. Do not do that. Do
9 not do that. No, no. This is a very delicate, sensitive
10 matter and you certainly have the right to ask for a roll
11 call vote, but I would suggest that we voice the modified
12 Bingaman amendment as we continue to work on an
13 equitable, fair, balanced solution. My sense is that a
14 voice vote would help us get there more easily.

15 All those in favor of the modified Bingaman
16 amendment, signify by saying aye.

17 [A chorus of Ayes.]

18 The Chairman. Those opposed, no.

19 [No response.]

20 The Chairman. In the opinion of the Chair, the
21 ayes have it. The ayes have it. The amendment is agreed
22 to. I thank all Senators very much. I understand the
23 concerns that Senators have. I understand very deeply.
24 We have got a lot of work ahead of us between now and the
25 floor.

1 Senator Enzi, do you have an amendment?

2 Senator Enzi. Yes, Mr. Chairman, I do have an
3 amendment. I thought that Senator Grassley's COBRA
4 amendment preceded mine, but I am ready to go ahead with
5 it.

6 The Chairman. All right. Senator Enzi?

7 Senator Enzi. I would call up Enzi amendment #11.

8 The Chairman. Enzi #11. Thank you.

9 Senator Enzi. And I call this up primarily to
10 point out what appears to me is a huge problem. I know
11 that the principle that we are trying to solve here is to
12 make sure that people who are unemployed get COBRA and
13 that the employer is not injured by providing COBRA. So
14 the employer pays 65 percent of the premium subsidy for
15 nine months, and then the employer is allowed to deduct
16 the cost of the subsidy from their payroll taxes.

17 Now, the problem with that is, it will create a cash
18 flow problem in the first instance. In the second, it
19 can result in them not getting the kind of credit that
20 they need, that they have had to put up. It depends on
21 how many employees they have, how many employees they
22 lost, and what the change is in the amount of COBRA and
23 the cost of COBRA. Typically, the people that go with
24 COBRA are the ones that are sicker, and that drives up
25 the price for the employer.

1 I am not suggesting that I have the solution here.
2 I just got on the committee last Friday and we had to
3 have the amendments in Monday at noon. But I sense that
4 there is a real problem here and I sense that we are
5 trying to make sure that the employer is not injured and
6 that the employee gets COBRA, but I do not think we got
7 there. I am going to withdraw my amendment because it
8 does not have the complete solution there.

9 But I am hoping that somebody will help us come up
10 with a complete solution. I am sure if I have a day or
11 two more to do that, which we will have before we go to
12 the floor, that there can be a solution to this problem
13 and we can meet the principle that we are trying to do,
14 of neither harming the employee nor the employer, which
15 is what I think we are trying to do with the whole bill.

16 Somehow we have got to get there. This amendment falls
17 a little short of that, but surely there are some great
18 minds here that can help out on that now that I have
19 raised the problem.

20 The Chairman. Thanks for raising the problem. As
21 I understand, the amendment exempts an employer from the
22 requirement to offer COBRA coverage if doing so would
23 raise the cost of the employer's group health insurance
24 premiums by more than 2 percent. That is the amendment?

25 Senator Enzi. That is the amendment that I have

1 here.

2 The Chairman. Could Joint Tax tell me, what is
3 your estimate? What is the consequence of this?

4 Mr. Kleinbard. We have not been able to score this
5 bill yet. We need to work with Senator Enzi's staff.
6 There are some definitional issues that need to be worked
7 through as to how this would actually operate.

8 The Chairman. All right. Do you want to still
9 push your amendment, Senator?

10 Senator Enzi. No. I said that I would withdraw my
11 amendment.

12 The Chairman. All right. Thank you. The
13 amendment is withdrawn. Thank you. I understand. We'll
14 see what we can work out by the time we get to the floor.

15 Senator Enzi. Thank you.

16 The Chairman. Do you have another amendment,
17 Senator? Do you have another amendment?

18 Senator Enzi. I do. It is not on COBRA, though.

19 The Chairman. Well, whatever. Is it health
20 related?

21 Senator Enzi. Yes, it is.

22 The Chairman. Well, why do you not bring it up?

23 Senator Enzi. It is my amendment #10, which is the
24 health IT marketplace amendment. And I would like to
25 modify the amendment so that it is germane, and modify it

1 by revising the amendment to prohibit any of the
2 incentive payments under this title from being
3 distributed if the national coordinator of health
4 information technology develops electronic health record
5 technology.

6 Health IT has great potential to improve the quality
7 of health care in this country. Greater use of health IT
8 could save the Federal Government, and all Americans, a
9 lot of money. However, it is not, and it should not be,
10 the Federal Government's job to create the technology.
11 There has been a group that has been working on this that
12 had great success at coming up with interoperability,
13 setting standards.

14 That is with a large portion of people in the
15 private sector participating in it as well. To have
16 somebody now turn around and say, no, we are just going
17 to do it as a Federal Government way -- I have seen this
18 happen in Federal agencies already where they have said
19 we will just write our own program, and they do and they
20 are months and years behind and over budget compared to
21 what the private sector already has.

22 We are going to have to rely on the private sector
23 to provide this technology. They have been involved in
24 the process and making progress on it, so I do not know
25 why we would put in a provision that would allow the

1 national coordinator to counter all of that and do his
2 own thing. It seems like a needless step.

3 A process is in place to create the standards, it
4 has been working well, there are people that are meeting
5 those standards and providing the service right now. If
6 the bill moves forward with a provision that mandates
7 that the national coordinator develop and provide health
8 IT, it would drastically hurt innovation. I do not think
9 we want to go backwards on health IT, I think we are
10 trying to go forward.

11 The Chairman. Senator, I hear you. The difficulty
12 is this. This subject is appropriately the jurisdiction
13 of the Help Committee, your committee. Second, the
14 Appropriations Committee, today, marked up standards on
15 health IT. I think we should not try to resolve that
16 issue that you are addressing here in this committee now,
17 but rather through the Help Committee and look at what
18 the Appropriations standards language is. There will be
19 an opportunity, I think, at that time on the floor,
20 working with the Help Committee and working with the
21 Appropriations Committee, to develop a solution here.

22 Senator Enzi. Well, the Help Committee has been
23 left out of the process. The Appropriations Committee
24 has finished their work, as I understand it.

25 The Chairman. Well, there is an opportunity for --

1 Senator Enzi. This makes a statement. It probably
2 does not provide the final solution, but if we put
3 something in there like this it will force us to resolve
4 the issue of how much we can go backwards in time.

5 The Chairman. I hear you. I am uncomfortable in
6 putting language which is really in the jurisdiction of
7 the Help Committee in this bill.

8 Senator Ensign. Mr. Chairman, if I could just
9 comment on the health IT provisions that we are doing in
10 the stimulus package?

11 The Chairman. Yes.

12 Senator Ensign. Health IT, I think, is something
13 that a lot of us strongly believe in, and we believe that
14 it can save huge amounts of money, improve health care
15 quality, and allow the dollars in the health care system
16 to go to patient care instead of just bureaucracy. There
17 is no question that the promise of health IT is great.
18 But if we mess it up, if we do it the wrong way, if we do
19 not have proper interoperability standards, and if the
20 government tries to develop the technology, then we will
21 be way behind. Government cannot develop this
22 technology.

23 But what we need to do is make sure we have the
24 Stark laws right, and we need to make sure we have HIPAA
25 laws right. We also need to make sure that health

1 information technology, electronic health records and the
2 like, actually can work and can work in a way that does
3 protect privacy. If you are going to one doctor and
4 maybe what you are doing over here would mess up what a
5 different doctor over there is doing, then those records
6 with the different doctors should automatically talk to
7 each other while still protecting privacy. We have got
8 to be able to get this thing right, otherwise you will
9 not get the efficiencies out of the system, and you will
10 have people afraid of using health information
11 technology. So this is a critical issue for us as we try
12 to modernize our health care system.

13 The Chairman. Senator Rockefeller?

14 Senator Rockefeller. I would just say to the
15 distinguished Senator from Wyoming that if I read you
16 correctly, what you want to do is you want to bring in
17 private people to set up a proper system. What I want to
18 tell you--although most Americans would not at first,
19 unless they knew more, agree with this--the best health
20 care system in this country is the Veterans
21 Administration, better than any hospital.

22 There is one reason for that, because back in the
23 1990s a fellow named Dr. Ken Kizer and some others
24 completely computerized and did all the IT stuff which
25 the Department of Defense had yet to learn how to do,

1 which is one of the problems that was created in the Gulf
2 War Syndrome matter. But it is there. The government
3 has done it. It is just a matter of applying it where
4 necessary.

5 Senator Enzi. Mr. Chairman?

6 The Chairman. Senator Enzi?

7 Senator Enzi. We are already three years into a
8 project, of having the private sector work with the
9 government sector, like the Veterans Administration.
10 They have been doing some tremendous work in setting up
11 some standards. I have not heard any objections to the
12 standards. In fact, we were thinking that it was about
13 at a point where it could be turned over to the private
14 sector entirely.

15 I am sure we are not going to do that, but on the
16 other hand, I do not want to turn it over to the
17 government entirely now and jerk it out from under all of
18 these people that have been cooperating so that when a
19 person from Wyoming comes out here to Washington and gets
20 injured, their record is not readable any more so nobody
21 can help them with all of the knowledge that the little
22 card they are carrying would have, that is supposed to
23 make it possible for you to get health coverage anywhere
24 in the United States, and also to eliminate duplications
25 in tests.

1 I had a bad ankle. I had it X-rayed here. I went
2 home. My wife said, you are still limping, go see a
3 doctor. The first thing he wanted to do was take another
4 X-ray. So if I had had my medical health record with me
5 I would not have had to do that, but without that
6 interoperability this whole thing does not work. I do
7 not want to just go backwards in time. This is just a
8 small statement that we want to make sure we do not go
9 backwards in time.

10 The Chairman. To be honest, Senator, I do not
11 understand this. It says the amendment prohibits any
12 funding for health IT if the national coordinator of
13 health information technology develops electronic health
14 record technology.

15 Senator Rockefeller. And that is the point.

16 The Chairman. So why do you want to prohibit
17 funding if the technology is developed, if the national
18 coordinator develops electronic health record technology?

19 Your point is, you do not want him to?

20 Senator Enzi. That is correct.

21 The Chairman. This is sort of an oblique way.

22 Senator Enzi. I had to write it that way in order
23 to make it germane so that it could be in this bill.

24 The Chairman. Oh. Yes. Well, now I understand
25 it. [Laughter.]

1 Senator Cantwell. Mr. Chairman?

2 The Chairman. Senator Cantwell?

3 Senator Cantwell. Mr. Chairman, I think the
4 Senator from Wyoming is trying to make an important
5 point. I know that both the House language and this
6 language that is in the Chairman's mark has taken a lot
7 of time to craft the right balance. But I think what
8 Senator Enzi is simply trying to say is that we should
9 have a standard, an open standard--not open source, but
10 an open standard--and that that should be done basically
11 through the private sector, or in conjunction with the
12 private sector, not decided by the government so that one
13 technology is chosen and then that becomes the platform.

14 Open standards means that everybody gets together,
15 just like HTTP or HTML and they decide what that standard
16 is, and then everybody gets to build off that
17 architecture. The Senator from Wyoming, I believe, is
18 the only programmer in the U.S. Senate, so I think he
19 actually understands what he is talking about here. I do
20 not know if the amendment is crafted correctly, but his
21 concept of what he wants to get at.

22 So I would encourage the Senator perhaps to look to
23 the floor as a way to clarify what you are actually
24 trying to do, which is to say, let us keep government out
25 of picking winners and losers in technology, let us make

1 sure we create open standards, let us build an
2 architecture which is interoperable, which means you have
3 the standard and everybody builds to that standard. So I
4 would hope that we could get there. I do not know that
5 we have perfect language in the mark, but I think this
6 amendment probably does not quite get at what you are
7 trying to get at.

8 The Chairman. The Senator is correct. I do not
9 think this committee is competent at this time to make a
10 decision on standards, but we all agree that standards
11 are necessary, interoperability, et cetera. We are going
12 to have to come with an uniquely American solution here.

13 Private industry had a hard time with Beta and VHS. It
14 is my impression, we have been kind of behind the 8 ball
15 in the United States as other countries developed better
16 cell phone technology and will go to 3G before we do,
17 because we are fighting among ourselves in the private
18 sector as to which technology is going to prevail.

19 On the other hand, it is the private sector which is
20 potentially more innovative, tend to have more ideas. We
21 just take a longer time in our country because we are
22 bigger and because we are more free market than those
23 other countries. So we are going to have to, it seems to
24 me, work very creatively with the administration, HHS,
25 and the appropriate office and develop ways--I do not

1 think this is the language--to make sure that there is
2 sufficient private sector involvement. Then it gets to
3 the question of open source. I am not sure if the
4 Senator from Washington means open source. I think she
5 means a more transparent process in the development of
6 this technology.

7 Senator Enzi. Mr. Chairman, I think she had the
8 words correct and was not suggesting open source.

9 The Chairman. Yes. Right.

10 Senator Enzi. Standards. Yes.

11 Senator Cantwell. If I could, Mr. Chairman. Open
12 standard. But I do think if you look at the model that
13 is pursued by the private sector, because they have to do
14 this all the time. Whether it is W3C or the IETF, the
15 industry gets together and they decide what the open
16 standard is. That means that you do not have to give up
17 the proprietary information about your technology. It
18 means that it is a standard that everybody can build off
19 of, and that is what we are trying to get at.

20 I think the Senator from Wyoming is simply trying to
21 say he does not want government to decide that, he wants
22 the private sector, which is normally the way it is done,
23 whether you are in the cell phone industry, the software
24 industry, or anywhere else. Now, we can push them and we
25 can push that process along, but we certainly want it to

1 be something that is not decided by one person someplace
2 in an agency.

3 The Chairman. This amendment actually assumes that
4 there is no coordination with the private sector, which I
5 think would probably be an incorrect assumption.

6 Senator Enzi. Mr. Chairman, it would be an
7 incorrect assumption and there is a lot of work that has
8 already gone into it that I want to make sure that we do
9 not undo.

10 The Chairman. Sure. I appreciate that.

11 Senator Enzi. So what I would ask, is your
12 cooperation in coming up with something in conjunction
13 with the Help Committee.

14 The Chairman. Right.

15 Senator Enzi. We have been left out of the process
16 --

17 The Chairman. And the Appropriations Committee.

18 Senator Enzi [continuing]. Even though we have been
19 working on it for four years and making a great deal of
20 progress. I would be happy to work with the Senator from
21 Washington to make sure this happens.

22 The Chairman. Well, I appreciate that. We really
23 appreciate your addition to this committee. You have got
24 lots of experience on this particular subject, and also
25 your membership on the Help Committee is going to be

1 very--no pun--helpful. So, thank you.

2 Senator Enzi. Thank you, Mr. Chairman.

3 The Chairman. Thank you.

4 Senator Enzi. I will withdraw it, with your
5 promise to work on it.

6 The Chairman. Thank you.

7 Senator Grassley?

8 Senator Grassley. Yes. I have a COBRA amendment.

9 It is #25. My co-sponsors are Senators Roberts, Hatch,
10 and Enzi.

11 The budget deficit for this fiscal year is already
12 projected to be over \$1 trillion. After this stimulus
13 bill and other legislation, the deficit is going to grow
14 to \$2 trillion. It is critical that we are being
15 fiscally responsible to the taxpayers' dollars. You
16 probably know Mr. Fold, former CEO of Lehman Brothers,
17 earned about \$33 million in salary and compensation in
18 2007 as Chairman of Lehman Brothers. He earned about
19 \$500 million since 2000. Unless my amendment is
20 approved, people like Mr. Fold would be eligible for the
21 taxpayer-funded subsidy proposed in the Chairman's mark
22 to pay for his personal health insurance.

23 In the midst of Lehman Brothers' collapse, he was
24 fired. Since many of Lehman Brothers' assets were
25 acquired by other companies, Mr. Fold's termination would

1 have made him eligible for COBRA continuation coverage.
2 This legislation, as it is currently written, would allow
3 Mr. Fold and others like him to take advantage of the 65
4 percent taxpayer-paid subsidy to pay for COBRA coverage.

5 While providing tax subsidies to help lower income
6 Americans pay for private health insurance can be good
7 policy, I do not think we ought to be pushing legislation
8 that uses taxpayers' hard-earned dollars to subsidize
9 insurance for people that can already afford it,
10 particularly what an issue we made out of it in TARP,
11 that we were going to make sure that these people that
12 run a country into the ground were not going to get
13 golden parachutes and all those sorts of things that we
14 made such a big deal about last fall, and I am one of
15 those that made a big deal about it.

16 According to Joint Tax, about half the people that
17 will get this taxpayer-funded subsidy would have
18 purchased the coverage anyway. My amendment would
19 prohibit anyone earning over \$250,000 in the previous
20 year and with assets of over \$1 million from receiving a
21 subsidy to pay for COBRA continuation coverage.

22 Joint Tax also noted during the question and answer
23 section of this mark-up that IRS could reconcile whether
24 people were, in fact, eligible for a COBRA subsidy at the
25 end of the tax year. So this is administratively

1 possible. I think this amendment makes a lot of sense,
2 especially given our mounting budget deficits. I
3 strongly urge a "yes" vote.

4 The Chairman. Let me ask Joint Tax two questions:
5 one, the distribution effect currently in COBRA, and
6 second, the administrative burden that this would impose
7 on employers.

8 Mr. Kleinbard. There is very little data on the
9 distributional effect of COBRA today. Our best numbers
10 suggest that, as I said earlier today, over half of the
11 population that would take up this new subsidized program
12 would have incomes under \$40,000 a year. The number that
13 would be over \$1 million is almost immeasurably small.
14 We can obviously name a handful of individuals, but those
15 are very, very, very exceptional cases.

16 So within the realm of the distributional data that
17 we have available, that is about the best we can do.
18 There just is not a lot of good, empirical data on the
19 COBRA population. They turn over very quickly and this
20 will expand that population, of course. We believe it
21 will do that, frankly, more at the low end than at the
22 high end.

23 If I can just ask your indulgence for one second to
24 be very clear about the discussion that Senator Grassley
25 and I had earlier. The IRS can absolutely reconcile, at

1 the end of the year, any income rules you come up with.
2 But the United States of America does not collect
3 information on your assets, only on an estate. So as
4 long as you are alive and kicking, which is a
5 precondition to getting COBRA, we do not have any
6 information on your assets. So the asset component, we
7 just --

8 Senator Grassley. Well, modify it and leave the
9 asset out then. So modified.

10 The Chairman. In fact, it is, in effect, already
11 modified because your amendment says one or the other.
12 Both tests do not have to be made, but to make it more
13 clear --

14 Senator Grassley. Just income.

15 The Chairman. Just income. Yes.

16 Mr. Kleinbard. So if it is income and as long as
17 it does not have to be done contemporaneously, so long as
18 you contemplate an after-the-fact reconciliation as you
19 have described, Senator Grassley, then the IRS absolutely
20 can do that.

21 The Chairman. I would like to press you a little
22 more, Mr. Kleinbard, because I just do not understand
23 this. What burdens -- I mean, clearly we want this
24 legislation to pass quickly.

25 Mr. Kleinbard. Yes.

1 The Chairman. We are in a recession. We want the
2 President to be able to sign this bill by mid-February.
3 We want COBRA subsidies to be available to employees who
4 worked for firms of 20 or more and were laid off.

5 Mr. Kleinbard. Yes.

6 The Chairman. We want that to be available right
7 away.

8 Mr. Kleinbard. Yes.

9 The Chairman. So people can get health insurance.

10 Mr. Kleinbard. Yes.

11 The Chairman. Otherwise, if this provision does
12 not pass, people will have to pay 102 percent of
13 premiums. Not very many people are in a position to do
14 so.

15 Mr. Kleinbard. Understood.

16 The Chairman. So my question is, how much of a
17 burden will it be, how many loopholes will people have to
18 go through if the employer has got to certify that the
19 employee's income is not above \$250,000?

20 Mr. Kleinbard. This is the difficulty of trying to
21 work out this important question without detailed
22 statutory language that we can all examine and share.
23 But the way the proposal works, the way the Chairman's
24 modification works, the employer attests that the
25 employee has been fired and it is, in effect, a self-

1 attestation by the employer and then the employee gets
2 into the program.

3 I understood Senator Grassley to be, in effect,
4 saying that it will be incumbent on the employee, not the
5 employer, to then, in effect, say to herself, I am not
6 going to sign up for this because my income is above
7 whatever the threshold is that you all choose, if you
8 choose a threshold. If the employee does sign up and it
9 turns out that her income is above the threshold, then on
10 her tax return, when she files it, it will be apparent
11 that she was ineligible and she would owe a refund of the
12 subsidized amount, so it would be the employee who would
13 pay back the government. I believe that is what Senator
14 Grassley was saying, sir. Did I accurately summarize?

15 Senator Grassley. Did you say that right? Well,
16 sit down. Sit down. Yes.

17 Mr. Kleinbard. All right. So the employer, if I
18 have understood Senator Grassley correctly, would not be
19 required to do anything extra. If the employee
20 misrepresented and signed up for a program for which she
21 was not entitled, it would be apparent on her tax return
22 and then she would owe the government the subsidy,
23 presumably with a penalty of some sort. Those are the
24 kind of details one would work out in legislation, if you
25 chose to adopt this amendment.

1 Senator Grassley. Yes. Correct.

2 Mr. Kleinbard. Is that responsive, Mr. Chairman,
3 to your question?

4 The Chairman. Well, partly. I am just trying to
5 figure out what happens. Say an employee would otherwise
6 qualify for COBRA, say, the end of June. Then that
7 employee may not know what the total income is going to
8 be for that year, because we are really talking about the
9 end of the year. What is the income of the employee at
10 the end of the year? There may be a number of people who
11 we do not know what their income is going to be. It
12 could be they get laid off and it is zero. It could be
13 just really low. So there are administrative questions
14 here.

15 Mr. Kleinbard. Yes, sir.

16 The Chairman. They get in the way here.

17 Senator Conrad. Mr. Chairman?

18 Senator Stabenow. Mr. Chairman?

19 The Chairman. Yes?

20 Senator Conrad. As I read this, what Senator
21 Grassley is calling for is the income in the previous
22 year. It applies to their income the previous year.

23 The Chairman. Right.

24 Senator Conrad. Whether they got \$125,000 the
25 previous year, \$250,000, for a family, the previous year.

1 So they would know that. I guess the question that would
2 rise in my mind is, they may have \$125,000 of income the
3 year before and now they have nothing.

4 The Chairman. Not this year. This year.

5 Senator Conrad. Yes.

6 The Chairman. I do not know if that is fair, if
7 that is appropriate.

8 Senator Stabenow. Mr. Chairman?

9 The Chairman. Senator Stabenow?

10 Senator Stabenow. Thank you, Mr. Chairman. I
11 certainly agree with what Senator Grassley is trying to
12 get at in terms of, we certainly do not want people who
13 are millionaires or very high-income people benefitting
14 from this. But given the low numbers that have been
15 talked about and given the fact that a majority of
16 people, unfortunately, that find themselves going onto
17 unemployment may be spending as much as three-quarters,
18 75 percent, of their entire unemployment benefit just to
19 try to keep health care for their family, I am wondering
20 if we might just look at this and see if there is any way
21 to make sure there are no unintended consequences in
22 terms of going to the floor.

23 Senator Grassley. Well, the people that you are
24 talking about we are not affecting anyway, this figure
25 that is in the bill.

1 Senator Stabenow. Mr. Chairman, I understand that.
2 I guess I am concerned about unintended consequences at
3 this point and wonder if we might continue to look at it
4 and see if there is any way to work it out.

5 Senator Schumer. Mr. Chairman?

6 Senator Stabenow. I appreciate what Senator
7 Grassley is trying to do.

8 The Chairman. Senator Schumer?

9 Senator Schumer. Yes. I think everyone would
10 agree, or almost everyone, with the concept of what
11 Senator Grassley is trying to do. It is just the
12 implementation. So why could we not just sort of
13 unofficially agree that we want to -- the House, as I
14 understand it, tried to do this and could not quite
15 figure it out.

16 Why do we not ask the staff to come up with a way of
17 implementing this in a way that would not deal with the
18 unusual circumstances a few people have brought up, but
19 knock out these very wealthy people from getting COBRA,
20 which makes sense?

21 Senator Grassley. Are you sure that the bill does
22 not already do that? We have got the mark directing the
23 Treasury to come up with certain reporting requirements
24 for the employers. This would include a requirement, or
25 at least could include the requirement, that the employer

1 provide the IRS with an employee's TIN. So, it seems to
2 me it is very administratively doable.

3 The Chairman. Yes. My sense is that we could do a
4 better job if we worked together to find a way to make it
5 workable so there are fewer surprises. Otherwise, with
6 just a total delegation, who knows what is going to
7 happen? I just think that discretion is the better part
8 of valor here to work this thing out.

9 Senator Schumer. Mr. Chairman?

10 The Chairman. So I pledge to work with you.

11 Senator Grassley. Is that all right with you co-
12 sponsors?

13 [Nods in the affirmative.]

14 The Chairman. They nodded agreement.

15 Senator Schumer. Mr. Chairman?

16 Senator Grassley. So that is the second promise we
17 have to work something out.

18 The Chairman. We have got a lot of promises.

19 Senator Schumer. Mr. Chairman?

20 The Chairman. Senator Schumer?

21 Senator Schumer. Yes. I have two amendments I am
22 not going to offer either. I just want to mention them,
23 briefly. The first, to get back on a bipartisan mold, is
24 myself and Senator Roberts and Senator Bingaman. It is
25 about hospices and trying to deal with some of the issues

1 there because it is a delay in the phase-out of the
2 hospice budget neutrality factor. I am not going to
3 offer it. I hope we can just work on something as we
4 move to the floor on that amendment because it does have
5 broad bipartisan support.

6 The Chairman. All right. Thank you.

7 Senator Schumer. And the second is --

8 Senator Roberts. Would the Senator from New York
9 yield? Why do we not just go ahead and have the House
10 language on this? This is a mess. CMS has made two very
11 terrible decisions on this and it has a lot of
12 repercussions for an awful lot of people. The House bill
13 has it. It is just a moratorium. CMS needs scolded
14 about every third day. Why do you not just go ahead with
15 it? I do not know anything -- why would you object to
16 it? Wait a minute. I am going to find out. [Laughter.]

17 Senator Schumer. It is up to the Chairman, in my
18 opinion.

19 Senator Roberts. Oh. It was accepted. I am
20 sorry.

21 The Chairman. It was not accepted. We are going
22 to work it out on the floor, Senator.

23 Senator Roberts. Half of it was accepted.

24 Senator Schumer. Pat, I think we can work it out
25 on the floor. Not everyone is on board yet.

1 The Chairman. No, no, no. It was not accepted.

2 Senator Roberts. All right.

3 The Chairman. It was not pushed, discussed.

4 Senator Roberts. If the Senator from New York says
5 he can work it out on the floor with the distinguished
6 Chairman, who am I to object?

7 Senator Schumer. Thank you.

8 The second one, similarly, is the moratoria on the
9 seven Medicaid regulations. We have had some discussions
10 about this. Again, the House stimulus includes this
11 moratorium. When it was implemented, it raised a lot of
12 hackles with a lot of people. I would like, again, to
13 try and work out, on the floor, including it.

14 Thank you, Mr. Chairman.

15 The Chairman. We will have to work it out on the
16 floor.

17 Senator Roberts? Do you have an amendment, Senator?

18 Senator Roberts. Yes, I do. It is #5, but I have
19 mine as #1. But you can take your pick. I hate to bring
20 this up, but this is another rural fairness amendment.
21 But do not get too wound up over there.

22 Senator Schumer. If it helps you and does not hurt
23 us, go ahead.

24 Senator Roberts. No, no, no. It will not hurt
25 you.

1 The Chairman. Senator, we could take this
2 amendment. You can still talk about it. We are going to
3 take it. We are going to take it.

4 Senator Schumer. I second the taking of the rural
5 fairness amendment. [Laughter.]

6 Senator Conrad. The ecumenical spirit is growing.

7 Senator Roberts. I am fine. Go ahead.

8 The Chairman. All right. Roberts #5 is adopted.

9 Senator Grassley?

10 Senator Grassley. All right. I have two
11 amendments. This first one is a single one, and I want a
12 roll call on this. Then we have got the last one. I
13 will have three amendments en bloc.

14 The Chairman. Which one is this?

15 Senator Grassley. This is 28.

16 The Chairman. Twenty-eight. Yes.

17 Senator Grassley. The mark before us proposes \$87
18 billion in funding to States for their Medicaid program.
19 States need some assistance with their Medicaid spending,
20 but I do not believe anyone can argue that States need
21 \$87 billion over the next two years to pay for increased
22 Medicaid spending as a result of the recession. The
23 committee is considering \$87 billion in funding because
24 States are facing deficits of as much as \$312 billion in
25 the aggregate over the next two years. So we should not

1 fool ourselves.

2 The Chairman's mark gives States money to help them
3 fill their deficits. Mr. Chairman, we are giving States
4 \$87 billion and hoping that States do not take actions
5 that are contrary to economic growth. Now, I use the
6 word "hope" because we are not doing enough in this bill
7 to make sure that the States do what is best for the
8 economy. The Chairman's mark gives States money to keep
9 them from looking to Medicaid cuts to help them fill the
10 deficit.

11 The bill prevents Medicaid income eligibility cuts,
12 but if we are giving States \$87 billion and telling them
13 not to cut Medicaid eligibility, should we also tell them
14 not to cut payments to providers? The Chairman's mark
15 assumes States need significant aid to prevent them from
16 cutting their Medicaid programs. States cannot change
17 income eligibility, but under the Chairman's mark they
18 can cut providers' payments.

19 Will there be Medicaid beneficiaries who are elderly
20 or disabled able to receive home- and community-based
21 services? If we want to keep seniors and the disabled in
22 their homes rather than institutions, paying direct-care
23 workers to provide home- and community-based services is
24 critical. If States are allowed to cut payments, you can
25 believe that these providers will be the first ones cut.

1 If the Chairman's mark does nothing to protect access to
2 these vital providers, nobody will be able to assure the
3 people this bill is supposed to protect that care will be
4 there for them.

5 The people back home expect us to spend their money
6 wisely, and Congress handing States \$87 billion without
7 guaranteeing access will be there for the people who need
8 Medicaid is not wise use of their money. So this
9 amendment is going to make sure that home- and community-
10 based providers are not cut by the respective States.
11 You are talking about people that probably receive the
12 least attention of people that need this, and it is also
13 a service that is badly needed to keep people out of the
14 more expensive environments of hospitals, for instance.

15 The Chairman. Is there discussion on the
16 amendment?

17 [No response.]

18 The Chairman. Senator, I understand what you are
19 doing here, but it begins going down a slippery slope
20 which I do not think is advisable. The slippery slope is
21 then going to other groups of providers and certifying
22 that they will not be cut either. Then we are going to
23 start getting into a real problem here, because then we
24 are choosing among different providers, which ones will
25 receive the benefit of maintenance of effort and which

1 ones do not.

2 This is not dispositive, but I just got a letter
3 from the pediatricians who urge us not to do this to
4 them. They think that providers should all be together
5 and they do not want to be singled out as protected or
6 held harmless in any maintenance of effort provision. I
7 think that is pretty noble of them. Pediatricians are
8 pretty noble folks anyway, and that sort of explains why
9 they take that position.

10 But anyway, I believe the final paragraph: "We urge
11 you to value the skills, abilities, and efforts of
12 pediatricians who put children before their own self-
13 interests. We wish to highlight our support of the
14 Medicaid and CHIP Payment and Access Commission
15 which...believes that this is an appropriate next step."

16 Basically, without reading the whole letter, they did
17 not want to be singled out for protection. I think that
18 if we start protecting home-based and community services,
19 then we have got to start protecting other providers, and
20 other providers, and then we will start to cherry-pick.
21 I just think a better approach here is not to begin to go
22 down that road, and therefore not adopt this amendment.
23 I just think it is otherwise not the right thing to do.

24 Senator Grassley. I want a roll call vote.

25 The Chairman. The Senator has his right for a roll

1 call vote. The Clerk will call the roll.
2 The Clerk. Mr. Rockefeller?
3 Senator Rockefeller. No.
4 The Clerk. Mr. Conrad?
5 Senator Conrad. No.
6 The Clerk. Mr. Bingaman?
7 The Chairman. No by proxy.
8 The Clerk. Mr. Kerry?
9 The Chairman. No by proxy.
10 The Clerk. Mrs. Lincoln?
11 Senator Lincoln. No.
12 The Clerk. Mr. Wyden?
13 Senator Wyden. No.
14 The Clerk. Mr. Schumer?
15 Senator Schumer. No.
16 The Clerk. Ms. Stabenow?
17 Senator Stabenow. No.
18 The Clerk. Ms. Cantwell?
19 Senator Cantwell. No.
20 The Clerk. Mr. Nelson?
21 Senator Nelson. No.
22 The Clerk. Mr. Menendez?
23 Senator Menendez. No.
24 The Clerk. Mr. Carper?
25 Senator Carper. No.

1 The Clerk. Mr. Grassley?
2 Senator Grassley. Aye.
3 The Clerk. Mr. Hatch?
4 Senator Grassley. Aye by proxy.
5 The Clerk. Ms. Snowe?
6 Senator Snowe. Aye.
7 The Clerk. Mr. Kyl?
8 Senator Grassley. Aye by proxy.
9 The Clerk. Mr. Bunning?
10 Senator Grassley. Aye by proxy.
11 The Clerk. Mr. Crapo?
12 Senator Grassley. Aye by proxy.
13 The Clerk. Mr. Roberts?
14 Senator Roberts. Aye.
15 The Clerk. Mr. Ensign?
16 Senator Ensign. Aye.
17 The Clerk. Mr. Enzi?
18 Senator Enzi. Aye.
19 The Clerk. Mr. Cornyn?
20 Senator Cornyn. Aye.
21 The Clerk. Mr. Chairman?
22 The Chairman. No.
23 The Clerk will tally the vote.
24 The Clerk. Mr. Chairman, the tally is 10 ayes and
25 13 nays.

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

3 Senator Rockefeller, did you have an amendment? I
4 might say for the information of all Senators, I think we
5 have only two amendments remaining, Senator Rockefeller
6 and Senator Grassley. God willing, those are just the
7 two.

8 Senator Schumer. Amen, brother. [Laughter.]

9 The Chairman. Senator Rockefeller?

10 Senator Rockefeller. Mr. Chairman, I have
11 Rockefeller 5, as modified. I want to explain--and I
12 apologize to my colleagues for this--something which is
13 really unknown and has huge financial consequences. My
14 original amendment would have established a definite time
15 line for the Social Security Administration and the CMS
16 folks to address this problem.

17 What is this problem? Hundreds of thousands of
18 disabled people have had their health care paid for by
19 Medicaid, but their health care was actually the
20 responsibility of Medicare. This has gone on for quite a
21 while. Both CMS and Social Security acknowledge that
22 Medicare has liability, but so far the Federal Government
23 has not acted to establish a means of satisfying its debt
24 to the States.

25 Currently, it is estimated that the Medicare program

1 owes the States an estimated \$3.75 billion. It is most
2 appropriate to fix this problem, it would occur to me, in
3 the economic recovery package. The amendment is
4 enormously stimulative, immediate, and targeted. It
5 would inject several billions of dollars within the next
6 two quarters into the State and local economy.

7 I have modified it to simply say that the Secretary
8 of Health and Human Services and the Commissioner of
9 Social Security will work with the States to reach an
10 agreement on a Federal payment for each State related to
11 the medical liability due to the special disability
12 workload. The Secretary of Health and Human Services
13 will make the payments to the States no later than three
14 months after enactment. I urge my colleagues to support
15 this.

16 The Chairman. Is there any further discussion? I
17 am prepared to take this, Senator. Is there further
18 discussion?

19 [No response.]

20 The Chairman. Without objection, the amendment is
21 agreed to.

22 Senator Grassley?

23 Senator Conrad. Mr. Chairman?

24 The Chairman. Senator Conrad?

25 Senator Conrad. Might I ask to change my vote on

1 the previous Grassley amendment?

2 The Chairman. So long as it does not affect the
3 outcome, the Senator has that right.

4 Senator Conrad. It does not affect the outcome.
5 But I had a miscommunication with my staff and I would
6 like to change my vote from "no" to "yes" on the previous
7 Grassley amendment.

8 The Chairman. Senator, would you identify which
9 amendment that is?

10 Senator Conrad. It was the amendment --

11 The Chairman. Do you have the number there, by
12 chance?

13 Senator Conrad. It was the amendment just voted
14 on.

15 The Chairman. Twenty-eight?

16 Senator Conrad. Yes.

17 The Chairman. That is right.

18 Senator Conrad. Yes. Twenty-eight. Grassley 28.

19 The Chairman. It is the slippery slope amendment.

20 Senator Conrad. Yes. The slippery slope
21 amendment.

22 The Chairman. All right.

23 Senator Conrad. Slippery slopes go two ways.

24 The Chairman. Right.

25 Senator Conrad. Up and down.

1 The Chairman. Right. But usually they go down.
2 All right.

3 Senator Grassley?

4 Senator Grassley. I am calling up amendments 26
5 through 32, but we obviously are not calling up 28
6 because we have already dealt with that one. So I
7 suppose it is 26, 27, 29, 31, and 32.

8 These are along the lines of what I just argued in
9 the previous amendment on the home- and community-based
10 services. I would further like to modify my amendment to
11 include public hospitals in the list of providers whose
12 payments cannot be cut by the States. I would further
13 like to modify my amendment to prevent States from
14 cutting benefits relating to mental health services.

15 As I stated before, the Chairman's mark specifically
16 prevents States from cutting back on income eligibility
17 to Medicaid programs. We give States \$87 billion and
18 tell them not to cut Medicaid eligibility. Should we
19 also tell them not to cut payments to providers? I
20 believe so. States cannot change income eligibility, but
21 under the Chairman's mark they can cut provider payments.
22 States need aid, partially because of likely increases in
23 Medicaid enrollment.

24 So I ask the question: who will provide the services
25 to these new enrollees? Will there be enough pharmacists

1 taking Medicaid patients? Will there be enough
2 pediatricians? Will there be enough rural hospitals or
3 public children's hospitals taking Medicaid? Will there
4 be enough community health centers taking Medicaid? Will
5 Medicaid beneficiaries who are elderly or disabled be
6 able to get into nursing homes? Will States cut mental
7 health services because Congress did not prevent them
8 from doing so in the bill?

9 When the Chairman's mark does nothing to protect
10 access to these vital providers, nobody will be able to
11 assure those people that this bill is supposed to protect
12 that care will be there. The people back home expect us
13 to spend their money wisely, and Congress handing \$87
14 billion to the States without guaranteeing access, that
15 it will be there for the people who need Medicaid, is not
16 a wise use of money.

17 Since the Chairman suggested it, I would like to
18 modify my amendment to prevent States from cutting
19 payments to any Medicaid providers during the 27-month
20 period, so I am not picking and choosing. It is all-
21 inclusive. We have a responsibility to make sure that
22 what I see happening--in my State, for instance, two or
23 three years ago, cutting pharmacists, as an example--we
24 are giving all this money out -- in fact, I have proven
25 before in my discussions in Q&A that we are not going to

1 use \$87 billion for Medicaid.

2 We are going to use a heck of a lot less. There is
3 a lot of money left over. With this money flowing in,
4 there is no doggone reason why we ought to be shoving
5 this money to the States and then giving them the
6 opportunity to cut payments to providers, particularly in
7 rural America where, as Senator Conrad has made so clear,
8 we are always getting cut out, always sucking the hind
9 tit. So here we need to move ahead with this.

10 The Chairman. The hour is getting late.
11 [Laughter.] It is about time to wrap this up.

12 Senator Conrad. Mr. Chairman, could I just say I
13 did not quite phrase it that way? [Laughter.]

14 The Chairman. I think we clearly understand what
15 the Senator is trying to accomplish. It is like the
16 balloon effect, the bubble in the balloon: where is it
17 going to pop up? We have already prohibited States from
18 cutting eligibility requirements. There are only three
19 things States can do with respect to Medicaid: it is
20 eligibility, it is benefits, and providers. So we have
21 already in this bill prohibited States from cutting or
22 reducing eligibility. Now with this amendment we are
23 going to tell States they cannot cut providers' payments.
24 What is left? Benefits.

25 So the effect of this amendment will be--and I am

1 not saying it is going to categorically happen, but it is
2 going to tend -- more than tend, it is going to
3 significantly encourage States, when they are strapped,
4 to cut benefits. Medicaid benefits. That is what the
5 effect of this amendment is going to be. If we are
6 protecting the providers and we are protecting
7 eligibility -- we made the judgment in the mark--and
8 perhaps incorrectly--that at the very least we ought to
9 protect eligibility and leave the other two areas open,
10 benefits and providers' payments as a State option. I
11 just think it is not wise at all to put all the pressure
12 on benefits and cuts as we move to adopt this bill.

13 Senator Rockefeller. Mr. Chairman?

14 The Chairman. Senator Rockefeller?

15 Senator Rockefeller. I totally would agree with
16 the Chairman. I want the Ranking Member to know that I
17 strongly support children's hospitals and know how much
18 they have suffered during all of this time. But that is
19 exactly why I was so pleased that, as part of the CHIP
20 Reauthorization Act of 2009, which I think we have
21 reasonably done something about, an amendment was
22 accepted to create the Medicaid and CHIP Payment and
23 Access Commission, MACPAC, to further examine
24 reimbursement rates to Medicaid and CHIP providers. That
25 is the way to do it. That is the way we did it in 1989

1 with the resource-based relative value scale. You do not
2 do it -- legislators do not determine how much physicians
3 are going to make. They do, but they should not. It
4 should be done by a group of neutral observers who are
5 experts in their field who advise us on adjustments.

6 I will give you an example, wearing your patience.
7 Ophthalmologists were raking in a fortune back in the
8 late 1980s because laser had been invented but they were
9 still charging people as though it had not been, so they
10 were making a tremendous amount of money for very little
11 effort. They got cut back.

12 Then on the other hand, we wanted to take
13 pediatricians and general practitioners and to move them
14 up. We did not do that ourselves. That was done as a
15 result of sort of a study from, let us say, 25,000 feet
16 in the air, with good judgment, solid input, professional
17 input, non-judgmental, late-night decisions. We are
18 going to have to adjust what people make, but let us not
19 do it here. Let us do it properly and we will all be
20 better off for it.

21 Senator Roberts. Mr. Chairman?

22 The Chairman. Yes, Senator Roberts?

23 Senator Roberts. Thank you, sir. Well, as long as
24 I have been associated with the House Rural Health Care
25 Caucus and the Senate Rural Health Care Caucus, and Farm

1 Bills, and the like, we have been struggling, and
2 struggling, and struggling to shore up the rural health
3 care delivery system along the lines that has been so
4 eloquently spoken of by my friend from North Dakota.
5 There was an outfit called HCFA--it is now called CMS
6 because they had to change the acronym because HCFA
7 became so bad it was a four-letter word.

8 HCFA came down one time and said -- now, this is on
9 Medicare, not Medicaid, so you have to understand the
10 difference. But the same thing is going to happen with
11 this huge grant that we are giving to States to allegedly
12 help in regards to Medicaid. Which is, the money is
13 fungible, so some of the money that we are giving to the
14 states for Medicaid probably will be used for something
15 else. But I do not want to get into that argument.

16 But on Medicare, we even had a ruling from Califano
17 --and boy, that dates me--clear back a long time ago that
18 said that no hospital would be reimbursed for any
19 Medicare payment unless a team of three doctors approved
20 that payment within 24-hours. I voted for that, not
21 because I thought that we could comply, but because I
22 thought maybe HCFA and HEW, at that time, would provide
23 us with three doctors, because in our rural areas we do
24 not have any doctors. That was the silliness that was
25 being put out at that particular time.

1 Now, I can tell you, whether it is a doctor or
2 whether it is a hospital administrator or a poor,
3 beleaguered hospital board member, or a pharmacist, or a
4 home health care technician or owner, or whether it is a
5 clinical lab guy or whether it is an ambulance driver,
6 anybody that gets reimbursed by Medicare or Medicaid does
7 not get reimbursed up to cost. Now, that is what we are
8 facing.

9 So what we have now is doctors all over the country
10 not serving Medicare patients and instead forming
11 specialty hospitals. We are having a two-track system,
12 or two-track care in America where you have your
13 specialty hospital for those who can afford and who
14 really prefer that and the doctors saying I can treat you
15 over here, and then you have the community hospital, who
16 has to take care of everybody regardless of their ability
17 to pay, and it is a heck of a problem.

18 If we keep going this way without protecting the
19 provider, even though sometimes there are bad apples --
20 and I would suggest on the laser, it was probably the
21 market that determined it as opposed to the people who
22 had the benefit of that particular piece of equipment.
23 But if you do not think that we have a problem with
24 adequately reimbursing providers, I would suggest that
25 you talk to any provider of health care in the country,

1 and somehow or other we have to work that out.

2 What worries me is that under the banner of health
3 care reform, everybody takes a Lizzie Borden axe to the
4 provider to the point that they only get reimbursed up to
5 70 percent, maybe 60 percent, maybe 80 percent, and
6 finally they say the heck with it and they do not accept
7 Medicare and they will not serve Medicare patients. Then
8 those patients, especially in rural areas where providers
9 are scarce, have got to drive 150 miles to someplace to
10 get their prescription for example, especially Medicare
11 Part D and the pharmacies. That is really rough.

12 So we really do have this problem, and I think what
13 the Senator from Iowa is trying to point out is, all
14 right, if we are going to require that states do not cut
15 back on any benefits, then we should extend that to
16 reimbursements for the providers. If we do not do
17 something about this and we keep going under the illusion
18 that we are going to achieve health care reform by
19 cutting back on providers to the point that we are
20 rationing health care--and that is what we are doing,
21 rationing health care--then we are in a world of hurt.

22 Senator Ensign. Mr. Chairman, I have a question
23 for the staff.

24 The Chairman. Senator, let me just say, that is
25 not my intention here at all. In fact, as we all know,

1 family practitioners, primary care doctors must be
2 reimbursed a lot more than they currently are. So
3 believe me, I fully appreciate that. I hear it all the
4 time, and we are going to do our best to address it.

5 Senator Ensign?

6 Senator Ensign. Mr. Chairman, can I ask a question
7 of the staff on how this could potentially affect the
8 Medicaid population? But before I do, I thought it was
9 interesting, Senator Rockefeller, when you talked about
10 laser, or whatever you talked about, and
11 ophthalmologists. The one place in medicine where there
12 was truly a free market, where we had advances in
13 technology and decreases in price, is ophthalmology --
14 Lasik. You started with radial keratotomies, and then
15 advanced, advanced, and advanced. And what happened to
16 the price? It continued to go down. When the government
17 pays and somebody else sets the price, those prices stay
18 falsely high. A good example of that, obviously, is what
19 we do with cataract surgery because Medicare pays.

20 Now, having said that, a technical question for the
21 staff, though, on Senator Grassley's amendment. Let us
22 say right now a State decides that they want to turn
23 their Medicaid population over to an HMO. They currently
24 do not have an HMO. They want to put their population
25 into an HMO. Could that be construed, under Senator

1 Grassley's amendment, as cutting reimbursements?

2 Mr. Schwartz. The honest answer is, I do not know,
3 Senator. The way that I understood Senator Grassley's
4 amendment was that it was current payment rates that
5 could not be reduced.

6 Senator Ensign. But when you go to an HMO
7 situation, it may reduce payment rates?

8 Mr. Schwartz. Well, and it may take the whole
9 patient load away if you are not a participating provider
10 in that particular plan. I do not know, under --

11 Senator Ensign. I know that is not your intent,
12 Senator Grassley, but it is one of those unintended
13 consequences. I want to know if that could be a
14 potential problem with the amendment.

15 Mr. Schwartz. I think you are right, Senator.

16 The Chairman. Senator Grassley?

17 Senator Grassley. Well, I listened very closely to
18 what you had to say and I think what I ought to do is
19 modify my amendment so we do not affect providers, we do
20 not affect eligibility or benefits, so I am going to
21 modify it that way.

22 In other words, if we are giving \$87 billion to the
23 States, and in the Q&A we pointed out that about \$10
24 billion of that is needed for unemployment and the people
25 that are there because of the recession, then with all

1 this other money flowing to the States there is no reason
2 to cut eligibility, benefits, or providers.

3 The Chairman. Is there further debate?

4 [No response.]

5 The Chairman. All those in favor of the amendment,
6 signify by saying aye.

7 [A chorus of Ayes.]

8 The Chairman. Those opposed, no.

9 [A chorus of Nays.]

10 The Chairman. In the opinion of the Chair the nays
11 have it, especially from New York, and the amendment is
12 not agreed to.

13 Are there any further amendments?

14 [No response.]

15 The Chairman. If there are no further
16 amendments --

17 Senator Cantwell. No, Mr. Chairman.

18 The Chairman. Senator Cantwell?

19 Senator Cantwell. Could I enter three colloquys
20 into the record, though: one on health IT, one on
21 biodiesel, and one on low-income housing tax credits?

22 The Chairman. Without objection.

23 [The colloquys appear in the appendix.]

24 The Chairman. All right.

25 Senator Enzi. Mr. Chairman?

1 The Chairman. Senator Enzi?

2 Senator Enzi. I do not know where these fit into
3 the other part, so I have amendment #5.

4 The Chairman. Oh. Then we had better get it over
5 here. What is it? Amendment #5? Enzi 5?

6 Senator Enzi. It deals with Davis-Bacon, which
7 inflates the labor cost of Federal construction projects
8 from 15 to 38 percent, and puts red tape and compliance
9 requirements as a barrier. The compilation of the
10 prevailing rates is not only expensive, but it is bound
11 in red tape, but it has been found to be the subject of
12 fraud, bias, and error in its collection and computation.

13 The Chairman. All in favor of the amendment, say
14 aye.

15 [A chorus of Ayes.]

16 The Chairman. Those opposed, no.

17 [A chorus of Nays.]

18 The Chairman. The nays clearly have it. The
19 amendment is not agreed to.

20 The Chair will now entertain a motion to report the
21 Chairman's mark, as modified.

22 Senator Rockefeller. I so moved.

23 Senator Conrad. Second.

24 The Chairman. All those in favor will say aye.

25 [A chorus of Ayes.]

1 The Chairman. Those opposed will say no. I think
2 we will have a recorded vote.

3 The Clerk will call the roll.

4 The Clerk. Mr. Rockefeller?

5 Senator Rockefeller. Aye.

6 The Clerk. Mr. Conrad?

7 Senator Conrad. Aye.

8 The Clerk. Mr. Bingaman?

9 The Chairman. Aye by proxy.

10 The Clerk. Mr. Kerry?

11 Senator Kerry. Aye.

12 The Clerk. Mrs. Lincoln?

13 Senator Lincoln. Aye.

14 The Clerk. Mr. Wyden?

15 Senator Wyden. Aye.

16 The Clerk. Mr. Schumer?

17 Senator Schumer. Aye.

18 The Clerk. Ms. Stabenow?

19 Senator Stabenow. Aye.

20 The Clerk. Ms. Cantwell?

21 Senator Cantwell. Aye.

22 The Clerk. Mr. Nelson?

23 Senator Nelson. Aye.

24 The Clerk. Mr. Menendez?

25 Senator Menendez. Aye.

1 The Clerk. Mr. Carper?
2 Senator Carper. Aye.
3 The Clerk. Mr. Grassley?
4 Senator Grassley. No.
5 The Clerk. Mr. Hatch?
6 Senator Grassley. No by proxy.
7 The Clerk. Ms. Snowe?
8 Senator Snowe. Aye.
9 The Clerk. Mr. Kyl?
10 Senator Grassley. No by proxy.
11 The Clerk. Mr. Bunning?
12 Senator Grassley. No by proxy.
13 The Clerk. Mr. Crapo?
14 Senator Crapo. No.
15 The Clerk. Mr. Roberts?
16 Senator Roberts. No.
17 The Clerk. Mr. Ensign?
18 Senator Ensign. No.
19 The Clerk. Mr. Enzi?
20 Senator Enzi. No.
21 The Clerk. Mr. Cornyn?
22 Senator Cornyn. No.
23 The Clerk. Mr. Chairman?
24 The Chairman. Aye.
25 The Clerk will announce the vote.

1 The Clerk. Mr. Chairman, the final tally of the
2 members present is 13 ayes and 6 nays. The final tally
3 including proxies is 14 ayes and 9 nays.

4 The Chairman. The ayes have it and the mark is
5 ordered reported.

6 I would like to, first, thank all of you at the
7 desk. You have been here for a long time, worked very
8 hard, you personally, as well as all the people that work
9 with you and for you. It means a lot to us. We would
10 not be here, we would not be anywhere, were it not for
11 all of you. So I know on behalf of the committee we
12 thank you so very, very much.

13 I also thank all Senators for attending and for
14 helping work out what I think is a very harmonious mark,
15 and I just want all members to know that.

16 I also ask consent that staff be granted authority
17 to make technical, conforming, and budgetary changes.
18 Without objection, it is so ordered.

19 [No response.]

20 The Chairman. I thank all Senators.

21 [Whereupon, at 9:08 p.m. the meeting was concluded.]

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