MEASURES PLACED ON THE CALENDAR

The following measures were discharged from the Committee on Homeland Security and Governmental Affairs, and ordered placed on the calendar:

S. 194. A bill to designate the facility of the United States Postal Service located at 1300 North Frontage Road West in Vail, Colorado, as the ''Gerald R. Ford, Jr. Post Office Building''.

S. 219. A bill to designate the facility of the United States Postal Service located at 152 North 5th Street in Laramie, Wyoming, as the ''Gale W. McGee Post Office''.

S. 412. A bill to designate the facility of the United States Postal Service located at 2633 11th Street in Rock Island, Illinois, as the ''Lane Evans Post Office Building''.

MEASURES READ THE FIRST TIME

The following bill was read the first time:

H.R. 976. An act to amend the Internal Revenue Code of 1986 to provide tax relief for small businesses, and for other purposes.

INTRODUCTION OF BILLS AND JOINT RESOLUTIONS

The following bills and joint resolutions were introduced, read the first and second times by unanimous consent, and referred as indicated:

By Mr. BIDEN (for himself and Mr. LUGAR):

S. 676. A bill to provide that the Executive Director of the Inter-American Development Bank or the Alternate Executive Director of the Inter-American Development Bank may serve on the Board of Directors of the Inter-American Foundation; to the Committee on Foreign Relations.

By Mrs. BOXER (for herself, Mr. LAUTENBERG, Mr. SALAZAR, and Mr. SCHUMER):

S. 677. A bill to improve the grant program for secure schools under the Omnibus Crime Control and Safe Streets Act of 1968; to the Committee on the Judiciary.

By Mrs. BOXER (for herself and Ms. SNOWE):

S. 678. A bill to amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier and are not unnecessarily held on a grounded air carrier before or after a flight, and for other purposes; to the Committee on Commerce, Science, and Transportation.

By Mr. KERRY:

S. 679. A bill to provide a comprehensive strategy for stabilizing Iraq and redeploying United States troops from Iraq within one year; to the Committee on Foreign Relations.

By Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. COLEMAN, Mr. CARPER, and Mrs. MCCASKILL):

S. 680. A bill to ensure proper oversight and accountability in Federal contracting, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

By Mr. LEVIN (for himself, Mr. COLEMAN, and Mr. OBAMA):

S. 681. A bill to restrict the use of offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes; to the Committee on Finance.

By Mr. KENNEDY (for himself, Mr. MCCONNELL, Mr. REID, Mr. WARNER, Mr. KERRY, Mr. STEVENS, Mr. DOMENICI, Mr. COLEMAN, Mr. GREGG, Mr. COCHRAN, Ms. SNOWE, Mr. ENZI, Mr. AKAKA, Mr. BAUCUS, Mr. BINGAMAN, Mr. BIDEN, Mrs. BOXER, Mr. BROWN, Ms. CANTWELL, Mr. CARDIN, Mrs. CLINTON, Mr. DORGAN, Mr. DURBIN, Mrs. FEINSTEIN, Mr. HARKIN, Ms. KLOBUCHAR, Ms. LANDRIEU, Mr. LAUTENBERG, Mr. LIEBERMAN, Mr. LEVIN, Mr. MENENDEZ, Mrs. MURRAY, Mr. OBAMA, Mr. REED, Mr. ROCKEFELLER, Mr. SALAZAR, Mr. SCHUMER, Mr. TESTER, Mr. WEBB, Mr. WHITEHOUSE, Mr. WYDEN, Mr. BAYH, Ms. MIKULSKI, and Ms. STABENOW):

S. 682. A bill to award a congressional gold medal to Edward William Brooke III in recognition of his unprecedented and enduring service to our Nation; to the Committee on Banking, Housing, and Urban Affairs.

By Mrs. FEINSTEIN:

S.J. Res. 3. A joint resolution to specify an expiration date for the authorization of use of military force under the Authorization for Use of Military Force Against Iraq Resolution of 2002 and to authorize the continuing presence of United States forces in Iraq after that date for certain military operations and activities; to the Committee on Foreign Relations.

ADDITIONAL COSPONSORS

S. 614

At the request of Mr. SCHUMER, the name of the Senator from Michigan (Ms. STABENOW) was added as a cosponsor of S. 614, a bill to amend the Internal Revenue Code to double the child tax credit for the first year, to expand the credit dependent care services, to provide relief from the alternative minimum tax, and for other purposes.

S. 641

At the request of Mr. GREGG, the names of the Senator from Minnesota (Mr. COLEMAN), the Senator from Mississippi (Mr. LOTT), the Senator from Georgia (Mr. CHAMBLISS) and the Senator from South Dakota (Mr. THUNE) were added as cosponsors of S. 641, a bill to express the sense of Congress that no funds should be cut off or reduced for American troops in the field which would result in undermining their safety or their ability to complete their assigned missions.

STATEMENTS ON INTRODUCED BILLS AND JOINT RESOLUTIONS

By Mrs. BOXER (for herself and Ms. SNOWE):

S. 678. A bill to amend title 49, United States Code, to ensure air passengers have access to necessary services while on a grounded air carrier and are not unnecessarily held on a grounded air carrier before or after a flight, and for other purposes; to the Committee on Commerce, Science, and Transportation.

Mrs. BOXER. Mr. President, I rise today with my colleague Senator OLYMPIA SNOWE to introduce ''The Airline Passenger Bill of Rights Act of 2007,'' a bill which addresses an issue recently in the news—airlines trapping passengers on the ground in delayed planes for hours and hours without adequate food, water or bathrooms.

This week, at John F. Kennedy International Airport, a JetBlue airplane sat on the tarmac for 11 hours. Over this New Year's Eve weekend, American Airlines had to divert planes to Austin because of the bad weather and one plane sat on the tarmac for nine hours.

For the passengers, the conditions were not good. There was not enough food and potable water, and the bathrooms stopped working. According to news reports, after waiting for five hours an elderly woman asked for food and was told she could purchase a snack box for $4.

This is unacceptable.

I have been stuck on the tarmac many times in my travel back and forth to California. Weather delays are unavoidable, but airlines must have a plan to ensure that their passengers—which often include infants and the elderly—are not trapped on a plane for hours and hours. If a plane is stuck on the tarmac or at the gate for hours, a passenger should have the right to deplane. No one should be held hostage on an aircraft when an airline can clearly find a way to get passengers off safely.

This is not the first time that passengers have been trapped on an airplane an extreme amount of time. In 1999, after a Northwest plane was delayed on the tarmac for at least nine hours with the same poor conditions, many Members of Congress were outraged and several introduced comprehensive passenger bill of rights legislation.

While those bills did not become law, they had a powerful effect on the airlines, which agreed to a 12-point ''Airline Customer Service Plan.'' In the plan, the airlines committed to providing passengers with better information about ticket prices and delays, better efforts to retrieve lost luggage, fairer ''bumping'' policies and to meeting essential needs during long on-aircraft delays. And since 1999 the airlines have made improvements to passenger service.

But in recent years, as the industry has grown ever more competitive, airlines are increasingly operating with no margin of error. Planes are completely sold out, gates are continuously utilized, airport facilities are stretched thin. This means that when bad weather hits, the airlines can find themselves unable to readily accommodate delays and cancellations. And the results, as we have seen this winter, can be disastrous.

And that is why today we are introducing the ''Airline Passenger Bill of Rights Act of 2007,'' commonsense legislation designed to ensure that travelers can no longer be unnecessarily trapped on airplanes for excessive periods of time or deprived of food, water or adequate restrooms during a ground delay.

The legislation requires airlines to offer passengers the option of safely leaving a plane they have boarded once that plane has sat on the ground three hours after the plane door has closed. This option would be provided every three hours that the plane continues to sit on the ground.

The legislation also requires airlines to provide passengers with necessary services such as food, potable water and adequate restroom facilities while a plane is delayed on the ground.

The legislation provides two exceptions to the three-hour option. The pilot may decide to not allow passengers to deplane if he or she reasonably believes their safety or security would be at risk due to extreme weather or other emergencies. Alternately, if the pilot reasonably determines that the flight will depart within 30 minutes after the three hour period, he or she can delay the deplaning option for an additional 30 minutes.

I believe this legislation will do much to help consumers while placing reasonable requirements on the airlines and I hope my colleagues will support it.

By Ms. COLLINS (for herself, Mr. LIEBERMAN, Mr. COLEMAN, Mr. CARPER, and Mrs. MCCASKILL):

S. 680. A bill to ensure proper oversight and accountability in Federal contracting, and for other purposes; to the Committee on Homeland Security and Governmental Affairs.

Ms. COLLINS. Mr. President. I rise to introduce the Accountability in Government Contracting Act of 2007. This bill, which I am delighted is cosponsored by Senators LIEBERMAN, COLEMAN, CARPER, and MCCASKILL, will improve our stewardship of taxpayers' money by reforming contracting practices, strengthening the procurement workforce, reforming our IG community, and including other provisions to combat waste, fraud, and abuse. It will also provide increased oversight and transparency in the Federal Government's dealings with its contractors.

The Office of Federal Procurement Policy estimates that the Federal Government purchased approximately $410 billion in goods and services last year—more than a 50 percent increase in Federal purchases since 2001.

As the administration's proposed budget suggests, the costs of war, natural disaster, homeland-security precautions, and other vital programs will drive those expenditures to even higher levels in the years ahead.

Each of us in this Chamber knows that the Federal Government's prodigious purchasing can create abundant opportunities for fraud, waste, and abuse. Whether the problem is purchases of unusable trailers for hurricane victims, shoddy construction of schools and clinics in Iraq, or abuse of purchase cards by Government employees, we must do a better job of protecting taxpayer dollars and delivering better acquisition outcomes.

Recognizing that imperative requires that we also recognize the obstacles in our path. Such obstacles include resource constraints, inexcusable rushes to award contracts, poor program administration, and perverse incentives.

Other challenges to fair, effective, and open competition and oversight include inadequate documentation requirements, overuse of letter contracts that fail to include all the critical terms until after performance is complete, excessive tiering of subcontractors, and insufficient publicly available data on Federal contracts.

Too often, the problem of waste, fraud, and abuse stimulates floods of outrage and magic-bullet proposals that lean more toward symbolic gestures than practical reforms. The Accountability in Government Contracting Act of 2007 confines itself to sensible, practical reforms that will really make a difference.

Competition for Government contracts clearly helps to control costs, encourage innovation, and keep contractors sharp. It is basic economics—and it's the law, as Congress provided in the Competition in Contracting Act of 1984. This bill promotes more open competition for Government contracts—a positive step for both contractors and taxpayers.

Unfortunately, the tide has been running the wrong way. Competition, intended to produce savings, has sharply diminished. While the dollar volume of Federal contracting has nearly doubled since the year 2000, a recent report concluded that less than half of all ''contract actions''—new contracts and payments against existing contracts—are now subject to full and open competition: 48 percent in 2005, compared to 79 percent in 2001. This is inexcusable.

The dangers inherent in sole-source contracting are on full display in Iraq. For example, the Kellogg, Brown, and Root unit of Halliburton designed and was awarded a multi-year sole-source contract for the Restore Iraqi Oil project. A Defense Department audit concluded that the firm later overcharged the government $61 million for fuel. Incredibly, the Army Corps of Engineers permitted the overcharge.

According to a January 2007 Congressional Research Service report, Kellogg, Brown, and Root's contract work in Iraq included billing for $52 million to administer a project that entailed only $13 million in actual project work, piping unpurified water into showers and laundries used by our troops, and billing for 6 months of failure while using an unsuitable technique to lay oil pipeline beneath a river.

As these examples suggest, we need more competition, less sole source contracting, and tougher management in Federal contracts. The bill I introduce today extends a practice adopted in the fiscal year 2002 Defense Authorization Act government-wide, mandating competition for each task or delivery order over $100,000, the Simplified Acquisition Threshold.

The bill would promote more informed and effective competition for orders over $5 million by requiring more information in the statement of work. At minimum, contractors would be given a clear statement of agency requirements, a reasonable response period, and disclosure of significant evaluation factors to be applied. For awards to be made on a best-value rather than lowest-cost basis, the agency must provide a written statement on the basis of the award and on the trade-off between quality and cost.

To increase the quality of competitive bids, the bill mandates post-award debriefings for task or delivery orders valued over $5 million. Debriefings improve the transparency of the Federal acquisition process by providing information that contractors can use to improve future offers.

Competition helps secure good value for taxpayers' money, but there are exceptions, and they should be the exception and not the rule, when sole-source contracting is appropriate. Sole-source contracting heightens the importance of effective oversight, but oversight is often hampered by a lack of publicly available information on sole-source contract awards.

The bill addresses that problem by requiring publication at the ''FedBizOpps'' website of notices of all sole-source task-or-delivery orders above $100,000, within 10 business days after the award.

I shall note some other important provisions of the bill.

The bill will rein in the practice of awarding contracts missing key terms, such as price, scope or schedule, and then failing to supply those terms until the contractor delivers the good or service—thereby placing all risk of failure on the government. In Iraq and Katrina contracting, we saw the perils of failing to supply the ''missing term'' promptly. For example, the Special Inspector General for Iraq Reconstruction last July identified 194 individual task orders valued at $3.4 billion that were classified as ''undefinitized contract actions.''

This is entirely too much money and too many contract actions to linger in this status. The bill corrects this flaw by requiring contracting officers to unilaterally determine all missing terms, if not mutually agreed upon, within 180 days or before 40 percent of the work is performed, with the approval of the head of the contracting agency, and subject to the contract disputes process.

Contracting for Hurricane Katrina and Iraq has also involved excessive tiers of subcontractors, driving up costs and complicating administration. The bill extends a tiering-control rule we placed in the Department of Homeland Security appropriations bill, preventing contractors from using subcontracts for more than 65 percent of the cost of the contract, not including overhead and profit, unless the head of agency determines that exceptional circumstances apply.

To further decrease the Government's reliance on large single-source service contracts, the bill strengthens the preference for multiple awards of Indefinite Delivery/Indefinite Quantity, or IDIQ, contracts by prohibiting single awards of IDIQ contracts for services over $100 million. The Government would therefore have at least two contractors for these large service contracts, who would then be required to compete with each other for all task and/or delivery orders, unless strict grounds for exceptions applied.

To ensure that agencies' increasing use of interagency contracting is producing value, we require the Office of Federal Procurement Policy to collect and make publicly available data on the numbers, scope, users, and rationales for these contracts.

But increased competition will not solve all our ills. We must also address the lack of personnel to award and administer Federal contracts. We moved into the 21st century with 22 percent fewer Federal civilian acquisition personnel than we had at the start of the 1990s. The Department of Defense has been disbursing enormous amounts of money to contractors since the first gulf war, but has reduced its acquisition workforce by more than 50 percent from 1994 to 2005.

Among the current, attenuated Federal acquisition workforce, nearly 40 percent are eligible to retire by the end of this fiscal year. Meanwhile, the number and scale of Federal purchases continue to rise, making this human-capital crisis even more dire.

Therefore, the bill would help Federal agencies recruit, retain, and develop an adequate acquisition workforce. Its mechanisms include acquisition internship programs, promoting contracting careers, a government-industry exchange program; an Acquisition Fellowship Program with scholarships for graduate study, requirements for human-capital strategic plans by chief acquisition officers, and a new senior-executive-level position in the Office of Federal Procurement Policy to manage this initiative.

In keeping with earlier Senate action, the bill also targets wasteful use of purchase cards by seeking better analysis of purchase-card use to identify fraud as well as potential savings, negotiate discounts, collect and disseminate best practices, and address small-business concerns in micro-purchases.

Such information is clearly necessary. In a hearing before the Homeland Security and Governmental Affairs Committee, GAO detailed how a FEMA employee provided his purchase card number to a vendor, who agreed to provide the government 20 flat-bottom boats. Besides the fact that FEMA agreed to pay $208,000 for the boats, about twice the retail price, the vendor used the FEMA employee's purchase card information to make two unauthorized transactions totaling about $30,000. Neither the cardholder nor the approving official disputed the unauthorized charges. As if this was not bad enough, FEMA failed to gain title to the boats. It did not even enter 12 of the 20 boats into their property system. Eventually, one of the boats was later found back in the possession of the original owner.

The bill restricts the de-facto outsourcing of program-management responsibility when a large contractor becomes a ''lead systems integrator'' for a multi-part project. The bill requires OFPP to craft a government-wide definition of lead systems integrators and study their use by various agencies.

The bill also specifically addresses demonstrated problems in contracting for assistance programs in Afghanistan. Numerous reports of fraud, waste, and abuse in that country, such as the shockingly poor construction of schools and clinics by the Louis Berger Group, echo the findings of the SIGIR in Iraq.

The Louis Berger Group was awarded a contract to build schools and clinics to help restore a decent life for the people of Afghanistan. Of the 105 structures they erected before their work was stopped, 103 suffered roof collapses after the first snowfall. Here was a case that combined a waste of taxpayer funds, damage to the U.S. image we were trying to enhance, and an actual danger to the people we were trying to help.

This bill requires the Administrator of USAID to revise the strategy for the agency's assistance program in Afghanistan to include measurable goals, specific time frames, resource levels, delineated responsibilities, external factors bearing on success, and a schedule for program evaluations. All of these things should have been done from the outset, not after billions in Federal funds were expended.

Title II of the bill introduces targeted reforms of the Inspector General system. IGs play a vital role in preventing and detecting waste, fraud, and abuse. We must attract more of these specialists to government service, and make the career attractive.

One vital provision in our bill might appear to run counter to that aim but the provision, in fact, preserves the independence of our Inspector Generals. It prohibits IGs from accepting any cash award or cash bonus from the agency that they are auditing or investigating. This codifies the honorable practice of most IGs of declining to accept such awards because of the inherent conflict of interest they present.

The balancing mechanism for that prohibition is to increase the salaries of Presidentially appointed IGs from Senior Executive Service Level III to Level IV. This also corrects a common anomaly wherein Deputy IGs collecting performance pay earn more than their supervising IG. The bill removes the inequity and the disincentive to accepting a promotion.

The bill makes other reforms that will increase the quality of IG reports and audits. For example, it clarifies that IGs' subpoena power extends to electronic documents. It also sets out professional qualifications for the designated Federal entity IGs, or DFE IGs. These IGs work in our smaller Federal agencies and are not subject to confirmation. This is no excuse for this failure to supply minimum professional qualifications for these important positions.

This bill also corrects a serious problem that has left millions of fraudulently disbursed dollars un-recouped. Currently DFE IGs do not have the power to institute lawsuits to recover claims under $150,000, even if they have a compelling case. This is unacceptable. DFE IGs need the power to pick this ''low hanging fruit,'' whose cumulative cost can be huge. The bill corrects this problem by giving DFE IGs the same authority that Presidentially appointed IGs have to investigate and report false claims, and to recoup losses resulting from fraud below $150,000.

I believe this summary shows how the Accountability in Government Contracting Act of 2007 combines practical, workable, and targeted reforms to improve a complex process that expends hundreds of billions of taxpayer dollars every year. It will pay recurring dividends for years to come in higher-quality proposals, in more efficiently administered projects, and in better results for our citizens. I urge my colleagues to support it.

By Mr. LEVIN (for himself, Mr. COLEMAN, and Mr. OBAMA):

S. 681. A bill to restrict the use offshore tax havens and abusive tax shelters to inappropriately avoid Federal taxation, and for other purposes; to the Committee on Finance.

Mr. LEVIN. Mr. President, offshore tax haven and tax shelter abuses are undermining the integrity of our tax system, robbing the Treasury of more than $100 billion each year, and shifting the tax burden from high income persons and companies onto the backs of middle income families. We can shut down a lot of these abuses if we have the political will. That's why I am introducing today, along with Senators NORM COLEMAN and BARACK OBAMA, the Stop Tax Haven Abuse Act which offers powerful new tools to do just that.

We all know there are billions of dollars in taxes that are owed but not paid each year. It's called the tax gap. The latest estimate is $345 billion in unpaid taxes each year owed by individuals, corporations, and other organizations willing to rob Uncle Sam and offload their tax burden onto the backs of honest taxpayers. We also estimate that, of that $345 billion annual tax gap, offshore tax haven abuses account for as much as $100 billion. Abusive tax shelters, both domestic and offshore, account for additional billions in unpaid taxes per year. To pay for critical needs, to avoid going even deeper into debt, and to protect honest taxpayers, we must shut these abuses down.

The legislation we are introducing today is the product of years of work by the Permanent Subcommittee on Investigations. I serve as Chairman of that Subcommittee. Senator COLEMAN is the ranking Republican, and Senator OBAMA is a valued Subcommittee member. Through reports and hearings, the Subcommittee has worked for years to expose and combat abusive tax havens and tax shelters. In the last Congress, we confronted these twin threats to our treasury by introducing S. 1565, the Tax Shelter and Tax Haven Reform Act. Today's bill is an improved version of that legislation, reflecting not only the Subcommittee's additional investigative work but also innovative ideas to end the use of tax havens and to stop unethical tax advisers from aiding and abetting U.S. tax evasion.

A tax haven is a foreign jurisdiction that maintains corporate, bank, and tax secrecy laws and industry practices that make it very difficult for other countries to find out whether their citizens are using the tax haven to cheat on their taxes. In effect, tax havens sell secrecy to attract clients to their shores. They peddle secrecy the way other countries advertise high quality services. That secrecy is used to cloak tax evasion and other misconduct, and it is that offshore secrecy that is targeted in our bill.

Abusive tax shelters are another target. Abusive tax shelters are complicated transactions promoted to provide tax benefits unintended by the tax code. They are very different from legitimate tax shelters, such as deducting the interest paid on your home mortgage or Congressionally approved tax deductions for building affordable housing. Some abusive tax shelters involve complicated domestic transactions; others make use of offshore shenanigans. All abusive tax shelters are marked by one characteristic: there is no real economic or business rationale other than tax avoidance. As Judge Learned Hand wrote in Gregory v. Helvering, they are ''entered upon for no other motive but to escape taxation.''

Abusive tax shelters are usually tough to prosecute. Crimes such as terrorism, murder, and fraud produce instant recognition of the immorality involved. Abusive tax shelters, by contrast, are often ''MEGOs,'' meaning ''My Eyes Glaze Over.'' Those who cook up these concoctions count on their complexity to escape scrutiny and public ire. But regardless of how complicated or eye-glazing, the hawking of abusive tax shelters by tax professionals like accountants, bankers, investment advisers, and lawyers to thousands of people like late-night, cut-rate T.V. bargains is scandalous, and we need to stop it. Hiding tax schemes through offshore companies and bank accounts in tax havens with secrecy laws also needs to be stopped cold. It's up to Congress to do just that.

Today, I would like to take some time to cut through the haze of these schemes to describe them for what they really are and explain what our bill would do to stop them. First, I will look at our investigation into offshore tax havens and discuss the provisions we have included in this bill to combat them. Then, I will turn to abusive tax shelters and our proposed remedies.

For many years, the Permanent Subcommittee on Investigations has been looking at the problem of offshore corporate, bank, and tax secrecy laws and practices that help taxpayers dodge their U.S. tax obligations by preventing U.S. tax authorities from gaining access to key financial and beneficial ownership information. The Tax Justice Network, an international nonprofit organization dedicated to fighting tax evasion, recently estimated that wealthy individuals worldwide have stashed $11.5 trillion of their assets in offshore tax havens. At one Subcommittee hearing, a former owner of an offshore bank in the Cayman Islands testified that he believed 100 percent of his former bank clients were engaged in tax evasion. He said that almost all were from the United States and had taken elaborate measures to avoid IRS detection of their money transfers. He also expressed confidence that the offshore government that licensed his bank would vigorously defend client secrecy in order to continue attracting business.

In a hearing held in August 2006, the Subcommittee released a staff report with six case studies describing how U.S. individuals are using offshore tax havens to evade U.S. taxes. In one case, two brothers from Texas, Sam and Charles Wyly, established 58 offshore trusts and corporations, and operated them for more than 13 years without alerting U.S. authorities. To move funds abroad, the brothers transferred over $190 million in stock option compensation they had received from U.S. publicly traded companies to the offshore corporations. They claimed that they did not have to pay tax on this compensation, because, in exchange, the offshore corporations provided them with private annuities which would not begin to make payments to them until years later. In the meantime, the brothers directed the offshore corporations to cash in the stock options and start investing the money. The brothers failed to disclose these offshore stock transactions to the SEC despite their position as directors and major shareholders in the relevant companies.

The Subcommittee was able to trace more than $700 million in stock option proceeds that the brothers invested in various ventures they controlled, including two hedge funds, an energy company, and an offshore insurance firm. They also used the offshore funds to purchase real estate, jewelry, and artwork for themselves and their family members, claiming they could use these offshore dollars to advance their personal and business interests without having to pay any taxes on the offshore income. The Wylys were able to carry on these tax maneuvers in large part because all of their activities were shrouded in offshore secrecy.

In another of the case histories, six U.S. taxpayers relied on phantom stock trades between two offshore shell companies to generate fake stock losses which were then used to shelter billions in income. This offshore tax shelter scheme, known as the POINT Strategy, was devised by Quellos, a U.S. securities firm headquartered in Seattle; coordinated with a European financial firm known as Euram Advisers; and blessed by opinion letters issued by two prominent U.S. law firms, Cravath Swaine and Bryan Cave. The two offshore shell companies at the center of the strategy, known as Jackstones and Barneville, supposedly created a stock portfolio worth $9.6 billion. However, no cash or stock transfers ever took place. Moreover, the shell companies that conducted these phantom trades are so shrouded in offshore secrecy that no one will admit to knowing who owns them. One of the taxpayers, Haim Saban, used the scheme to shelter about $1.5 billion from U.S. taxes. Another, Robert Wood Johnson IV, sought to shelter about $145 million. Both have since agreed to settle with the IRS.

The persons examined by the Subcommittee are far from the only U.S. taxpayers engaging in these types of offshore tax abuses. Recent estimates are that U.S. individuals are using offshore tax schemes to avoid payment of $40 to $70 billion in taxes each year.

Corporations are also using tax havens to avoid payment of U.S. taxes. A recent IRS study estimates that U.S. corporations use offshore tax havens to avoid about $30 billion in U.S. taxes each year. A GAO report I released with Senator DORGAN in 2004 found that nearly two-thirds of the top 100 companies doing business with the United States government had one or more subsidiaries in a tax haven. One company, Tyco International, had 115. Enron, in its heyday, had over 400 Cayman subsidiaries.

Data released by the Commerce Department further demonstrates the extent of U.S. corporate use of tax havens, indicating that, as of 2001, almost half of all foreign profits of U.S. corporations were in tax havens. A study released by the journal Tax Notes in September 2004 found that American companies were able to shift $149 billion of profits to 18 tax haven countries in 2002, up 68 percent from $88 billion in 1999.

Here's just one simplified example of the gimmicks being used by corporations to transfer taxable income from the United States to tax havens to escape taxation. Suppose a profitable U.S. corporation establishes a shell corporation in a tax haven. The shell corporation has no office or employees, just a mailbox address. The U.S. parent transfers a valuable patent to the shell corporation. Then, the U.S. parent and all of its subsidiaries begin to pay a hefty fee to the shell corporation for use of the patent, reducing its U.S. income through deducting the patent fees and thus shifting taxable income out of the United States to the shell corporation. The shell corporation declares a portion of the fees as profit, but pays no U.S. tax since it is a tax haven resident. The icing on the cake is that the shell corporation can then ''lend'' the income it has accumulated from the fees back to the U.S. parent for its use. The parent, in turn, pays ''interest'' on the ''loans'' to the shell corporation, shifting still more taxable income out of the United States to the tax haven. This example highlights just a few of the tax haven ploys being used by some U.S. corporations to escape paying their fair share of taxes here at home.

Our Subcommittee's most recent investigation into offshore abuses highlighted the extent to which offshore secrecy rules make it possible for taxpayers to participate in illicit activity with little fear of getting caught. Through a series of case studies, the Subcommittee showed how U.S. taxpayers, with the help of offshore service providers, financial institutions, and sometimes highly credentialed tax professionals, set up entities in such secrecy jurisdictions as the Isle of Man, the Cayman Islands, and the island of Nevis, claimed these offshore entities were independent but, in fact, controlled them through compliant offshore trustees, officers, directors, and corporate administrators. Because of the offshore secrecy laws and practices, these offshore service providers could and did go to extraordinary lengths to protect their U.S. clients' identities and financial information from U.S. tax and regulatory authorities, making it extremely difficult, if not impossible, for U.S. law enforcement authorities to get the information they need to enforce U.S. tax laws.

The extent of the offshore tax abuses documented by the Subcommittee during this last year intensified our determination to find new ways to combat offshore secrecy and restore the ability of U.S. tax enforcement to pursue offshore tax cheats. I'd now like to describe the key measures in the Stop Tax Havens Act being introduced today, which includes the use of presumptions to overcome offshore secrecy barriers, special measures to combat persons who impede U.S. tax enforcement, and greater disclosure of offshore transactions.

Our last Subcommittee staff report provided six case histories detailing how U.S. taxpayers are using offshore tax havens to avoid payment of the taxes they owe. These case histories examined an Internet based company that helps persons obtain offshore entities and accounts; U.S. promoters that designed complex offshore structures to hide client assets, even providing clients with a how-to manual for going offshore; U.S. taxpayers who diverted business income offshore through phony loans and invoices; a one-time tax dodge that deducted phantom offshore stock losses from real U.S. stock income to shelter that income from U.S. taxes; and the 13-year offshore empire built by Sam and Charles Wyly. Each of these case histories presented the same fact pattern in which the U.S. taxpayer, through lawyers, banks, or other representatives, set up offshore trusts, corporations, or other entities which had all the trappings of independence but, in fact, were controlled by the U.S. taxpayer whose directives were implemented by compliant offshore personnel acting as the trustees, officers, directors or nominee owners of the offshore entities.

In the case of the Wylys, the brothers and their representatives communicated Wyly directives to a so-called trust protector who then relayed the directives to the offshore trustees. In the 13 years examined by the Subcommittee, the offshore trustees never once rejected a Wyly request and never once initiated an action without Wyly approval. They simply did what they were told. A U.S. taxpayer in another case history told the Subcommittee that the offshore personnel who nominally owned and controlled his offshore entities, in fact, always followed his directions, describing himself as the ''puppet master'' in charge of his offshore holdings. When the Subcommittee discussed these case histories with financial administrators from the Isle of Man, they explained that none of the offshore personnel were engaged in any wrongdoing, because their laws permit foreign clients to transmit detailed, daily instructions to offshore service providers on how to handle offshore assets, so long as it is the offshore trustee or corporate officer who gives the final order to buy or sell the assets. They explained that, under their law, an offshore entity is considered legally independent from the person directing its activities so long as that person follows the form of transmitting ''requests'' to the offshore personnel who retain the formal right to make the decisions, even though the offshore personnel always do as they are asked.

The Subcommittee case histories illustrate what the tax literature and law enforcement experience have shown for years: that the business model followed in all offshore secrecy jurisdictions is for compliant trustees, corporate administrators, and financial institutions to provide a veneer of independence while ensuring that their U.S. clients retain complete and unfettered control over ''their'' offshore assets. That's the standard operating procedure offshore. Offshore service providers pretend to own or control the offshore trusts, corporations, and accounts they help establish, but what they really do is whatever their clients tell them to do. In truth, the independence of offshore entities is a legal fiction, and it is past time to pull back the curtain on the reality hiding behind the legal formalities.

The reality behind these offshore practices makes a mockery of U.S. laws that normally view trusts and corporations as independent entities. They invite game-playing and tax evasion. To combat these offshore abuses, our bill takes them head on in a number of ways.

The first section of our bill, Section 101, tackles this issue by creating several rebuttable evidentiary presumptions that would strip the veneer of independence from the U.S. person involved with offshore entities, transactions, and accounts, unless that U.S. person presents clear and convincing evidence to the contrary. These presumptions would apply only in civil judicial or administrative tax or securities enforcement proceedings examining transactions, entities, or accounts in offshore secrecy jurisdictions. These presumptions would put the burden of producing evidence from the offshore secrecy jurisdiction on the taxpayer who chose to do business there, and who has access to the information, rather than on the Federal Government which has little or no practical ability to get the information. The creation of these presumptions implements a bipartisan recommendation in the August 2006 Subcommittee report on tax haven abuses.

The bill would establish three evidentiary presumptions that could be used in a civil tax enforcement proceeding: (1) a presumption that a U.S. taxpayer who ''formed, transferred assets to, was a beneficiary of, or received money or property'' from an offshore entity, such as a trust or corporation, is in control of that entity; (2) a presumption that funds or other property received from offshore are taxable income, and that funds or other property transferred offshore have not yet been taxed; and (3) a presumption that a financial account controlled by a U.S. taxpayer in a foreign country contains enough money—$10,000—to trigger an existing statutory reporting threshold and allow the IRS to assert the minimum penalty for nondisclosure of the account by the taxpayer.

In addition, the bill would establish two evidentiary presumptions applicable to civil proceedings to enforce U.S. securities laws. One would specify that if a director, officer, or major shareholder of a U.S. publicly traded corporation were associated with an offshore entity, that person would be presumed to control that offshore entity. The second provides that securities nominally owned by an offshore entity are presumed to be beneficially owned by any U.S. person who controlled the offshore entity.

These presumptions are rebuttable, which means that the U.S. person who is the subject of the proceeding could provide clear and convincing evidence to show that the presumptions were factually inaccurate. To rebut the presumptions, a taxpayer could establish, for example, that an offshore corporation really was controlled by an independent third party, or that money sent from an offshore account really represented a nontaxable gift instead of taxable income. If the taxpayer wished to introduce evidence from a foreign person, such as an offshore banker, corporate officer, or trust administrator, to establish those facts, that foreign person would have to actually appear in the proceeding in a manner that would permit cross examination in order for the taxpayer to rebut the presumption. A simple affidavit from an offshore resident who refused to submit to cross examination in the United States would be insufficient.

There are several limitations on these presumptions to ensure their operation is fair and reasonable. First, the evidentiary rules in criminal cases would not be affected by this bill which would apply only to civil proceedings. Second, because the presumptions apply only in enforcement ''proceedings,'' they would not directly affect, for example, a person's reporting obligations on a tax return or SEC filing. The presumptions would come into play only if the IRS or SEC were to challenge a matter in a formal proceeding. Third, the bill does not apply the presumptions to situations where either the U.S. person or the offshore entity is a publicly traded company, because in those situations, even if a transaction were abusive, IRS and SEC officials are generally able to obtain access to necessary information. Fourth, the bill recognizes that certain classes of offshore transactions, such as corporate reorganizations, may not present a potential for abuse, and accordingly authorizes Treasury and the Securities and Exchange Commission to issue regulations or guidance identifying such classes of transactions, to which the presumptions would then not apply.

An even more fundamental limitation on the presumptions is that they would apply only to transactions, accounts, or entities in offshore jurisdictions with secrecy laws or practices that unreasonably restrict the ability of the U.S. government to get needed information and which do not have effective information exchange programs with U.S. law enforcement. The bill requires the Secretary of the Treasury to identify those offshore secrecy jurisdictions, based upon the practical experience of the IRS in obtaining needed information from the relevant country.

To provide a starting point for Treasury, the bill presents an initial list of 34 offshore secrecy jurisdictions. This list is taken from actual IRS court filings in numerous, recent court proceedings in which the IRS sought permission to obtain information about U.S. taxpayers active in the named jurisdictions. The bill thus identifies the same jurisdictions that the IRS has already named publicly as probable locations for U.S. tax evasion. Federal courts all over the country have consistently found, when presented with the IRS list and supporting evidence, that the IRS had a reasonable basis for concluding that U.S. taxpayers with financial accounts in those countries presented a risk of tax noncompliance. In every case, the courts allowed the IRS to collect information about accounts and transactions in the listed offshore jurisdictions.

The bill also provides Treasury with the authority to add or remove jurisdictions from the initial list so that the list can change over time and reflect the actual record of experience of the United States in its dealings with specific jurisdictions around the world. The bill provides two tests for Treasury to use in determining whether a jurisdiction should be identified as an ''offshore secrecy jurisdiction'' triggering the evidentiary presumptions: (1) whether the jurisdiction's secrecy laws and practices unreasonably restrict U.S. access to information, and (2) whether the jurisdiction maintains a tax information exchange process with the United States that is effective in practice.

If offshore jurisdictions make a decision to enact secrecy laws and support industry practices furthering corporate, financial, and tax secrecy, that's their business. But when U.S. taxpayers start using those offshore secrecy laws and practices to evade U.S. taxes to the tune of $100 billion per year, that's our business. We have a right to enforce our tax laws and to expect that other countries will not help U.S. tax cheats achieve their ends.

The aim of the presumptions created by the bill is to eliminate the unfair advantage provided by offshore secrecy laws that for too long have enabled U.S. persons to conceal their misconduct offshore and game U.S. law enforcement. These presumptions would allow U.S. law enforcement to establish what we all know from experience is normally the case in an offshore jurisdiction—that a U.S. person associated with an offshore entity controls that entity; that money and property sent to or from an offshore entity involves taxable income; and that an offshore account that wasn't disclosed to U.S. authorities should have been. U.S. law enforcement can establish these facts presumptively, without having to pierce the secrecy veil. At the same time, U.S. persons who chose to transact their affairs through an offshore secrecy jurisdiction are given the opportunity to lift the veil of secrecy and demonstrate that the presumptions are factually wrong.

We believe these evidentiary presumptions will provide U.S. tax and securities law enforcement with powerful new tools to shut down tax haven abuses.

Section 102 of the bill is another innovative approach to combating tax haven abuses. This section would build upon existing Treasury authority to apply an array of sanctions to counter specific foreign money laundering threats by extending that same authority to counter specific foreign tax administration threats.

In 2001, the PATRIOT Act gave Treasury the authority under 31 U.S.C. 5318A to require domestic financial institutions and agencies to take special measures with respect to foreign jurisdictions, financial institutions, or transactions found to be of ''primary money laundering concern.'' Once Treasury designates a foreign jurisdiction or financial institution to be of primary money laundering concern, Section 5318A allows Treasury to impose a range of requirements on U.S. financial institutions in their dealings with the designated entity—from requiring U.S. financial institutions, for example, to provide greater information than normal about transactions involving the designated entity, to prohibiting U.S. financial institutions from opening accounts for that foreign entity.

This PATRIOT Act authority has been used sparingly, but to telling effect. In some instances Treasury has employed special measures against an entire country, such as Burma, to stop its financial institutions from laundering funds through the U.S. financial system. More often, however, Treasury has used the authority surgically, against a single problem financial institution, to stop laundered funds from entering the United States. The provision has clearly succeeded in giving Treasury a powerful tool to protect the U.S. financial system from money laundering abuses.

The bill would authorize Treasury to use that same tool to require U.S. financial institutions to take the same special measures against foreign jurisdictions or financial institutions found by Treasury to be ''impeding U.S. tax enforcement.'' Treasury could, for example, in consultation with the IRS, Secretary of State, and the Attorney General, require U.S. financial institutions that have correspondent accounts for a designated foreign bank to produce information on all of that foreign bank's customers. Alternatively, Treasury could prohibit U.S. financial institutions from opening accounts for a designated foreign bank, thereby cutting off that foreign bank's access to the U.S. financial system. These types of sanctions could be as effective in ending the worst tax haven abuses as they have been in curbing money laundering.

In addition to extending Treasury's ability to impose special measures against foreign entities impeding U.S. tax enforcement, the bill would add one new measure to the list of possible sanctions that could be applied to foreign entities: it would allow Treasury to instruct U.S. financial institutions not to authorize or accept credit card transactions involving the designated foreign jurisdiction or financial institution. Denying tax haven banks the ability to issue credit cards for use in the United States, for example, would be a powerful new way to stop U.S. tax cheats from obtaining access to funds hidden offshore.

Section 103 of the bill addresses another problem faced by the IRS in cases involving offshore jurisdictions—completing audits in a timely fashion when the evidence needed is located in a jurisdiction with strict secrecy laws. Currently, in the absence of fraud or some other exception, the IRS has 3 years from the date a return is filed to complete an audit and assess any additional tax. Because offshore secrecy laws slow down, and sometimes impede, efforts by the United States to obtain offshore financial and beneficial ownership information, the bill gives the IRS an extra 3 years to complete an audit and assess a tax on transactions involving an offshore secrecy jurisdiction. Of course, in the event that a case turns out to involve actual fraud, this provision of the bill is not intended to limit the rule giving the IRS unlimited time to assess tax in such cases.

Tax haven abuses are shrouded in secrecy. Section 104 attempts to pierce that secrecy by creating two new disclosure mechanisms requiring third parties to report on offshore transactions undertaken by U.S. persons.

The first disclosure mechanism focuses on U.S. financial institutions that open a U.S. account in the name of an offshore entity, such as an offshore trust or corporation, and learn from an anti-money laundering due diligence review, that a U.S. person is the beneficial owner behind that offshore entity. In the Wyly case history examined by the Subcommittee, for example, three major U.S. financial institutions opened dozens of accounts for offshore trusts and corporations which they knew were associated with the Wyly family.

Under current anti-money laundering law, all U.S. financial institutions are supposed to know who is behind an account opened in the name of, for example, an offshore shell corporation or trust. They are supposed to obtain this information to safeguard the U.S. financial system against misuse by terrorists, money launderers, and other criminals.

Under current tax law, a bank or securities broker that opens an account for a U.S. person is also required to give the IRS a 1099 form reporting any capital gains earned on the account. However, the bank or securities broker need not file a 1099 form if the account is owned by a foreign entity not subject to U.S. tax law. Problems arise when an account is opened in the name of an offshore entity that the bank or broker knows, from its anti-money laundering review, is owned or controlled by a U.S. person. The U.S. person should be filing a tax return with the IRS reporting the income of the ''controlled foreign corporation.'' However, since he or she knows it is difficult for the IRS to connect an offshore accountholder to a particular taxpayer, he or she may feel safe in not reporting that income. That complacency might change, however, if the U.S. person knew that the bank or broker who opened the account and learned of the connection had a legal obligation to report any account income to the IRS.

Under current law, the way the regulations are written and typically interpreted, the bank or broker can treat the foreign account holder as an independent entity separate from the U.S. person, even if it knows that the foreign corporation is merely holding title to the account for the U.S. person, who exercises complete authority over the corporation and benefits from any capital gains earned on the account. Current law thus arguably imposes no duty on the bank or broker to file a 1099 form disclosing the account to the IRS.

The bill would strengthen current law by expressly requiring a bank or broker that knows, as a result of its anti-money laundering due diligence or otherwise, that a U.S. person is the beneficial owner of a foreign entity that opened the account, to disclose that account to the IRS by filing a 1099 form reporting account income. This reporting obligation would not require banks or brokers to gather any new information—financial institutions are already required to perform anti-money laundering due diligence for accounts opened by offshore shell entities. The bill would instead require U.S. financial institutions to act on what they already know by filing a 1099 form with the IRS.

The second disclosure mechanism created by Section 104 targets U.S. financial institutions that open foreign bank accounts or set up offshore corporations, trusts, or other entities for their U.S. clients. Our investigations have shown that it is common for private bankers and brokers in the United States to provide these services to their wealthy clients, so that the clients do not even need to leave home to set up an offshore structure. The offshore entities can then open both offshore and U.S. accounts and supposedly be treated as foreign account holders for tax purposes.

A Subcommittee investigation learned, for example, that Citibank Private Bank routinely offered to its clients private banking services which included establishing one or more offshore shell corporations—which it called Private Investment Corporations or PICs—in jurisdictions like the Cayman Islands. The paperwork to form the PIC was typically completed by a Citibank affiliate located in the jurisdiction, such as Cititrust, which is a Cayman trust company. Cititrust could then help the PIC open offshore accounts, while Citibank could help the PIC open U.S. accounts.

Section 104 would require any U.S. financial institution that directly or indirectly opens a foreign bank account or establishes a foreign corporation or other entity for a U.S. customer to report that action to the IRS. The bill authorizes the regulators of banks and securities firms, as well as the IRS, to enforce this filing requirement. Existing tax law already requires U.S. taxpayers that take such actions to report them to the IRS, but many fail to do so, secure in the knowledge that offshore secrecy laws limit the ability of the IRS to find out about the establishment of new offshore accounts and entities. That's why our bill turns to a third party—the financial institution—to disclose the information. Placing this third party reporting requirement on the private banks and brokers will make it more difficult for U.S. clients to hide these transactions.

Section 105 of our bill strengthens the ability of the IRS to stop offshore trust abuses by making narrow but important changes to the Revenue Code provisions dealing with taxation of foreign trusts. The rules on foreign trust taxation have been significantly strengthened over the past 30 years to the point where they now appear adequate to prevent or punish many of the more serious abuses. However, the Subcommittee's 2006 investigation found a few loopholes that are still being exploited by tax cheats and that need to be shut down.

The bill would make several changes to close these loopholes. First, our investigation showed that U.S. taxpayers exercising control over a supposedly independent foreign trust commonly used the services of a liaison, called a trust ''protector'' or ''enforcer,'' to convey their directives to the supposedly independent offshore trustees. A trust protector is typically authorized to replace a foreign trustee at will and to advise the trustees on a wide range of trust matters, including the handling of trust assets and the naming of trust beneficiaries. In cases examined by the Subcommittee, the trust protector was often a friend, business associate, or employee of the U.S. person exercising control over the foreign trust. Section 105 provides that, for tax purposes, any powers held by a trust protector shall be attributed to the trust grantor.

A second problem addressed by our bill involves U.S. taxpayers who establish foreign trusts for the benefit of their families in an effort to escape U.S. tax on the accumulation of trust income. Foreign trusts can accumulate income tax free for many years. Previous amendments to the foreign trust rules have addressed the taxation problem by basically disregarding such trusts and taxing the trust income to the grantors as it is earned. However, as currently written, this taxation rule applies only to years in which the foreign trust has a named ''U.S. beneficiary.'' In response, to avoid the reach of the rule, some taxpayers have begun structuring their foreign trusts so that they operate with no named U.S. beneficiaries.

For example, the Subcommittee's investigation into the Wyly trusts discovered that the foreign trust agreements had only two named beneficiaries, both of which were foreign charities, but also gave the offshore trustees ''discretion'' to name beneficiaries in the future. The offshore trustees had been informed in a letter of wishes from the Wyly brothers that the trust assets were to go to their children after death. The trustees also knew that the trust protector selected by the Wylys had the power to replace them if they did not comply with the Wylys' instructions. In addition, during the life of the Wyly brothers, and in accordance with instructions supplied by the trust protector, the offshore trustees authorized millions of dollars in trust income to be invested in Wyly business ventures and spent on real estate, jewelry, artwork, and other goods and services used by the Wylys and their families. The Wylys plainly thought they had found a legal loophole that would let them enjoy and direct the foreign trust assets without any obligation to pay taxes on the money they used.

To stop such foreign trust abuses, the bill would make it impossible to pretend that this type of foreign trust has no U.S. beneficiaries. The bill would shut down the loophole by providing that: (1) any U.S. person actually benefiting from a foreign trust is treated as a trust beneficiary, even if they are not named in the trust instrument; (2) future or contingent U.S. beneficiaries are treated the same as current beneficiaries; and (3) loans of foreign trust assets or property such as real estate, jewelry and artwork (in addition to loans of cash or securities already covered by current law) are treated as trust distributions for tax purposes.

Section 106 of the bill takes aim at legal opinions that are used to try to immunize taxpayers against penalties for tax shelter transactions with offshore elements. The Subcommittee investigations have found that tax practitioners sometimes tell potential clients that they can invest in an offshore tax scheme without fear of penalty, because they will be given a legal opinion that will shield the taxpayer from any imposition of the 20 percent accuracy related penalties in the tax code. Current law does, in fact, allow taxpayers to escape these penalties if they can produce a legal opinion letter stating that the tax arrangement in question is ''more likely than not'' to survive challenge by the IRS. The problem with such opinions where part of the transaction occurs in an offshore secrecy jurisdiction is that critical assumptions of the opinions are often based on offshore events, transactions and facts that are hidden and cannot be easily ascertained by the IRS. Legal opinions based on such assumptions should be understood by any reasonable person to be inherently unreliable.

The bill therefore provides that, for any transaction involving an offshore secrecy jurisdiction, the taxpayer would need to have some other basis, independent of the legal opinion, to show that there was reasonable cause to claim the tax benefit. The ''more likely than not'' opinion would no longer be sufficient in and of itself to shield a taxpayer from all penalties if an offshore secrecy jurisdiction is involved. This provision, which is based upon a suggestion made by IRS Commissioner Mark Everson at our August hearing, is intended to force taxpayers to think twice about entering into an offshore scheme and to stop thinking that an opinion by a lawyer is all they need to escape any penalty for nonpayment of taxes owed. By making this change, we would also provide an incentive for taxpayers to understand and document the complete facts of the offshore aspects of a transaction before claiming favorable tax treatment.

To ensure that this section does not impede legitimate business arrangements in offshore secrecy jurisdictions, the bill authorizes the Treasury Secretary to issue regulations exempting two types of legal opinions from the application of this section. First, the Treasury Secretary could exempt all legal opinions that have a confidence level substantially above the more-likely-than-not level, such as opinions which express confidence that a proposed tax arrangement ''should'' withstand an IRS challenge. ''More-likely-than-not'' opinion letters are normally viewed as expressing confidence that a tax arrangement has at least a 50 percent chance of surviving IRS review, while a ''should'' opinion is normally viewed as expressing a confidence level of 70 to 75 percent. This first exemption is intended to ensure that legal opinions on arrangements that are highly likely to survive IRS review would continue to shield taxpayers from the 20 percent penalty. Second, the Treasury Secretary could exempt legal opinions addressing classes of transactions, such as corporate reorganizations, that do not present the potential for abuse. These exemptions would ensure that taxpayers who obtain legal opinions for these classes of transactions would also be protected from tax code penalties.

In addition to tax abuses, last year's Subcommittee investigation of the Wyly case history uncovered a host of troubling transactions involving U.S. securities held by the 58 offshore trusts and corporations associated with the two Wyly brothers. The offshore entities had obtained these securities by exercising about $190 million in stock options provided to them by the Wylys. The Wylys had obtained these stock options as compensation from three U.S. publicly traded corporations at which they were directors and major shareholders.

The investigation found that the Wylys generally did not report the offshore entities' stock holdings or transactions in their SEC filings, on the ground that the 58 offshore trusts and corporations functioned as independent entities, even though the Wylys continued to direct the entities' investment activities. The public companies where the Wylys were corporate insiders also failed to include in their SEC filings information about the company shares held by the offshore entities, even though the companies knew of their close relationship to the Wylys, that the Wylys had provided the offshore entities with significant stock options, and that the offshore entities held large blocks of the company stock. On other occasions, the public companies and various financial institutions failed to treat the shares held by the offshore entities as affiliated stock, even though they were aware of the offshore entities' close association with the Wylys. The investigation also found that, because both the Wylys and the public companies had failed to disclose the holdings of the offshore entities, for 13 years federal regulators were unaware of those holdings and the relationships between the offshore entities and the Wyly brothers.

Corporate insiders and public companies are already obligated by current law to disclose share holdings and transactions of offshore entities affiliated with a company director, officer, or major shareholder. Current penalties, however, appear insufficient to ensure compliance in light of the low likelihood that U.S. authorities will learn what went on in an offshore jurisdiction. To address this problem, our bill would establish a new monetary penalty of up to $1 million for persons who knowingly fail to disclose offshore holdings and transactions in violation of U.S. securities laws.

The Subcommittee's August 2006 investigation showed that the Wyly brothers used two hedge funds and a private equity fund controlled by them to funnel millions of untaxed offshore dollars into U.S. investments. In addition, that and earlier investigations provide extensive evidence on the role played by U.S. company formation agents in assisting U.S. persons to set up offshore structures. Moreover, a Subcommittee hearing in November 2006 disclosed that U.S. company formation agents are forming U.S. shell companies for numerous unidentified foreign clients. Some of those U.S. shell companies were later used in illicit activities, including money laundering, terrorist financing, drug crimes, tax evasion, and other misconduct. Because hedge funds, private equity funds, and company formation agents are as vulnerable as other financial institutions to money launderers seeking entry into the U.S. financial system, the bill contains two provisions aimed at ensuring that these groups know their clients and do not accept or transmit suspect funds into the U.S. financial system.

Currently, unregistered investment companies, such as hedge funds and private equity funds, are the only class of financial institutions under the Bank Secrecy Act that transmit substantial offshore funds into the United

States, yet are not required by law to have anti-money laundering programs, including Know Your Customer, due diligence procedures. There is no reason why this growing sector of our financial services industry should continue to serve as a gateway into the U.S. financial system for monies of unknown origin. The Treasury Department proposed anti-money laundering regulations for these groups in 2002, but has not yet finalized them, even though the principal hedge fund trade association supports the issuance of federal anti-money laundering regulations. Our bill would require Treasury to issue final regulations within 180 days of the enactment of the bill. Treasury would be free to work from its existing proposal, but the bill would also require the final regulations to direct hedge funds and private equity funds to exercise due diligence before accepting offshore funds and to comply with the same procedures as other financial institutions if asked by federal regulators to produce records kept offshore.

In addition, the bill would add company formation agents to the list of persons subject to the anti-money laundering obligations of the Bank Secrecy Act. For the first time, those engaged in the business of forming corporations and other entities, both offshore and in the 50 States, would be responsible for knowing the identity of the person for whom they are forming the entity. The bill also directs Treasury to develop anti-money laundering regulations for this group. Treasury's key anti-money laundering agency, the Financial Crimes Enforcement Network, testified before the Subcommittee that it was considering drafting such regulations.

We expect and intend that, as in the case of all other entities covered by the Bank Secrecy Act, the regulations issued in response to this bill would instruct hedge funds, private equity funds, and company formation agents to adopt risk-based procedures that would concentrate their due diligence efforts on clients that pose the highest risk of money laundering.

Section 204 of the bill focuses on one tool used by the IRS in recent years to uncover taxpayers involved in offshore tax schemes, known as John Doe summonses. The bill would make three technical changes to IRS rules governing the issuance of these summonses to make their use more effective in offshore and other complex investigations.

A John Doe summons is an administrative IRS summons used to request information in cases where the identity of a taxpayer is unknown. In cases involving known taxpayers, the IRS may issue a summons to a third party to obtain information about a U.S. taxpayer, but must also notify the taxpayer who then has 20 days to petition a court to quash the summons to the third party. With a John Doe summons, however, IRS does not have the taxpayer's name and does not know where to send the taxpayer notice, so the statute substitutes a procedure in which the IRS must apply to a court for advance permission to serve the summons on the third party. To obtain approval of the summons, the IRS must show the court, in public filings to be resolved in open court, that: (1) the summons relates to a particular person or ascertainable class of persons, (2) there is a reasonable basis for concluding that there is a tax compliance issue involving that person or class of persons, and (3) the information sought is not readily available from other sources.

In recent years, the IRS has used John Doe summonses to obtain information about taxpayers operating in offshore secrecy jurisdictions. For example, the IRS has obtained court approval to issue John Doe summonses to credit card associations, credit card processors, and credit card merchants, to obtain information about taxpayers using credit cards issued by offshore banks. This information has led to many successful cases in which the IRS identified funds hidden offshore and recovered unpaid taxes.

Use of the John Doe summons process, however, has proved unnecessarily time consuming and expensive. For each John Doe summons involving an offshore secrecy jurisdiction, the IRS has had to establish in court that the involvement of accounts and transactions in offshore secrecy jurisdictions meant there was a significant likelihood of tax compliance problems. To relieve the IRS of the need to make this same proof over and over, the bill would provide that, in any John Doe summons proceeding involving a class defined in terms of accounts or transactions in an offshore secrecy jurisdiction, the court may presume that the case raises tax compliance issues. This presumption would then eliminate the need for the IRS to repeatedly establish in court the obvious fact that accounts, entities, and transactions involving offshore secrecy jurisdictions raise tax compliance issues.

Second, for a smaller subset of John Doe cases, where the only records sought by the IRS are offshore bank account records held by a U.S. financial institution where the offshore bank has an account, the bill would relieve the IRS of the obligation to get prior court approval to serve the summons. Again, the justification is that offshore bank records are highly likely to involve accounts that raise tax compliance issues so no prior court approval should be required. Even in this instance, however, if a U.S. financial. institution were to decline to produce the requested records, the IRS would have to obtain a court order to enforce the summons.

Finally, the bill would streamline the John Doe summons approval process in large ''project'' investigations where the IRS anticipates issuing multiple summonses to definable classes of third parties, such as banks or credit card associations, to obtain information related to particular taxpayers. Right now, for each summons issued in connection with a project, the IRS has to obtain the approval of a court, often having to repeatedly establish the same facts before multiple judges in multiple courts. This repetitive exercise wastes IRS, Justice Department, and court resources, and fragments oversight of the overall IRS investigative effort.

To streamline this process and strengthen court oversight of IRS use of John Doe summons, the bill would authorize the IRS to present an investigative project, as a whole, to a single judge to obtain approval for issuing multiple summons related to that project. In such cases, the court would retain jurisdiction over the case after approval is granted, to exercise ongoing oversight of IRS issuance of summonses under the project. To further strengthen court oversight, the IRS would be required to file a publicly available report with the court on at least an annual basis describing the summonses issued under the project. The court would retain authority to restrict the use of further summonses at any point during the project. To evaluate the effectiveness of this approach, the bill would also direct the Government Accountability Office to report on the use of the provision after five years.

Finally, Section 205 of the bill would make several changes to Title 31 of the U.S. Code needed to reflect the IRS's new responsibility for enforcing the Foreign Bank Account Report (FBAR) requirements and to clarify the right of access to Suspicious Activity Reports by IRS civil enforcement authorities.

Under present law, a person controlling a foreign financial account with over $10,000 is required to check a box on his or her income tax return and, under Title 31, also file an FBAR form with the IRS. Treasury's Financial Crimes Enforcement Network (FinCEN), which normally enforces Title 31 provisions, recently delegated to the IRS the responsibility for investigating FBAR violations and assessing FBAR penalties. Because the FBAR enforcement jurisdiction derives from Title 31, however, and most of the information available to the IRS is tax return information, IRS routinely encounters difficulties in using available tax information to fulfill its new role as FBAR enforcer. The tax disclosure law permits the use of tax information only for the administration of the internal revenue laws or ''related statutes.'' This rule is presently understood to require the IRS to determine, at a managerial level and on a case by case basis, that the Title 31 FBAR law is a ''related statute.'' Not only does this necessitate repetitive determinations in every FBAR case investigated by the IRS before each agent can look at the potential non-filer's income tax return, but it prevents the use by IRS of bulk data on foreign accounts received from tax treaty partners to compare to FBAR filing records to find non-filers.

One of the stated purposes for the FBAR filing requirement is that such reports ''have a high degree of usefulness in . . . tax . . . investigations or proceedings.'' 31 U. S. C 5311. If one of the reasons for requiring taxpayers to file FBARs is to use the information for tax purposes, and if IRS is to be charged with FBAR enforcement because of the FBARs' connection to taxes, common sense dictates that the FBAR statute should be considered a related statute for tax disclosure purposes, and the bill changes the related statute rule to say that.

The second change made by Section 205 is a technical amendment to the wording of the penalty provision. Currently the penalty is determined in part by the balance in the foreign bank account at the time of the ''violation.'' The violation is interpreted to have occurred on the due date of the FBAR return, which is June 30 of the year following the year to which the report relates. The statute's use of this specific June 30th date can lead to strange results if money is withdrawn from the foreign account after the reporting period closed but before the return due date. To eliminate this unintended problem, the bill would instead gauge the penalty by using the highest balance in the account during the reporting period.

The third part of section 205 relates to Suspicious Activity Reports, which financial institutions are required to file with FinCEN whenever they encounter suspicious transactions. FinCEN is required to share this information with law enforcement, but currently does not permit IRS civil investigators access to the information. However, if the information that is gathered and transmitted to Treasury by the financial institutions at great expense is to be effectively utilized, its use should not be limited to the relatively small number of criminal investigators, who can barely scratch the surface of the large number of reports. In addition, sharing the information with civil tax investigators would not increase the risk of disclosure, because they operate under the same tough disclosure rules as the criminal investigators. In some cases, IRS civil agents are now issuing an IRS summons to a financial institution to get access, for a production fee, to the very same information the financial institution has already filed with Treasury in a SAR. The bill changes those anomalous results by making it clear that ''law enforcement'' includes civil tax law enforcement.

Overall, our bill includes a host of innovative measures to strengthen the ability of Federal regulators to combat offshore tax haven abuses. We believe these new tools merit Congressional attention and enactment this year if we are going to begin to make a serious dent in the $100 billion in annual lost tax revenue from offshore tax abuses that forces honest taxpayers to shoulder a greater tax burden than they would otherwise have to bear.

Until now, I've been talking about what the bill would do to combat offshore tax abuses. Now I want to turn to what the bill would do to combat abusive tax shelters and their promoters who use both domestic and offshore means to achieve their ends. Most of these provisions appeared in the Levin-Coleman-Obama bill from the last Congress. Some provisions from that bill have been dropped or modified in light of those that were enacted into law.

For five years, the Permanent Subcommittee on Investigations has been conducting investigations into the design, sale, and implementation of abusive tax shelters. Our first hearing on this topic in recent years was held in January 2002, when the Subcommittee examined an abusive tax shelter purchased by Enron. In November 2003, the Subcommittee held two days of hearings and released a staff report that pulled back the curtain on how even some respected accounting firms, banks, investment advisors, and law firms had become engines pushing the design and sale of abusive tax shelters to corporations and individuals across this country. In February 2005, the Subcommittee issued a bipartisan report that provided further details on the role these professional firms played in the proliferation of these abusive shelters. Our Subcommittee report was endorsed by the full Committee on Homeland Security and Governmental Affairs in April 2005. Most recently, a 2006 Subcommittee staff report entitled, ''Tax Haven Abuses: The Enablers, the Tools, and Secrecy,'' disclosed how financial and legal professionals designed and sold yet another abusive tax shelter known as the POINT Strategy, which depended on secrecy laws and practices in the Isle of Man to conceal the phantom nature of securities trades that lay at the center of this tax shelter transaction.

The Subcommittee investigations have found that many abusive tax shelters are not dreamed up by the taxpayers who use them. Instead, most are devised by tax professionals, such as accountants, bankers, investment advisors, and lawyers, who then sell the tax shelter to clients for a fee. In fact, as our 2003 investigation widened, we found a large number of tax advisors cooking up one complex scheme after another, packaging them up as generic ''tax products'' with boiler-plate legal and tax opinion letters, and then undertaking elaborate marketing schemes to peddle these products to literally thousands of persons across the country. In return, these tax shelter promoters were getting hundreds of millions of dollars in fees, while diverting billions of dollars in tax revenues from the U.S. Treasury each year.

For example, one shelter investigated by the Subcommittee and featured in the 2003 hearings has since become part of an IRS effort to settle cases involving a set of abusive tax shelters known as ''Son of Boss.'' Following our hearing, more than 1,200 taxpayers have admitted wrongdoing and agreed to pay back taxes, interest and penalties totaling more than $3.7 billion. That's billions of dollars the IRS has collected on just one type of tax shelter, demonstrating both the depth of the problem and the potential for progress. The POINT shelter featured in our 2006 hearing involved another $300 million in tax loss on transactions conducted by just six taxpayers.

The bill we are introducing today contains a number of measures to curb abusive tax shelters. First, it would strengthen the penalties imposed on those who aid or abet tax evasion. Second, it would prohibit the issuance of tax shelter patents. Several provisions would deter bank participation in abusive tax shelter activities by requiring regulators to develop new examination procedures to detect and stop such activities. Others would end outdated communication barriers between the IRS and other enforcement agencies such as the SEC, bank regulators, and the Public Company Accounting Oversight Board, to allow the exchange of information relating to tax evasion cases. The bill also provides for increased disclosure of tax shelter information to Congress.

In addition, the bill would simplify and clarify an existing prohibition on the payment of fees linked to tax benefits; and authorize Treasury to issue tougher standards for tax shelter opinion letters. Finally, the bill would codify and strengthen the economic substance doctrine, which eliminates tax benefits for transactions that have no real business purpose apart from avoiding taxes.

Let me be more specific about these key provisions to curb abusive tax shelters.

Title III of the bill strengthens two very important penalties that the IRS can use in its fight against the professionals who make complex abusive shelters possible. Three years ago, the penalty for promoting an abusive tax shelter, as set forth in Section 6700 of the tax code, was the lesser of $1,000 or 100 percent of the promoter's gross income derived from the prohibited activity. That meant in most cases the maximum fine was just $1,000.

Many abusive tax shelters sell for $100,000 or $250,000 apiece. Our investigation uncovered some tax shelters that were sold for as much as $2 million or even $5 million apiece, as well as instances in which the same cookie-cutter tax opinion letter was sold to 100 or even 200 clients. There are huge profits to be made in this business, and a $1,000 fine is laughable.

The Senate acknowledged that in 2004 when it adopted the Levin-Coleman amendment to the JOBS Act, S. 1637, raising the Section 6700 penalty on abusive tax shelter promoters to 100 percent of the fees earned by the promoter from the abusive shelter. A 100 percent penalty would have ensured that the abusive tax shelter hucksters would not get to keep a single penny of their ill-gotten gains. That figure, however, was cut in half in the conference report, setting the penalty at 50 percent of the fees earned and allowing the promoters of abusive shelters to keep half of their illicit profits.

While a 50 percent penalty is an obvious improvement over $1000, this penalty still is inadequate and makes no sense. Why should anyone who pushes an illegal tax shelter that robs our Treasury of needed revenues get to keep half of his ill-gotten gains? What deterrent effect is created by a penalty that allows promoters to keep half of their fees if caught, and of course, all of their fees if they are not caught?

Effective penalties should make sure that the peddler of an abusive tax shelter is deprived of every penny of profit earned from selling or implementing the shelter and then is fined on top of that. Section 301 of this bill would do just that by increasing the penalty on tax shelter promoters to an amount equal to up to 150 percent of the promoters' gross income from the prohibited activity.

A second penalty provision in the bill addresses what our investigations have found to be a key problem: the knowing assistance of accounting firms, law firms, banks, and others to help taxpayers understate their taxes. In addition to those who meet the definition of ''promoters'' of abusive shelters, there are professional firms that aid and abet the use of abusive tax shelters and enable taxpayers to carry out the abusive tax schemes. For example, law firms are often asked to write ''opinion letters'' to help taxpayers head off IRS questioning and fines that they might otherwise confront for using an abusive shelter. Currently, under Section 6701 of the tax code, these aiders and abettors face a maximum penalty of only $1,000, or $10,000 if the offender is a corporation. This penalty, too, is a joke. When law firms are getting $50,000 for each of these cookie-cutter opinion letters, it provides no deterrent whatsoever. A $1,000 fine is like a jaywalking ticket for robbing a bank.

Section 302 of the bill would strengthen Section 6701 significantly, subjecting aiders and abettors to a maximum fine up to 150 percent of the aider and abettor's gross income from the prohibited activity. This penalty would apply to all aiders and abettors, not just tax return preparers.

Again, the Senate has recognized the need to toughen this critical penalty. In the 2004 JOBS Act, Sen. Coleman and I successfully increased this fine to 100 percent of the gross income derived from the prohibited activity. Unfortunately, the conference report completely omitted this change, allowing aiders and abettors to continue to profit without penalty from their wrongdoing.

If further justification for toughening these penalties is needed, one document uncovered by our investigation shows the cold calculation engaged in by a tax advisor facing low fines. A senior tax professional at accounting giant KPMG compared possible tax shelter fees with possible tax shelter penalties if the firm were caught promoting an illegal tax shelter. This senior tax professional wrote the following: ''[O]ur average deal would result in KPMG fees of $360,000 with a maximum penalty exposure of only $31,000.'' He then recommended the obvious: going forward with sales of the abusive tax shelter on a cost-benefit basis.

Section 303 of our bill addresses the growing problem of tax shelter patents, which has the potential for significantly increasing abusive tax shelter activities.

In 1998, a Federal appeals court ruled for the first time that business methods can be patented and, since then, various tax practitioners have filed applications to patent a variety of tax strategies. The U.S. Patent Office has apparently issued 49 tax strategy patents to date, with more on the way. These patents were issued by patent officers who, by statute, have a background in science and technology, not tax law, and know little to nothing about abusive tax shelters.

Issuing these types of patents raises multiple public policy concerns. Patents issued for aggressive tax strategies, for example, may enable unscrupulous promoters to claim the patent represents an official endorsement of the strategy and evidence that it would withstand IRS challenge. Patents could be issued for blatantly illegal tax shelters, yet remain in place for years, producing revenue for the wrongdoers while the IRS battles the promoters in court. Patents for tax shelters found to be illegal by a court would nevertheless remain in place, creating confusion among users and possibly producing illicit income for the patent holder.

Another set of policy concerns relates to the patenting of more routine tax strategies. If a single tax practitioner is the first to discover an advantage granted by the law and secures a patent for it, that person could then effectively charge a toll for all other taxpayers to use the same strategy, even though as a matter of public policy all persons ought to be able to take advantage of the law to minimize their taxes. Companies could even patent a legal method to minimize their taxes and then refuse to license that patent to their competitors in order to prevent them from lowering their operating costs. Tax patents could be used to hinder productivity and competition rather than foster it.

The primary rationale for granting patents is to encourage innovation, which is normally perceived to be a sufficient public benefit to justify granting a temporary monopoly to the patent holder. In the tax arena, however, there has historically been ample incentive for innovation in the form of the tax savings alone. The last thing we need is a further incentive for aggressive tax shelters. That's why Section 303 would prohibit the patenting of any ''invention designed to minimize, avoid, defer, or otherwise affect the liability for Federal, State, local, or foreign tax.''

Another finding of the Subcommittee investigations is that some tax practitioners are circumventing current state and federal constraints on charging tax service fees that are dependent on the amount of promised tax benefits. Traditionally, accounting firms charged flat fees or hourly fees for their tax services. In the 1990s, however, they began charging ''value added'' fees based on, in the words of one accounting firm's manual, ''the value of the services provided, as opposed to the time required to perform the services.'' In addition, some firms began charging ''contingent fees'' that were calculated according to the size of the paper ''loss'' that could be produced for a client and used to offset the client's other taxable income the greater the so-called loss, the greater the fee.

In response, many states prohibited accounting firms from charging contingent fees for tax work to avoid creating incentives for these firms to devise ways to shelter substantial sums. The SEC and the American Institute of Certified Public Accountants also issued rules restricting contingent fees, allowing them in only limited circumstances. Recently, the Public Company Accounting Oversight Board issued a similar rule prohibiting public accounting firms from charging contingent fees for tax services provided to the public companies they audit. Each of these federal, state, and professional ethics rules seeks to limit the use of contingent fees under certain, limited circumstances.

The Subcommittee investigation found that tax shelter fees, which are typically substantial and sometimes exceed $1 million, are often linked to the amount of a taxpayer's projected paper losses which can be used to shelter income from taxation. For example, in four tax shelters examined by the Subcommittee in 2003, documents show that the fees were equal to a percentage of the paper loss to be generated by the transaction. In one case, the fees were typically set at 7 percent of the transaction's generated ''tax loss'' that clients could use to reduce other taxable income. In another, the fee was only 3.5 percent of the loss, but the losses were large enough to generate a fee of over $53 million on a single transaction. In other words, the greater the loss that could be concocted for the taxpayer or ''investor,'' the greater the profit for the tax promoter. Think about that—greater the loss, the greater the profit. How's that for turning capitalism on its head!

In addition, evidence indicated that, in at least one instance, a tax advisor was willing to deliberately manipulate the way it handled certain tax products to circumvent contingent fee prohibitions. An internal document at an accounting firm related to a specific tax shelter, for example, identified the states that prohibited contingent fees. Then, rather than prohibit the tax shelter transactions in those states or require an alternative fee structure, the memorandum directed the firm's tax professionals to make sure the engagement letter was signed, the engagement was managed, and the bulk of services was performed ''in a jurisdiction that does not prohibit contingency fees.''

Right now, the prohibitions on contingent fees are complex and must be evaluated in the context of a patchwork of federal, state, and professional ethics rules. Section 304 of the bill would establish a single enforceable rule, applicable nationwide, that would prohibit tax practitioners from charging fees calculated according to a projected or actual amount of tax savings or paper losses.

The bill would also help fight abusive tax shelters that are disguised as complex investment opportunities and use financing or securities transactions provided by financial institutions. In reality, tax shelter schemes lack the economic risks and rewards associated with a true investment. These phony transactions instead often rely on the temporary use of significant amounts of money in low risk schemes mischaracterized as real investments. The financing or securities transactions called for by these schemes are often supplied by a bank, securities firm, or other financial institution.

Currently the tax code prohibits financial institutions from providing products or services that aid or abet tax evasion or that promote or implement abusive tax shelters. The agencies that oversee these financial institutions on a daily basis, however, are experts in banking and securities law and generally lack the expertise to spot tax issues. Section 305 would crack down on financial institutions' illegal tax shelter activities by requiring federal bank regulators and the SEC to work with the IRS to develop examination techniques to detect such abusive activities and put an end to them.

These examination techniques would be used regularly, preferably in combination with routine regulatory examinations, and the regulators would report potential violations to the IRS. The agencies would also be required to prepare joint reports to Congress in 2009 and 2012 on preventing the participation of financial institutions in tax evasion or tax shelter activities.

During hearings before the Permanent Subcommittee on Investigations on tax shelters in November 2003, IRS Commissioner Everson testified that his agency was barred by Section 6103 of the tax code from communicating information to other federal agencies that would assist those agencies in their law enforcement duties. He pointed out that the IRS was barred from providing tax return information to the SEC, federal bank regulators, and the Public Company Accounting Oversight Board (PCAOB)—even, for example, when that information might assist the SEC in evaluating whether an abusive tax shelter resulted in deceptive accounting in a public company's financial statements, might help the Federal Reserve determine whether a bank selling tax products to its clients had violated the law against promoting abusive tax shelters, or help the PCAOB judge whether an accounting firm had impaired its independence by selling tax shelters to its audit clients.

A recent example demonstrates how harmful these information barriers are to legitimate law enforcement efforts. In 2004, the IRS offered a settlement initiative to companies and corporate executives who participated in an abusive tax shelter involving the transfer of stock options to family-controlled entities. Over a hundred corporations and executives responded with admissions of wrongdoing. In addition to tax violations, their misconduct may be linked to securities law violations and improprieties by corporate auditors or banks, but the IRS has informed the Subcommittee that it is currently barred by law from sharing the names of the wrongdoers with the SEC, banking regulators, or PCAOB.

These communication barriers are outdated, inefficient, and ill-suited to stopping the torrent of tax shelter abuses now affecting or being promoted by so many public companies, banks, and accounting firms. To address this problem, Section 306 of this bill would authorize the Treasury Secretary, with appropriate privacy safeguards, to disclose to the SEC, federal banking agencies, and the PCAOB, upon request, tax return information related to abusive tax shelters, inappropriate tax avoidance, or tax evasion. The agencies could then use this information only for law enforcement purposes, such as preventing accounting firms or banks from promoting abusive tax shelters, or detecting accounting fraud in the financial statements of public companies.

The bill would also provide for increased disclosure of tax shelter information to Congress. Section 307 would make it clear that companies providing tax return preparation services to taxpayers cannot refuse to comply with a Congressional document subpoena by citing Section 7216, which prohibits tax return preparers from disclosing taxpayer information to third parties. Several accounting and law firms raised this claim in response to document subpoenas issued by the Permanent Subcommittee on Investigations, contending they were barred by the nondisclosure provision in Section 7216 from producing documents related to the sale of abusive tax shelters to clients for a fee.

The accounting and law firms maintained this position despite an analysis provided by the Senate legal counsel showing that the nondisclosure provision was never intended to create a privilege or to override a Senate subpoena, as demonstrated in federal regulations interpreting the provision. This bill would codify the existing regulations interpreting Section 7216 and make it clear that Congressional document subpoenas must be honored.

Section 307 would also ensure Congress has access to information about decisions by the Treasury related to an organization's tax exempt status. A 2003 decision by the D.C. Circuit Court of Appeals, Tax Analysts v. IRS, struck down certain IRS regulations and held that the IRS must disclose letters denying or revoking an organization's tax exempt status. The IRS has been reluctant to disclose such information, not only to the public, but also to Congress, including in response to requests by the Subcommittee.

For example, in 2005, the IRS revoked the tax exempt status of four credit counseling firms, and, despite the Tax Analysts case, claimed that it could not disclose to the Subcommittee the names of the four firms or the reasons for revoking their tax exemption. Our bill would make it clear that, upon receipt of a request from a Congressional committee or subcommittee, the IRS must disclose documents, other than a tax return, related to the agency's determination to grant, deny, revoke or restore an organization's exemption from taxation.

The Treasury Department recently issued new standards for tax practitioners issuing opinion letters on the tax implications of potential tax shelters as part of Circular 230. Section 308 of the bill would provide express statutory authority for these and even clearer regulations.

The public has traditionally relied on tax opinion letters to obtain informed and trustworthy advice about whether a tax-motivated transaction meets the requirements of the law. The Permanent Subcommittee on Investigations has found that, in too many cases, tax opinion letters no longer contain disinterested and reliable tax advice, even when issued by supposedly reputable accounting or law firms. Instead, some tax opinion letters have become marketing tools used by tax shelter promoters and their allies to sell clients on their latest tax products. In many of these cases, financial interests and biases were concealed, unreasonable factual assumptions were used to justify dubious legal conclusions, and taxpayers were misled about the risk that the proposed transaction would later be designated an illegal tax shelter. Reforms are essential to address these abuses and restore the integrity of tax opinion letters.

The Treasury Department recently adopted standards that address a number of the abuses affecting tax shelter opinion letters; however, the standards could be stronger yet. Our bill would authorize Treasury to issue standards addressing a wider spectrum of tax shelter opinion letter problems, including: preventing concealed collaboration among supposedly independent letter writers; avoiding conflicts of interest that would impair auditor independence; ensuring appropriate fee charges; preventing practitioners and firms from aiding and abetting the understatement of tax liability by clients; and banning the promotion of potentially abusive tax shelters. By addressing each of these areas, a beefed-up Circular 230 could help reduce the ongoing abusive practices related to tax shelter opinion letters.

Finally, Title IV of the bill incorporates a Baucus-Grassley proposal which would strengthen legal prohibitions against abusive tax shelters by codifying in Federal tax statutes for the first time what is known as the economic substance doctrine. This anti-tax abuse doctrine was fashioned by federal courts evaluating transactions that appeared to have little or no business purpose or economic substance apart from tax avoidance. It has become a powerful analytical tool used by courts to invalidate abusive tax shelters. At the same time, because there is no statute underlying this doctrine and the courts have developed and applied it differently in different judicial districts, the existing case law has many ambiguities and conflicting interpretations.

This language was developed under the leadership of Senators BAUCUS and GRASSLEY, the Chairman and Ranking Member of the Finance Committee. The Senate has voted on multiple occasions to enact it into law, but House conferees have rejected it each time. Since no tax shelter legislation would be complete without addressing this issue, Title IV of this comprehensive bill proposes once more to include the economic substance doctrine in the tax code.

The eyes of some people may glaze over when tax shelters and tax havens are discussed, but unscrupulous taxpayers and tax professionals clearly see illicit dollar signs. Our commitment to crack down on their tax abuses must be as strong as their determination to get away with ripping off America and American taxpayers.

Our bill provides powerful new tools to end the tax haven and tax shelter abuses. Tax haven and tax shelter abuses contribute nearly $100 billion to the $345 billion annual tax gap, which represents taxes owed but not paid. It's long past time for taxes owing to the people's Treasury to be collected. And it's long past time for Congress to end the shifting of a disproportionate tax burden onto the shoulders of honest Americans.

Mr. OBAMA. Mr. President, I rise today to speak about the Stop Tax Haven Abuse Act, which I am proud to cosponsor with Senators LEVIN and COLEMAN. This bill seeks to improve the fairness of our tax system by deterring the abuse of secret tax havens and unacceptable tax avoidance strategies. It is a serious solution to a serious problem.

An investigation by the Senate Permanent Subcommittee on Investigations found that offshore tax havens and secrecy jurisdictions hold trillions of dollars in assets and are often used as havens for tax evasion, financial fraud, and money laundering. Experts estimate that abusive tax shelters and tax havens cost this country between $40 billion and $70 billion every year, and the burden of filling this gap is borne unfairly by taxpayers who follow the rules and can't afford high-priced lawyers and accountants to help them game the system.

The problem is not new, but we need a new solution. Several years ago, the subcommittee heard testimony from the owner of a Cayman Island offshore bank who estimated that all of his clients—100 percent—were engaged in tax evasion, and 95 percent were U.S. citizens. In 2000, the Enron Corporation—remember Enron?—established over 441 offshore entities in the Cayman Islands. A 2004 report found that U.S. multinational corporations are increasingly attributing their profits to offshore jurisdictions. A 2005 study of high-net-worth individuals worldwide estimated that their offshore assets now total $11.5 trillion. The IRS has estimated that more than half a million U.S. taxpayers have offshore bank accounts and access those funds with offshore credit cards.

Unfortunately, the tax, corporate, or bank secrecy laws and practices of about 50 countries make it nearly impossible for American authorities to gain access to necessary information about U.S. taxpayers in order to enforce U.S. tax laws. Today, the Government has the burden of proving that a taxpayer has control of the tax haven entity and is the beneficial owner. This allows taxpayers to rely on the secrecy protections of tax havens to deceive Federal tax authorities and evade taxes.

This is not a political issue of how low or high taxes ought to be. This is a basic issue of fairness and integrity. Corporate and individual taxpayers alike must have confidence that those who disregard the law will be identified and adequately punished. Those who defy the law or game the system must face consequences. Those who enforce the law need the tools and resources to do so. We cannot sit idly by while tax secrecy jurisdictions impede the enforcement of U.S. law.

Under this bill, if you create a trust or corporation in a tax haven jurisdiction, send it assets, or benefit from its actions, the Federal Government will presume in civil judicial and administrative proceedings that you control the entity and that any income generated by it is your income for tax, securities, and money-laundering purposes. The burden of proof shifts to the corporation or the individual, who may rebut these presumptions by clear and convincing evidence.

This bill provides an initial list of offshore secrecy jurisdictions where these evidentiary presumptions will apply. Taxpayers with foreign financial accounts in Anguilla, Bermuda, the Cayman Islands, or Dominica, for example, should be prepared to report their accounts to the IRS. And this bill will make it easier for the IRS to find such taxpayers if they do not.

The Treasury Secretary may add to or subtract from the list of offshore secrecy jurisdictions. The list does not reflect a determination that a country is necessarily uncooperative but merely that it is difficult to obtain adequate financial and beneficial ownership information from that country and it is ripe for tax abuse. If an offshore jurisdiction is in fact uncooperative and impedes U.S. tax enforcement, however, this bill gives Treasury the authority to impose sanctions, including the denial of the right to issue credit cards for use in the United States.

This bill also establishes a $1 million penalty on public companies or their officers who fail to disclose foreign holdings and requires hedge funds and private equity funds to establish anti-money laundering programs and to submit suspicious activity reports. Importantly, this bill clarifies that the sole purpose of a transaction cannot legitimately be to evade tax liability. Transactions must have meaningful ''economic substance'' or a business purpose apart from tax avoidance or evasion.

There is no such thing as a free lunch—someone always has to pay. And when a crooked business or shameless individual does not pay its fair share, the burden gets shifted to others, usually to ordinary taxpayers and working Americans without access to sophisticated tax preparers or corporate loopholes.

This bill strengthens our ability to stop shifting the tax burden to working families. All of us must pay our fair share of the cost of securing and running this country. There is no excuse for benefiting from the laws and services, institutions, and economic structure of our Nation, while evading your responsibility to do your part. I believe it is our job to keep the system fair, and that is what this bill seeks to do.

I commend Senator LEVIN and Senator COLEMAN for their leadership on this important issue. I am proud to be a cosponsor of this bill and urge my colleagues to support it.

By Mrs. FEINSTEIN:

S.J. Res. 3. A joint resolution to specify an expiration date for the authorization of use of military force under the Authorization for Use of Military Force Against Iraq Resolution of 2002 and to authorize the continuing presence of United States forces in Iraq after that date for certain military operations and activities; to the Committee on Foreign Relations.

Mrs. FEINSTEIN. Yesterday, the House of Representatives clearly expressed its support for our troops and its disapproval of the President's action to escalate the war. Today, it is the Senate's turn.

Today, I believe that by voting for cloture, a majority of the Senate will convey the same message. There may not be 60 votes, but I believe there will be a majority. Our forces have been in Iraq for 4 years, $380 billion has been spent, more than 3,000 troops have been killed, and nearly 24,000 have been wounded. My home State of California has lost more than 300 brave men and women, with thousands injured.

Iraq is in chaos: Sunni fighting Shia, Shia fighting Sunni, car bombs, IEDs, assassinations, mortar attacks, downed helicopters, death squads, and sabotaged infrastructure. Every day, we learn of new attacks, new casualties, new bloodshed, and no end in sight.

I believe this surge is a mistake. Four years ago, U.S. Armed Forces went to Iraq to be liberators. Today, they are caught in the bloody crossfire of internecine fighting. The question is, Can the American military solve a civil war? I don't believe it can. It was certainly not the mission Congress authorized in 2002. So the time has come for the Senate to say so, just as the House has done. The time has come to declare that our time has come and gone in Iraq. The time has come to speak clearly, and the time has come to change course.

The authorization for use of military force, approved by the Congress in October 2002, carries with it congressional approval of this war. The way to change course is to change that authorization. Therefore, today, I introduce legislation that will put the expiration date of December 31, 2007, on the authorization for use of military force.

The President would be required to return to Congress if he seeks to renew the resolution. The resolution recognizes that conditions have changed since the 2002 authorization was approved. Saddam Hussein is gone. An Iraqi Government has been established. It also recognizes the flaws of the 2002 authorization. Iraq, in fact, had no weapons of mass destruction. It was not closely allied with al-Qaida.

This resolution does not call for a precipitous withdrawal—let me stress that—but it sets a time limit—the remaining 10 months of the year—to stage an orderly redeployment and to transition this mission. That mission would be limited to training, equipping, and advising Iraqi security and police forces; to force protection and security for U.S. Armed Forces and civilian personnel; support of Iraqi security forces for border security and protection, to be carried out with the minimum forces required for that purpose; targeted counterterrorism operations against al-Qaida and foreign fighters within Iraq; and logistical support in connection with these activities.

I believe this legislation is the next logical step following today. It is simple, it is concise. After the majority vote today sends our disapproval to the President, it is time to consider the next step. I submit this resolution as a possible next step.

I ask unanimous consent that the text of the joint resolution be printed in the RECORD.

There being no objection, the joint resolution was ordered to be printed in the RECORD, as follows:

S.J. RES. 3

Resolved by the Senate and House of Representatives of the United States of America in Congress assembled,

SECTION 1. EXPIRATION OF AUTHORIZATION FOR USE OF MILITARY FORCE AGAINST IRAQ.

The authority conveyed by the Authorization for Use of Military Force Against Iraq Resolution of 2002 (Public Law 107–243) shall expire on December 31, 2007, unless otherwise provided in a Joint Resolution (other than Public Law 107–243) enacted by Congress.

SEC. 2. ALLOWANCE FOR CERTAIN MILITARY OPERATIONS AND ACTIVITIES.

Section 1 shall not be construed as prohibiting or limiting the presence of personnel or units of the Armed Forces of the United States in Iraq after December 31, 2007, for the following purposes:

(1) Training, equipping, and advising Iraqi security and police forces.

(2) Force protection and security for United States Armed Forces and civilian personnel.

(3) Support of Iraqi security forces for border security and protection, to be carried out with the minimum forces required for that purpose.

(4) Targeted counter-terrorism operations against al Qaeda and foreign fighters within Iraq.

(5) Logistical support in connection with activities under paragraphs (1) through (4).

SURFACE TRANSPORTATION AND RAIL SECURITY ACT OF 2007—MOTION TO PROCEED

Mr. REID. Mr. President, I ask unanimous consent that on Tuesday, February 27, at 11:30 a.m., the Senate proceed to the consideration of S. 184, Calendar No. 26, a bill to provide improved rail and surface transportation security.

The PRESIDING OFFICER. Is there objection?

Mr. MCCONNELL. Reserving the right to object, my understanding is the Senate would next turn to the so-called 9/11 bill on which the Homeland Security and Governmental Affairs Committee worked. That bill is not yet on the calendar and will be filed sometime this week.

I understand that the pending unanimous consent request is that we turn to a different bill, which has been reported by the Commerce Committee. At this point, I am compelled to object to this unanimous consent request and say to the majority leader, once the 9/11 bill is available and Members have had an opportunity to review the legislation, I will be happy to revisit this consent request. So I, therefore, object.

The PRESIDING OFFICER. Objection is heard.

Mr. REID. Mr. President, in response to my friend, he is absolutely right. We had every intention of moving to the Homeland Security bill, but it wasn't reported out of the committee. The matter I read, Calendar No. 26, is part of a big bill. I, frankly, understand why there is an objection. We are going to file a cloture motion. Hopefully, in the interim period of time, when people have a chance to look at this bill, we will get consent from the Republicans to move forward.

The reason I am moving to this bill now is I didn't want to waste Tuesday. Time is so precious around here that I wanted to get to this or some vehicle as soon as we can. We will do our best in the next few days to try to work this out.

The Republican leader already objected to my request?

The PRESIDING OFFICER. That is correct.

CLOTURE MOTION

Mr. REID. Mr. President, I now move to proceed to S. 184 and send a cloture motion to the desk.

The PRESIDING OFFICER. The cloture motion having been presented under rule XXII, the Chair directs the clerk to read the motion.

The assistant legislative clerk read as follows:

CLOTURE MOTION

We, the undersigned Senators, in accordance with the provisions of rule XXII of the Standing Rules of the Senate, do hereby move to bring to a close the debate on the motion to proceed to S. 184, a bill to provide improved rail and surface transportation security.

Harry Reid, Russell D. Feingold, Daniel K. Inouye, Jack Reed, Sherrod Brown, Ron Wyden, Ken Salazar, Joe Biden, Mary Landrieu, John Kerry, Dick Durbin, Byron L. Dorgan, H.R. Clinton, Bill Nelson, Frank R. Lautenberg, B.A. Mikulski, Patty Murray.

MEASURES DISCHARGED AND PASSED—S. 171, H.R. 49, H.R. 335, H.R. 521, H.R. 433, H.R. 514, AND H.R. 577

Mr. REID. Mr. President, I ask unanimous consent that it be in order to discharge from the Homeland Security and Governmental Affairs Committee the following postal-naming bills and the Senate proceed en bloc to their consideration: S. 171, H.R. 49, H.R. 335, H.R. 521, H.R. 433, H.R. 514, and H.R. 577.

The PRESIDING OFFICER. Without objection, it is so ordered.

Mr. REID. Mr. President, I ask unanimous consent that the bills be read three times, passed, the motions to reconsider be laid upon the table, en bloc; that the consideration of these items appear separately in the RECORD; and that any statements relating to the measures be printed in the RECORD, without intervening action or debate.

The PRESIDING OFFICER. Without objection, it is so ordered.