a successor under the amendment made by subsection (a).

(d) CONFORMING AMENDMENTS.—

(1) HOMELAND SECURITY ACT OF 2002.—The Homeland Security Act of 2002 (Public Law 107–296) is amended—

(A) in section 103 (6 U.S.C. 113)—

(i) in subsection (d) by striking paragraph (4), and redesignating paragraph (5) as paragraph (4);

(ii) by redesignating subsection (e) as subsection (f); and

(iii) by inserting after subsection (d) the following:

''(e) CHIEF FINANCIAL OFFICER.—There shall be in the Department a Chief Financial Officer, as provided in chapter 9 of title 31, United States Code.''; and

(B) in section 702 (6 U.S.C. 342) by striking ''shall report'' and all that follows through the period and inserting ''shall perform functions as specified in chapter 9 of title 31, United States Code.''.

(2) FEMA.—Section 901(b)(2) of title 31, United States Code, is amended by striking subparagraph (B), and by redesignating subparagraphs (D) through (H) as subparagraphs (C) through (G), respectively.

SEC. 3. FUNCTIONS OF CHIEF FINANCIAL OFFICER OF THE DEPARTMENT OF HOMELAND SECURITY.

Section 3516 of title 31, United States Code, is amended by adding at the end the following:

''(f) The Secretary of Homeland Security—

''(1) shall submit for fiscal year 2004, and for each subsequent fiscal year, a performance and accountability report under subsection (a) that incorporates the program performance report under section 1116 of this title for the Department of Homeland Security; and

''(2) shall include in each performance and accountability report an audit opinion of the Department's internal controls over its financial reporting.''.

Mr. AKAKA. Mr. President. As the ranking member of the Subcommittee on Financial Management, the Budget, and International Security, I am honored to work with my colleague Senator FITZGERALD, Chairman of the Subcommittee, to introduce the ''Department of Homeland Security Financial Accountability Act.''

Our bill would add the Department of Homeland Security (DHS) to the Chief Financial Officers Act of 1990 (CFO Act), P.L. 101–576. It is a companion measure to bipartisan legislation, H.R. 2886, introduced in the House on July 24, 2003. Adding DHS would ensure that Congress will have timely and accurate financial information imperative for good governance of the resources of the Department entrusted to making our homeland safe.

The CFO Act recognizes the responsibility of governmental agencies to be accountable to taxpayers. This bill would require the President to appoint, subject to Senate confirmation, a Chief Financial Officer for DHS, who would report directly to the Director of the Department regarding financial management matters. It also requires the DHS CFO to be a member of the CFO Council. This Council is charged with advising and coordinating the activities of its members' agencies on such matters as consolidation and modernization of financial systems, improved quality of financial information, financial data and information standards, internal controls, legislation affecting financial operations and organizations, and any other financial management matters. In addition, the bill would require the DHS CFO to prepare and provide for audit, annual financial statements that are submitted to Congress, which will aid in congressional oversight of the Department.

Although the DHS bill adopted by the Govermental Affairs Committee last year, S. 2452, would have put the new Department under the CFO Act, the enacted version of the bill, P.L. 107–296, did not. All other Federal departments and major agencies are under the requirements of the Act. Since the passage of the CFO Act in 1990, tremendous improvements have been made in agency financial management. For example, all CFO Act agencies, except for the Department of Defense and the Agency for International Development, achieved clean opinions from their auditors on their financial statements in fiscal year 2003. Initially, none of the agencies were able to do so. Also, the General Accounting Office has reported that the number and severity of internal control problems reported for CFO Act agencies have been significantly reduced. We expect good corporate governance from the private sector; we should also expect good governance from federal agencies.

Adding DHS to the CFO Act would also require that it meet the requirements of the Federal Financial Management Improvement Act of 1996 (FFMIA), P.L. 104–208, which mandates that all agencies subject to the CFO Act meet certain financial system conditions. The goal of FFMIA is for agencies to have systems that provide reliable financial information available for day-to-day management.

It is our responsibility to ensure the Federal Government is accountable to the American taxpayers. I am pleased to join with the Chairman of our Subcommittee to ensure that DHS has the financial management systems and practices in place to provide meaningful and timely information needed for effective and efficient management decision-making.

By Mr. HATCH (for himself, Mr. BREAUX, Mr. SMITH, Mr. LOTT, and Ms. SNOWE):

S. 1568. A bill to amend the Internal Revenue Code of 1986 to simplify certain provisions applicable to real estate investment trusts; to the Committee on Finance.

Mr. HATCH. Mr. President, along with my good friends and colleagues, Senators BREAUX, SMITH, LOTT, and SNOWE, I rise today to introduce the Real Estate Investment Trust Improvement Act of 2003. This legislation would update the tax rules governing real estate investment trusts, commonly referred to as REITs, by making a number of minor but important changes to remove uncertainties in the law and improve their investment climate. Identical legislation has been introduced in the House of Representatives.

REITs are publicly traded real estate companies that pass through their earnings to individual shareholders. Congress originally created REITs in 1960 to enable small investors to make investments in large-scale, income producing real estate. By doing so, Congress made commercial real estate more accessible, more liquid, more transparent, and more attuned to investor interests. REITs have evolved to own properties across the country, including office buildings, apartments, shopping centers, and warehouses. As a result, these entities play a key role in helping our economy move forward by promoting investment and creating jobs.

The Internal Revenue Code includes detailed rules governing the operations of REITs, the types of income they can earn, and the assets they hold. Congress last amended these provisions in 1999. The REIT Improvement Act is the product of almost two years of discussions with the staffs of the Treasury Department and the Joint Committee on Taxation on how to find solutions to several thorny problem areas where the rules are in need of clarification or modification.

The REIT Improvement Act includes three titles: Title I—REIT Corrections; Title II—FIRPTA Corrections; and Title III—REIT Savings.

Title I includes several corrections to the REIT tax rules to remove some uncertainties and provide corrections largely arising from enactment of the REIT Modernization Act in 1999. Although these provisions have very little effect on revenue to the Treasury, they are of considerable importance to REITs because they remove uncertainties that interfere with the efficient operation of their businesses.

Because publicly-held REITs have to report quarterly to the Securities and Exchange Commission that they are in compliance with the specialized income and asset tests applicable to REITs, the uncertain application of these tax rules creates greater difficulties in REIT business operators than unclear tax rules generally do for other corporations.

The most important, time-sensitive provision in this title deals with what is called the ''straight debt'' rule. This rule, which was adopted in the REIT Modernization Act of 1999, prohibits REITs from owning more than 10 percent of the value of any other entity's securities. Although this rule was intended to prevent REITs from owning more than 10 percent of the equity of another corporation, as drafted the rules potentially apply to many situations when individuals and businesses owe some sort of debt, ''security'' defined broadly, to a REIT.

There are many situations in which REITs make non-abusive, ordinary loans in the course of business for which they could face loss of REIT status because the loans do not qualify as

''straight debt.'' The most common context for this situation is in the REIT's relationship with its tenants. For example, the REIT might lend the tenant money for leasehold improvements. In some circumstances such a loan could represent more than 10 percent of the tenant's total debt obligations. In such a case, although the amount owed could be small, it could lead to REIT disqualification. The bill we are introducing today would exempt from the 10 percent rule certain categories of loans that are non-abusive and present little or no opportunity for the REIT to participate in the profits of the issuer's business. This includes any loan from a REIT to an individual or to a government, and any debt arising from a real property rent arrangement.

Other provisions in this title clarify the related party rent rules that limit the amount of space a taxable subsidiary may lease from its parent REIT, update the hedging definitions in the REIT rules, remove a safe harbor protection for a taxable subsidiary providing customary services to a REIT's tenants, and restore a formula for imposing a tax on REITs that fail to meet the 95 percent gross income test.

Finally, the bill would modify a safe harbor to the prohibited transaction rule that imposes a 100 percent tax on the income REITs earn from sales of ''dealer property.'' Currently, the safe harbor is limited to sales of property held for the production of rental income that meet a series of tests. The change proposed in this title would extend the safe harbor to other REIT property, not just that held for the production of rental income.

Title II of the bill would modify the Foreign Investment in Real Property Tax Act (''FIRPTA'') to remove barriers to foreign investment in REITs. Today, there is very little foreign investment in REITs. We understand that U.S. money managers routinely receive assignments to place foreign investment capital in the United States under which they have complete discretion to invest in any U.S. stocks except REITs. The reason they are expressly told to avoid REITs is that under FIRPTA, foreign investors that receive REIT capital gains distributions are treated as doing business in the United States.

Title II would modify the FIRPTA rules so that a publicly traded REIT's payment of capital gains dividends to a foreign portfolio investor would no longer cause the REIT investor to be considered doing business in the United States. The effect of this would be to threat investments in REITs like investment in other corporations, and the provision would parallel current law governing a portfolio investor's sale of REIT stock.

Title III of our bill, REIT Savings, would modify a number so-called ''death trap'' provisions in the REIT tax rules that result in the disqualification of the REIT if various rules are not met. The loss of REIT status would be a catastrophic occurrence that the management of a REIT tries to avoid at all costs, so much so that they expend significant resources to put in place compliance measures to avoid such a result. A better, simpler alternative would be to build in some flexibility to the REIT tax rules and impose monetary penalties, in lieu of REIT disqualification, for the failure to meet these strict rules that lead to REIT disqualification.

For example, under current law, a REIT is disqualified if more than 5 percent of its assets are comprised of the securities of any entity, or if it owns more than 10 percent of the voting power or value of any entity. In lieu of disqualification of the REIT status for violations of these rules, our bill would first give REITs an opportunity to comply with the asset tests with respect to any violation that does not exceed 1 percent of their total assets. Assets in excess of the 1 percent de minimis amount would be subject to a tax of the greater of $50,000 or the highest corporate tax rate multiplied by the net income from the assets if the violation was justified by reasonable cause.

Under current law, a REIT is disqualified if it does not meet certain other tests relating to its organizational structure, the distribution of its income, its annual elections to the IRS, the transferability of its shares, and other requirements. In lieu of this disqualification, Title III would change the law, assess a monetary penalty of $50,000 for each reasonable cause failure to satisfy these rules. This is a much more reasonable solution.

These changes are similar to ''intermediate sanctions'' legislation that Congress approved a few years ago dealing with nonprofit organizations. That legislation imposed monetary penalties on nonprofit organizations for violation of certain tax rules in lieu of a devastating loss of the organizations' tax-exempt status. Those changes, like the ones we are proposing today, recognize that it is far more likely that an entity will be sanctioned under a penalty regime than under draconian rules that entirely disqualify the organization.

The REIT Improvement Act would provide reasonable and much needed reforms to the rules governing a key component of our economy. We urge our colleagues to join with us in sponsoring this legislation and supporting its inclusion in tax legislation heading for passage this year.

Mr. BREAUX. Mr. President, I am pleased to join my colleague, Senator HATCH in the introduction of the REIT Improvement Act of 2003. Through this legislation we hope to remove a number of uncertainties in the tax laws that hinder the management of REITs, and to improve the investment climate for REITs, particularly with respect to their ability to attract foreign capital.

Real estate investment trusts (''REITs'') were created by Congress in 1960 as a means of enabling small investors to invest in real estate through professionally managed companies. While REITs remained a very small sector of the real estate industry for many years—primarily as mortgage owning companies—with the enactment of tax reform in 1986, and the collapse of the real estate markets in the late 1980s—the REIT structure rapidly grew in the 1990s as an attractive means of owning real estate. Unlike the traditional form of real estate ownership, REITs are publicly traded corporations that go to the public capital markets to raise capital for their operations. Today, REITs are corporations or business trusts that combine the capital of many investors to own, operate or finance income-producing real estate, such as apartments, storage facilities, hotels, shopping centers, offices, and warehouses.

Because REITs are publicly traded corporations that must show results to the financial markets, the REIT structure injects better market discipline into the real estate sector. This minimizes the wild valuation swings that have characterized the real estate sector in the past. It also limits the exposure of federally insured depository institutions that have been traditional lenders to private real estate companies.

The legislation that we are introducing today, the REIT Improvement Act of 2003 (RIA), has three objectives. Number one, to make a number of minor corrections in the REIT tax rules, including most importantly fixing an unintended problem arising from the REIT Modernization Act of 1999 that now causes a company to lose its REIT status by holding ordinary debt, e.g., a loan to a small tenant to finance tenant improvements.

Number two, to eliminate a major barrier to foreign investment in publicly traded REITs that now treats portfolio investors as doing business in the U.S. merely because they receive REIT capital gains distributions. The change would parallel the existing Tax Code rule for a foreigner's sale of a publicly traded REIT's stock.

Number three, to replace the penalty for reasonable cause violations of REIT tests from a loss of REIT status to a monetary penalty. This is similar to a test that was enacted as part of the REIT Simplification Act of 1977, as well as ''intermediate sanction'' legislation Congress passed a few years ago for tax-exempt organizations.

Twenty-nine members of the Ways and Means Committee are cosponsoring identical legislation in the House of Representatives, H.R. 1890. I expect we will eventually have similar support for this legislation in the Senate Finance Committee. I invite may colleagues to join us as cosponsors of this legislation in the weeks ahead.

By Mr. AKAKA:

S. 1569. A bill to amend title IV of the Employee Retirement Income Security